



# INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved Fatal Incident in  
Baltimore, Maryland, on February 19, 2022

August 3, 2022

**Report of the Independent Investigations Division of the Maryland Office  
of the Attorney General Concerning the Officer-Involved Death of  
Donnell Raquan Rochester on February 19, 2022**

Pursuant to Md. Code, State Gov't § 6-106.2, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this report to Baltimore City State's Attorney Marilyn J. Mosby regarding the officer-involved death of Donnell Raquan Rochester.

The IID is charged with "investigat[ing] all alleged or potential police-involved deaths of civilians" and "[w]ithin 15 days after completing an investigation ... transmit[ting] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-106.2(c), (d). The IID completed its investigation on July 27, 2022. This report is being provided to State's Attorney Mosby on August 3, 2022.

**I. Introduction**

Donnell Rochester died after being shot by Baltimore Police Department ("BPD") Officer Connor Murray on February 19, 2022. At approximately 3:10 p.m. on February 19, BPD Officers Robert Mauri and Antoine Galloway were on patrol when they saw a vehicle whose registered owner, Mr. Rochester, had open warrants for failing to appear at a court date on a carjacking charge and for an alleged robbery. Officer Murray and Officer Joshua Lutz joined Officers Mauri and Galloway in following Mr. Rochester's car. When officers attempted to pull him over, Mr. Rochester fled in the car.

After a brief search, the four officers located Mr. Rochester on foot in the 1800 block of Chilton Street in Baltimore. As officers got out of their vehicles, Mr. Rochester turned, ran back to his car, and got in the driver's seat. As officers ran towards the vehicle, it began moving forward toward Officer Murray, who was running down the center of Chilton Street. Officer Murray fired four shots, three into the front of the car and one into the front passenger-side window. Officer Mauri then fired two shots, both toward the front of the car. Officer Murray's fourth shot struck Mr. Rochester in the right side. The car stopped several houses down Chilton Street, and Mr. Rochester got out with his hands raised. Officers handcuffed Mr. Rochester, then provided medical aid until an ambulance arrived to take him to the hospital, where he was pronounced dead at 3:41 p.m.

The IID and BPD have entered a Memorandum of Understanding ("MOU") stating that the parties will each investigate all officer-involved deaths. The MOU recognizes that BPD entered a federal consent decree on January 12, 2017, which imposes certain obligations to investigate officer-involved fatalities. In order for BPD to meet its obligations under the consent decree and the IID to meet its obligations under state law, the MOU states that the agencies' investigators will cooperate and communicate during the investigation. If at any point the IID determines that BPD cannot maintain the level of impartiality required to conduct a thorough investigation, the IID may take over sole investigative responsibility for the case. In the present case, the IID and BPD have collaborated throughout the investigation.

This report details the IID's investigative findings based on review of physical evidence, forensic analysis of the shooting scene, ballistic analysis, the Office of the Chief Medical Examiner's autopsy report, video and audio recordings, and officers' written reports. Investigators also interviewed civilian and officer witnesses. All materials reviewed in this investigation are being provided to the Baltimore City State's Attorney's Office with this report and are listed in Appendix A.

This report also includes an analysis of Maryland statutes that could be relevant in a shooting of this nature. The IID considered the legal elements of possible criminal charges, the relevant departmental policies, and Maryland case law to assess whether any charge could be supported by the facts of this incident. Because the Baltimore City State's Attorney's Office—not the Attorney General's Office—retains prosecution authority in this case, this report does not make recommendations as to whether any individuals should or should not be charged.

## **II. Factual Findings**

The following findings are based on a forensic examination of the shooting scene as well as review of body-worn camera video, radio transmissions, analysis from the Office of the Chief Medical Examiner, ballistic analysis, and interviews with civilian and law enforcement witnesses. BPD cars are not equipped with dashboard cameras.

### *A. Events Preceding the Shooting*

Officers Mauri, Galloway, and Murray did not activate their body-worn cameras until they got out of their vehicles on Chilton Street. Officer Lutz activated his body-worn camera while in the patrol car with Officer Murray, but it was largely blocked by his arms and the car's dashboard. This subsection, therefore, will be based on interviews with Officers Galloway and Lutz, as well as documentary evidence and the limited available video evidence. The following events took place shortly after 3:00 p.m. on February 19, 2022.

Officer Galloway reported that he and Officer Mauri were on patrol near the intersection of Belair Road and Erdman Avenue in Baltimore. They were part of BPD's Mobile Metro Unit, which, according to BPD documents, had been assigned to that area due to recent carjackings. While on patrol, Officers Galloway and Mauri were checking vehicle license plates using their in-car computer. Officer Galloway stated that such checks are a routine part of their patrol work, and that BPD had specifically seen an increase in fraudulent temporary paper license plates recently. Computer records show that Officers Mauri and Galloway had checked 23 license plates that day before encountering Mr. Rochester's Honda; Officer Galloway said their shift began at 10 a.m.

When the officers ran the Honda's license plate, which was a temporary paper plate, their in-car computer showed that the car's owner, Mr. Rochester, had open warrants for failure to appear at a court date on a carjacking charge and for an alleged robbery.<sup>1</sup> The in-car system also

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<sup>1</sup> Officers did not know the specific facts of the alleged carjacking and robbery at the time of this incident, so those allegations did not affect the IID's analysis and are not detailed here. However, in the interest of completeness, police reports concerning both incidents are being provided to the State's Attorney's Office with this report.

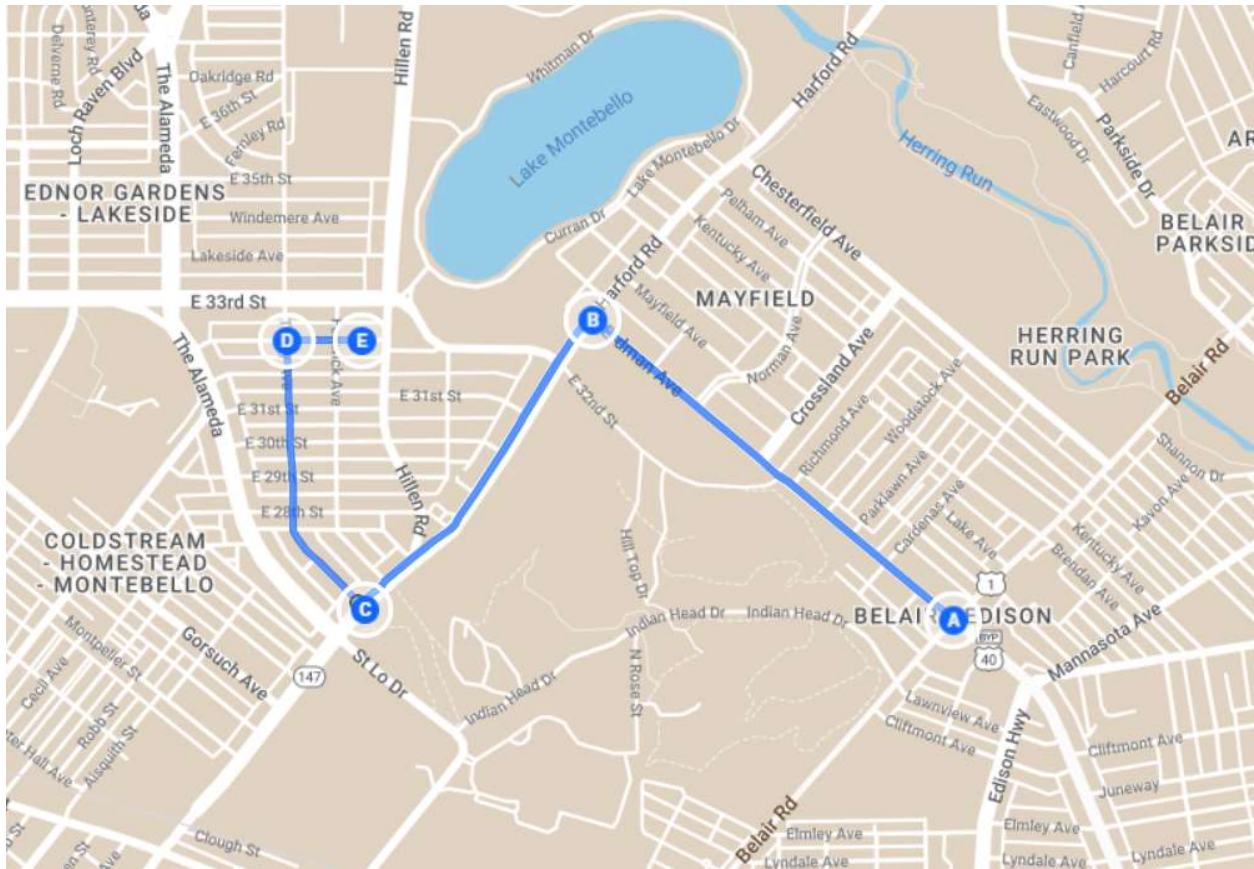
showed two pictures of Mr. Rochester. According to Officer Galloway, Officer Mauri pulled their unmarked patrol car alongside the Honda so they could see the driver; they believed the driver matched the pictures of Mr. Rochester. There was also a female passenger in the Honda, though she was not identified at the time and has not been identified to date.

Officer Galloway said that Officer Mauri, who was driving, waited before attempting to stop the Honda. By radio, officers reported: “It’s a individual with multiple warrants, including robbery and carjacking. I believe the driver is in the driver’s seat, occupying the vehicle. I haven’t tried to attempt a stop yet.”<sup>2</sup> They also reported their location and the car’s description and registration. The officers followed the Honda west on Erdman Avenue, south on Harford Road, and north on Tivoly Avenue. While on Harford Road, a marked patrol SUV—Officer Murray was driving, Officer Lutz was the passenger—pulled behind them to join in following the Honda. On Tivoly Avenue, Officer Mauri activated his emergency lights and attempted to stop the Honda. Officer Galloway said that the Honda initially “slow-rolled,” neither stopping nor accelerating, but that it then accelerated away. The officers reported by radio that, “he’s taking off.” Officer Galloway said Officer Mauri then deactivated his emergency lights and followed the Honda from a distance of approximately 400 to 600 feet.<sup>3</sup> Officer Galloway said that he lost sight of the Honda at this point. Soon, as they passed Chilton Street, he saw it again, parked with its door partially open. Officer Mauri turned right on East 33<sup>rd</sup> Street, then right on Hillen Road, and stopped their patrol car at the intersection of Hillen Road and Chilton Street.

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<sup>2</sup> Presumably, officers meant that the owner, for whom there were open warrants, was in the driver’s seat.

<sup>3</sup> BPD’s Emergency Vehicle Operation and Pursuit Policy (Policy 1503) states that officers may initiate a vehicle pursuit when: (1) “The vehicle contains a felony suspect and failure to immediately apprehend poses an immediate threat of death or serious bodily injury to the member or others;” and (2) “Before the pursuit is initiated, there exists probable cause to believe the fleeing suspect committed a felony which resulted, or could have resulted, in death or serious bodily injury.” Officer Mauri presumably did not initiate a pursuit because he did not have reason to believe that Mr. Rochester posed an immediate threat of death or serious bodily injury to officers or others at that time.



**Image 1:** Approximate route of Mr. Rochester after Officers Mauri and Galloway first identified his car, with the approximate locations of: (A) officers first identifying Mr. Rochester’s car, near the intersection of Belair Road and Erdman Avenue; (B) Mr. Rochester turning from Erdman Avenue onto Harford Road; (C) Mr. Rochester turning from Harford Road onto Tivoly Avenue; (D) Mr. Rochester turning from Tivoly Avenue onto Chilton Street; and (E) Mr. Rochester stopping on Chilton Street.

According to Officer Lutz, he and Officer Murray were already patrolling the area when they heard Officer Mauri report by radio that he had identified a driver with multiple open warrants. Officer Murray stopped their patrol car on Harford Road and waited for the Honda and Officer Mauri’s car to pass. Officer Lutz’s body-worn camera video shows he and Officer Murray stopped and waited for Officer Mauri to pass, though the video does not show their precise location. Officer Lutz similarly recounted losing sight of the Honda on Tivoly Avenue and said that Officer Murray turned right on either East 29<sup>th</sup> or East 31<sup>st</sup> Street, then left on Fenwick Avenue. Officer Lutz said they saw the Honda as they passed Chilton Street, so Officer Murray stopped, backed up, and turned down Chilton Street. This account is consistent with Officer Lutz’s body-worn camera video. Officer Murray drove the length of the 1800 block of Chilton Street, then stopped in the middle of Chilton Street, at the intersection of with Hillen Road.

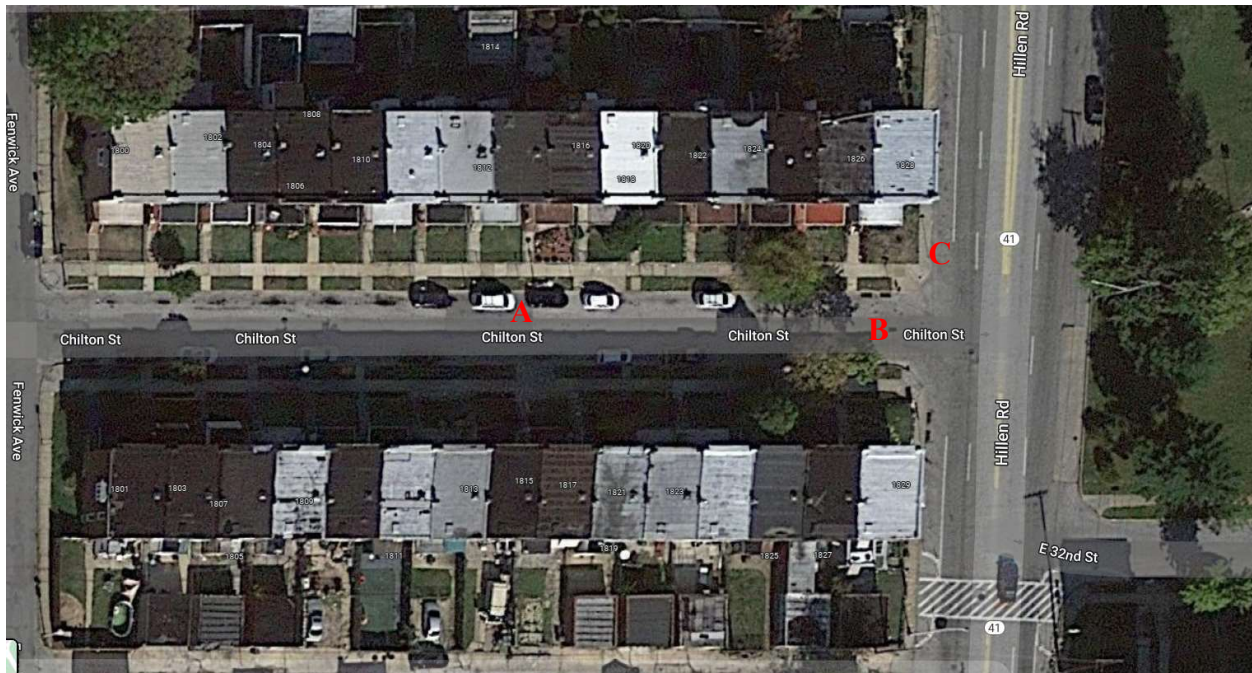
Both Officers Lutz and Galloway reported that when they got out of their patrol cars, Mr. Rochester was on foot, running towards Hillen Road. Both said he turned and ran back to the Honda once he saw the officers. Officers’ body-worn cameras were activated at this point but do not show Mr. Rochester until he had gotten back in the driver’s seat of the Honda. Both officers

also said the female passenger was running on Chilton Street toward Hillen Road, but neither saw where she went after they ran past her toward Mr. Rochester and the Honda.

### *B. The Shooting*

The shooting occurred at 3:13 p.m. in the 1800 block of Chilton Street. The following account is based on review of officers' body-worn camera videos. The shooting occurred during daylight, and there was no precipitation or other limitations on visibility.

As described above, all four officers left their patrol cars after parking at the intersection of Chilton Street and Hillen Road. Both cars were stopped at 3:12:50 p.m.



**Image 2:** Aerial view of the 1800 block of Chilton Street in Baltimore. Letters have been added to indicate approximately: (A) the location of Mr. Rochester's vehicle when officers arrived; (B) the location at which Officers Murray and Lutz stopped their patrol vehicle; and (C) the location at which Officers Mauri and Galloway stopped their patrol vehicle.

Officers Lutz and Galloway left their vehicles first, running to the Honda's passenger- and driver-side doors, respectively. Officers Murray and Mauri followed. Officer Murray ran down the center of Chilton Street, directly towards the front of the Honda. Officer Mauri ran down the sidewalk on the north side of Chilton Street. Officers Galloway, Murray, and Mauri all drew their service weapons while running towards the Honda. Officer Lutz did not. As they ran, Officer Galloway yelled, "Get out of the car now!" several times. Officer Murray yelled, "Stop it! Stop the car! Stop the car!" Officers Lutz and Mauri did not say anything between leaving their patrol cars and the shooting.



**Image 3:** View from Officer Murray's body-worn camera as Officers Lutz and Galloway get to the Honda. A portion of Officer Murray's service weapon is visible to the left of the screen. The Honda had not started to move yet.



**Image 4:** View from Officer Murray's body-worn camera video immediately before he fired his first shot.

The Honda began moving forward at 3:13:02 p.m. Officer Murray was still in the middle of Chilton Street, approximately 20 feet in front of the Honda. One second later, as the Honda

moved toward him, Officer Murray fired his service weapon three times in quick succession. Two of these shots struck the Honda's windshield; the other struck the hood. None hit Mr. Rochester.

As the Honda continued forward, body-worn camera video appears to show that Officer Murray was able to dodge the car without being hit. Body-worn camera video also shows that Officer Murray initially said he thought he had been hit but soon told two supervisors, separately, that he had not been. Then, later that day, Officer Murray filed a form with BPD saying [Redacted - Protected personnel and medical information.] Medical records show [Redacted - Protected medical information.]

[Redacted - Protected information]



**Image 5:** View from Officer Murray's body-worn camera immediately before he fired the shot that killed Mr. Rochester. Officer Mauri can be seen standing on the sidewalk next to the white car in the top-right of the image.

As the Honda passed him, Officer Murray fired a fourth shot through the front passenger-side window. Officer Murray fell to the ground as he did so. There was a brief pause—less than one second—between Officer Murray's third and fourth shots.

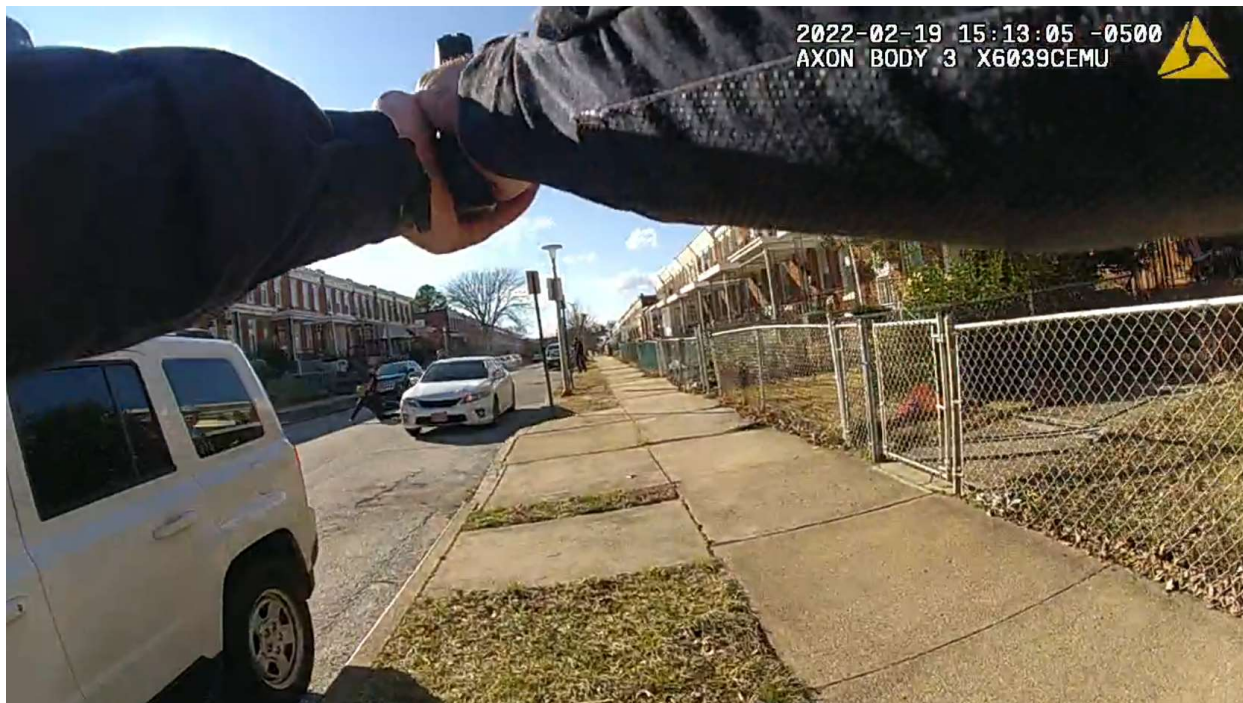




**Image 6:** View from Officer Murray's body-worn camera immediately after he fired the shot that killed Mr. Rochester. The bullet hole can be seen in the lower portion of the front passenger-side window.

The locations of Mr. Rochester's injuries indicate that this fourth shot struck and killed him. Mr. Rochester was shot in the right tricep and right upper chest. The injuries are consistent with being struck by one round that traveled through his right arm and into the right side of his chest. The only round fired from Mr. Rochester's right side was Officer Murray's fourth shot. Ballistic testing on the bullet recovered from Mr. Rochester's chest was inconclusive due to damage to the round.

After Officer Murray fired, Officer Mauri fired two shots from the sidewalk in front and to the left of the Honda. There was a gap of less than one second between Officer Murray's final shot and Officer Mauri's shots. When Officer Mauri fired, Officer Murray was falling to the ground on the passenger side of the Honda. Neither of Officer Mauri's shots struck Mr. Rochester; one hit the hood of the Honda and one likely struck the front bumper, though that round was not recovered.



**Image 7:** View from Officer Mauri's body-worn camera immediately before he fired two shots. Officer Murray can be seen falling to the left of the Honda. Officer Galloway is on the sidewalk ahead of Officer Mauri. Officer Lutz is behind the Honda, not visible in this image.

### *C. Response to the Shooting*

After the shooting, the Honda stopped on Chilton Street, approximately five houses from where it had been parked. Mr. Rochester opened the driver's door and stepped to the street with his hands up, immediately saying, "I can't breathe," and getting to his knees. Mr. Rochester had blood coming from his mouth. Officer Mauri put Mr. Rochester face-down on the street and began handcuffing him, yelling, "Put your fucking hand behind your back." At 3:13:26 p.m., 14 seconds after Mr. Rochester got out of his car, Officer Murray called over the radio: "Signal 13. Start a medic." Other officers begin arriving less than a minute later.

Over the next several minutes, officers provided medical aid to Mr. Rochester. Officer Galloway helped remove Mr. Rochester's shirt and jacket, revealing the gunshot wounds in Mr. Rochester's right tricep and upper right chest. Officer Murray and other officers turned Mr. Rochester onto his side and kept his head elevated. Another officer then wrapped Mr. Rochester's wounds with gauze. After approximately three minutes, Officers Murray, Mauri, Galloway, and Lutz were replaced by other officers in attending to Mr. Rochester.

An ambulance arrived approximately nine minutes after the shooting. Mr. Rochester was then transported to The Johns Hopkins Hospital, where he was pronounced dead at 3:41 p.m.

Officer Murray's body-worn camera shows that after the shooting, Officer Murray first said he thought he had been hit by Mr. Rochester's car, but then told two supervisors he had not been. While attending to Mr. Rochester, Officer Murray was asked if he was OK and said, "I'm good." A minute later he said, "I think he hit my leg. I'm not sure." At 3:18:42 p.m., while

Officer Murray stood apart from the scene, he had the following dialogue with Sergeant Andrew Davis:

Sergeant Davis: Not you, right?

Officer Murray: Nah, I just ... it's all good.

Sergeant Davis: You good?

Officer Murray: Yeah.

Sergeant Davis: You get hit?

Officer Murray: No.

Sergeant Davis: Car? Run ... anything?

Officer Murray: I don't think it hit me.

Ten minutes later, while sitting in a nearby police vehicle, Officer Murray had the following dialogue with Sergeant Giuseppe Polanco:

Sergeant Polanco: Do you need a medic, because if the car hit you, I mean ...?

Officer Murray: I don't remember if it did or not. I don't think it did. I think I just fell. I was close to it, but I just fell. I don't think it hit me. I'm good.

Sergeant Polanco: If you need a medic, I'll call a medic for you.

Officer Murray: I don't feel any pain.

After the shooting, Officer Murray submitted an Employee's Incident Report form with BPD indicating [Redacted - Protected personnel and medical information.] As noted above, Officer Murray went to Mercy Medical Center five hours after the shooting. Hospital records from that visit show [Redacted - Protected medical information.]

### **III. Investigation**

The IID began its investigation immediately after the shooting. This section details specific components of the IID's investigation. It summarizes the initial response, Medical Examiner's report, ballistic analysis, and civilian and law enforcement witnesses' statements.

### *A. Initial Response*

BPD officers—in addition to the four on scene at the time of the shooting—responded to the scene approximately one minute after the shooting and secured the area. Pursuant to Md. Code, State Gov't § 6-106.2 and IID protocols, BPD soon notified the IID that there had been an officer-involved fatality. IID and MSP personnel then responded to the scene. Consistent with the MOU between the IID and BPD, the agencies proceeded jointly with the investigation.

### *B. Medical Examination*

Mr. Rochester's autopsy was conducted by Associate Pathologist Richard Morris, M.D., on February 20, 2022. Dr. Morris identified Mr. Rochester's cause of death as: "Gunshot Wounds (2) of Right Arm and Chest." Dr. Morris deemed the manner of death to be: "Homicide."<sup>4</sup> Though Dr. Morris noted two gunshot wounds, Mr. Rochester's injuries appear to consist of two wounds caused by a single bullet. It appears the round traveled through Mr. Rochester's right tricep, then into his right chest.

Dr. Morris observed that Mr. Rochester had two gunshot wounds, one to the right arm and one to the right side of the chest. Examining the skin surrounding the wounds, he found no indication of soot or gunpowder stippling, and thus no indication that the gunshot had occurred from close range. Both wounds showed a bullet trajectory from Mr. Rochester's back towards his front, his right towards his left, and upward. The entry wound on the outside of Mr. Rochester's arm had a corresponding exit wound on the inside of his arm. The entry wound on the right side of his chest did not have a corresponding exit wound; the bullet struck his rib, right lung, and heart, causing significant bleeding.

Dr. Morris also noted abrasions on the left side of Mr. Rochester's forehead, head, and neck, and on his left hand and knee.

### *C. Ballistic Analysis*

Ballistic analysis conducted by the BPD Firearms Analysis Unit ("FAU") could not conclusively match any of the rounds recovered to either discharging officer's service weapon. The FAU reported that the rounds were "damaged," "distorted," or had "limited marks of value" for purposes of making a valid comparison. Nonetheless, as noted in Section II(B) above, the positioning of the discharging officers and the location of Mr. Rochester's injuries makes clear that Officer Murray's fourth shot is the round that struck and killed Mr. Rochester.

The FAU did match the five recovered casings with officers' service weapons. Three of the casings were fired from Officer Murray's service weapon. Two of the casings were fired from Officer Mauri's service weapon.

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<sup>4</sup> Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. "Homicide" is one of six categories used by the Office of the Chief Medical Examiner of Maryland and refers to a death resulting from a volitional act committed by another person to cause fear, harm, or death. The term is not used to connote criminal liability.

#### *D. Civilian Witness Statements*

BPD Officers Haywood McMorris Jr. and Jonathan Woodland conducted a canvass of the neighborhood shortly after the shooting. They spoke to eight nearby residents; some had heard shots fired, but none had seen the shooting or any preceding events. Officers McMorris and Woodland attempted to speak to residents at 22 other addresses but received no response.

There was one civilian witness on the street at the time of the incident, but he had been inside his car and ducked when he heard shots fired. His car was also facing away from the shooting, so he said he did not see the shooting or any preceding events; he only saw police cars blocking Chilton Street when he looked up afterward.

The IID and BPD attempted to identify and contact the female passenger who had been in Mr. Rochester's car but were not able to do so.

#### *E. Law Enforcement Officers' Statements*

Officers Lutz and Galloway, the witnessing officers, gave interviews to investigators on the day of the shooting. Officers Murray and Mauri, the officers who fired their weapons, did not give interviews. Like the subjects of any investigation, they have the right under the Fifth Amendment to remain silent. They did make certain statements to other officers after the incident that were captured by body-worn cameras. The four officers' statements are summarized below.

##### 1. Officer Murray

Officer Murray's statements captured by body-worn cameras concerned whether he was struck by Mr. Rochester's car. Those statements are described in Section II(C) above.<sup>5</sup>

##### 2. Officer Mauri

As noted above, Officer Marui's body-worn camera video shows that twenty minutes after the shooting, he told another officer: "He looked like he was going to run Murray right over."<sup>6</sup> His body-worn camera does not show that he made any other significant statements.

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<sup>5</sup> Officer Murray's body-worn camera also captured a statement Officer Murray made in response to a sergeant's question about what had happened, in circumstances under which the statement could be considered compelled. Out of an abundance of caution, it is omitted from this report. In any event, the content of the statement is duplicative of other evidence—specifically, officers' body-worn camera videos of the incident and statements given by non-discharging officers—and had no effect on the IID's investigation or analysis.

<sup>6</sup> Officer Mauri's body-worn camera captured brief statements he made in response to three specific questions from a supervisor about the incident, in circumstances under which the statements could be considered compelled. Out of an abundance of caution, they are not included here. These statements had no effect on the IID's investigation or analysis.

### 3. Officer Lutz

Officer Lutz was interviewed the evening of the shooting by Detective Aaron Cruz of BPD's Special Incident Response Team ("SIRT"). The interview was recorded. His account of the events prior to leaving his patrol car is detailed in Section II(A) above. His account of subsequent events, including the shooting, is described here.

Officer Lutz said that Mr. Rochester had been running towards a house at the end of Chilton Street, but turned and fled to the Honda when officers arrived. Officer Lutz said he ran to the passenger side door of the Honda while Officer Galloway ran to the driver side door. Officer Lutz tried to open the door but it was locked. He then said, the "car took off." He let go of the car and believed it hit Officer Murray's right side; he also thought it ran over Officer Murray's foot. Officer Lutz said, "I'm almost 100% positive he got hit by the car." Officer Lutz said he then "heard weapons discharge," but did not know who fired.

Officer Lutz reported that the Honda rolled to a stop and Mr. Rochester got out of the driver's door. He said Mr. Rochester said something and had blood coming from his mouth. Officer Mauri then tried to handcuff Mr. Rochester, but according to Officer Lutz, Mr. Rochester did not "cooperate." Still, officers eventually handcuffed him. Officer Lutz said the officers called for medics, located Mr. Rochester's wounds, and bandaged them. They also rolled him on his side and kept his head elevated so he could breathe. Officer Lutz said that Mr. Rochester was talking and conscious until medics arrived and took him to the hospital.

Body-worn camera video largely confirms Officer Lutz's account. However, video does not support Officer Lutz's characterization that Mr. Rochester was uncooperative while officers tried to handcuff him after the shooting. After stopping the car, Mr. Rochester immediately got out and went to his knees with his hands up. He was bleeding from his mouth and said he could not breathe. Any difficulty officers had handcuffing him is better attributed to his severe injuries than to a failure to cooperate. Additionally, while Officer Lutz believed Officer Murray had been hit by the car, video and other evidence indicate it is most likely that Officer Murray narrowly avoided being hit.

### 4. Officer Galloway

Officer Galloway was also interviewed the evening of the shooting by Detective Cruz of BPD's SIRT, and on February 25 by BPD SIRT Detective Chris Kazmarek. Both interviews were recorded. Officer Galloway's account of the events prior to leaving his patrol car is detailed in Section II(A) above. His account of subsequent events, including the shooting, is described here.

Officer Galloway, like Officer Lutz, said that Mr. Rochester had been running on Chilton Street towards Hillen Road when officers arrived. He said the female passenger was near Hillen Road and Mr. Rochester was closer to the middle of the block. When Mr. Rochester saw officers, according to Officer Galloway, he turned around and ran back to the Honda. Officer Galloway followed him and reached for the driver-side door when he got to the car. Officer Galloway stated that he "brandished" his service weapon, but did not aim it at Mr. Rochester.

Officer Galloway said Mr. Rochester looked at him, looked away, and then put the Honda in drive and accelerated. As he did so, Officer Galloway saw Officer Murray in front of the car and “thought he was going to get run over.” He said, “I know Murray was directly in front of the car.” When asked if the Honda hit Murray, Officer Galloway responded, “I guess the vehicle hit him because he fell.” He said he then heard shots fired, but he said, “I have no idea who shot first.”

Officer Galloway said that the car then moved slowly down the block, and when it stopped, Mr. Rochester got out of the driver’s door with his hands up and laid down on the ground. He did not recall who handcuffed Mr. Rochester. He asked if Mr. Rochester was hit and then saw blood coming from his mouth, so he ran to get a medical kit from his patrol car. When officers cut Mr. Rochester’s jacket off, they saw he had been hit in the arm and armpit. Officer Galloway said that he did not call medics, but one of the other officers did. He did not recall what anyone said after the shooting and did not believe Mr. Rochester was able to speak, but he said he “knows” Officer Murray was limping and that Officer Murray’s leg was hurting him. He did not say how he knew that Officer Murray’s leg was hurting him.

Body-worn camera video largely confirms Officer Galloway’s account. However, there is not video supporting Officer Galloway’s statement that Officer Murray was limping after the incident; Officer Murray appears to be walking normally on the available video. And, as discussed above, body-worn camera video and other evidence indicate that Officer Murray most likely narrowly avoided being struck by the Honda.

#### *F. First Responding Personnel*

Emergency medical technicians Dominic Bianchi and Benjamin Haynes wrote reports documenting their responses to the shooting scene. Mr. Bianchi wrote that Mr. Rochester was handcuffed laying on his left side when paramedics arrived. Police informed him that Mr. Rochester had been shot. Mr. Rochester was conscious but having difficulty breathing. Mr. Haynes reported that Mr. Rochester had a pulse but was breathing shallowly and not speaking or showing any motor response. Both paramedics reported [REDACTED] Redacted - Protected medical information. Mr. Haynes reported that Mr. Rochester’s handcuffs were removed before he was placed on a stretcher and into the ambulance.

#### **IV. Involved Parties’ Backgrounds**

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

In this case, this information did not affect the analysis of potential criminal charges.

*Donnell Raquan Rochester:* Mr. Rochester was an 18-year-old Black man with a last known address in Odenton, Maryland.

*Officer Connor Murray:* Officer Murray is a white man who was 27 years old at the time of this incident. He was hired by BPD in July 2018 and completed the BPD Training Academy on July 26, 2019. Officer Murray has no BPD Public Integrity Bureau investigations or complaints that have been sustained; he has one pending matter that did not affect the analysis of the present incident. Officer Murray has not been involved in any prior shootings.

*Officer Robert Mauri:* Officer Mauri is a white man who was 40 years old at the time of this incident. He was hired by BPD in May 2017 and completed the BPD Training Academy on February 9, 2018. Officer Mauri has no BPD Public Integrity Bureau investigations or complaints that have been sustained; he has two pending matters that did not affect the analysis of the present incident. Officer Mauri has not been involved in any prior shootings.

## **V. Applicable Policies & Training**

This section discusses BPD policies and training concerning officers' use of force, including their decisions to use deadly force. The complete policies are attached as Appendix B.

### *Firearms Regulations (Policy 409) & Use of Force (Policy 1115)*

BPD's Firearms Regulations and Use of Force policies both contain the following relevant provisions.

Officers may only use force that is reasonable, necessary, and proportional. The policies define those terms as follows:

- Reasonable – “A member uses Reasonable Force when the member uses no more force than required to perform a lawful purpose.”
- Necessary – “Force is necessary only when no reasonably effective alternative exists.”
- Proportional – “Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.”

The Use of Force Policy specifies that “[t]he use of Deadly Force/Lethal Force shall always be the last resort,” and shall occur only when officers “reasonably believe such action is immediately necessary to protect a member or another person from an Imminent Threat of death or Serious Physical Injury.” Before using deadly force, officers “shall consider environmental considerations such as field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks to life.”

Specifically regarding fleeing individuals, officers may only use deadly force where there is probable cause to believe “the person has committed or is in the process of committing a felony involving the infliction or threatened infliction of Serious Physical Injury or death, and” escape “would pose an Imminent Threat of death or Serious Physical Injury”; “and [m]embers have identified themselves as law enforcement officers, have stated their intention to use Deadly Force/Lethal Force, and have given the person a reasonable opportunity to comply voluntarily, if time, safety, and the circumstances permit.” (Emphasis in original.)



The policy specifically states that officers shall not fire at moving vehicles, except to “counter an imminent threat of death or serious physical injury . . . by a person in the vehicle using means other than the vehicle,” or to “counter a situation where the officer or another person is unavoidably in the path of the vehicle and cannot move to safety. Officers shall avoid positioning themselves in the path of a moving vehicle where they have no option but to use Deadly Force/Lethal Force.” (Emphasis in original.)

With respect to providing medical aid, the Use of Force Policy states: “When there is a visible injury . . . members shall immediately render aid consistent with their training and shall request that a medic respond to the scene, or transport the person directly to the nearest emergency room.”

#### *De-escalation (Policy 1107)*

BPD’s De-escalation Policy, which is closely related to the Use of Force Policy, states that its goal is “to minimize the likelihood to use force,” in order to increase safety for officers and the public. The policy describes de-escalation techniques such as communicating calmly, increasing time and distance, and avoiding physical confrontation. It also states: “Members shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to, immediately approaching a subject without proper evaluation of the situation, failing to leave sufficient space between the member and the subject, closing the reactionary gap, or escalating a situation.”

#### *Officer Training*

Officers Murray and Mauri have completed numerous trainings on the use of force, including a 2021 training titled, “Firing at Moving Vehicles E-Learning.” They completed this training on June 21, 2021, and June 15, 2021, respectively.

This training began: “Firing from or at a moving vehicle is almost never a safe or effective means of stopping the threat posed by a suspect vehicle.” It later told officers that: “You are not likely to stop a moving vehicle with your handgun round. The only thing you might do is create an out-of-control vehicle with an incapacitated driver.”

This training also examined a case study from another department, critiquing that officer for firing at a driver after the officer had stepped out of the way of the car. The training stated: “In this case study, the only apparent imminent deadly threat occurred when the officer walked into the path of the moving vehicle. However, the officer eliminated that threat by moving out of the vehicle’s path before firing her weapon, thus any deadly force against the fleeing vehicle was inappropriate.” Contrasting that officer’s actions with the proper approach, the training instructed officers to “[i]ncrease distance, don’t decrease it,” and to “[p]lace yourself in a position of advantage, not in the way of a suspect’s vehicle.”

In a separate case study, the training critiqued an officer for firing towards a subject vehicle when other officers were behind that target car. It instructed officers to consider their backdrop when firing, for “the safety of bystanders and other members.”

The training also reminded officers: “Consider each round prior to firing,” and, “Re-assess after each round.”

Officers Murray and Mauri also completed a 2020 computer-based training regarding officers’ use of deadly force. This training consisted of four modules, each concluding with a summary quiz. Both officers completed and passed all four modules and the summary quizzes.

This training repeated the policy discussed above, that officers shall not fire at a moving vehicle absent specific exceptions, and that officers “shall not position themselves in the path of a moving vehicle where they have no option but to use Deadly Force/Lethal Force.” It also repeated that officers must constantly reassess whether the use of deadly force is appropriate. In the training’s third module, one slide stated (emphasis added):

Members shall continuously assess each situation and change the member’s response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member discharges a firearm.

The training also repeatedly instructed officers on de-escalation policy and methods. Among the techniques that appeared in multiple modules were “**creating space or placing barriers** between the member and the person” (emphasis in original), “slowing down the pace of an incident,” “tactical repositioning,” and “requesting additional resources.” The training specified that de-escalation is appropriate where such tactics are available to officers and a subject poses no imminent threat to civilians in the area.

This training also went through several case studies to emphasize limitations on the use of force. In one, it pointed out that even when a subject has been associated with past violence, that fact alone is not a sufficient basis to conclude that the person currently poses an imminent threat. It also made clear that deadly force is not always appropriate even when a subject has fired at officers, because there may be “environmental factors where the lives of officers, victims and/or bystanders could be placed in danger by using deadly force.”

## **VI. Applicable Law & Analysis**

The IID analyzed Maryland statutes and common law that could be relevant in a shooting of this nature. This section presents the elements of each possible criminal charge and analyzes these elements in light of the findings discussed above.

### A. Officer Murray's Actions

This section analyzes criminal charges that may be relevant to Officer Murray's actions in this incident.

#### 1. Intentional Second-Degree Murder & Voluntary Manslaughter<sup>7</sup>

Because a charge of intentional second-degree murder may be reduced to voluntary manslaughter if a defendant acted in partial self-defense, these potential charges will be analyzed together here. With respect to Officer Murray's first three shots, which did not hit Mr. Rochester, this section will analyze attempted second-degree murder and attempted voluntary manslaughter. With respect to Officer Murray's fourth shot, which did strike and kill Mr. Rochester, this section will analyze consummated second-degree murder and voluntary manslaughter.

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

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

Self-defense is one possible justification or mitigating circumstance. Self-defense may be either complete (*i.e.*, the use of deadly force was completely justified) or partial (*i.e.*, the use of deadly force was partially, but not completely, justified). If a defendant acted in complete self-defense, no murder or manslaughter charge is appropriate. If a defendant acted in partial self-defense, a charge of second-degree murder must be reduced to voluntary manslaughter. Complete self-defense exists where:

1. The defendant was not the aggressor;
2. The defendant actually believed that [they were] in immediate or imminent danger of death or serious bodily harm;
3. The defendant's belief was reasonable; and

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<sup>7</sup> This report will not separately analyze the charge of first-degree assault because that offense merges with the crimes of intentional second-degree murder and voluntary manslaughter, either attempted or consummated. *Sifrit v. State*, 383 Md. 116, 137 (2004); *Dixon v. State*, 364 Md. 209, 239-40 (2001).

4. The defendant used no more force than was reasonably necessary to defend [themselves] in light of the threatened or actual force.

MPJI-Cr 4:17.2; *see also Porter v. State*, 455 Md. 220, 234-36 (2017). Partial self-defense exists where the first two of these elements are present, but the defendant either unreasonably believed danger to be imminent or unreasonably believed the amount of force they used was necessary. MPJI-Cr 4:17.2.

Another possible defense is law-enforcement justification. This defense provides that an officer may use “that force necessary to discharge his official duties” and “[i]n so doing, he is not liable civilly or criminally for the assault or battery that may result, including, if necessary, the use of deadly force.” *Wilson v. State*, 87 Md. App. 512, 519-20 (1991). The rationale for this justification is that officers’ duties are “markedly different” from those of ordinary citizens, requiring that officers “threaten deadly force on a regular basis.” *Koushall v. State*, 249 Md. App. 717, 728-29 (2021), *aff’d*, No. 13, Sept. Term, 2021 (Md. Feb. 3, 2022). To reasonably use deadly force, an officer must have “probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others.” *Estate of Blair by Blair v. Austin*, 469 Md. 1, 23-24 (2020) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)). If an officer used more force than was reasonably necessary, “the privilege is lost.” *French v. Hines*, 182 Md. App. 201, 265-66 (2008).

For either defense—self-defense or law-enforcement justification—the reasonableness of an officer’s actions “must be evaluated not from the perspective of a reasonable civilian but rather from the perspective of a reasonable police officer similarly situated.” *State v. Albrecht*, 336 Md. 475, 501 (1994). A court will consider “the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *State v. Pagotto*, 361 Md. 528, 555 (2000) (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)). However, “an objectively reasonable officer would use deadly force *only* when threatened with serious physical harm.” *Estate of Blair by Blair*, 469 Md. at 24 (emphasis in original).

Under Maryland law at the time of this shooting, only the circumstances facing the officer at the moment lethal force was used are relevant. “Antecedent and allegedly negligent acts that may have contributed to the creation of a dangerous situation are not pertinent in evaluating the officer’s state of mind at the critical moment when the gun, for instance, was discharged.” *State v. Pagotto*, 127 Md. App. 271, 356 (1999), *aff’d*, 361 Md. 528 (2000); *see also Mayor & City Council of Baltimore v. Hart*, 167 Md. App. 106, 118 (2006), *aff’d*, 395 Md. 394 (2006); *Richardson v. McGriff*, 361 Md. 437, 458 (2000).<sup>8</sup>

Violation of or compliance with departmental policies is one way to assess an officer’s reasonableness. “[A] violation of police guidelines *may* be the basis for a criminal prosecution.” *State v. Pagotto*, 361 Md. at 557 (citing *Albrecht*, 336 Md. at 502-03) (emphasis in original) (“while a violation of police guidelines is not negligence *per se*, it is a factor to be considered in determining the reasonableness of police conduct.”). Officers’ policy violations may be evidence

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<sup>8</sup> This standard changed on July 1, 2022, when Maryland’s statutory use of force standard became effective. *See* 107 *Opinions of the Attorney General* 33, 38-39 (2022).

of negligence, recklessness, unreasonableness, and corrupt intent. *See, e.g., Albrecht*, 336 Md. at 503; *Pagotto*, 361 Md. at 550-53; *Koushall*, 249 Md. App. at 729-30; *Kern v. State*, No. 2443, Sept. Term 2013, 2016 WL 3670027, at \*5 (Md. Ct. Spec. App. Jul. 11, 2016) (unreported); *Merkel v. State*, No. 690 Sept. Term 2018, 2019 WL 2060952, at \*8 (Md. Ct. Spec. App. May 9, 2019) (unreported)<sup>9</sup>; *Hart*, 395 Md. at 398 (civil litigation). However, a “hypertechnical” violation of policy, without more, is not sufficient to establish gross negligence. *Pagotto*, 127 Md. App. at 304.

With respect to Officer Murray’s first three shots, it would be difficult for the State to prove that Officer Murray acted unreasonably, as would be necessary to overcome either a complete or partial self-defense argument. Under Maryland law at the time of the shooting, only the circumstances Officer Murray faced at the moment he fired may be considered when assessing reasonableness. *E.g., Pagotto*, 127 Md. App. at 356. In other words, the reasonableness analysis may not consider the fact that Officer Murray placed himself in front of the vehicle prior to the shooting or that he ran towards the Honda rather than attempting to de-escalate the situation by preserving time and distance. The reasonableness analysis will consider only that, at the moment he fired the first three shots, Officer Murray was directly in front of the Honda as it drove towards him. He therefore had reason to believe that Mr. Rochester posed an immediate threat of serious bodily injury to him.

While these factors suggest the reasonableness of Officer Murray’s first three shots, there are two considerations to the contrary. First, Officer Murray’s training instructed him that firing at a moving vehicle is not likely to stop the vehicle; it will only cause the vehicle to continue uncontrolled. However, BPD policy also acknowledges that there may be situations in which an officer is “in the path of a moving vehicle” and has “no option but to use Deadly Force/Lethal Force.”<sup>10</sup> Second, Officer Murray seems to have subsequently dodged the Honda without being hit, as discussed in more detail below. However, at the time of his first three shots, he had reason to believe he could be hit; his actions may not be judged “with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396. It is unlikely, therefore, that the State could prove that Officer Murray acted unreasonably with respect to his first three shots.

With respect to Officer Murray’s fourth shot, which struck and killed Mr. Rochester, it is possible the State could prove Officer Murray acted unreasonably, thereby overcoming a complete self-defense argument. When he fired this shot, Officer Murray had dodged the Honda and was to the side of the car, falling to the ground. At that time, Mr. Rochester no longer posed a threat to Officer Murray, and Officer Murray had no reason to believe that Mr. Rochester posed a threat to any other officer or civilian. No other officers or civilians were in the path of Mr. Rochester’s vehicle and officers had no reason to believe that Mr. Rochester was armed or otherwise imminently dangerous. In such a situation, BPD policy instructs that deadly force is not reasonable, necessary, or proportional. Officer Murray’s training and BPD’s Use of Force Policy instructed him to re-assess the threat after each shot and specified that, “Members may be

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<sup>9</sup> Pursuant to General Provisions § 1-104, unreported opinions shall not be used as either precedential or persuasive authority in any Maryland court. They are included here solely for illustrative purposes.

<sup>10</sup> This policy prohibits officers from placing themselves in the path of the vehicle so as to make deadly force necessary, but in so doing it inherently implies that deadly force may be an option available to an officer when a vehicle is driving at them.

justified in using force in one instance, but not justified in using force an instant later.” While such reevaluation is difficult amid changing conditions, it is required under the law. “[A]n objectively reasonable officer would use deadly force *only* when threatened with serious physical harm.” *Estate of Blair by Blair*, 469 Md. at 24 (emphasis in original). For this reason, BPD’s Use of Force Policy states: “Members shall continuously assess each situation and change the member’s response as the circumstances change.” It continues: “[Officers] will immediately reduce the level of force as the threat or resistance diminishes.” Here, Officer Murray did not immediately reduce the level of force used when the threat posed diminished. Instead, body-worn camera video shows that he fired his first three shots in quick succession, then fired his fourth after a brief pause of less than one second. It is possible that this gap between the third and fourth shots could indicate that Officer Murray had the opportunity to re-assess the situation and, despite no longer being in immediate danger, chose to fire again regardless.

Critically, however, in any reasonableness determination, the law provides officers some “allowance” in recognition of the reality that they are “often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.” *Pagotto*, 361 Md. at 555 (citing *Graham*, 490 U.S. at 397). It is possible that a factfinder—a judge or jury—could find Officer Murray was acting within such leeway here. His fourth shot came less than one second after his third; it could be argued that such a short gap did not afford him the opportunity to understand that the threat had passed or to alter his actions accordingly. Additionally, Officer Murray fired as he fell to the ground, immediately after having been directly in front of Mr. Rochester’s car; there is no doubt that this was a “tense, uncertain, and rapidly evolving” situation. It is unclear, given these facts, whether a factfinder would determine that Officer Murray was acting within the “allowance” given to officers under the law applicable at the time of this shooting.

It is also unclear what weight a factfinder might give to the apparent discrepancies in Officer Murray’s account of whether he was struck by Mr. Rochester’s car. Officer Murray first said he thought the car had hit him but then told multiple officers, minutes after the shooting, that he did not believe the car struck him and that he was not injured. Body-worn camera video does not show him limping or otherwise evincing any injury in the minutes after the shooting. Later that day, though, he completed a BPD Employee’s Incident Report, saying [REDACTED] Redacted - Protected personnel and medical information.

[REDACTED] However, body-worn camera video appears to show that Officer Murray was able to dodge the Honda. Furthermore, when he later reported to the hospital, according to hospital records, [REDACTED] Redacted - Protected medical information.

[REDACTED] There are at least two possible explanations for the apparent discrepancies in Officer Murray’s accounts. On one hand, Officer Murray’s initial reports at the scene were made in the immediate aftermath of a stressful situation in which events transpired quickly. And when he later reported injuries, he may have felt pain from his fall and assumed it was the result of having been hit by Mr. Rochester’s car. On the other hand, it is possible that Officer Murray reported he had been struck

by the car in order to exaggerate the threat he faced, thereby attempting to make his use of force appear more reasonable.

If the State proved that Officer Murray acted unreasonably, the charge would likely shift from second-degree murder to voluntary manslaughter because of partial self-defense. Partial self-defense exists where the defendant was not the aggressor and actually believed they faced an imminent threat of serious harm, but that belief was unreasonable or the defendant used more force than necessary to defend themselves. It is unlikely the State could show that Officer Murray was the aggressor, given that Mr. Rochester drove the car towards him before he fired. *See Pagotto*, 127 Md. App. at 363-64. It is similarly unlikely the State could show that Officer Murray did not actually believe he was in imminent danger, given that he was either directly in front of the car or had within one second prior been directly in front of the car when he fired. Therefore, Officer Murray could still assert a partial self-defense argument that would reduce the potentially relevant charge to voluntary manslaughter. Overcoming this partial self-defense argument would then depend on the factfinder's evaluation of whether Officer Murray's beliefs and actions were reasonable, as analyzed above.

In addition to addressing reasonableness, the State must—and likely could—prove that Officer Murray's fatal fourth shot was intentional, not accidental as he fell. When he fired his fourth shot, even though he was in the process of falling, Officer Murray held his left arm, which held his service weapon, straight, aimed directly at Mr. Rochester (*see* Images 5 and 6). This shot also closely followed his first three, which were undoubtedly intentional. On the other hand, Officer Murray's body-worn camera video shows that his right hand, which was not holding his service weapon, clenched as he fell, making it possible that a factfinder could find his left hand similarly clenched, pulling the trigger. Still, given the proximity to his first three shots and the apparent control demonstrated in aiming directly at Mr. Rochester with his arm straight, it is likely the State could prove Officer Murray's fourth shot was intentional.

## 2. Unintentional Second-Degree Murder & Involuntary Manslaughter

As discussed above, a factfinder may question the intentionality of Officer Murray's fourth shot. Given this possibility, the charges of unintentional second-degree murder and involuntary manslaughter will be analyzed here.

To prove unintentional (“depraved heart”) second-degree murder, the State must prove: “(1) that the defendant caused the death of [Mr. Rochester]; (2) that the defendant's conduct created a very high degree of risk to the life of [Mr. Rochester]; and (3) that the defendant, conscious of such risk, acted with extreme disregard of the life[-]endangering consequences.” MPJI-Cr 4:17.8 Homicide—Second Degree Depraved Heart Murder and Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.8 (2d ed. 2021). As discussed above, an officer's actions before the use of deadly force will not be considered. *Pagotto*, 127 Md. App. at 356.

It is highly unlikely the State could prove each element of a charge for depraved heart murder. This theory would assert that the circumstances in which it was possible for an unintentional discharge of Officer Murray's service weapon to kill Mr. Rochester were a

foreseeable result of Officer Murray's conduct. However, as discussed above, a factfinder will consider only the circumstances at the moment Officer Murray fired, not his preceding conduct. *Id.* Specifically, a factfinder will not consider the fact that Officer Murray ran down the middle of Chilton Street in the path of Mr. Rochester's car as evidence of an "extreme disregard" for life. Absent this context, it is unlikely the State could show other wrongful conduct by Officer Murray that rose to the level of "extreme disregard."

The same legal limitations, however, may not apply to the charge of involuntary manslaughter based on a theory of a death that occurred during the commission of some other unlawful act. The requirement of this charge that the State prove a separate unlawful act inherently requires consideration of a broader context, not merely the conditions at the moment lethal force was used.

To prove involuntary manslaughter under this theory, the State must establish: (1) that the defendant committed or attempted to commit an unlawful act; (2) that the defendant killed Mr. Rochester; and (3) that the act resulting in Mr. Rochester's death occurred during the commission or attempted commission of the unlawful act. MPJI-Cr 4:17.9 Homicide—Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.9 (2d ed. 2021).

In this case, the predicate unlawful act would be reckless endangerment by virtue of Officer Murray's running in front of the car, which could have created the situation in which deadly force became a likely outcome. To prove reckless endangerment, the State must establish: "(1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; (2) that a reasonable person would not have engaged in that conduct; and (3) that the defendant acted recklessly." MPJI-Cr 4:26B Reckless Endangerment, MJPI-Cr 4:26B (2d ed. 2021). To prove recklessness, the State must show that the defendant "consciously disregarded" the substantial risk to others. *Marlin v. State*, 192 Md. App. 134, 166 (2010) (citation omitted). "The test is whether the [defendant's] misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk the statute was designed to punish." *Minor v. State*, 326 Md. 436, 443 (1992). In the context of officers' interactions with civilians, relevant factors include: an officer's modifications to their service weapon; an officer aiming their gun at the civilian; the officer's placement of their trigger finger; the officer's knowledge of the threat, or lack thereof, posed by the civilian; and the proximity of bystanders. *Pagotto*, 361 Md. at 554-55 (finding these factors to be have been determinative in *Albrecht*, 336 Md. at 505, but not present in the incident involving Sergeant Pagotto).<sup>11</sup>

It would be difficult for the State to prove that Officer Murray's actions preceding the shooting rose to the level of recklessness. As in *Albrecht*, Officer Murray had no reason, as he ran towards the Honda, to believe Mr. Rochester posed a threat of serious injury or death. As in *Pagotto*, however, there is no evidence that Officer Murray made any modifications to his weapon, held his trigger finger inappropriately, or that there were bystanders nearby. It is

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<sup>11</sup> While *Albrecht* and *Pagotto* considered the *mens rea* for gross negligence involuntary manslaughter rather than for reckless endangerment, courts have indicated that the two *mentes reae* are functionally identical. See *State v. Morrison*, 470 Md. 86 (2020).



arguable whether Officer Murray's unholstering of his weapon as he ran towards the car—because it increased the chances that he would use the weapon—would constitute evidence of recklessness. Ultimately, however, these circumstances more closely resemble those of *Pagotto*, in which the situation was unsettled and the civilian was failing to comply with officers' orders by attempting to flee in the seconds leading up to the shooting.

Beyond the factors delineated in *Albrecht* and *Pagotto*, possibly supporting a theory of recklessness, Officer Murray violated an explicit BPD policy against officers positioning themselves in front of a vehicle, such that the need to use deadly force is the likely result. This policy is underlined by BPD for emphasis and was a subject of multiple trainings that Officer Murray completed.<sup>12</sup> Officer Murray also likely violated BPD policy regarding de-escalation. This policy and Officer Murray's training instructed him to increase the distance between himself and the vehicle, and to give himself more time to assess and respond to a situation, particularly where neither civilians nor officers faced an imminent threat. Instead, Officer Murray decreased the distance and time available for him to determine the appropriate response by running directly at the front of Mr. Rochester's Honda.

On the other hand, the circumstances suggest that Officer Murray may not have deliberately positioned himself in front of the Honda. Officer Murray stopped his patrol car in the middle of Chilton Street, at the end of the block. By running down the middle of the street back towards Mr. Rochester's car, Officer Murray took the most direct path. A factfinder, therefore, may find his poor positioning to be a result of the circumstances rather than an intentional choice. Such a finding may lead to the actions being deemed negligent, but not rising to the level of recklessness.

An alternate, less plausible theory of criminal liability would consider a charge based on the officers' decision to wait for an ambulance rather than transporting Mr. Rochester to the hospital in their department vehicles. The evidence does not support such a theory here. BPD policy provides: "When there is a visible injury ... members shall immediately render aid consistent with their training and shall request that a medic respond to the scene, or transport the person directly to the nearest emergency room." While direct transport is permitted, it is not required or even recommended. Here, the officers called for paramedics immediately after the shooting and then began to provide medical aid, including identifying where Mr. Rochester had been shot, applying bandages, positioning him on his side, and keeping his head elevated. Based on this evidence, it is highly unlikely the State could prove that the officers' response was grossly negligent or reckless, or that it caused Mr. Rochester's death.

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<sup>12</sup> While Mr. Rochester's vehicle was not moving when Officer Murray began running towards it, Officer Murray had reason to believe that it would be at any moment. Mr. Rochester had just fled officers in the car and was again running away from them, getting into the driver's seat of the car. The logical inference was that Mr. Rochester was going to try to flee in the car again. The rationale that underlies the BPD policy prohibiting officers from positioning themselves in front of moving vehicles—that doing so foreseeably creates a situation in which officers will feel the need to use deadly force—applies equally to a situation in which an officer positions himself in front of a vehicle that they have reason to believe will begin to move imminently.

### 3. Use of a Firearm in the Commission of a Crime of Violence

Criminal Law § 4-204(b) states: “A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony ....” Second-degree murder, voluntary manslaughter, first-degree assault, and second-degree assault are all crimes of violence. Pub. Safety § 5-101(c). Second-degree murder, voluntary manslaughter, involuntary manslaughter, and first-degree assault are all felonies. Crim. Law. §§ 2-204, 2-207, 3-202. Police officers are not afforded any special dispensation or exemption from this statute. *Riley v. State*, 227 Md. App. 249, 261 (2016).

To prove use of a firearm in the commission of a crime of violence, the State must establish: (1) that the defendant committed a felony or crime of violence; and (2) that the defendant used a handgun in the commission of that felony or crime of violence. MPJI-Cr 4:35.4 Weapons—Use of a Handgun or Firearm in the Commission of a Felony or Crime of Violence, MPJI-Cr 4:35.4 (2d ed. 2021).

Unless the State could establish one of the predicate offenses discussed above, it could not pursue a charge for use of a firearm in the commission of a crime of violence.

### 4. Reckless Endangerment

Criminal Law § 3-204(a) states: “A person may not recklessly [] engage in conduct that creates a substantial risk of death or serious physical injury to another.” The elements of reckless endangerment are discussed in Section VI(B)(2) above with respect to unintentional second-degree murder and involuntary manslaughter.

A reckless endangerment charge with respect to Officer Murray’s endangerment of Mr. Rochester by shooting at him would merge with the above charges and is therefore not discussed separately here. *Williams v. State*, 100 Md. App. 468, 490-91 (1994).

The State may consider a reckless endangerment charge with respect to Officer Murray’s actions preceding the shooting, as analyzed in the unintentional second-degree murder and involuntary manslaughter section above.

### 5. Misconduct in Office

Misconduct in office is a common law misdemeanor not enumerated in statute. *Leopold v. State*, 216 Md. App. 588, 604 (2014). To prove misconduct in office, the State must establish: (1) that the defendant was a public officer; (2) that the defendant acted in their official capacity or took advantage of their public office; and (3) that the defendant corruptly did an unlawful act (malfeasance), corruptly failed to do an act required by the duties of their office (nonfeasance), or corruptly did a lawful act (misfeasance). MPJI-Cr 4:23 Misconduct in Office (Malfeasance, Misfeasance, and Nonfeasance), MPJI-Cr 4:23 (2d ed. 2021). “[T]he conduct must be a willful abuse of authority and not merely an error in judgment.” Comment to *id.* (citing Hyman Ginsberg and Isidore Ginsberg, *Criminal Law & Procedure in Maryland* 152 (1940)).

Unless the State could prove one of the above charges, it would be difficult to establish the corrupt intent necessary to prove misconduct in office. *See Sewell v. State*, 239 Md. App. 571, 604 (2018) (Malfeasance is conduct that “falls outside the official’s discretion and authority, and if done willfully, is corrupt on its face. The fact-finder can therefore infer the element of corruption with direct evidence of the official’s intent to act corruptly....”). There is no evidence that Officer Murray was specifically motivated by “depravity, perversion, or taint.” *Id.* Evidence of corruption would have to be inferred from the possible wrongfulness of his actions.

## 6. Impairment of Physical Evidence

Criminal Law § 9-307(b) states that it is illegal to “fabricate physical evidence in order to impair the verity of the physical evidence with the intent to deceive and that the fabricated physical evidence be introduced in a pending or future official proceeding.” Physical evidence “encompass[es] all evidence not testimonial in nature,” and would therefore include a police report. *Pinheiro v. State*, 244 Md. App. 703, 714 (2020).

To prove this charge, the government must show that the evidence in question did not “honestly represent what it purported” to be, and that the defendant created the false material “with the intent to deceive.” *Id.* at 718. The State need not show that the defendant specifically intended to deceive a court of law; “a general intent to deceive observers of the fabricated evidence into believing the evidence is authentic” is sufficient. *Id.* at 720.

Here, as discussed in Section VI(A)(1) above, there is some question as to the accuracy of the report Officer Murray submitted stating [Redacted - Protected personnel and medical information.

[Redacted] As discussed above, it is unclear whether a factfinder would attribute these discrepancies to an intent to deceive or to the inherent difficulty of recounting a stressful, quickly-evolving situation.

### *B. Officer Mauri’s Actions*

This section analyzes criminal charges that may be relevant given Officer Mauri’s actions in this incident.

1. Attempted Second-Degree Murder & Attempted Voluntary Manslaughter<sup>13,14</sup>

The elements of attempted second-degree murder and attempted voluntary manslaughter are discussed in Section VI(A)(1) above.

Defense of others is a possible justification or mitigating circumstance for homicide. This justification parallels the self-defense justification discussed in Section VI(A)(1). As with self-defense, defense of others may be either complete (*i.e.*, the use of deadly force was completely justified) or partial (*i.e.*, the use of deadly force was partially, but not completely, justified). If a defendant acted in complete defense of others, no murder or manslaughter charge is appropriate. If a defendant acted in partial defense of others, a charge of second-degree murder must be reduced to voluntary manslaughter. Complete defense of others exists where:

1. The defendant actually believed that the person [they were] defending was in immediate or imminent danger of death or serious bodily harm;
2. The defendant's belief was reasonable;
3. The defendant used no more force than was reasonably necessary in light of the threatened or actual force; and
4. The defendant's purpose in using force was to aid the person they were defending.

MPJI-Cr 4:17.3 Homicide—First Degree Premeditated Murder, Second Degree Specific Intent Murder and Voluntary Manslaughter (Perfect/Imperfect Defense of Others), MPJI-Cr 4:17.3 (2d ed. 2021). Partial defense of others exists where the first and fourth of these elements are present, but the defendant either unreasonably believed the person they were defending was in immediate or imminent danger or unreasonably believed the amount of force they used was necessary. *Id.*

Law-enforcement justification is another possible defense to these charges, as discussed in Section VI(A)(1) above.

In this case, there is no dispute that Officer Mauri fired two shots at Mr. Rochester's car, neither of which struck Mr. Rochester. There is also no dispute that the shots were intentional. Officer Mauri's specific intent to kill Mr. Rochester can be inferred from the situation and is evidenced by his statement after the shooting that, "He looked like he was going to run Murray right over." Officer Mauri's apparent intent was to stop Mr. Rochester from hitting Officer Murray, which he only could have accomplished, if at all, if his shots hit Mr. Rochester.

It could be possible for the State to prove Officer Mauri acted unreasonably when firing at Mr. Rochester's car, thereby overcoming a complete defense of others argument. When he fired, Officer Murray was already to the side of the Honda (*see* Image 7); Mr. Rochester no longer posed a threat to Officer Murray or any other officer or civilian. In fact, Officer Mauri had

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<sup>13</sup> Because there is no dispute that Officer Mauri intended to fire either shot, and because "[t]here is no such crime as attempted involuntary manslaughter," this report will not analyze attempted depraved heart murder or attempted involuntary manslaughter charges with respect to Officer Mauri. *Dixon*, 364 Md. at 218 fn. 9 (citing *Sacchet v. Blan*, 353 Md. 87, 96 (1999); *Cox v. State*, 311 Md. 326, 331-32 (1988)).

<sup>14</sup> As above, this report will not separately analyze the charge of first-degree assault because that offense merges with the crimes of intentional second-degree murder and voluntary manslaughter, either attempted or consummated. *Sifrit*, 383 Md. at 137; *Dixon*, 364 Md. at 239-40.

just started to raise his service weapon at the time Officer Murray appears to have sidestepped the Honda (*see* Image 8). Over one second passed between that moment and Officer Mauri's first shot. As discussed above with respect to Officer Murray, Officer Mauri had received training calling for officers to constantly re-assess the threat posed in determining whether deadly force was necessary. This training further stated that shooting at the driver of a moving vehicle is likely to be ineffective at stopping that vehicle.

It is also possible, however, as with Office Murray, that a factfinder could find the gap between the time at which the threat to Officer Murray existed and the time at which Officer Mauri shot to be sufficiently small that his shots were reasonable. Officer Mauri perceived another officer to be in immediate danger and attempted to take action with the means available to him. The relevant legal question is not whether Officer Mauri had good or malicious intentions; the relevant question is solely whether it was reasonable for Officer Mauri to use deadly force, given that Officer Murray did not face an immediate threat at that moment but had approximately one second before. It is unclear how a factfinder would decide this issue.



**Image 8:** View from Officer Mauri's body-worn camera before he fired either shot.

If the State proved that Officer Mauri acted unreasonably, it would nonetheless be difficult to overcome a partial defense of others argument that would require reducing the relevant charge from attempted second-degree murder to attempted voluntary manslaughter. It is unlikely the State could show that Officer Mauri did not subjectively believe Officer Murray was in danger, or that he fired for any reason other than to attempt to protect Officer Murray. After the shooting, Officer Mauri said that he believed Mr. Rochester was going to “run Murray right over,” and there is no evidence suggesting this belief was not genuine. Therefore, Officer Mauri could still assert a partial defense of others argument that would reduce the relevant charge to attempted voluntary manslaughter. Overcoming this partial defense of others argument would

then depend on the factfinder's evaluation of whether Officer Mauri's beliefs and actions were reasonable, as analyzed above.

## 2. Use of a Firearm in the Commission of a Crime of Violence

The elements of use of a firearm in the commission of a crime of violence are discussed with respect to Officer Murray's actions in Section VI(A)(3) above.

Unless the State could establish one of the predicate offenses discussed above, it could not pursue a charge for use of a firearm in the commission of a crime of violence.

## 3. Reckless Endangerment

The elements of reckless endangerment are discussed with respect to Officer Murray's actions in Section VI(A)(2) above.

A reckless endangerment charge with respect to Officer Mauri's endangerment of Mr. Rochester by shooting at him would merge with the above charges and is therefore not discussed separately here. *Williams*, 100 Md. App. at 490-91.

The State may also consider reckless endangerment charges with respect to Officer Mauri's endangerment of the two officers toward whom he shot. Officer Mauri's apparent intent in firing was to protect Officer Murray from what had been an immediate threat. However, when Officer Mauri fired at the Honda, Officer Murray was directly to the side of the vehicle and Officer Lutz was directly behind it, from Officer Mauri's perspective (*see* Images 7 and 8). BPD use of force and firearms policies specifically warn officers to consider risks involving "field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks of life." Officer Mauri completed training on this topic, including specifically in the context of moving vehicles, which critiqued another department's officer for shooting at a vehicle positioned in front of other officers. Officer Mauri also completed training that praised an officer for not firing, even when fired upon, because "environmental factors" could have put the lives of officers or the public in danger. Therefore, it is possible that a factfinder would find firing in the circumstances of this incident to be "a gross departure" from the standard of conduct of a reasonable officer.

## 4. Misconduct in Office

The elements of misconduct in office are discussed with respect to Officer Murray's actions in Section VI(A)(5) above.

Unless the State could prove one of the above charges, it would be difficult to establish the corrupt intent necessary to prove misconduct in office. *See Sewell*, 239 Md. App. at 604 (2018) (Malfeasance is conduct that "falls outside the official's discretion and authority, and if done willfully, is corrupt on its face. The fact-finder can therefore infer the element of corruption with direct evidence of the official's intent to act corruptly...."). There is no evidence that

Officer Mauri was specifically motivated by “depravity, perversion, or taint.” *Id.* Evidence of corruption would have to be inferred from the possible wrongfulness of his actions.

### *C. Other Charges*

The facts of this incident did not warrant a full analysis of the charge of first-degree murder. This crime requires the State to prove that the killing was “willful, deliberate, and premeditated.” MPJI-Cr 4:17.2. Said another way, the State must prove “the actual intent, the fully formed purpose to kill, with so much time for deliberation and premeditation as to convince [the factfinder] that this purpose is not the immediate offspring of rashness and impetuous temper and that the mind has become fully conscious of its own design.” *Ferrell v. State*, 304 Md. 679, 687 n. 2 (1985) (citations omitted). There is no evidence here that either officer came to a considered decision to kill Mr. Rochester. The evidence suggests both officers were reacting to a quickly evolving situation.

## **VII. Conclusion**

This report has presented factual findings and legal analysis relevant to the fatal shooting that occurred on February 19, 2022, in Baltimore, Maryland. Please feel free to contact the IID if you would like us to supplement this report through any further investigation or analysis.

## Appendices

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

BPD & BFD Computer-Aided Dispatch Reports (1 document)  
BPD Body-Worn Camera Video (35 videos)  
BPD Radio Recordings (1 recording)  
BPD Reports & Other Documents (22 documents)  
Civilian Videos (2 videos)  
Civilian Witness Statements (1 recording; 1 document)  
Crime Lab Reports (7 documents)  
Emergency Medical Services Reports (2 documents)  
IID Investigative Reports (9 documents)  
Involved Parties' Criminal Histories (3 documents)  
Medical Examiner's Reports (2 documents)  
Medical Records (2 documents)  
Motor Vehicle Records (1 document)  
Officer Internal Affairs Records (6 documents)  
Officer Training Records (41 documents)  
Officer Witness Statements (3 recordings)  
Photographs (475 documents)  
Search Warrants (1 document)

### **Appendix B – Relevant BPD Policies**

See attached.





# Policy 1115

Subject	
<b>USE OF FORCE</b>	
Date Published	Page
<b>24 November 2019</b>	<b>1 of 11</b>

*By Order of the Police Commissioner*

## POLICY

The purpose of this policy is to establish when a member may use force, and members' duties before, during, and after the Use of Force. The decision to use force requires careful attention and continual assessment of the situation, threats, options, and risks, with the goal of resolving the encounter peacefully.

**While members must at all times comply with the minimum legal requirements governing the Use of Force, they must also comply with even stricter standards set forth by Department policy.**

## CORE PRINCIPLES

1. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
2. **Value and Worth of All Persons.** All human beings have equal value and worth and members shall respect and uphold the value and dignity of all persons at all times.
3. **Peaceful Resolutions.** Members shall avoid the Use of Force unless it is not possible to do so.
4. **De-Escalation.** Members shall use De-Escalation Techniques and tactics to reduce any threat or gain compliance to lawful commands without the Use of Force or with the lowest level of force possible (See Policy 1107, *De-Escalation*).
5. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
6. **Assessment.** Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member uses force.
7. **Use of Force: Reasonable, Necessary, and Proportional.** Members shall use only the force Reasonable, Necessary, and Proportional to respond to the threat or resistance to effectively and safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.
8. **Reporting Use of Force.** Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will accurately and completely report the Use of Force by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

9. **Duty to Intervene.** Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).
10. **Duty to Provide Medical Assistance.** After any Use of Force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance. If restrained, persons are not to be positioned facedown as it may cause positional asphyxia, and placing restrained persons on their back may lead to radial nerve damage to the wrists and forearms. Restrained persons are to be placed in a seated position or on their sides.
11. **Accountability.** Members shall be held accountable for uses of force that violate law or policy.
12. **Retaliatory Force.** Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason (See Policy 804, *First Amendment Protected Activity*).

## **DEFINITIONS**

**Active Aggression** — Active Aggression is when a person attacks or attempts to attack a member or another person. Strikes, kicks, or attempted strikes or kicks with hands, fists, the head, elbows, knees, or an instrument, constitute Active Aggression.

**Aggravated Aggression** — Aggravated Aggression is when a person presents an Imminent Threat of death or Serious Physical Injury to the member or another person based on the Totality of the Circumstances. Aggravated Aggression represents the least encountered but most serious threat to a member or other person. Even when confronted with Aggravated Aggression, the member is required to make every reasonable effort to de-escalate and to continuously assess the member's Use of Force.

**Chemical Agents** — Substances designed to irritate the eyes and mucous membranes (CS gas, PepperBall, Mk-9 Pepper Fogger, smoke, etc.).

**Chokehold/Neck Hold** — A Chokehold or Neck hold is any hold or contact with the neck that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. Chokeholds/Neck Holds are prohibited unless the use of Deadly Force/Lethal Force is justified.

**Conducted Electrical Weapon (CEW)** — A weapon designed to discharge electrical impulses in two modes:

**Drive Stun** — Pulling the trigger on the CEW with the cartridge removed or discharged, and placing the electrodes upon the skin/clothing of the person. Drive Stunning does not cause neuro-muscular incapacitation but causes severe pain.

**Probes Deployment** — Probes Deployment is the primary way that CEWs are used. With a cartridge attached, pulling the trigger fires two probes with barbs on the end that can penetrate the clothing or skin of a person. The two probes are connected to the CEW by wires and upon contact, if an electrical circuit is established, the CEW delivers pulsed electricity into the person, and overrides the person's voluntary motor function. Probes Deployment also causes significant pain.

**Deadly Force/Lethal Force** — Any force likely to cause death or Serious Physical Injury, whether the member intended to cause death or Serious Physical Injury or not. Deadly Force/Lethal Force includes, but is not limited to:

- The discharge of a firearm at a person;
- Strikes with any hard object such as a baton, flashlight, radio, weapon stock/handle, or Improvised Impact Weapon to the head, neck, sternum, spine, groin, or kidneys;
- Intentionally striking a person's head against a hard, fixed object such as a roadway, concrete floor, wall, or iron bars;
- Knee strikes or kicks to a person's head;
- Any strikes to a person's throat;
- "Knee drops" against a prone or supine person's head, neck, or torso;
- Chokeholds/Neck Holds;
- Shooting someone in the head, neck, chest, or back, with a Less-Lethal Launcher at close range.
- The use of any force on a person whose health, age, condition, or circumstances make it likely death or Serious Physical Injury will result.

**De-Escalation Techniques** — De-Escalation Techniques are actions taken by members that are designed to eliminate the need to use force in order to resolve any event or situation. De-Escalation Techniques include: talking to a person using a tone of voice and language that is not aggressive or confrontational; creating space or placing barriers between the member and the person; waiting the person out when circumstances permit; permitting a person to move about when safe; permitting a person the opportunity to make statements or ask questions; slowing down the pace of an incident; tactical re-positioning and requesting additional resources. The guiding principles for de-escalation are patience, flexibility, and the desire to resolve each situation peacefully (See Policy 1107, *De-Escalation*).

**Imminent Threat** — A person presents an Imminent Threat when the person has the means and ability to harm the member or another person, and the member reasonably believes the person intends to deliver that harm.

**Improvised Impact Weapon (IIW)** — An Improvised Impact Weapon (IIW) is a device or object that is not a department approved weapon, but is nonetheless used as an impact weapon (e.g., flashlight, radio, or stick). Such weapons may be unpredictable, ineffective, or exert unexpectedly high levels of damage (e.g., board with protruding nail). Consequently, members shall use Improvised Impact Weapons only in rare, emergency conditions where members lack an authorized Baton or other approved less-lethal alternatives, and use of an Improvised Impact Weapon is reasonable and necessary to defend against a person displaying Active or Aggravated Aggression.

**Less-Lethal Force** — Force that, when employed as designed, intended, and consistent with policy and training, is not likely to cause death or Serious Physical Injury. Devices of Less-Lethal Force may include, but not be limited to, a DS-3027 bean bag, FN-303, Pepper Ball rounds, batons/impact weapons, O.C. spray, and CEW. The way a Less-Lethal Force device is used and the circumstances in which it is used could constitute Deadly Force/Lethal Force.

**Less-Lethal Launchers/Munitions** — A delivery tool that, when used as designed and intended, is less likely to cause death or Serious Physical Injury than a conventional lethal weapon such as a firearm. Less-Lethal Launchers/Munitions are only approved for use by certified members.

**Physical Force** — A member uses Physical Force any time a member coercively touches, directly or indirectly, any person. Physical Force includes holds, grabs, blows, and strikes as well as the use of instruments, such as batons, devices, such as CEWs, tools such as O.C. spray, canines, or firearms, whether

lethal or less-lethal.

**Reasonable, Necessary, and Proportional** — The review of every Use of Force shall be to determine whether it was reasonable, necessary, and proportional in light of the Totality of the Circumstances that were known, or should have been known, to the member, and in light of the mandates of BPD Policies.

**Reasonable** — A member uses Reasonable Force when the member uses no more force than required to perform a lawful purpose.

**Necessary** — Force is necessary only when no reasonably effective alternative exists. When force is Necessary, members shall use force in a manner that avoids unnecessary injury or risk of injury to members and civilians.

**Proportional** — Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.

**NOTE:** Members who use force that is not Reasonable, Necessary, and Proportional will be subject to corrective action, possible discipline, possible criminal prosecution, and/or civil liability.

**Resistance** — Members may face the following types of Resistance to lawful directives:

**Active Resistance** — Active Resistance is when a person moves to avoid detention or arrest but does not attack or attempt to attack the member or another person. Attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the member's grasp are all examples of Active Resistance. Verbal statements, bracing, or tensing alone do not constitute Active Resistance. A person's reaction to pain caused by a member or purely defensive reactions to force does not constitute Active Resistance.

**Passive Resistance** — Passive Resistance is when a non-assaultive person fails to comply with the member's commands without attempting to flee. Passive Resistance may include, but not be limited to, going limp, standing stationary and not moving based upon lawful direction, and/or verbally signaling an intention to avoid or prevent being taken into custody.

**Serious Physical Injury** — Serious Physical Injury is when there is disfigurement or substantial disruption or harm to one or more body parts, organs, or systems. The term includes, for example, brain injury, with or without unconsciousness, gunshot wounds, cardiac arrhythmia, difficulty breathing, cardiac or respiratory arrest, broken bones, dislocations, torn ligaments or tendons, or significant bleeding. This list is not exhaustive and is intended only to provide representative examples for guidance.

**Temporary Pain** — Any pain or complaint of pain that is brief, does not result in injury, and is delivered as a means to gain compliance. Temporary Pain may result from the application of, but is not limited to, elbow grips, wrist grips, shoulder grips, pressure point techniques, and/or forcible takedowns.

**Totality of Circumstances** — The Totality of Circumstances consists of all facts and circumstances surrounding any event. The facts and circumstances may include but are not limited to:

- Whether an offense has occurred;
- The nature of the offense;
- The seriousness of the offense;
- The size and strength of the person;
- The number of persons;

- The availability of weapons;
- Whether the person is exhibiting signs of mental illness or is experiencing a behavioral health crisis;
- Whether a person suffers from a medical or behavioral health disability, physical or hearing impairment, is impaired by alcohol or drug use, or may be non-compliant due to a language barrier;
- Other force options;
- Availability of non-force options, including tactical repositioning, going to cover, or other De-Escalation Techniques;
- Environmental factors;
- Availability of back up and specialized units.

**Use of Force** — Any Use of Force or show of force that falls within Level 1, Level 2, or Level 3 force as defined in this policy. Use of Force Levels are:

**Level 1 Use of Force** — Includes:

- Using techniques that cause Temporary Pain or disorientation as a means of gaining compliance, hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip), and pressure point compliance techniques. Force under this category is not reasonably expected to cause injury,
- Pointing a firearm, Less-Lethal Launcher, or CEW at a person,
- “Displaying the arc” with a CEW as a form of warning, and
- Forcible takedowns that do not result in actual injury or complaint of injury.

NOTE: Escorting, touching, or handcuffing a person with minimal or no resistance does not constitute a Level 1 Use of Force.

EXCEPTION #1: SWAT team members and members assigned to work on a federal task force will not be required to report the pointing of a firearm at a person as a Use of Force during the execution of SWAT team or federal task force duties.

EXCEPTION #2: Pointing of a firearm at a person by any member, if done solely while entering and securing a building in connection with the execution of an arrest or search warrant, will not be a Use of Force. A permanent-rank supervisor must still complete a Form 93, Weapons-Pointing Report detailing the incident (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

**Level 2 Use of Force** — Includes:

- Force that causes or could reasonably be expected to cause an injury greater than Temporary Pain or the use of weapons or techniques listed below — provided they do not otherwise rise to a Level 3 Use of Force:
- Discharge of a CEW in Drive-Stun or Probes Deployment, in the direction of a person, including where a CEW is fired at a person but misses,
- Use of OC spray or other Chemical Agents,
- Weaponless defense techniques including, but not limited to, elbow or closed fist strikes, open hand strikes, and kicks,
- Discharge of a Less-Lethal Launcher/Munitions in the direction of a person,
- Canine-inflicted injuries that do not rise to a Level 3 Use of Force,
- Non-weapon strikes to the head, neck, sternum, spine, groin, or kidney area, and
- Striking of a person or a vehicle with a vehicle that does not rise to Level 3 Use of Force.

**Level 3 Use of Force** — Includes:

- Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon,
- Firearm discharges by a BPD member,
- Applications of more than three (3) CEW cycles in a single encounter, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different members,
- CEW application for longer than 15 seconds whether the application is a single continuous application or from multiple applications,
- Uses of Force resulting in death, Serious Physical Injury, loss of consciousness, or requiring hospitalization, and
- Uses of Deadly Force/Lethal Force.

**NOTE:** Hospitalization refers to admission to the hospital, and does not include treatment and release in the emergency department, no matter how long the stay.

**DIRECTIVES****Use of Force**

1. Sworn members have the authority to use Reasonable force when Necessary to accomplish lawful ends. This authority is limited by the laws of the State of Maryland, federal law, the United States Constitution, and the provisions of this policy. Members must conform their actions to the law, the Constitution, and BPD policies. When members use force, they shall exercise the utmost restraint. When practical, members should announce that force will be utilized prior to the application of such force.
2. Members shall prevent or stop the illegal, inappropriate, or excessive Use of Force by other members. Failure to intervene may subject a member to disciplinary action (See Policy 319, *Duty to Intervene*).
3. Members may only use weapons and/or force techniques that are allowed by policy and on which the member is trained, unless warranted by the Totality of Circumstances.

**De-Escalation**

Members shall, unless it is not possible to do so, avoid the Use of Force by using De-Escalation Techniques, including verbal persuasion and warnings, slowing down the pace of an incident, waiting out persons, using barriers, creating distance (and thus the reactionary gap) between the member and the threat, and requesting additional resources such as specialized units, CIT trained members, behavioral health care providers, or negotiators, before resorting to force, and to reduce the need for force. De-Escalation Techniques mitigate the threats and gives officers time to utilize extra resources, and increases time available to call more officers or specialty units (See Policy 1107, *De-Escalation*).

1. Members shall talk to the person; attempt to convince the person to comply; reduce any threat presented by withdrawing to a position that is tactically advantageous; or take actions that allow the member greater distance and time, in order to de-escalate a situation or deploy a lesser force option or no force at all.

2. Members shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to, immediately approaching a person without proper evaluation of the situation, failing to leave sufficient space between the member and the person, closing the reactionary gap, or escalating a situation.
3. Members shall not use tactics that unnecessarily escalate an encounter or create a need for force.
4. Members shall de-escalate force immediately as resistance decreases.
5. If the member has no alternative to using force, the member shall use only the amount of force that is Reasonable, Necessary and Proportional to respond to the threat or resistance and shall immediately reduce the level of force as the threat or resistance lessens or stops.

### Critical Thinking

Prior to using force, members shall use a critical thinking and decision-making framework to analyze and respond to incidents. This framework will allow members to uphold the sanctity of life and protect themselves by decelerating and stabilizing a situation to minimize the likelihood of a Use of Force incident. Using this framework, members will:

1. Assess the situation, threats, and risks;
2. Gather relevant facts about the incident;
3. Consider police powers and BPD policy;
4. Identify options and determine the best course of action; and
5. Act, review, and re-assess the situation.

### Restrained Persons

1. Members shall not use force against persons who are handcuffed or otherwise restrained, except in exceptional circumstances where the Totality of Circumstances makes it Reasonable and Necessary to prevent injury or escape. Members are cautioned that force that may be Proportional against an unrestrained person may not be Proportional when used on a restrained person. As with any Use of Force, members shall be required to use De-Escalation Techniques and critical thinking in order to avoid the Use of Force.
2. Members shall not use force against a handcuffed or restrained person if the person's actions only present a risk of property damage.
3. Members shall **not** position a restrained person face-down as it may cause positional asphyxia, placing persons on their back can cause radial nerve damage to the wrist and forearm area. Restrained persons are to be seated or placed on their side.

### Use of Deadly Force/Lethal Force

1. The use of Deadly Force/Lethal Force shall always be the last resort.
2. Members shall not use Deadly Force/Lethal Force unless they have exhausted de-escalation

(See Policy 1107, *De-Escalation*) and Less-Lethal Force options have been tried and failed, or are not safe based on the Totality of Circumstances.

3. A member may use Deadly Force/Lethal Force when they reasonably believe such action is immediately necessary to protect a member or another person from an Imminent Threat of death or Serious Physical Injury.
4. Prior to the decision to employ Deadly Force/Lethal Force members shall consider environmental considerations such as field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks to life.
5. Where safety permits, a member should identify himself/herself as a law enforcement officer and state his/her intention to use Deadly Force/Lethal Force before using a firearm or employing Deadly Force/Lethal Force.
6. A member may use Deadly Force/Lethal Force to prevent the escape of a fleeing person if force is authorized and no Reasonable force alternative exists that is within BPD policy, the member has given a verbal warning to the person (if time, safety, and circumstances permit), and there is probable cause to believe that:
  - 6.1. The person has committed or is in the process of committing a felony involving the infliction or threatened infliction of Serious Physical Injury or death, and
  - 6.2. The escape of the person would pose an Imminent Threat of death or Serious Physical Injury to the member or another unless the person is apprehended without delay, and
  - 6.3. Members have identified themselves as law enforcement officers, have stated their intention to use Deadly Force/Lethal Force, and have given the person a reasonable opportunity to comply voluntarily, if time, safety, and the circumstances permit.

#### **Restrictions on the Use of Deadly Force/Lethal Force**

1. Deadly Force/Lethal Force shall not be used to subdue persons whose conduct is a threat only to property.
2. Deadly Force/Lethal Force shall not be used against persons whose conduct is a threat only to themselves.
3. **The following are prohibited** unless the use of Deadly Force/Lethal Force is authorized and no reasonable alternatives exist:
  - 3.1. Discharge of a firearm at a person.
  - 3.2. Strikes with any hard object, such as a baton, flashlight, radio, weapon stock/handle, or IIW to the person's head, neck, sternum, spine, groin, or kidneys.
  - 3.3. Intentional strikes of a person's head against a hard, fixed object including, but not limited to, a roadway, concrete floor, wall, or iron bars.
  - 3.4. Kneeing or kicking a person's head, neck, back, or torso, including "knee drops" onto a prone or supine person.



- 3.5. Intentionally deploying a CEW to the neck, chest, groin or face of a person.
  - 3.6. Application of Chokeholds/Neck Holds.
  - 3.7. Discharge of a Less-Lethal Launcher to the chest, neck, or head at close range.
  - 3.8. The use of any force on a person whose health, age, condition, or circumstances make it likely that death or Serious Physical Injury will result.
4. Firing warning shots is prohibited.
  5. Firing into crowds is prohibited.
  6. Members shall not fire any weapon from or at a moving vehicle, except:
    - 6.1. To counter an immediate threat of death or Serious Physical Injury to the member or another person, by a person in the vehicle using means other than the vehicle.
    - 6.2. To counter a situation where the member or another person is unavoidably in the path of the vehicle and cannot move to safety. Members shall not position themselves in the path of a moving vehicle where they have no option but to use Deadly Force/Lethal Force.

NOTE: Refer to Policy 409, *Firearms Regulations*, for instructions on the use of firearms.

## **REQUIRED ACTION**

### **Duty to Intervene**

Members shall intervene to stop any member from using excessive force. Intervention may be verbal and/or physical (see Policy 319, *Duty to Intervene*).

**NOTE: Failure to intervene may subject a member to disciplinary action. Members must immediately, or as soon as safety allows, notify a permanent-rank supervisor after such an intervention.**

### **Duty to Provide Medical Assistance**

1. When there is a visible injury, complaint of injury, signs of medical distress, or when medical attention is requested by any person, members shall immediately render aid consistent with their training and shall request that a medic respond to the scene, or transport the person directly to the nearest hospital emergency room. The member shall then notify their supervisor and the Communications Section.
2. If a person has been subjected to impact by any type of Less-Lethal Force including CEW, impact weapons or impact projectile, he/she will be provided with medical treatment. If the person refuses medical treatment or leaves the location (e.g., persons of an unlawful gathering dispersed by Less-Lethal Force that may voluntarily leave without aid), members must document the actions taken to identify and render aid to the person in the Use of Force Review.

### Children and Youth

1. As with any encounter, members are expected to continually assess the situation, employ De-Escalation Techniques, and seek peaceful resolutions during incidents involving children and youth.
2. Members will, when feasible, recognize and employ developmentally-appropriate and trauma-informed tactics including, but not limited to, using a calm and natural demeanor, and avoiding threatening language. Members will also account for any fear-based reactions children and youth may experience during an encounter.
3. When force against a child or young person is necessary, take into account personalized factors of the child or young person including, apparent age, body size, and relative strength of the member relative to the child or young person; and risk posed by the child or young person; and,
4. In the case of injury resulting from a Use of Force, in addition to the requirements to render aid, summon medical care and notify a supervisor, the member will notify the child or young person's parent, guardian, or other responsible adult.

### Reporting

1. All members will adhere to the Use of Force guidelines found in Policy 725, *Use of Force Reporting, Review, and Assessment*.
2. Members of the BPD must notify a permanent-rank supervisor immediately, or as soon as practicable, following a Use of Force. The supervisor will notify the Shift Commander by the end of the shift during which the force occurred. The notification will contain basic information concerning the incident. Any member with knowledge that another member used force must also immediately report that Use of Force to a permanent-rank supervisor. In all instances, the permanent-rank supervisor will conduct a thorough review of the Use of Force, and document this review by completing a BlueTeam entry before the conclusion of the supervisor's tour of duty.
3. The failure of any commander, supervisor or member to fulfill any of the requirements of this policy will not prevent, inhibit or otherwise affect the ability of the Department to conduct an investigation of any misconduct arising from a Use of Force incident or to otherwise discipline a member for any violation of this policy.

**ASSOCIATED POLICIES**

Policy 302,	<i>Rules and Regulations</i>
Policy 319,	<i>Duty to Intervene</i>
Policy 409,	<i>Firearms Regulations</i>
Policy 414,	<i>Less-Lethal Munitions and Chemical Agents</i>
Policy 710,	<i>Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)</i>
Policy 719,	<i>Conducted Electrical Weapon</i>
Policy 724,	<i>Performance Review Board</i>
Policy 725,	<i>Use of Force Reporting, Review, and Assessment</i>
Policy 824,	<i>Body-Worn Camera</i>
Policy 1107,	<i>De-Escalation</i>
Policy 1111,	<i>Batons / Impact Weapons</i>
Policy 1114,	<i>Persons in Police Custody</i>
Policy 1118,	<i>Oleoresin Capsicum Spray</i>
Policy 1602,	<i>Canine Procedure</i>

**RECISSION**

Remove and destroy/recycle Policy 1115, *Use of Force*, dated 2 March 2018.

**COMMUNICATION OF POLICY**

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.



## Policy 409

Subject	
<b>FIREARMS REGULATIONS</b>	
Date Published	Page
<b>24 November 2019</b>	<b>1 of 14</b>

*By Order of the Police Commissioner*

### POLICY

The purpose of this policy is to establish guidelines to ensure proper use of department-issued firearms.

**While members must at all times comply with the minimum legal requirements governing the use of firearms, they must also comply with even stricter standards set forth by Department policy (See Policy 1115, *Use of Force*).**

### CORE PRINCIPLES

1. **Use of Force: Firearms.** The discharge of a firearm is always Deadly Force/Lethal Force. As with all other weapons, the use of a firearm is strictly limited. Members shall discharge their firearms only as a last resort, when all reasonable measures to avoid the use of Deadly Force/Lethal Force have failed or when the member has no reasonable or safe choice but to discharge the firearm.

Unnecessarily drawing or exhibiting a firearm may limit a member's alternatives in controlling a situation, create unnecessary anxiety on the part of citizens, and/or result in an unwarranted or accidental discharge of the firearm.

During a potential Deadly Force/Lethal Force encounter, the member has many factors to consider including, but not limited to: identification, location and number of suspects, lighting, terrain, cover, concealment, presence and movement of bystanders, and back drop. With so many factors outside of the member's control, the situation that initially suggests the need to shoot might change between the time the pistol is grasped in the holster to the moment of pressing the trigger. The member must always be evaluating and must have the skills to de-escalate from the firearm being pointed, to lowered, and holstered as the member chooses other force options.

2. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
3. **Value and Worth of All Persons.** All human beings have equal value and worth, and members shall respect and uphold the value and dignity of all persons at all times.
4. **Peaceful Resolutions.** Members shall avoid the use of force unless it is not possible to do so.
5. **De-Escalation.** Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible (See Policy 1107, *De-Escalation* and Policy 1115, *Use of Force*).

6. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
7. **Assessment.** Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member discharges a firearm.
8. **Use of Force: Reasonable, Necessary, and Proportional.** Members shall use only the force Reasonable, Necessary, and Proportional to respond to the threat or resistance to effectively and safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.
9. **Reporting Use of Force.** Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will report the use of force accurately and completely by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).
10. **Duty to Intervene.** Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).
11. **Duty to Provide Medical Assistance.** After any use of force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance. If restrained, persons are not to be positioned facedown as it may cause positional asphyxia, and placing restrained persons on their back may lead to radial nerve damage to the wrists and forearms. Restrained persons are to be placed in a seated position or on their sides.
12. **Accountability.** Members shall be held accountable for uses of force that violate law or policy.
13. **Retaliatory Force.** Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason (See Policy 804, *First Amendment Protected Activity*).

## **DEFINITIONS**

**Approved Handgun** — A personally-owned handgun that has been inspected by the Armory Unit and formally approved by the Director, Education and Training Section (E&T), for individual use by the member who owns it (See Appendix A).

**Approved Shotgun** — A personally-owned shotgun that has been inspected by the Armory Unit and formally approved by Director, E&T, for individual use by the member who owns it.

**Approved Rifle** — A personally-owned rifle that has been inspected by the Armory Unit and formally approved by Director, E&T, for individual use by the member who owns it.

**Deadly Force/Lethal Force** — Any force likely to cause death or Serious Physical Injury, whether the member intended to cause death or Serious Physical Injury or not. Deadly Force/Lethal Force includes, but is not limited to:

- The discharge of a firearm at a person;
- Strikes with any hard object such as a baton, flashlight, radio, weapon stock/handle, or Improvised Impact Weapon to the head, neck, sternum, spine, groin, or kidneys;
- Intentionally striking a person's head against a hard, fixed object such as a roadway, concrete floor, wall, or iron bars;
- Knee strikes or kicks to a person's head;
- Any strikes to a person's throat;
- "Knee drops" against a prone or supine person's head, neck, or torso;
- Chokeholds/Neck Holds;
- Shooting someone in the head, neck, chest, or back, with a Less-Lethal Launcher at close range.
- The use of any force on a person whose health, age, condition, or circumstances make it likely death or Serious Physical Injury will result.

**Issued Ammunition** — Any munitions issued by the BPD to its members (e.g., lethal and less-lethal ammunition for a firearm, etc.).

**Issued Handgun** — BPD-owned Glock 22, 23, or 27 - .40 caliber pistol issued to a member for utilization.

**Issued Rifle** — BPD-owned Colt 5.56/.223 caliber AR-15/M-4 style rifle (Patrol Rifle and SWAT carbine), Remington 700 (SWAT), etc.

**Issued Shotgun** — BPD-owned Remington 870 - 12-gauge shotgun. The shotgun may be issued to a member, the Armory Unit, or a BPD command, and utilized by a qualified member when needed.

**Issued Firearm** — Any make, model, or caliber of firearm owned by BPD that has been issued to a member or that is for general utilization by a designated group of properly certified and qualified members.

**Reasonable, Necessary, and Proportional** — The review of every use of force shall be to determine whether it was objectively Reasonable, Necessary, and Proportional in light of the totality of the circumstances that were known, or should have been known, to the member, and in light of the mandates of BPD Policies.

**Reasonable** — A member uses reasonable force when the member uses no more force than required to perform a lawful purpose.

**Necessary** — Force is necessary only when no reasonably effective alternative is available. When force is necessary, members shall use force in a manner that avoids unnecessary injury or risk of injury to members and civilians.

**Proportional** — Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.

**NOTE:** Members who use force that is not Reasonable, Necessary, and Proportional will be subject to corrective action, possible discipline, possible criminal prosecution, and/or civil liability.

**GENERAL****Requirement/Authorization to be Armed**

1. When on-duty, members shall be armed at all times with an Issued Firearm or Approved Handgun and shall utilize Issued Ammunition, except when participating in authorized training or a practice session.
2. When off-duty, members are authorized to carry an Issued or Approved Handgun while located within the State of Maryland. Off-duty members may also carry their Approved Handgun with Issued Ammunition within and outside the State of Maryland. Members are not required to be armed when off-duty.
3. Members operating a marked BPD Take-Home Vehicle shall be armed with an Issued Firearm or Approved Handgun, and BPD radio, when the BPD marked Take-Home Vehicle is in use.

**DIRECTIVES****Permitted Uses of a Firearm**

Any use of force, but particularly the exhibiting, pointing, or discharging of a firearm, must be preceded by an analysis, to the greatest extent possible, applying the principles of the sanctity of life, critical thinking and decision-making, and de-escalation. These principles must be an ever-present priority as a member is making the serious decision of whether to use any type of force, and particularly Deadly Force/Lethal Force.

Any use of a firearm qualifies as a Use of Force, and may only be used when Reasonable, Necessary, and Proportional.

**Un-holstering, Exhibiting, or Pointing a Firearm**

1. Pointing a firearm at a person is considered a Level 1 use of force, with few exceptions (see Policy 1115, *Use of Force*).
2. Except for administrative reasons, members shall not un-holster their firearms unless they anticipate or encounter a dangerous situation in which there is a potential risk of death or serious physical injury to the member or another.
3. Members shall not point a firearm at a person unless they reasonably believe that the person poses a present or imminent threat of death or serious physical injury to the member or another person.
4. Firearms shall be secured or re-holstered as soon as reasonably practicable when Deadly Force/Lethal Force is no longer necessary. Firearms must always be holstered by any member attempting to frisk or handcuff a suspect.

### Discharging a Firearm

1. The discharging of a firearm constitutes Level 3 use of force (also known as use of Deadly Force/Lethal Force).
2. As per Policy 1115, *Use of Force*, a member may use Deadly Force/Lethal Force:
  - 2.1. When de-escalation and less-lethal force options have been exhausted, and/or are not reasonable based on the totality of the circumstances, and
  - 2.2. When the member reasonably believes the action is immediately necessary to protect a member or another person from imminent threat of death or serious physical injury, and
  - 2.3. When members have considered environmental factors such as field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks of life.
3. Members shall identify themselves as law enforcement officers and state their intention to use Deadly Force/Lethal Force before using a firearm if time, safety, and circumstances permit.

EXAMPLE: "Police! Drop your weapon or I'll shoot!"

  - 3.1. Members shall give the person a reasonable opportunity to voluntarily comply.
4. A member who discharges a firearm must continuously assess the circumstances that initially justified the use of Deadly Force/Lethal Force, and modulate the use of force according to the circumstances. Each round fired must be justifiable.
5. After the intentional or unintentional discharge of any firearm, members shall immediately notify a supervisor over radio when on-duty and complete the required actions and reporting as mandated in Policy 725, *Use of Force Reporting, Review, and Assessment*, and Policy 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)*.

EXCEPTION: Members participating in firearms training, on-duty or off-duty, need not make the above notifications unless the discharge was accidental or resulted in an injury to the member or another party.

### Fleeing Persons

1. Members may discharge a firearm to prevent the escape of a fleeing person if no reasonable force alternative exists and there is probable cause to believe that:
  - 1.1. The person has committed or is in the process of committing a felony involving the infliction or threatened infliction of serious physical injury or death, and
  - 1.2. The escape of the person would pose an imminent threat of death or serious physical injury to the member or another unless the person is apprehended without delay, and
  - 1.3. Members have identified themselves as law enforcement officers, have stated their intention to use Deadly Force/Lethal Force before discharging the firearm, and have given



the person a reasonable opportunity to comply voluntarily, if time, safety, and the circumstances permit.

### Prohibited Uses of a Firearm

1. Members shall not fire warning shots.
2. Members shall not fire into crowds.
3. Members shall not fire any weapon from or at a moving vehicle, except:
  - 3.1 To counter an imminent threat of death or serious physical injury to the member or another person, by a person in the vehicle using means other than the vehicle.
  - 3.2 To counter a situation where the officer or another person is unavoidably in the path of the vehicle and cannot move to safety. Officers shall avoid positioning themselves in the path of a moving vehicle where they have no option but to use Deadly Force/Lethal Force.
4. Members shall not use their firearm as an impact weapon, except in situations where Deadly Force/Lethal Force is authorized.
5. Members shall not fire at a threat that is not verified and visible.
6. Members shall not carry a firearm when they are under the influence of an impairing substance or alcohol.
7. As per Policy 1115, *Use of Force*, a member may not use Deadly Force/Lethal Force:
  - 7.1. Solely to protect property interests;
  - 7.2. Against a person who is only a threat to themselves.

**NOTE:** See Policies 1115, *Use of Force*; 725, *Use of Force Reporting, Review and Assessment*; and 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)* for further guidance on use of firearms and other use of force guidance.

### Dangerous Animals

1. Members are permitted to use firearms to stop a dangerous animal in circumstances where the animal reasonably appears to pose an imminent threat to human or animal safety and alternative options are not available or would likely be ineffective.
2. Members shall conduct pre-raid surveillance prior to executing a Search and Seizure Warrant, in an effort to determine if a dangerous animal may be present at the location to be searched. Members should contact Animal Control Supervision at (410) 396-4689 within 24 hours of executing a Search and Seizure Warrant to have Animal Control present.
3. Members shall develop a reasonable contingency plan to control/avoid a dangerous animal prior to confronting the animal when given advance notice that a dangerous animal may be encountered (e.g., dog pole, fire extinguisher, etc.). Any time SWAT or warrant teams are

operating, they should be prepared to deal with animals using other means besides Deadly Force/Lethal Force.

### Responsibilities Following Firearm Discharges

1. After an officer-involved shooting, members shall refrain from speaking about the incident until a supervisor or SIRT arrives on the scene, except to the extent necessary to address safety concerns. Except for necessary tactical information during an active event, involved or witnessing members are prohibited from discussing with each other their observations before, during, or after any officer-involved shooting. Members shall reference Policy 710, *Level 3 Use of Force Investigations – SIRT* for officer-involved shooting interview requirements.
2. Members shall immediately request emergency medical assistance on police radio, as soon as it is safe to do so, following an officer-involved shooting, or when a person is hit by a firearm discharge.
3. Members must render medical aid, consistent with their training, to any person injured by a member's or other person's firearm, until medical personnel arrive on the scene. Members have a duty to maximize the likelihood of victim survival by utilizing their Individual First Aid Kit (IFAK) (See Policy 811, *Individual First Aid Kit (IFAK)*).

### REQUIRED ACTION

#### Safety

1. Treat every firearm as a loaded weapon.
2. Do not place your finger inside of the trigger guard unless prepared to justifiably discharge the weapon.
3. Do not point or aim a weapon in dry firing practice in a location where an accidental discharge could cause injury.
4. Do not allow unauthorized persons to handle Issued Firearms.
5. Unload firearms in a manner prescribed by E&T before passing the firearm to another or before being stored or positioned where someone else may gain access to it.
6. Always holster slowly, with your thumb on the back of the slide and trigger finger extended outside of the trigger guard.
7. Never pull back the hammer or “cock” a revolver.

#### Care and Maintenance

1. Properly maintain Issued/Approved Firearms and ammunition. Safeguard them to ensure they are not misplaced, misused, or stolen.

- 1.1. Issued/Approved Firearms must be cleaned/oiled regularly (minimally once a month) in the manner prescribed by E&T.
- 1.2. Issued Ammunition shall be inspected for signs of wear/serviceability. The round in the chamber must be rotated regularly with other rounds in the magazine (minimally once a month) to avoid excessive wear.
2. Ensure all Issued/Approved Firearms and Issued Ammunition are stored in such a manner as to be inaccessible to any person or member not qualified and/or authorized to access the firearm or ammunition. Storing firearms anywhere in a motor vehicle is presumptively insecure and prohibited unless locked in a BPD-issued or installed secured gun vault, lockbox, or rack.
3. When assigned to a vehicle equipped with a shotgun, less-lethal shotgun, or rifle, be responsible for the proper care and security of those firearms during your tour of duty.
4. Do not attempt to repair or modify any Issued/Approved Firearm. In the event an Issued/Approved Firearm needs repair or modification, take the firearm to the Armory Unit or Firearms Training Unit Armorer for examination/modification/repair.
5. At no time should any repair be done by an outside source, unless authorized in writing by the Armory Unit.

### **Training**

1. Members are encouraged to train with Issued Firearms and Approved Handguns to maintain firearms proficiency.
2. When practicing with an Issued Firearm or Approved Handgun while off-duty, utilize only high quality, professionally manufactured ammunition. At the end of each practice session, unload any ammunition that is not Issued Ammunition and restore the Issued Ammunition when leaving the practice facility.

### **Inspections**

1. Issued/Approved Firearms and all Issued Ammunition assigned to members shall be inspected by the member's first-line supervisor bi-weekly, utilizing the Firearms and Ammunition Inspection Sheet, Form 242 (see Appendix B). Completed Firearms and Ammunition Inspection Sheets, Form 242, shall be retained at the member's parent command.
2. Any firearm that does not pass inspection shall be taken to the Armory Unit or Firearms Training Unit Armorer for repair.

### **General Carry Provisions**

1. Members assigned to units whose primary duties involve interactions with citizens and/or enforcement related activities (e.g., Patrol, SWAT, K-9, RATT, DAT, etc.) shall carry a fully loaded Issued/Approved Handgun, and a minimum of two loaded spare magazines. All such members must carry on their person at least one less-lethal weapon, which they are trained and certified to use, at all times while on duty (See Policy 1115, *Use of Force*).

- 1.1. The wearing of a Glock 27 is prohibited when wearing a full duty belt (i.e., issued duty belt with issued holster, radio, OC spray, double magazine pouch, etc.). Only a Glock 22 or Glock 23 may be worn with the full duty belt.
2. Members assigned to units whose primary duties are administrative (e.g., Communications, ECU, Quartermaster, RMS, etc.) or investigative (e.g., DDU, Homicide, Pawn Shop, Sex Offense, Child Abuse, etc.) need only carry a fully loaded Issued/Approved Handgun. When engaged in proactive enforcement activity likely to involve detention or arrests, members must carry at least one less-lethal weapon they are trained and certified to use (See Policy 1005, *Non-Uniformed Policing Standards*).
3. Unless exigent circumstances exist, ensure any firearm carried when working in a plain-clothes capacity or while off-duty is concealed from public view in a secure holster or secure container designed for that specific weapon.
4. After qualifying with and being issued an Issued Handgun, a member may apply to qualify with and carry off-duty or on-duty, one or two personally owned Approved Handguns that meet departmental standards and specifications.

**NOTE:** Police Officer Trainees are not approved to carry an Approved Handgun.

5. Only one Issued Handgun or Approved Handgun may be carried while on-duty or off-duty. Utilization of a second handgun as a “back-up” handgun is not permitted.

**EXCEPTION:** SWAT/ESU members often deploy multiple weapons platforms simultaneously during the execution of their tactical duties. Members of SWAT/ESU are EXEMPT from the restriction cited above and may carry/utilize all weapons platforms that the member is authorized and certified to deploy when operating in a tactically deployed posture.

6. Only those members departmentally trained with a .38 caliber revolver, who have successfully qualified with that revolver, may apply to carry while off-duty one personally owned .38 caliber revolver.

### **Restrictions**

1. Do not transport Issued Firearms out of the State of Maryland unless on official business and with prior approval of your Commanding Officer. A member may transport an Approved Handgun with Issued Ammunition out-of-state without prior approval.

**EXCEPTION:** Members who reside outside Maryland may transport Issued Firearms with Issued Ammunition to and from their residence.

2. When responding to the Office of Professional Responsibility (OPR):
  - 2.1. Secure all weapons in the lockbox when directed by OPR staff.
  - 2.2. Follow administrative unloading procedures.
  - 2.3. Maintain possession of the lockbox key until exiting the OPR facility or until OPR staff takes possession of the lockbox key and directs the member to leave without their weapon.

3. When appearing in any court as a defendant, plaintiff, or juror, members shall:
  - 3.1. Not carry any firearms into the courtroom or jury room.
  - 3.2. Immediately secure weapons with court liaison personnel or appropriate court personnel before entering the courtroom or jury room.
4. Members approved to carry personally-owned 9mm, .380, or .38 caliber handguns off-duty are not permitted to carry these handguns while on-duty.
5. Do not store less-lethal equipment boxes and lethal shotgun boxes in the same vehicle.

**EXCEPTION:** Designated vehicles assigned to the Special Operations Division may be used to store less-lethal equipment boxes and lethal shotgun boxes together.

#### **Approval for Personally-Owned Firearms (Approved Firearms)**

1. Members wishing to register a personally owned firearm as an Approved Firearm must:
  - 1.1. Complete Section 1 of the Application for Authorization to Carry an Approved Firearm, Form 133 (See Appendix C).
  - 1.2. Submit the Application for Authorization to Carry an Approved Firearm to the Armory Unit.
  - 1.3. Submit the firearm to the Armory Unit for inspection.
  - 1.4. Qualify with the desired firearm once every calendar year, or as directed by E&T.
2. When relinquishing ownership of an Approved Firearm, submit an Administrative Report (Form 95) to your Commanding Officer.

#### **Firearms Accessories**

1. Members may use an issued or Armory Unit approved personally owned weapon mounted light on any Issued/Approved Firearm provided:
  - 1.1. The member was issued or utilized a weapon mounted light during entrance level training, or
  - 1.2. The member has successfully completed Weapon Mounted Light Training provided by E&T.
2. Members may purchase at their own expense and use "Night Sights" or "Standard Sights." Any sights must be approved, inspected, and installed by the Armory Unit or Firearms Training Unit Armorer.
3. Members may purchase at their own expense and use a sling/sling mounts for utilization with Issued/Approved Rifles and Shotguns. All sling mounts must be approved, inspected, and installed by the Armory Unit or Firearms Training Unit Armorer.

4. Members may purchase at their own expense a replacement stock/forearm for use with Issued/Approved Rifles and Shotguns. The stock/forearm must be approved, inspected, and installed by the Armory Unit or Firearms Training Unit Armorer.

### **APPENDICES**

- A. Approved Firearms
- B. Firearms and Ammunition Inspection Sheet, Form 242
- C. Application for Authorization to Carry an Approved Firearm, Form 133

### **ASSOCIATED POLICIES**

- Policy 319, *Duty to Intervene*  
Policy 412, *Patrol Rifle*  
Policy 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)*  
Policy 725, *Use of Force Reporting, Review, and Assessment*  
Policy 811, *Individual First Aid Kit (IFAK)*  
Policy 1005, *Non-Uniformed Policing Standards*  
Policy 1115, *Use of Force*

### **RESCISSION**

Remove and destroy/recycle Policy 409, *Firearms Regulations*, dated 1 July 2016.

### **COMMUNICATION OF POLICY**

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

## **APPENDIX A**

### **Approved Firearms**

#### **Approved Handguns**

##### Category "A" Approved Handguns

Glock Model 22, .40 caliber semi-automatic handgun.  
Glock Model 23, .40 caliber semi-automatic handgun.  
Glock Model 27, .40 caliber semi-automatic handgun.

##### Category "B" Approved Handguns

Glock Model 19, 9mm semi-automatic handgun.  
Glock Model 26, 9mm semi-automatic handgun.  
Glock Model 43, 9mm semi-automatic handgun.  
Glock Model 43x, 9mm semi-automatic handgun.  
Glock Model 42, .380 caliber handgun.

\*Category "B" Approved Handguns are for off-duty use only, and may not be utilized on-duty. As such, certain modifications such as colored finishes (cerakote, DuraCote, etc.), grip texturing, sights, stippling, etc. may be authorized if the modifications enhance or do not interfere with the performance of the firearm. Factory triggers may not be modified in any way, and must have a minimum weight of 5.5 lbs. The Armory Unit has final authority to authorize/approve modifications and determine if the firearm is approved for utilization. No modified Category "B" Handguns may be utilized while on-duty.

##### Category "C" Approved Handguns

.38 caliber revolver with a barrel length of not less than 2" or more than 4" that meets departmental standards and specifications, made by:

Colt.  
Ruger.  
Smith & Wesson.

#### **Approved Shotgun**

Remington 870 — .12 gauge pump action shotgun with a barrel length not less than 18" and not more than 20." The barrel shall be smooth bore and contain rifled sights. All accessories and modifications must be approved by the Armory Unit.

#### **Approved Rifle**

Colt AR-15 — 5.56 /.223 caliber rifle with a barrel length not less than 16" and not more than 20." All accessories and modifications must be approved by the Armory Unit.

**APPENDIX B**

Firearms and Ammunition Inspection Sheet, Form 242

Firearms and Ammunition Inspection Sheet  
Form 242/19

**Police Department**  
Baltimore, Maryland

Member's Name: \_\_\_\_\_ Seq. Number \_\_\_\_\_ Assignment \_\_\_\_\_

Weapon Make:	Weapon Model:	Caliber:	Serial #:
Ammunition Type:	Number of Rounds:	Weapon Mounted Flashlight: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Weapon Make:	Weapon Model:	Caliber:	Serial #:
Ammunition Type:	Number of Rounds:	Weapon Mounted Flashlight: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Weapon Make:	Weapon Model:	Caliber:	Serial #:
Ammunition Type:	Number of Rounds:	Weapon Mounted Flashlight: <input type="checkbox"/> YES <input type="checkbox"/> NO	

CONDITION	Check One
Good Condition	<input type="checkbox"/>
Needs Repair (Respond to Armory Unit)	<input type="checkbox"/>

If "Needs Repair" please specify the type of repair, if unknown, please explain problems with weapon:

To be completed by the Supervisor conducting the inspection:

\_\_\_\_\_  
Printed Name                                      Signature                                      Seq #                                      Inspection Date



**APPENDIX C**

Application for Authorization to Carry an Approved Firearm, Form 133

**Application for Authorization to Carry an Approved Firearm**  
Form 133/20

**POLICE DEPARTMENT  
BALTIMORE, MARYLAND**

DATE \_\_\_\_\_

**TO: RANGE MASTER, POLICE TRAINING ACADEMY**

I, \_\_\_\_\_  
*(PRINT NAME, RANK, ASSIGNMENT AND SEQUENCE NUMBER)*

RESPECTFULLY REQUEST THAT FOLLOWING DESCRIBED FIREARM BE APPROVED FOR USE AS AN APPROVED FIREARM. I UNDERSTAND THAT SHOULD SAME BE APPROVED, ALL APPLICABLE POLICIES AND RULES OF SAFETY WHICH REFER TO MY ISSUED FIREARM ALSO APPLY TO THIS APPROVED FIREARM. I ACKNOWLEDGE THIS FACT BY MY SIGNATURE BELOW.

<b>MAKE</b>		<b>MODEL</b>	
<b>SERIAL NUMBER</b>		<b>ORIGIN</b>	
<b>TYPE</b>			

Respectfully,

\_\_\_\_\_  
*(Signature)*

*(TAKE THIS FORM AND FIREARM TO THE ARMORY UNIT FOR INSPECTION)*

**ARMORY UNIT**

SERIAL NO. VERIFIED       NCIC CHECK       INSPECTED

\_\_\_\_\_  
(Name, Rank)

\_\_\_\_\_  
(Date)

APPROVED       DISAPPROVED

If Disapproved, Reason:

\_\_\_\_\_  
Signature, Armory Unit

TO: DIRECTOR, EDUCATION AND TRAINING  
RE: QUALIFICATION – APPROVED FIREARM

MAKE \_\_\_\_\_      MODEL \_\_\_\_\_      SERIAL NO \_\_\_\_\_

QUALIFICATION SCORE \_\_\_\_\_      DATE \_\_\_\_\_

CERTIFIED BY \_\_\_\_\_      ASSIGNMENT \_\_\_\_\_



# Policy 1107

Subject	
<b>DE-ESCALATION</b>	
Date Published	Page
<b>24 November 2019</b>	<b>1 of 6</b>

*By Order of the Police Commissioner*

## POLICY

The purpose of this policy is to ensure that members use De-Escalation Techniques to reduce threats, gain the voluntary compliance of persons, and safely resolve a situation. When feasible, reducing the need for force allows members to secure their own safety as well as the safety of the public.

**While members must at all times comply with the minimum legal requirements governing the use of force, they must also comply with even stricter standards set forth by Department policy.**

## CORE PRINCIPLES

1. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
2. **Value and Worth of All Persons.** All human beings have equal value and worth and members shall respect and uphold the value and dignity of all persons at all times.
3. **Peaceful Resolutions.** Members shall avoid the use of force unless it is not possible to do so.
4. **De-Escalation.** Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force.
5. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
6. **Assessment.** Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member discharges a firearm.
7. **Use of Force: Reasonable, Necessary, and Proportional.** Members shall use only the force reasonable, necessary, and proportional to respond to the threat or resistance to effectively and safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.
8. **Reporting Use of Force.** Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will accurately and completely report the use of force by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

9. **Duty to Intervene.** Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).
10. **Duty to Provide Medical Assistance.** After any use of force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance.
11. **Accountability.** Members who exhibit excellence in deploying De-Escalation Techniques will be recognized and commended for their efforts.
12. **Sound Tactics.** Members shall comply with Departmental policy, follow training, exhibit sound tactics, and will be held accountable for poor tactical decisions, including failure to de-escalate and uses of force that violate law or policy.
13. **Retaliatory Force.** Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason (See Policy 804, *First Amendment Protected Activity*).

## **DEFINITIONS**

**De-Escalation Techniques** — Techniques used to minimize the need to use force and increase the likelihood of voluntary compliance. These techniques may include, but are not limited to, persuasion, warnings, creating space, use of physical barriers, slowing down the pace of an incident and requesting additional resources.

**Totality of Circumstances** — The Totality of the Circumstances consists of all facts and circumstances surrounding any event. The facts and circumstances shall include but are not limited to:

- Whether an offense has occurred;
- The nature of the offense;
- The seriousness of the offense;
- The size and strength of the subject;
- The number of subjects;
- The availability of weapons;
- Whether the subject is exhibiting signs of mental illness or is experiencing a behavioral health crisis;
- Whether a person suffers from a medical or behavioral health disability, physical or hearing impairment, is impaired by alcohol or drug use, or may be non-compliant due to a language barrier;
- Other force options;
- Availability of non-force options including tactical repositioning, going to cover, or other De-Escalation Techniques;
- Environmental factors such as backdrop;
- The availability of back up and specialized units.

**GENERAL**

1. De-Escalation Techniques seek to minimize the likelihood to use force during an incident, increase the likelihood of voluntary compliance, and/or lessen the amount of force that may be needed.
2. De-Escalation Techniques involve a range of tactics that can assist in slowing down or stabilizing an incident so that - when safe and feasible under the Totality of Circumstances - more time, options, and resources become available to safely resolve an incident.
3. The employment of De-Escalation Techniques is especially important to maintain member and individual safety during encounters with children, youth, and persons experiencing a behavioral health disorder or in crisis.

**Examples of De-Escalation Techniques**

De-Escalation Techniques may include, but are not limited to:

1. Communication techniques to calm an agitated subject and promote rational decision making such as:
  - 1.1. Ensuring that only one member addresses the person and that other members present remain detached as much as safety permits.

**NOTE:** The presence of multiple officers that are issuing commands to an agitated subject may escalate the incident by increasing the likelihood of miscommunication, and is less likely to result in a peaceful resolution. Whenever possible, only one member shall communicate with and address the person.

- 1.2. Regulating vocal tone and pitch (e.g., speaking slowly in a calm voice, rather than shouting commands),
- 1.3. Using calming gestures and facial expressions (e.g., arms extended with palms out; avoiding angry expressions),
- 1.4. Sharing the member's name, asking the person his/her name, and exhibiting a genuine willingness to listen,
- 1.5. Practicing procedural justice techniques, such as explaining the member's actions and responding to questions (e.g., directly answering questions about why the police are there or taking action),
- 1.6. Verbal persuasion (e.g., explaining, without threats, how the person would benefit from cooperation),
- 1.7. Verbal advisements (e.g., respectfully explaining the person's rights or what the police want the person to do),
- 1.8. Verbal warnings (e.g., when necessary, notifying the person of the consequences of continued non-cooperation and then offering the person a chance to cooperate), and

- 1.9. Avoiding the unnecessary display of weapons, including the CEW, a firearm, a baton, or OC Spray.
2. Decreasing the exposure to the potential threat by moving to a safer position. This may involve:
  - 2.1. Creating distance,
  - 2.2. Seeking cover,
  - 2.3. Tactical repositioning,
  - 2.4. Concealment, and/or
  - 2.5. Placing barriers between an uncooperative person and the member.
3. Slowing down the pace of the incident by slowing your speech, taking deep breaths, and/or applying the critical thinking framework, including:
  - 3.1. Waiting out the person,
  - 3.2. Avoiding physical confrontation,
  - 3.3. Calling for extra resources outside of the person's hearing, whenever possible such as:
    - 3.3.1. Additional members,
    - 3.3.2. Specially-trained members (e.g., BEST-trained members, CIT-trained members, behavioral health care providers, negotiators, Qualified Bilingual Members, etc.), and
    - 3.3.3. Members equipped with less-lethal tools.

## **REQUIRED ACTION**

### **Member**

1. As part of their tactical planning, members should begin to think through De-Escalation Techniques and the critical thinking framework (See Policy 1115, *Use of Force*) prior to arriving on the scene.
2. Members will use De-Escalation Techniques to reduce threats, gain the voluntary compliance of persons, and safely resolve a situation.
3. Members shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to, immediately approaching a subject without proper evaluation of the situation, failing to leave sufficient space between the member and the subject, closing the reactionary gap, or escalating a situation.

4. When time and circumstances reasonably permit, members shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
  - 4.1. Medical conditions,
  - 4.2. Behavior health disability,
  - 4.3. Developmental disability,
  - 4.4. Physical limitation,
  - 4.5. Language barrier,
  - 4.6. Drug interaction, and/or
  - 4.7. Behavioral health crisis.

**NOTE:** A member's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the member when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

5. During encounters with children, youth, and/or persons experiencing behavioral health disorders or in crisis, members will employ developmentally-appropriate, trauma-informed tactics including, but not limited to, using a calm and natural demeanor, and avoiding threatening language.
  - 5.1. Members will account for any fear-based reactions that children, youth, and/or persons experiencing behavioral health disabilities or in crisis may experience during an encounter with law enforcement.
  - 5.2. If attempts to de-escalate an encounter with a child, youth, or person experiencing a behavioral health disability or in crisis are unsuccessful to resolve the incident, and a use of force is reasonable, necessary, and proportional, members shall consider personalized factors of the individual, including:
    - 5.2.1. Apparent age,
    - 5.2.2. Body size,
    - 5.2.3. Strength of the member relative to the individual, and
    - 5.2.4. The risk posed by the individual.
6. Any force used shall be de-escalated immediately as resistance decreases. If the individual stops resisting, the member must stop using force.

## Supervisor

Supervisors shall:

1. Ensure appropriate number of officers respond promptly to an incident,
2. Assess member's tactical positioning and/or deployment of specialized equipment (e.g., bunker, CEW, less-lethal equipment),
3. Assess whether member successfully employed De-Escalation Techniques during a use of force review, and
4. Provide timely and constructive feedback directly to the member (see Policy 725, *Use of Force Reporting, Review, and Assessment*), and/or refer the member to further training if deficiencies are noted.

## Education and Training (E&T) Academy

The Director, E&T shall:

1. Annually provide all patrol members with Integration of Communication, Assessment, and Tactics (ICAT) De-Escalation Program.
2. Provide updates and re-certification to all patrol members in De-Escalation Techniques during in-service training.

## ASSOCIATED POLICIES

Policy 319, *Duty to Intervene*  
Policy 712, *Crisis Intervention Team*  
Policy 713, *Responding to Mental Health Emergencies and Petitions for Emergency Evaluations*  
Policy 725, *Use of Force Reporting, Review, and Assessment*  
Policy 804, *First Amendment Protected Activities*  
Policy 1103, *Communicating with Individuals Who are Deaf or Hard of Hearing*  
Policy 1115, *Use of Force*  
Policy 1735, *Language Access Services for Limited English Proficient (LEP) Individuals*

## COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.