



# INDEPENDENT INVESTIGATIONS DIVISION

Interim Report Concerning the Police-Involved Shooting  
Death in Montgomery County on July 20, 2022

March 1, 2023

**Interim Report of the Independent Investigations Division of the Maryland  
Office of the Attorney General Concerning the Officer-Involved Death of  
Hamed Ghorouni Delcheh on July 20, 2022**

Pursuant to Md. Code, State Gov't § 6-602, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this interim report to Howard County State's Attorney Richard H. Gibson, Jr., regarding the officer-involved death of Hamed Ghorouni Delcheh on July 20, 2022, in Gaithersburg, Maryland.<sup>1</sup>

The IID is charged with "investigat[ing] all police-involved incidents that result in the death of a civilian or injuries that are likely to result in the death of a civilian" and "[w]ithin 15 days after completing an investigation ... transmit[ing] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-602(c)(1), (e)(1). Due to the continued delay in receiving ballistics analysis from the Federal Bureau of Investigation (the "FBI") in this case, in contrast to the finality of all other aspects of the investigation, the IID and the State's Attorney agreed that an interim report would be useful. This interim report is being provided to State's Attorney Gibson on March 1, 2023. The IID will supplement this interim report when it receives ballistics analysis from the FBI.

## **I. Introduction**

Hamed Ghorouni Delcheh died after being shot by Montgomery County Sheriff's Office Deputy Domenic Mash on July 20, 2022. Deputy Mash was detailed to the U.S. Marshals Capital Area Regional Fugitive Task Force and was acting in that capacity at the time of the shooting. At 9:26 a.m. on July 20, ten task force officers were attempting to serve an arrest warrant on Mr. Delcheh in Gaithersburg, Maryland. The officers located Mr. Delcheh inside a townhome and positioned themselves outside. After several minutes, Mr. Delcheh threw a large kitchen knife out of the home's front window, then jumped out himself and picked up the knife. One officer deployed his Taser, but Mr. Delcheh was still able to run up the small street in front of the house. He ran past Deputy Mash, who began following him. According to witnesses, Mr. Delcheh then turned toward Deputy Mash with the large kitchen knife raised. Deputy Mash fired at Mr. Delcheh, striking him four times. Officers provided medical aid until paramedics arrived, but Mr. Delcheh died on scene. One of Deputy Mash's shots also struck [REDACTED] he was taken to a hospital with non-life-threatening injuries.

This interim report details the IID's investigative findings and 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 caselaw to assess whether any charge could be supported by the facts of this incident. Because the Howard County State's Attorney's Office—not the Attorney General's Office—retains prosecution authority in this case, this interim report does not make recommendations as to whether any individuals should or should not be charged.

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<sup>1</sup> This interim report is provided to the Howard County State's Attorney pursuant to an agreement between the Montgomery County State's Attorney Office and the Howard County State's Attorney Office whereby each office reviews officer-involved civilian fatalities that occur in the other's jurisdiction.

Because Deputy Mash was serving as a member of a federal task force when this incident occurred, the IID investigated this shooting in coordination with the FBI. However, the FBI had no role in the creation of this interim report, or the analysis contained herein.

## **II. Factual Findings**

The following findings are based on a forensic examination of the shooting scene as well as the autopsy report and interviews with civilian and law enforcement witnesses. All materials reviewed in this investigation are being provided to the Howard County State's Attorney's Office with this interim report and are listed in Appendix A.

No task force officers ("TFOs") were equipped with body-worn cameras at the time of the shooting. Home security cameras captured some events in the area of the shooting, but they did not capture the shooting itself. This interim report will note the sources of all information presented.

This shooting occurred on the morning of July 20, during daylight; there was no precipitation or other notable conditions.

### **A. Background**

Deputy Domenic Mash is a member of the Montgomery County Sheriff's Office and is detailed to the U.S. Marshals Capital Area Regional Fugitive Task Force ("CARFTF"). He was acting in his CARFTF capacity at the time of this incident.

The U.S. Marshals' regional fugitive task forces are intended to "combine the efforts of federal, state, and local law enforcement agencies to locate and apprehend the most dangerous fugitives and assist in high profile investigations."<sup>2</sup> CARFTF is a federal task force, but it is composed of officers detailed from multiple federal, state, and local law enforcement agencies. The fugitives CARFTF seeks may have arrest warrants out of either state or federal courts.

Ten officers were present for this incident. They were led by Prince George's County Police Department Corporal William Blount. Deputy Mash was the "case agent" coordinating the attempt to arrest Mr. Delcheh because he was the officer most familiar with Mr. Delcheh and the warrant for his arrest, as described below. CARFTF was attempting to execute an arrest warrant for Mr. Delcheh that had been issued by the Montgomery County Circuit Court on July 15, 2022. The court's warrant said Mr. Delcheh had failed to appear at a court date and tampered with his court-imposed GPS ankle monitor.

### **B. Events Preceding the Shooting**

When interviewed by investigators, Deputy Mash reported that the events leading to this incident started on Monday, July 18, when a Montgomery County Sheriff's Office sergeant asked him to check for Mr. Delcheh's vehicle at an address in Germantown, Maryland. Deputy Mash did not see the car that evening, but on Tuesday morning he asked the Sheriff's Office to

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<sup>2</sup> *Fugitive Task Forces*, U.S. Marshals Service, <https://www.usmarshals.gov/what-we-do/fugitive-investigations/fugitive-task-forces> (last visited Dec. 12, 2022).

send more information on Mr. Delcheh. Deputy Mash went to multiple addresses associated with Mr. Delcheh on Tuesday, but he did not find him or his car. Deputy Mash said that during the day Tuesday, he learned of the reason for Mr. Delcheh's warrant, the facts of the underlying offense, and that Mr. Delcheh had been [REDACTED] TFO Andrew Leadore, also a Montgomery County Sheriff's Office deputy, told investigators that while Mr. Delcheh's warrant was from state court, CARFTF "adopted" the case on Tuesday night, pursuant to U.S. Marshals Service policy.

When interviewed after the shooting, CARFTF officers reported that they had convened at 7:30 a.m. on Wednesday, July 20, for a briefing before executing the warrant. Deputy Mash briefed the other officers, providing information such as a photograph of Mr. Delcheh, his likely address, his criminal history, his known mental health history, the reason for the warrant, and a report that Mr. Delcheh may be armed with a BB gun that resembled a Glock handgun. The officers learned Mr. Delcheh's warrant was for missing a post-sentencing hearing and tampering with an ankle monitor. Mr. Delcheh had been convicted in April 2021 for home invasion after a 2020 incident in which he drove his car into a residential home. He was on probation and had been ordered to participate in certain programs designated by the Mental Health Court.<sup>3</sup> Deputy Mash had also shared this information with officers by email the night before. After Deputy Mash provided this information, Cpl. Blount explained each officer's tactical role for when they approached the home. In their interviews after the shooting, the officers said they did not review any use of force policy at this briefing; they said each officer adheres to their own department's use of force policy.

Dispatch reports show, and the officers reported, that after the briefing they first went to an address on Chalet Drive in Germantown. There was no answer at that house and no sign anyone was inside. The officers said Deputy Mash then called Mr. Delcheh's father, who owned the house, to tell him CARFTF was looking for Mr. Delcheh and to ask if he would help locate him. Mr. Delcheh's father agreed and came to the house about ten minutes later. After agreeing to let officers search the house, which confirmed nobody was home, he called Mr. Delcheh. He spoke very briefly with Mr. Delcheh, then told Deputy Mash that he thought he knew where Mr. Delcheh was. According to Deputy Mash, Mr. Delcheh's father also said Mr. Delcheh dealt with mental health issues and, "I don't want you to hurt my son."

Mr. Delcheh's father then drove with Deputy Mash to where he believed his son was staying, on Gateshead Circle in Germantown. When they arrived at approximately 8:40 a.m., Deputy Mash said he realized there was no house with the address provided. Mr. Delcheh's father said he had been confused and then gave the address of [REDACTED] Garth Terrace in Gaithersburg.

When interviewed, the officers said Deputy Mash conveyed the new address by radio, and the officers began the approximately ten-minute drive. The officers said that while they drove, they discussed by radio what Mr. Delcheh's connection to the Garth Terrace home could be.<sup>4</sup> Several officers reported checking police databases to try to find a connection, but they said

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<sup>3</sup> Mental Health Court is "a specialized court docket established for defendants with mental illness that substitutes a problem-solving approach for the traditional adversarial criminal court processing." *Mental Health Courts*, Maryland Judiciary, <https://mdcourts.gov/opsc/mhc> (last visited Dec. 2, 2022).

<sup>4</sup> The U.S. Marshals Service does not create or maintain audio recordings of radio transmissions.

they did not find anything. Marshal Maceo Gates said that even once they arrived at Garth Terrace, “we didn’t actually, like, we didn’t establish anything.” The officers did not report that they had any tactical discussion aside from their briefing at the start of the day.

Both Deputy Mash and Mr. Delcheh’s father reported that while they drove to Garth Terrace, Mr. Delcheh’s father repeated multiple times, “I don’t want you to kill my son.” Deputy Mash said he relayed this by radio to the rest of the Task Force.

Upon arriving at Garth Terrace, at approximately 8:58 a.m., the officers said the decision was made for Mr. Delcheh’s father to go into the house to try to convince Mr. Delcheh to turn himself in. Deputy Mash said that he and Cpl. Blount made this decision, and that Mr. Delcheh’s father “insisted” on it. Other officers reported learning of the decision by radio.

Multiple officers reported that Mr. Delcheh’s father knocked for between one and five minutes before being let in. While this happened, other officers were “kind of standing by,” according to Deputy Leadore. Multiple officers said their understanding was that officers would not enter the home, even if Mr. Delcheh’s presence was confirmed, because they would first need consent from an owner or tenant, neither of whom had been identified. The officers remained in their unmarked vehicles outside the home while Mr. Delcheh’s father knocked on the door and eventually entered. After he went inside, text messages show Deputy Mash asked, “Are you ok?” Mr. Delcheh’s father responded, “Down stairs.” Deputy Mash followed up asking, “Is he there?” Mr. Delcheh’s father did not respond. Deputy Mash said he became concerned something had happened to Mr. Delcheh’s father, so he called him. After a brief conversation, Mr. Delcheh’s father left the townhome. Multiple officers said it appeared that he was pushed out, though Mr. Delcheh’s father denied this.



**Image 1:** Photo of [REDACTED] Garth Terrace, where officers contacted Mr. Delcheh.

### C. The Shooting

After Mr. Delcheh’s father left the house, the officers got out of their cars. Deputy Mash and Mr. Delcheh’s father said they walked to the area of [REDACTED] Garth Terrace, about seven doors down, and spoke near the sidewalk. Mr. Delcheh’s father reported that Mr. Delcheh was the only person in the house and that he had no weapons.



**Image 2:** Map showing the approximate locations where: (A) Mr. Delcheh jumped out of the townhome window; (B) Mr. Delcheh ran between two parked cars before running up Garth Terrace; (C) Deputy Mash and Mr. Delcheh’s father were positioned when Mr. Delcheh jumped out of the window; and (D) Deputy Mash shot Mr. Delcheh.

As Deputy Mash remained up the street with Mr. Delcheh’s father, the other officers said they positioned themselves in front of and behind the townhome. They said that Mr. Delcheh appeared at times in both the front and back windows, lowering a security bar on a sliding door, yelling obscenities, and raising his middle finger toward officers. The officers reported that Mr. Delcheh then appeared in the front windows of the townhome holding a large kitchen knife. Marshal Gates described the knife as “the biggest kitchen knife in the kitchen knife set.” The knife recovered near Mr. Delcheh after the shooting was a wood-handled kitchen knife with an eight-inch blade. Officers said they told each other by radio that Mr. Delcheh had a knife. When later interviewed by investigators, Mr. Delcheh’s father said he did not see Mr. Delcheh with a knife at any point.



**Image 3:** Enlarged image from a neighbor’s home security camera showing Mr. Delcheh as he began running up Garth Terrace, after an officer attempted to use a Taser on him. While the image and video are somewhat blurry, it appears Mr. Delcheh was holding something in his left hand.

Multiple officers said that soon after Mr. Delcheh held up the knife, he threw it out an open front window and jumped out after it. A construction worker at a neighbor’s house also reported seeing him throw the knife and jump out of the window. The officers said that Mr. Delcheh “faceplanted,” falling in such a way that they thought he may be injured. But he then stood up and grabbed the knife. Marshal Gates, who said he was standing on the sidewalk approximately ten to twelve feet away, said Mr. Delcheh then turned in his direction, so he deployed his Taser. The Taser deployment and the events that follow are visible on a neighbor’s home security video. Marshal Gates said he believed the Taser struck Mr. Delcheh because Mr. Delcheh yelled, but the autopsy report did not note evidence of Taser prongs on Mr. Delcheh’s body. In either event, the Taser did not have any visible effect on Mr. Delcheh. He passed between two parked cars and began running up the slight hill of Garth Terrace. The home security video is somewhat blurry, making it difficult to confirm that Mr. Delcheh was holding a knife at this point, but it appears he is holding something in his left hand. Multiple officers can also be heard yelling, “he has a knife,” as they began to follow Mr. Delcheh up Garth Terrace. The nearby construction worker also reported that Mr. Delcheh had a knife as he ran up Garth Terrace. As Mr. Delcheh ran, this construction worker heard officers yell, “Stop,” toward Mr. Delcheh.



**Image 4:** Photo of the knife found near Mr. Delcheh after the shooting.

Multiple officers reported that Mr. Delcheh’s father and Deputy Mash ran after Mr. Delcheh up Garth Terrace. Mr. Delcheh’s father and Deputy Mash were already located several

houses up the street from ■■■ Garth Terrace, so they were closer to Mr. Delcheh than any other officer. Deputy Mash said that Mr. Delcheh's father was closest to Mr. Delcheh, and that he feared Mr. Delcheh "was gonna turn around and kill [him]," so he was yelling for Mr. Delcheh's father to "get away from him." Cpl. Blount and the nearby construction worker similarly reported that they thought Mr. Delcheh was going to stab his father. The officers reported that it appeared Mr. Delcheh's father was trying to grab or stop Mr. Delcheh. Mr. Delcheh's father said that he did, in fact, grab Mr. Delcheh.

There is no video of the shooting itself or the moments immediately preceding it, but witness accounts, physical evidence on scene, and the autopsy report all provide some information about the sequence of events. Witnesses who provided accounts of the shooting included the nearby construction worker, Mr. Delcheh's father, Deputy Mash, and five other officers; four officers said they only heard the shooting because of where they were positioned. Mr. Delcheh's father said he did not see Mr. Delcheh with a knife at any point. All other eyewitnesses said Deputy Mash was running up Garth Terrace when Mr. Delcheh turned towards him holding the knife. These seven eyewitnesses all said Mr. Delcheh held the knife in a threatening way as he faced Deputy Mash; four, including Deputy Mash, specified that Mr. Delcheh raised the knife above his head as he turned.<sup>5</sup> Deputy Mash said Mr. Delcheh was approximately two arms' lengths away from him at this point. TFO Kwok Kam said Mr. Delcheh and Deputy Mash were approximately three feet from each other. All of the witnesses said Deputy Mash then fired. The autopsy report revealed gunpowder stippling on Mr. Delcheh's right forearm, indicating that at least one shot was fired from no more than a few feet away. Deputy Mash said he backpedaled as he shot, and that he fell backward after tripping on the curb. On the home security video mentioned above, eight gunshots can be heard at 9:26 a.m. Over two to three seconds, Deputy Mash fired four shots, paused briefly, then fired four additional shots. Casings recovered at the scene and a count of the ammunition left in Deputy Mash's service weapon confirm that Deputy Mash fired eight shots. Investigators later found the eight casings about 15 feet from Mr. Delcheh's body.<sup>6</sup> Deputy Mash's shots struck Mr. Delcheh four times and his father once.

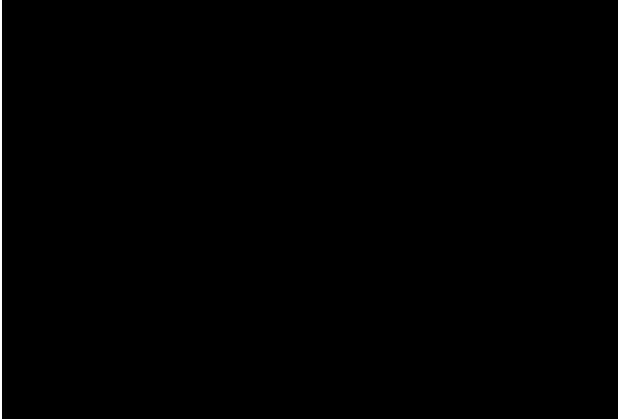
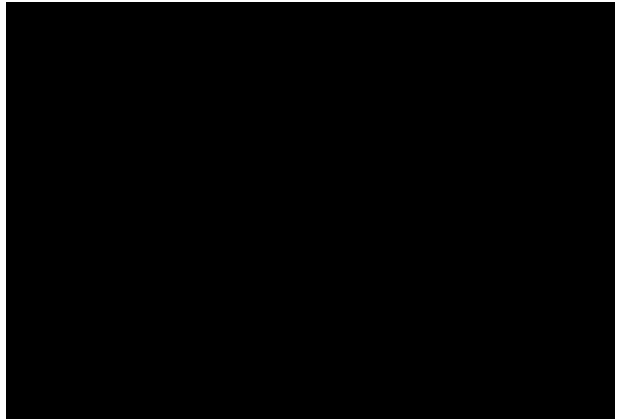
Photographs from Mr. Delcheh's autopsy show that he was struck once on the outside of his left arm, halfway between his elbow and shoulder (Image 5); once on the left side of his back, approximately halfway between his hip and shoulder (Image 6); once by a bullet grazing the outside of his right leg, several inches below his right hip (Image 7); and once on the outside of his left leg, a few inches above his knee (Image 8).

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<sup>5</sup> Deputy Mash said he thought Mr. Delcheh was holding the knife in his right hand; the other witnesses did not specify. Home security video before the shooting shows Mr. Delcheh holding an object in his left hand as he ran up the street.

<sup>6</sup> The location of casings indicates the general location from which shots were fired, but it is not a precise measurement. Casings eject away from a gun when fired, may hit a person or object before coming to rest, and may be inadvertently moved during the incident or subsequent emergency response. *See, e.g.,* Ian K. Pepper & Steve T. Bloomer, *Cartridge Casing Ejection Patterns from Two Types of 9 mm Self-loading Pistols Can Be Distinguished from Each Other*, 56 *Journal of Forensic Identification* 721, 724 (2006).





**Images 5-8 (clockwise from top-left):** Autopsy photos depicting: (5) the gunshot wound to the outside of Mr. Delcheh’s left arm (Mr. Delcheh is laying on his back with his head to the right); (6) the gunshot wound to the left side of Mr. Delcheh’s back (Mr. Delcheh is laying on his front with his head to the left); (7) the bullet graze wound to the outside of Mr. Delcheh’s right leg (Mr. Delcheh is laying on his back with his head to the left); and (8) the gunshot wound to the outside of Mr. Delcheh’s left leg (Mr. Delcheh is laying on his front with his head to the left).

After the eight shots, the other officers arrived at the shooting scene within seconds. Marshal Gates, according to multiple officers, used his foot to drag or kick the knife away from Mr. Delcheh, who was laying in the middle of Garth Terrace. After the shooting, investigators found the knife 32 feet downhill from Mr. Delcheh’s body; both were on the paved portion of Garth Terrace. Multiple officers reported that they then provided medical aid to both Mr. Delcheh [REDACTED]

[REDACTED] Photographs and videos taken by a neighbor after the shooting also show officers providing aid to both Mr. Delcheh [REDACTED] Paramedics arrived at 9:32 a.m., six minutes after the shooting. Mr. Delcheh was pronounced dead on scene at 9:47 a.m. [REDACTED] [REDACTED] was transported to the hospital with one non-life-threatening gunshot wound.

D. Medical Examination

Mr. Delcheh's autopsy was conducted by Associate Pathologist Michael Pagacz, M.D., on July 21, 2022. Dr. Pagacz identified Mr. Delcheh's cause of death as: "Multiple Gunshot Wounds." He deemed the manner of death to be: "Homicide."<sup>7</sup>

Dr. Pagacz found that Mr. Delcheh had been shot four times, once each in the back, left arm, left thigh, and right thigh. The locations of these wounds are shown in Images 5 through 8 above. The shot to the left side of Mr. Delcheh's back traveled back to front, left to right, and upward, injuring multiple ribs and both lungs, and causing significant bleeding within the chest cavity. The shot to Mr. Delcheh's left arm traveled left to right and upward, injuring a rib, lung, multiple vertebrae, and the esophagus. The shot to Mr. Delcheh's left thigh traveled back to front, left to right, and downward, injuring his left femur. The shot to Mr. Delcheh's right thigh was a "graze-type" wound that traveled back to front and upward. None of these wounds showed evidence of soot or gunpowder stippling, and thus no indication that the shots occurred from close range. However, there was evidence of gunpowder stippling on Mr. Delcheh's right forearm.

In addition to the gunshot wounds, Dr. Pagacz identified contusions and abrasions to Mr. Delcheh's forehead, chin, arms, and knee. Dr. Pagacz also found electronic chip fragments in Mr. Delcheh's gastrointestinal tract. Toxicology testing was negative for both alcohol and other drugs.

#### E. DNA Analysis

Analysis of DNA collected from the handle of the knife showed partial DNA profiles from at least two individuals, at least one of whom was male. The Maryland State Police Forensic Sciences Division could not make conclusions about whether the DNA came from any particular individual because of the intermingling of the DNA and the limited amount present.

However, the Forensic Sciences Division was able to obtain a partial DNA profile using Y-chromosome testing, which can be used to analyze small amounts of male DNA in a particular sample. This testing showed that Mr. Delcheh could not be excluded as a possible source of the DNA on the knife. Based on a known database of DNA profiles, the partial DNA profile found on the knife could occur in 1 out of 4,416 unrelated men in the general population. This profile was found in the sample of Mr. Delcheh's DNA.

#### F. Civilian Witness Statements

The two civilian eyewitnesses to the shooting were Mr. Delcheh's father and the construction worker mentioned above. Both of their accounts are incorporated into the factual findings above and elaborated upon here.

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<sup>7</sup> Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. The Office of the Chief Medical Examiner of Maryland uses five categories of manner of death: natural, accident, suicide, homicide, and undetermined. "Homicide" applies when death results from a volitional act committed by another person to cause fear, harm, or death. This term is not a legal determination; rather, it is largely used to assist in the collection of public health statistics. *A Guide for Manner of Death Classification*, First Edition, National Association of Medical Examiners, February 2002.

1. [REDACTED]

Mr. Delcheh's father said that Mr. Delcheh was on a video call with his girlfriend when he went into the townhome. He said that Mr. Delcheh finished the call and was happy until learning that, "you called the police on me." Mr. Delcheh's father further said he was not sure of Mr. Delcheh's mental health diagnosis, but that Mr. Delcheh did better or worse depending on whether he was taking his medication. Emails between Mr. Delcheh's father and Mr. Delcheh's attorney from the night before this incident, provided by the attorney, show that Mr. Delcheh's father thought Mr. Delcheh was off his medications and had removed his court-ordered ankle monitor. Mr. Delcheh was not wearing an ankle monitor at the time of the shooting.

2. Neighboring Construction Worker

The nearby construction worker was the only eyewitness to this incident other than Mr. Delcheh's father and CARFTF members. Because he is neither a relative of Mr. Delcheh nor a member of law enforcement, his account could be seen as the most objective and trustworthy. As discussed above, his account was consistent with the accounts of officers. He said that Mr. Delcheh dropped the knife out of the window, then picked it up and ran up Garth Terrace. He heard officers tell Mr. Delcheh to stop, and saw Mr. Delcheh running towards his father and officers while holding the knife up in a threatening way. He then heard gunshots but did not know which officer fired. When asked for more details about the moments immediately before the shooting, he said he could not remember more precisely than he had already described.

3. Other Civilian Witnesses

Several residents and a Gaithersburg city employee in the area of the shooting heard officers yelling and heard shots fired, and many saw officers providing medical aid afterward. None reported seeing the shooting or the events immediately preceding it. Mr. Delcheh's girlfriend, with whom he was on the phone when Mr. Delcheh's father went inside the townhome, said Mr. Delcheh was hiding and that she heard knocking on the door, but she said she did not see or hear anything else. She did not report anything unusual about Mr. Delcheh's demeanor or actions while they were on the phone.

G. Paramedic and EMT Statements

Paramedic Joseph Chronowski wrote a report describing the emergency medical response to the shooting. [REDACTED]

[REDACTED] He further wrote that Mr. Delcheh was [REDACTED] when paramedics arrived. [REDACTED]

[REDACTED] paramedics pronounced Mr. Delcheh dead at 9:47 a.m.

H. Law Enforcement Officers' Statements

Under Maryland law effective July 1, 2022, a police officer must "fully document all use of force incidents that the officer observed or was involved in." Public Safety § 3-524(e)(4). The law does not provide further guidance about what "fully document" means. The Montgomery

County Sheriff's Office's Use of Force Policy requires that deputies complete an Incident Report and Use of Force Report before the end of their tour of duty when they discharged a firearm or used force that results in injury or death. *See* Appendix B, VII(A)(1).

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

### 1. Deputy Mash

Deputy Mash participated in a voluntary interview with FBI special agents on July 2, 2022, at the Montgomery County Police Department. Also present for the interview were Deputy Mash's attorney and union representative. Deputy Mash's account is detailed in the factual findings above. He said that he had driven with Mr. Delcheh's father to Garth Terrace from the earlier addresses where they tried to find Mr. Delcheh. He said he texted and then called Mr. Delcheh's father while he was inside with Mr. Delcheh, then spoke to Mr. Delcheh's father after he came back out. He said they were both several houses up from [REDACTED] Garth Terrace when Mr. Delcheh jumped from the window with a knife. Deputy Mash said both he and Mr. Delcheh's father ran after Mr. Delcheh, and that when he was approximately two arms' lengths away, Mr. Delcheh turned towards Deputy Mash and raised the knife above his head. Deputy Mash said he then fired what he believed to be four to six shots while backpedaling. He said he tripped and fell on the curb of Garth Terrace and that Mr. Delcheh and his father were on the ground when he got up.

Additionally, when asked by investigators why he fired, Deputy Mash said: “He was going to kill me. I needed to protect myself. And ultimately my first thought was protecting [Mr. Delcheh's father] when I was yelling for him to get away from the son [Mr. Delcheh]. I thought he was going to kill him first.” When asked whether he had any alternative to using deadly force, Deputy Mash said, “There was none; he was going to kill me.” He also said he does not carry less-than-lethal weapons such as a Taser or OC (oleoresin capsicum) spray.

### 2. Other Officer Witnesses

All nine other officers present for the shooting were also interviewed by investigators. Their accounts are incorporated into the factual findings above.

## III. Involved Parties' Backgrounds

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

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

A. Hamed Ghorouni Delcheh

Mr. Delcheh was a 35-year-old white man who lived in Germantown, Maryland.

B. MCSO Deputy Sheriff III Domenic Mash

Deputy Mash is a white man who was 32 years old at the time of the shooting. He was hired by the Montgomery County Sheriff's Office on August 12, 2013, and graduated from the police academy on September 11, 2014. He was assigned to CARFTF on January 17, 2021. Deputy Mash has not been the subject of any Internal Affairs investigations or complaints.

#### **IV. Applicable Policies**

The Memorandum of Understanding between the Montgomery County Sheriff's Office and the U.S. Marshals Service states: "All members of the [CA]RFTF will comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-than[-]lethal devices, to include completing all necessary training and certification requirements." When interviewed by investigators, all officers and Sheriff's Office supervisors similarly reported that TFOs' home agencies' use of force policies governed their conduct.

The Sheriff's Office has the following policies relevant to this incident. The full policies are attached as Appendix B.

A. MCSO 3.01 – Use of Force

This policy states that Sheriff's Office deputies may use "only that force which is necessary and proportional to perform their duties or to protect themselves or others from personal attack, physical resistance, harm or death." The policy defines "reasonable" force as that which is "required to perform a law enforcement purpose," "necessary" force as that used "when no reasonably effective alternative exists," and "proportional" force as that which is "rationally related to the law enforcement objective[] or the level of resistance or aggression confronting the deputy."

Regarding deadly force, the policy provides: "Deputies may use deadly force only when the deputy reasonably believes the action is in defense of any human life in imminent danger of death or serious bodily harm." Deadly force may only be used once "de-escalation and less-lethal force options have been tried and failed, or are not safe based on the totality of the circumstances." The totality of the circumstances includes "[w]hether the subject poses an imminent threat," "[w]hether the subject is actively resisting a lawful arrest," and "[t]he severity of the crime or suspected offense."

Finally, the policy provides that deputies "must obtain medical treatment as soon as possible for any individual who . . . shows signs of any injury as a result of any use of force by a deputy."

## B. MCSO 3.13 – Mental Disorders

The stated purpose of this policy is to ensure that the Sheriff’s Office “afford[s] persons who have a mental disorder the same rights, dignity and access to policy and other government and community services as are provided to all individuals.” The policy provides officers with guidance that may help resolve interactions with those facing mental health crises. That guidance states: “Frequently, a family member or friend is of great value in calming an individual exhibiting unusual behavior as a result of mental or emotional impairment.” It further says that deputies should: “Eliminate commotion. Eliminate, to the degree possible, loud sounds, bright lights, sirens, and crowds, moving the individual to a calm environment, if possible”; and, “Prepare for a lengthy interaction. Mentally ill individuals should not be rushed unless there is an emergency.”

## V. Applicable Law & Analysis

The IID analyzed criminal offenses that could be relevant in a shooting of this nature. This section will discuss those potential charges and any likely defenses the State would have to overcome to prove a charge beyond a reasonable doubt.

### A. Excessive Force

Effective July 1, 2022, the Maryland Use of Force Statute makes it a crime for officers to intentionally use force that is not, “under the totality of the circumstances . . . necessary and proportional to: (i) prevent an imminent threat of physical injury to a person; or (ii) effectuate a legitimate law enforcement objective.” Public Safety § 3-524(d)(1).

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

The Use of Force Statute’s reference to “the totality of the circumstances” likely encompasses several factors courts have previously considered when evaluating officers’ uses of force, including, but not limited to: the severity of the underlying crime; the existence of an articulable basis to believe the suspect is armed; the threat, if any, the suspect posed; information known to the officer before the use of force; time of day; how the officer approached the suspect; whether the officer issued a warning or threat to the suspect; whether the officer afforded the suspect an opportunity to respond to commands; the suspect’s statements; the suspect’s mental well-being; attempts to evade or resist arrest; aggressive behavior; and the reactions of other officers to the use of force. *See generally, Graham v. Connor*, 490 U.S. 386, 396 (1989); *Koushall v. State*, 249 Md. App. 717, 730 (2021), *aff’d*, 479 Md. 124 (2022); *Estate of Blair by Blair v. Austin*, 469 Md. 1, 23, 25-26 (2020); *Salvato v. Miley*, 790 F.3d 1286, 1293 (11th Cir. 2015); *Deering v. Reich*, 183 F.3d 645, 650-52 (7th Cir. 1999). Also likely factoring into this analysis is the Use of Force Statute’s requirement that “when time, circumstances, and safety

allow, [officers shall] take steps to gain compliance and de-escalate conflict without using physical force.” Public Safety § 3-524(e)(1).

The terms “necessary” and “proportional” are not defined by statute or by Maryland caselaw. However, [an opinion](#) issued by the Office of the Attorney General concluded that the “necessary and proportional” standard “involves three core principles”:

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

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

The Use of Force Statute provides that necessary and proportional force may be appropriate to “prevent an imminent threat of physical injury to a person” or to “effectuate a legitimate law enforcement objective.” Public Safety § 3-524(d)(1)(i), (ii). “Imminent” is defined as “likely to occur at any moment; impending.” *Howell v. State*, 465 Md. 548, 564 n. 15 (2019).<sup>8</sup> Officers must have probable cause to believe that an individual poses such an imminent threat. *Estate of Blair*, 469 Md. at 23. Probable cause “means something less than ‘more likely than not.’” *Whittington v. State*, 474 Md. 1, 41 n. 29 (2021) (quoting *Freeman v. State*, 249 Md. App. 269, 301 (2021) (cleaned up)).

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

The Use of Force Statute specifically provides that an officer must cease the use of force when either of the above conditions are no longer met, or when the target of the force is under the officer’s control. Physical restraint is not a prerequisite to “control.” *Michigan v. Long*, 463 U.S. 1032, 1051 (1983) (“During any investigative detention [*i.e.*, a *Terry* stop], the suspect is ‘in the control’ of the officers in the sense that he may be briefly detained against his will.”) (cleaned up). An individual who is complying with an officer’s commands without physical restraint is under the officer’s control because the officer has a “directing influence” over them. *See Bryant v. State*, 229 Md. 531, 537 (1962) (citations omitted) (applying dictionary definitions of “control,” *i.e.*, “to exercise restraining or directing influence over”); *cf. Bailey v. State*, 412

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<sup>8</sup> “Imminent” differs from “immediate,” which means “occurring or accomplished without lapse of time; instant; of or relating to the present moment.” *Howell*, 465 Md. at 564 n. 15. However, imminence still requires a reasonable degree of proximity and specificity; a threat that may occur “sometime in the future” is not imminent. *Madrid v. State*, 474 Md. 273, 339 (2021).

Md. 349, 371 (2010) (“Although the display of force often involves placing the individual who is seized in handcuffs, application of handcuffs is not a necessary element of an arrest.”); *Henderson v. State*, 89 Md. App. 19, 23 (1991) (suspect was not seized where he “was neither under the physical control of the officers, nor was he acquiescing to their authority”).

Unintentional violations of the Use of Force Statute do not constitute criminal offenses. While it is possible the General Assembly meant only that the officer’s actions must have been intentional, it is more likely the General Assembly meant to require that the officer knew the level of force that would have been permissible and intentionally crossed that threshold. The Office of the Attorney General’s Opinions Division stated in a January 18, 2023, advice letter to the Prince George’s County State’s Attorney’s Office that this latter interpretation was better supported by the plain language of the statute.<sup>9</sup> Letter of Assistant Attorney General Rachel A. Simmons to State’s Attorney Aisha N. Braveboy, Prince George’s County State’s Attorney’s Office (Jan. 18, 2023).

In this case, based on the available evidence, it is unlikely the State could prove beyond a reasonable doubt that Deputy Mash’s force intentionally exceeded that which was necessary and proportional. Multiple officers corroborated Deputy Mash’s statement that Mr. Delcheh raised the large kitchen knife and moved towards him while approximately two arms’ lengths away. While there is no video of this action or the shooting itself, the neighbor’s security video shows that Mr. Delcheh appeared to have something in his left hand as he ran up Garth Terrace, and officers yelled “he’s got a knife” as Mr. Delcheh ran. The autopsy revealed gunpowder stippling on Mr. Delcheh’s forearm, indicating that at least one shot was fired from less than a few feet away. The available evidence, therefore, supports Deputy Mash’s account that Mr. Delcheh was armed with a knife, that the two were within a few feet of each other, and that Mr. Delcheh came towards Deputy Mash with the knife raised threateningly. In these circumstances, it is unlikely the State could prove that deadly force was not necessary or disproportionate to the threat posed by Mr. Delcheh.

However, the fact that Deputy Mash shot Mr. Delcheh towards the back and on the side of both legs is also relevant to the analysis of the threat Mr. Delcheh posed. The locations of these gunshot wounds suggest that Mr. Delcheh was not directly facing Deputy Mash when the shots were fired. However, the accounts of all eyewitnesses, except Mr. Delcheh’s father, were that Deputy Mash fired when Mr. Delcheh came toward him with the knife raised. The most plausible explanation of this possible discrepancy is that Mr. Delcheh turned slightly before the shots that struck him. The locations and directionality of the shots to Mr. Delcheh’s left arm, back, and left leg all suggest that his left side was facing Deputy Mash when those shots were fired. One witness, TFO Marek Materka, stated that Mr. Delcheh turned to his right—which would have exposed his left side to Deputy Mash, if they had initially been facing each other—and fell after Deputy Mash fired. Additionally, the presence of gunpowder stippling on Mr. Delcheh’s right forearm but not near any of his gunshot wounds indicates that Deputy Mash fired at least one shot from less than a few feet away that missed Mr. Delcheh. This possible explanation, coupled with the witness testimony about the threat Mr. Delcheh posed, would

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<sup>9</sup> The Opinions Division is a unit within the Office of the Attorney General that is responsible for answering significant legal questions involving Maryland law or other law that governs the actions of Maryland public officials. The Division issues both formal opinions and less formal advice letters; neither serves as binding precedent, though they may be used as persuasive authority.



make it difficult for the State to prove that Deputy Mash fired when Mr. Delcheh did not present an imminent threat.

This analysis must also consider whether Deputy Mash properly ceased using force once Mr. Delcheh no longer posed an imminent threat. Deputy Mash fired eight shots over the course of two to three seconds. He fired four shots in quick succession, paused for less than one second, then fired four additional shots. No witness said Mr. Delcheh stopped presenting a threat during these shots; the witnesses did not recount that Mr. Delcheh's actions changed while Deputy Mash fired. Given that the shots were fired in less than three seconds and began when Mr. Delcheh was less than a few feet from Deputy Mash, there was little opportunity for the threat posed by Mr. Delcheh to have abated. Even if Mr. Delcheh had turned after Deputy Mash first fired, as discussed above, there is no available evidence suggesting that he was incapacitated, had dropped the knife, or had otherwise stopped posing an imminent threat while Deputy Mash fired. Absent such evidence, it would be difficult to prove that Deputy Mash's use of force was not necessary and proportional.

The other evidence that could arguably be inconsistent with a conclusion that Deputy Mash appropriately used deadly force is Mr. Delcheh's father's statements that Mr. Delcheh was unarmed and the fact that the knife was found 32 feet from Mr. Delcheh after the shooting. As to Mr. Delcheh's father's statements, his account is less plausible than the accounts of other witnesses. Officers said they reported the knife by radio contemporaneously, video shows officers yelling that Mr. Delcheh had a knife as he ran seconds before the shooting, video shows Mr. Delcheh seemingly holding something in his left hand, and the knife was recovered on the scene. The witnesses who recalled that Mr. Delcheh was armed also included the civilian construction worker, not only officers; Mr. Delcheh's father was the only witness who said Mr. Delcheh was not armed. As to the location of the knife, Marshal Gates reported that he moved the knife away from Mr. Delcheh with his foot immediately after the shooting. Other officers also reported that Marshal Gates had done this. This action would be consistent with officers' accounts that their concerns in approaching the shooting scene were ensuring Mr. Delcheh posed no safety threat and then providing medical aid. The knife was also found downhill from Mr. Delcheh, and both Mr. Delcheh and the knife were on the pavement of Garth Terrace; both of these facts could explain how the knife could have traveled 32 feet after being kicked by Marshal Gates. Given these possible explanations, it would be difficult for the State to prove that the distance between Mr. Delcheh and the knife should be attributed to any explanation other than Marshal Gates moving it when he arrived.

## B. Homicide Charges

In addition to the new excessive force charge, officers may still be charged with traditional statutory and common law offenses. There are two charges related specifically to officers killing Mr. Delcheh that could be relevant given the facts of this incident: intentional second-degree murder and voluntary manslaughter.<sup>10</sup>

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<sup>10</sup> First-degree murder is not analyzed because there is no evidence that officers' killing of Mr. Delcheh was premeditated. Unintentional ("depraved heart") second-degree murder and involuntary manslaughter are not analyzed because there is no dispute that officers intended to fire at Mr. Delcheh.

Intentional second-degree murder is a killing done with “either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result,” but which 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). To prove this charge, the State must, among other things, establish beyond a reasonable doubt that the killing was not legally justified. *Id.*

An officer’s use of deadly force is legally justified if it is done in self-defense, in defense of others, or pursuant to law-enforcement justification.

Self-defense and 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 the defendant acted in complete self-defense or complete defense of others, no assaultive charge, including murder and manslaughter, is appropriate. MPJI-Cr 4:17.2; 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). If the defendant acted in partial self-defense or partial defense of others, the appropriate charge is voluntary manslaughter rather than second-degree murder. *Id.*

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 (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.

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. 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 exists where an officer uses “only that amount of force reasonably necessary under the circumstances to discharge his duties.” *Wilson v. State*, 87 Md. App. 512, 520 (1991). The defense provides that in using reasonably necessary force, officers are “not liable civilly or criminally for the assault or battery that may result, including, if necessary, the use of deadly force.” *Id.* at 519. 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*, 249 Md. App. at 728-29. To use deadly force, an officer must have “probable cause to believe that the suspect poses a threat of serious physical harm.” *Estate of Blair*, 469 Md. at 23-24 (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)).

Each of these defenses is viable only if an officer acted reasonably. 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*, 490 U.S. at 397). However, "an objectively reasonable officer would use deadly force *only* when threatened with serious physical harm." *Estate of Blair*, 469 Md. at 24 (emphasis in original). Violations of departmental policy are one "factor to be considered in determining the reasonableness of police conduct." *Pagotto*, 361 Md. at 557 (citations omitted).

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

The Opinions Division noted, however, that necessity and proportionality may still be salient factors in the reasonableness determination because the new standard has now been incorporated into law enforcement policies and training statewide. *Id.* The advice letter states: "Maryland's appellate courts have often considered an officer's compliance with police department policies or training guidelines when assessing the reasonableness of the officer's use of force." *Id.* (citing *Koushall*, 479 Md. at 152, 156 & n.11 (non-compliance with departmental policy "highlight[ed] the [officer's] unreasonable use of force under the circumstances"); *Albrecht*, 336 Md. at 477-78, 487, 502-03 (noting that "the record [was] replete with evidence . . . that [the officer] did not comply with . . . departmental guidelines, procedures or practices" and, thus, did not act as "act as a reasonable police officer under the circumstances" but, rather acted "in a grossly negligent and reckless manner"); *Pagotto*, 361 Md. at 550-53 (considering three departmental guidelines about how to approach a suspect when analyzing convictions for involuntary manslaughter or reckless endangerment)).

In this case, based on the available evidence, it would be difficult for the State to prove that Deputy Mash did not act in self-defense, defense of others, or pursuant to law-enforcement justification. As discussed in the Excessive Force section above, the available evidence suggests that Deputy Mash fired when Mr. Delcheh turned towards him from a close distance and began aggressively coming towards him with a knife. In this situation, it is unlikely the State could prove beyond a reasonable doubt that Deputy Mash's use of deadly force was not reasonable, necessary, and proportional.

### C. Other Charges

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

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

## **VI. Conclusion**

This interim report has presented factual findings and legal analysis relevant to the fatal shooting that occurred on July 20, 2022, in Gaithersburg, Maryland. The IID will supplement this report when it receives ballistics analysis from the FBI, but please feel free to contact the IID if you would like us to supplement this report in any other way through further investigation or analysis.

## Appendix

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

911 Calls (1 audio file and 1 certification)  
CAD Reports (4 items)  
Civilian Witness Statements (6 recordings and 1 receipt of recording)  
Decedent Documents (2 items)  
Department Policies (5 MCSO Policies and 6 Marshall Services Policies)  
FBI Reports and Notes (212 items)  
IA History and Training Records (7 items)  
Lab Reports (3 items)  
Medical Records (1 record)  
MSP Reports (10 items)  
OAG Reports (6 items)  
OCME (1 report and 20 photos)  
Officer Statements (3 interviews)  
Other Video (13 videos and 5 screenshots)  
Photographs (FBI – 150 photos and 121 aerial scans, MSP – 120 photos, and 19 misc. photos)  
Search Warrants (2 items)  
Subpoenas (4 items)  
USMS-MCSO MOU (1 item)

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

### **Appendix B – Relevant Montgomery County Policies**

See attached.

**Appendix B**  
Relevant Montgomery County Policies



**OFFICE OF THE COUNTY SHERIFF**  
**Montgomery County, Maryland**  
*Darren M. Popkin, Sheriff*  
**GENERAL OPERATIONAL PROCEDURES**



<b><u>Subject:</u></b>	<b><u>Number:</u></b>	<b><u>Effective Date:</u></b>
Use of Force	3.01	07/01/22

Policy: The decision to use force, whether deadly or non-deadly, is one of the most crucial and demanding decisions that a deputy may be called upon to make. Though use of force incidents occur infrequently, situations may arise when a deputy must make the irreversible decision of whether or not to use deadly or non-deadly force. This decision, perhaps the most far reaching of any decision a deputy may be called upon to make can have a powerful and possibly harmful effect on the deputy, the Office, and the community. The decision to use force is that of the deputy and cannot be made by the Office; however, the Office must provide guidelines to aid in the exercise of that decision.

It is the policy of the Sheriff’s Office that deputies are permitted to use only that force which is *necessary and proportional* to perform their duties or to protect themselves or others from personal attack, physical resistance, harm or death. *Deputies may not use force against a person unless, under the totality of the circumstances, the force is reasonable, necessary and proportional to prevent an imminent threat of physical injury to a person or to accomplish a legitimate law enforcement objective. 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.*

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- I. Definitions
- II. Use of Force
- III. Authorized Use of Deadly Force
- IV. Firearms
- V. Medical Care
- VI. Dangerous/Injured Animals
- VII. Reporting and Investigating Responsibility
- VIII. Review of Use of Force Incidents
- IX. Cancellation

**I. Definitions**

A. Sanctity of life – It is the policy of the Sheriff’s Office that all employees hold the highest regard for the sanctity of human life, dignity, and liberty of all persons. All uses of force must be reasonable based upon the circumstances of the incident. The use of deadly force will only be used by deputies when reasonable to protect the safety and lives of others, or themselves.

- B. ***Use of Force:*** - Any physical strike or contact of a person; any intentional or attempted physical strike or contact of a person which does not yield the desired effect; any use of a protective instrument or intentional canine bite; any significant physical contact or action that restricts the movement of a person.
- The term includes discharge of a firearm, use of chemical agents, use of impact weapons, use of an electronic control weapon, use of a violent prisoner restraining device, taking a subject to the ground, and any physical contact that includes control techniques. The term does not include a deputy's mere presence, verbal commands, escorting, or handcuffing a person with minimal or no resistance.*
- C. ***Deadly Force*** - Any use of force, which is intended to or likely to, cause death or serious physical injury. The use of deadly force is not limited to firearms, but also includes protective instruments, or any other means including hands, used by a deputy. Deadly force will only be used by deputies to protect the safety and lives of others, or themselves.
- D. ***Objectively Reasonable Force*** – The level of force that is deemed appropriate when analyzed from the perspective of a reasonable deputy possessing the same information and faced with the same circumstances as the deputy who actually utilized the force.
- E. ***Reasonable, Necessary, and Proportional Force*** – Each use of force will undergo an administrative review to determine if the force used was reasonable, necessary, and proportional given the circumstances that were known or should have been known at the time that the force was used.
- (1) ***Reasonable:*** A deputy uses reasonable force when they utilize only that force which is required to perform a law enforcement purpose.
  - (2) ***Necessary:*** Force is necessary only when no reasonably effective alternative exists. When force is necessary, it must be used in a manner that avoids unnecessary injury or risk of injury.
  - (3) ***Proportional:*** Proportionality measures whether the force used is rationally related to the law enforcement objective, or the level of resistance or aggression confronting the deputy.
- F. ***Duty to Intervene*** – All deputies have a duty to intervene to prevent or stop the use of force by another law enforcement officer beyond what is authorized by law, if they have a reasonable opportunity and ability for intervention. All deputies must immediately report such incidents to a supervisor.
- G. ***Protective Instrument*** - Any device, authorized by the office, and utilized by a deputy to apply force to another individual, e.g. O.C. spray, expandable baton, flashlight, electronic control device (ECD), etc.
- H. ***Reasonable Belief*** - Facts or circumstances a deputy knows, or should know, which would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.



- I. **Totality of the Circumstances:** - *consists of all facts and circumstances surrounding any event that are known or reasonably should have been known at the time. 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 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 the 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, moving to cover, or other de-escalation techniques; environmental factors such as backdrop; and the availability of backup and specialized units.*
- J. **Resistance:** - *Deputies may face the following types of resistance to lawful orders:*
- (1) *Active Resistance - When a person moves to avoid detention or arrest but does not attack or attempt to attack the deputy or another person. Attempting to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the deputy's grasp are all examples of active resistance.*
  - (2) *Passive Resistance - When a non-assaultive person fails to comply with a deputy's commands without attempting to flee. Examples include, but are not limited to, going limp, refusing to speak, standing stationary and not moving after being given a lawful direction, and/or verbally signaling an intention to avoid being taken into custody.*
- K. **Assaultive Behavior:** – *Any intentional physical action taken by an individual which is likely to cause immediate physical harm or danger to a deputy or others.*
- L. **Serious Physical Injury** - *An injury that creates a substantial risk of death; causes serious permanent disfigurement; or results in long-term loss or impairment of any bodily member or organ.*

## II. **Use of Force**

- A. Deputies may only use force which is ***necessary and proportional*** to make an arrest, an investigatory stop or other seizure, or in the performance of their lawful duties, to protect themselves or others from personal attack, physical resistance, harm, or death. The decision to exercise force must be based upon the circumstances that the deputy reasonably believes to exist. In determining the appropriate level of force to be used by a deputy, the nature of the threat or resistance faced or perceived by the deputy as compared to the force employed should be considered. Factors to be considered in assessing the level of force to be used include, but are not limited to:
- (1) Whether the subject poses an imminent threat to the safety of the deputies or others.
  - (2) Whether the subject is actively resisting a lawful arrest, or the subject is attempting to evade a lawful arrest by flight.
  - (3) The severity of the crime or suspected offense.

- B. A person need not strike or attempt to strike a deputy to be considered a physical threat as long as a deputy has a reasonable belief that the person is physically threatening and has the present ability to harm the deputy or another. Examples of actions or observations that may lead a deputy to believe that a person is a threat include, but are not limited to, clenched fists, displayed hostility or anger, verbal threats, aggressive stance, non-compliance, and furtive movements. Under the law, deputies are not obligated to retreat when confronted with a threat.
- C. The Sheriff's Office recognizes that some situations require the application of force and relies on the deputy's judgment and discretion to employ *reasonable, necessary and proportional* force under each unique circumstance.
- D. If time, circumstances and safety permit, deputies should attempt to gain compliance through de-escalation as opposed to the use of physical force. De-escalation could slow down or stabilize encounters to allow for more resources or options to better resolve the conflict. Examples of de-escalation techniques include but are not limited to the use of advisements, warning, or persuasion.
- E. It is the duty of every deputy to prevent another law enforcement officer from using force unreasonably. Any deputy observing a use of force which is clearly beyond that which is *necessary and proportional* under the circumstances must intervene and prevent the use of unreasonable force. Any deputy who observes another law enforcement officer using unreasonable force must promptly report these observations to a supervisor when practical and safe to do so.
- F. Deputies may encounter situations that require not only the deputy's presence, but also some form of verbal or non-verbal communication. This communication may take the form of providing information, giving commands or direction, physical gestures etc.
- G. *Necessary and proportional* force may be used to effect arrests, to safely make or maintain an investigative detention or seizure, or to protect deputies or others from personal attack, physical resistance, or injury, provided the force applied is reasonable based upon the circumstances confronting the deputy at the time.
- H. The Sheriff's Office authorizes protective instruments for deputies, however, in exigent circumstances, deputies may use other objects or instruments in order to protect themselves or others when used within the scope of *necessary and proportional* force.
- I. Due to the potential for severe injury the use of the "Lateral Vascular Neck Restraint" or any similar neck restraint, designed to temporarily immobilize individuals, is prohibited as an acceptable use of non-deadly force.
- J. Choke holds or any similar technique restricting the intake of oxygen for the purpose of gaining control of a subject is prohibited as an acceptable use of non-deadly force.

### III. Authorized Use of Deadly Force

- A. Deputies may use deadly force *only when the deputy reasonably believes the action is in defense of any human life in imminent danger of death or serious bodily injury.*
- B. *Deputies must not use deadly force unless de-escalation and less-lethal force options have been tried and failed, or are not safe based on the totality of circumstances.*
- C. *The use of deadly force will always be a last resort.*
- D. Foreign Jurisdiction

Any area outside the State of Maryland is a foreign jurisdiction. When deputies are in foreign jurisdictions, deputies may only carry or wear a weapon, whether on or off duty in compliance with the laws of that jurisdiction, federal law and office regulations. In foreign jurisdictions, the use of deadly force is permissible only in defense against an attack that may result in death or serious bodily injury to the deputy, other law enforcement personnel or to bystanders.

### IV. Firearms

- A. Deputies are prohibited from engaging in horseplay with firearms.
- B. Warning shots are prohibited.
- C. Firearms may be drawn when a deputy has reasonable fear for their safety or the safety of others. Firearms may not be arbitrarily pointed at a person or persons. Reasonable caution must be used when utilizing a firearm. When possible, deputies must consider the backstop and location of any bystanders before discharging a firearm to avoid endangering the lives of innocent people.
- D. Firearms must not be discharged at or from a moving vehicle unless the circumstances would authorize the use of deadly force.
  - (1) Deputies must not intentionally position themselves in front of an oncoming vehicle where the use of deadly force would likely be the most probable outcome.
  - (2) When confronted by an oncoming vehicle, deputies must move out of its path, if possible, rather than discharging a firearm at it or any of its occupants.
  - (3) Additionally, shots fired from or at a moving vehicle are discouraged for the following reasons:
    - (a) There is an obvious danger to persons in the area if the driver should lose control of the vehicle.
    - (b) Such shots are usually ineffective and cannot be depended upon to stop a moving vehicle.

- E. The following procedures must be used to report and investigate every incident of firearms discharge by a deputy except for range practice, ballistic examinations or destruction of a dangerous or injured animal. Whenever a deputy discharges their firearm either accidentally or intentionally, they must immediately:
- (1) Notify the Public Safety Communications Center (PSCC) of the incident and location.
  - (2) Determine the physical condition of any injured person and request that Montgomery County Fire and Rescue Service (MCFRS) respond to render first aid.
  - (3) Unless injured, the deputy must remain at the scene until the arrival of the appropriate investigators. However, if the circumstances are such that the continued presence of the deputy at the scene may cause a dangerous situation to develop (i.e. violent crowd), the ranking deputy or police officer at the scene has the discretion to instruct the deputy to respond to another, more appropriate location.
  - (4) The deputy must protect their weapon for examination and submit the weapon to the appropriate investigator.
    - (a) The deputy must holster their firearm and leave it holstered.
    - (b) When asked to submit the firearm to the investigator, the deputy will leave the firearm holstered and submit the entire duty belt to the investigator.
  - (5) The deputy should not discuss the case with anyone except:
    - (a) Supervisory and assigned investigative personnel.
    - (b) The assigned States Attorney.
    - (c) The deputy's attorney, psychologist, clergy or spouse.
    - (d) The deputy's union representative.
- F. The deputy must be available at all reasonable times for official interviews and statements regarding the case and is subject to recall to duty at any time.

## **V. Medical Care**

- A. Deputies must be mindful of certain indicators or conditions when detaining or arresting a person. The following conditions or indicators may potentially contribute to sudden unexpected death following extreme physical exertion or restraint. Deputies must recognize these factors and closely monitor anyone after a use of force when any of these factors or indicators are observed.

- (1) Excited Delirium, a sudden onset with symptoms of bizarre and/or aggressive behavior, shouting, paranoia, panic, violence toward others, unexpected physical strength, and hyperthermia.
  - (2) Alcohol or drug use or abuse.
  - (3) Obesity.
  - (4) Display of erratic or psychotic behavior.
  - (5) Incoherent speech.
  - (6) State of agitation.
  - (7) Intentionally injuring themselves.
  - (8) Disrobing or naked.
- B. Deputies must take appropriate measures so that the individual involved in the use of force is able to breathe without restriction and if possible, should lay the subject on their side or seated in an upright position. Deputies should avoid transporting subjects in a face-down position whenever possible.
- C. Deputies must obtain medical treatment as soon as practical for any individual who:
- (1) Complains of any injury as a result of any use of force.
  - (2) Shows signs of any injury as a result of any use of force by a deputy.
  - (3) A deputy or supervisor believes is in need of medical treatment as a result of any use of force.
  - (4) Complains or exhibits trouble breathing.
  - (5) Exhibits reduced levels of consciousness or becomes unresponsive.
  - (6) Shows signs of excited delirium.
    - (a) Deputies must specifically request that an Advanced Life Support Unit (ALS) respond.
    - (b) ALS units carry medication such as Haldol or Ketamine, which can assist in treating individuals suffering from excited delirium.
  - (7) Has been exposed to an electronic control device (ECD) and the probes have impacted a sensitive area such as the eyes, face, breast, throat, neck, groin or probes that are deeply embedded in any body part.

**VI. Dangerous/Injured Animals**

- A. The killing of an animal is justified in the following circumstances:
  - (1) For self-defense.
  - (2) To prevent physical harm to the deputy or another person.
  - (3) When the animal is so badly injured that humanity requires its relief from further suffering.
- B. If practical, deputies must notify the Public Safety Communications Center (PSCC) prior to the discharge of the firearm.
- C. Deputies must attempt to locate the owner of a destroyed domestic animal if they are not present.
- D. Deputies must request that the Public Safety Communications Center (PSCC) notify the appropriate agency to respond and remove the animal's remains.

**VII. Reporting and Investigating Responsibility**

- A. Required Reports
  - (1) Deputies must complete and submit an Incident Report (MCSO9) and a Use of Force Report (MCSO2) prior to the end of their tour of duty in the following circumstances:
    - (a) Any time force is used to counteract physical resistance.
    - (b) Any force that results in an injury or death of an individual or whenever an individual claims an injury as a result of the amount of force used.
    - (c) Whenever force is applied by the use of a protective instrument.
    - (d) Whenever a firearm is discharged other than for range practice or ballistic examinations.
    - (e) Whenever an office canine inflicts injury to any person.
  - (2) Whenever the use of force is used on more than one individual during an incident, a Use of Force Report (MCSO2) must be completed for each individual.
  - (3) If a use of force incident involves more than one deputy, it is the responsibility of the senior-ranking deputy involved in the incident to complete and submit the required reports. However, at the discretion of a supervisor, each deputy involved in the incident may be required to submit separate reports.

- (4) The section supervisor, duty commander or the highest-ranking deputy on duty must ensure that the involved deputy completes and submits all required reports, prior to the end of the deputy's tour of duty. If the deputy is injured to such an extent that they are physically unable to complete the required reports, the section supervisor, duty commander or the highest-ranking deputy on duty must assist in the completion of the required reports.
- (5) Off-duty deputies involved in a reportable use of force incident must immediately, after clearing from the incident scene, contact their section lieutenant, duty commander or the highest ranking deputy on duty and provide a detailed account of the incident. The section supervisor, duty commander or the highest ranking deputy on duty will determine whether or not the deputy will immediately report to the Sheriff's Office to complete the required reports based on the seriousness of the incident and the practicality of reporting to the Office. If the deputy is not required to report to the Office, the deputy will report to their section supervisor on their next scheduled workday and complete the Incident Report (MCSO9) and Use of Force Report (MCSO2).
- (6) Any instance whereby any employee was required to intervene and halt the use of force by another law enforcement officer, the intervening employee must notify their section supervisor or the highest ranking deputy on duty, and complete an incident report (MCSO9) before the end of their tour of duty.

B. Notifications

- (1) Deputies must promptly notify the Sheriff's Office of any use of force that results in death or injury requiring medical attention and any firearm discharge except for authorized range practice.
- (2) During normal business hours, notification must be made to the deputy's section supervisor. The section supervisor is responsible for notifying the following individuals of the incident:
  - (a) Division Captain.
  - (b) Office of Professional Responsibility (OPR.)
  - (c) Chief Deputy.
  - (d) Sheriff.
- (3) During the evening or weekends, notification must be made to the duty commander or highest-ranking deputy on duty. This deputy is responsible for contacting the following individuals and notifying them of the incident:
  - (a) Involved deputy's section supervisor.
  - (b) Division Captain.
  - (c) Office of Professional Responsibility (OPR).

- (d) Chief Deputy.
  - (e) Sheriff.
- (4) The section supervisor, duty commander, or the highest-ranking deputy on duty must notify the Montgomery County Department of Police, Homicide and Sex Section, after a firearm discharge occurs in the following circumstances:
- (a) All intentional firearm discharges by a deputy, whether injuries occur or not, with the exception of range practice, ballistic examinations or for the purpose of destroying a dangerous or injured animal.
  - (b) All accidental firearm discharges by a deputy that results in injury or death to any person.

C. ***Highest ranking on-duty deputy's responsibilities***

The ***highest ranking on-duty deputy*** must respond immediately to any incident when a deputy assigned ***under*** their ***command*** is injured, shoots another person, or when the action of the deputy results in the death or ***serious*** injury of another person and must:

- (1) Direct at least one deputy to secure the scene.
- (2) Direct at least one deputy to remain with the involved deputy to ensure their personal safety and well being. No questioning concerning the incident is to be initiated with the involved deputy.
- (3) If the involved deputy was injured and taken to an emergency facility, send a supervisor to the emergency facility to act as a liaison between emergency facility staff and the Sheriff's Office.
- (4) Conduct a preliminary field investigation.
- (5) Render command assistance to the assigned investigator(s).
- (6) Ensure the involved deputy has a scheduled appointment with the Occupation Medical Section and is referred to the Employee Assistance Program.
- (7) ***A division commander or section supervisor must place*** any deputy involved in a deadly force incident on administrative leave in accordance with General Orders/Operational Procedure 2.12, Administrative Leave, upon completion of their preliminary report of the incident. The Captain must explain to the deputy that this leave is without loss of pay or benefits, that it is pending the results of the investigation and that the assignment to administrative leave does not imply or indicate that the deputy has acted improperly.
- (8) Submit a detailed written report of the field investigation to the Sheriff with copies to the Chief Deputy and the Office of Professional Responsibility.



D. Office of Professional Responsibility Responsibilities (OPR)

A representative from OPR must respond to any incident where a deputy is seriously injured, shoots another person, or when the action of the deputy results in the death or injury requiring hospitalization of another person. OPR must conduct an *administrative investigation* into all serious incidents involving deputies, parallel to any criminal investigation, to determine whether the actions were within policy, contrary to policy, or accidental. OPR must prepare and submit a detailed report of findings to the Sheriff.

**VIII. Review of Use of Force Incidents**

A. The involved deputy's section supervisor, division captain, the Chief Deputy and Sheriff must conduct a review of all Use of Force Reports.

- (1) The Lieutenant and Captain must complete the comment section of the report as to whether there are any policy, training, weapon, equipment, or discipline issues that should be addressed.
- (2) The Chief Deputy and Sheriff must initial and date the report after reviewing the report and comments of the Lieutenant and Captain.
- (3) The Chief Deputy is responsible for maintaining all Use of Force Reports.

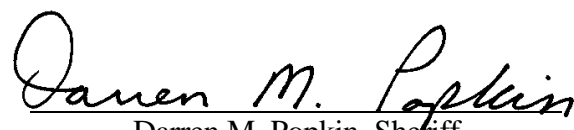
B. Annually, the Chief Deputy must conduct an analysis of all use of force incidents occurring during the preceding year. After reviewing the reported facts, circumstances, and if appropriate, any findings of the OPR, the Chief Deputy must submit a written report to the Sheriff detailing any trends or patterns that could indicate a need for additional training, equipment upgrades or policy modification.

C. If trends or patterns are identified regarding the use of unreasonable force, the personnel early warning system may be implemented pursuant to MCSO General Orders/Personnel Procedures 2.17.A – Personnel Early Warning System.

**IX. Cancellation**

This directive cancels and replaces General Operational Procedures 3.01, Effective Date: **10/05/20**.

AUTHORITY:



Darren M. Popkin, Sheriff

07/01/2022



**OFFICE OF THE COUNTY SHERIFF**  
**Montgomery County, Maryland**  
*Darren M. Popkin, Sheriff*



**GENERAL OPERATIONAL PROCEDURES**

<b><u>Subject:</u></b> <b>Mental Disorders</b>	<b><u>Number:</u></b> <b>3.13</b>	<b><u>Effective Date:</u></b> <b>10/22/20</b>
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**Purpose:** It is the policy of the Sheriff's Office to ensure that a consistently high level of service is provided to all persons with whom they come in contact, including those who may have a mental disorder. Office personnel will afford persons who have a mental disorder the same rights, dignity and access to police and other government and community services as are provided to all individuals. The intent of this directive is to provide guidance to employees in dealing with persons suffering from a possible mental disorder. This directive also establishes procedures for the initiation and service of Emergency Evaluation Petitions pursuant to the Health-General Article of the Annotated Code of Maryland.

**Contents:**

- I. Mental Disorders
- II. Common Symptoms
- III. Response to People With a Mental Disorder
- IV. Petition Procedures
- V. Serving Petitions for Emergency Evaluation
- VI. Transporting Aggressive Mental Patients
- VII. Procedures at the Emergency Facility
- VIII. Training
- IX. Cancellation

**I. Mental Disorders**

- A. Various conditions characterized by impairment of an individual's normal cognitive, emotional, or behavioral functioning, and caused by social, psychological, biochemical, genetic, or other factors, such as infection or head trauma.
- B. The terms "mental disorder", "emotional disorder", and "psychological disorder", describe varying levels of a group of disabilities causing disturbances in thinking, feeling, and relating.
- C. The National Alliance on Mental Illness (NAMI) estimates that one (1) in five (5) adults experiences a mental health condition every year. One (1) in twenty (20) lives with a serious mental disorder such as schizophrenia or bipolar disorder.

- D. While many people with a mental disorder manage symptoms successfully with the use of medications, others who do not have access to mental health services, fail to take their medications, or do not recognize that they are ill can experience psychiatric difficulties.
- E. When anyone with a mental disorder comes into contact with any Sheriff's Office personnel, for whatever reason or circumstance, employees must take extra caution to ensure that the person's rights are not violated and that the person understands what is occurring.
- F. Deputies and civilian employees must recognize that responses of people with certain mental disorders may resemble those of people who have abused substances such as alcohol or drugs. Individuals may appear as though they are on a substance or intoxicated but rather have not taken their prescribed medication for their mental disorder.

## **II. Common Symptoms**

- A. Although deputies are not in a position to diagnose a mental disorder, deputies should be alert to common symptoms.
- B. Symptoms of mental disorder may vary, but all mentally ill persons have thoughts, feelings, or behavioral characteristics, which result in an inability to cope with the ordinary demands of life.
- C. While a single symptom or isolated event does not necessarily indicate a mental disorder, professional help should be sought if symptoms persist or worsen. The following may be useful in recognizing warning signs of a mental disorder:
  - (1) Social Withdrawal
    - (a) Sitting and doing nothing.
    - (b) Withdrawal from family, friends; abnormal self-centeredness.
    - (c) Dropping out of activities such as occupations and hobbies.
    - (d) Decline in academic or athletic performance.
  - (2) Depression
    - (a) Loss of interest in once pleasurable activities.
    - (b) Expression of hopelessness, helplessness, inadequacy.
    - (c) Changes in appetite, weight loss or sometimes gain.
    - (d) Behaviors unrelated to events or circumstances.
    - (e) Excessive fatigue and sleepiness, or an inability to sleep.
    - (f) Pessimism; perceiving the world as "dead".
    - (g) Thinking or talking about suicide.

- (3) Thought Disorders
  - (a) Inability to concentrate or cope with minor problems.
  - (b) Irrational statements. Poor reasoning, memory, and judgment. Expressing a combination of unrelated or abstract topics. Expressing thought of greatness, e.g., person believes they are God. Expressing ideas of being harassed or threatened, e.g., CIA monitoring thoughts through TV set.
  - (c) Peculiar use of words or language structure. Nonsensical speech or chatter. Word repetition – frequently stating the same or rhyming words or phrases. Extremely slow speech. Pressured speech – expressing an urgency in manner of speaking.
  - (d) Excessive fears or suspiciousness. Preoccupation with death, germs, guilt, delusions and hallucinations.
- (4) Expression of Feelings
  - (a) Hostility from one formerly passive and compliant. Argumentative, belligerent, unreasonably hostile. Threatening harm to self or others. Overreacting to situations in an overly angry or frightening way.
  - (b) Indifference, even in highly important situations. Lack of emotional response.
  - (c) Inability to cry, or excessive crying.
  - (d) Inability to express joy.
  - (e) Inappropriate laughter. Reacting with opposite of expected emotion – e.g., laughing at auto accident.
  - (f) Nonverbal expressions of sadness or grief.
- (5) Behavior
  - (a) Hyperactivity or inactivity or alterations between the two. Talking excitedly or loudly. Manic behavior accelerated thinking and speaking.
  - (b) Deterioration in personal hygiene and appearance. Bizarre clothing or makeup, inappropriate to environment – e.g., shorts in the winter, heavy coats in the summer.
  - (c) Involvement in automobile accidents.
  - (d) Drug or alcohol abuse.
  - (e) Forgetfulness and loss of valuable possessions.
  - (f) Attempts to escape through geographic change, frequent moves, or hitchhiking trips.

- (g) Bizarre behavior – staring, strange postures or mannerisms, lethargic, sluggish movements, repetitious or ritualistic movements.
  - (h) Decorations – Inappropriate use of household items, e.g., aluminum foil covering windows.
  - (i) “Packratting” waste matter/trash – accumulation of trash, e.g., hoarding string, newspapers, paper bags, clutter, etc.
  - (j) Unusual sensitivity to noises, light, colors, clothing.
  - (k) Changes in sleeping and eating habits.
- (6) Cognitive Impairments
- (a) Disorientation in time, place, or person. Confusion, incoherence and extreme paranoia.
  - (b) Inability to find way in familiar settings.
  - (c) Inability to solve familiar problems.
  - (d) Impaired memory for recent events.
  - (e) Inability to wash and feed oneself, urinary or fecal incontinence. Presence of feces or urine on the floor or walls.

D. The degree to which these symptoms exist varies from person to person according to the type and severity of the mental disorder. Many of these symptoms represent internal, emotional states that are not readily observable from a distance, but are noticeable in conversation with the individual. Often, symptoms of a mental disorder are cyclic, varying in severity from time to time. Duration of an episode can also vary from weeks to months for some, and many years or a lifetime for others.

### **III. Response to People With a Mental Disorder**

- A. Persons with a mental disorder can be easily upset and may engage in tantrums or self-destructive behavior. Minor changes in daily routines may trigger these behaviors.
- B. Frequently, a family member or friend is of great value in calming an individual exhibiting unusual behavior as a result of mental or emotional impairment.
- C. The following guidelines detail how to approach and interact with people who may have a mental disorder, and who may be a crime victim, witness or suspect. These guidelines should be followed in all contacts, whether on the street or during more formal interviews. While protecting their own safety, the safety of the person with a mental disorder and others at the scene, the deputies should:
  - (1) Speak calmly. Loud, stern tones will likely have either no effect or a negative effect on the individual.

- (2) Use non-threatening body language: Keep your hands by your sides if possible.
  - (3) Eliminate commotion. Eliminate, to the degree possible, loud sounds, bright lights, sirens, and crowds, moving the individual to a calm environment, if possible.
  - (4) Keep animals away. Individuals with a mental disorder are often afraid of dogs or other large animals.
  - (5) Look for personal identification. Medical tags or cards often indicate a mental disorder and will supply a contact name and telephone number.
  - (6) Call the caregiver. The caregiver is often the best resource for specific advice on calming the person and ensuring deputy safety until the contact person arrives.
  - (7) Prepare for a lengthy interaction. Mentally ill individuals should not be rushed unless there is an emergency.
  - (8) Repeat short, direct phrases. Too much talking can distract the mentally ill individual and confuse the situation.
  - (9) Be attentive to sensory impairments. Many mentally ill individuals have sensory impairments that make it difficult to process information. Deputies should not touch the person unless absolutely necessary, use soft gestures, avoid quick movements, use simple and direct language, and don't automatically interpret odd behavior as belligerent.
  - (10) In many situations and particularly when dealing with someone who is lost or has run away, a deputy may gain improved response by accompanying the person through a building or neighborhood to seek visual clues.
  - (11) Be aware of different forms of communication. Mentally ill individuals often use signals or gestures instead of words or demonstrate limited speaking capabilities.
  - (12) Don't get angry.
  - (13) Maintain a safe distance.
- D. Once sufficient information has been collected about the nature of the situation, and the situation has been stabilized, there is a range of options deputies should consider when selecting an appropriate disposition. These options include the following:
- (1) Refer or transport the person for medical attention if he or she is injured or abused.
  - (2) Outright release.

- (3) Release to care of family, care giver or mental health provider.
- (4) Refer or transport to substance abuse services.
- (5) Assist in arranging voluntary admission to a mental health facility if requested.
- (6) Transport for involuntary emergency psychiatric evaluation if the person's behavior meets the criteria for this action.
- (7) Arrest if a crime has been committed.

#### **IV. Petition Procedures**

##### **A. Deputies as Petitioners**

- (1) If a deputy, upon personal observation or based on other pertinent information given by an interested person, has reason to believe, an individual has a mental disorder and the individual presents a danger to the life or safety to themselves or others, the deputy must initiate procedures to take the individual into custody and transport the individual to the nearest designated emergency facility for an examination.
- (2) Deputies should take appropriate action to prevent identifiable harm to an individual. Deputies are not civilly or criminally liable for completing a Petition for Emergency Evaluation or for taking a person into custody for an evaluation when it is done in good faith. As with a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, health officer or designee of a health officer who has examined the individual, no judicial review is required.
- (3) Once at the emergency facility, deputies must complete a Petition for Emergency Evaluation and the Additional Certification by a Peace Officer and present it to a physician.
- (4) If the Petition for Emergency Evaluation and Additional Certification by Peace Officer forms are not available at the emergency facility, deputies must request the Sheriff's Office transport or fax the forms to the emergency facility.
- (5) Deputies must complete an Incident Report (MCSO9) before the end of their tour of duty detailing the circumstances surrounding application for and service of the petition. A copy of the Emergency Evaluation and Additional Certification by Peace Officer form, Incident Report (MCSO9) and any other appropriate information must be forwarded to a Domestic Violence Section Sergeant for the creation of an Emergency Evaluation file.

B. Crisis Center/Mobile Crisis Team Staff as Petitioners

- (1) The Montgomery County Crisis Center provides crisis services twenty four (24) hours a day, three hundred sixty five (365) days a year. Mobile Crisis Outreach staff members will respond anywhere within Montgomery County to provide emergency psychiatric evaluations. These staff members, designees of the health officer, may sign an Emergency Evaluation Petition for an individual. Petitions signed by the Crisis Center staff do not require judicial review.
- (2) Upon the completion and signing of a Petition for Emergency Evaluation, the Crisis Center staff will contact the Domestic Violence Section for service of the Petition for Emergency Evaluation.
- (3) If deputies are unavailable, an employee of the Domestic Violence Section will advise the Crisis Center to contact ECC and have the Montgomery County Department of Police (MCP) respond and serve the Petition for Emergency Evaluation.

C. Physicians, psychologists, clinical social workers, licensed clinical professional counselors, clinical nurse specialists in psychiatric and mental health nursing, psychiatric nurse practitioners, licensed clinical marriage and family therapists

- (1) As with a Peace Officer, health officer or designee of a health officer, no judicial review is required.
- (2) Unless the evaluatee is present, those listed in Section IV. C above not affiliated with the Montgomery County Government must be directed to respond to the Family Justice Center with the Petition for Emergency Evaluation and the required Additional Certification. An employee of the Sheriff's Office must conduct a safety interview with the petitioner and complete an Interview Sheet.
  - (a) If the petitioner is unable to respond to the Family Justice Center, the petitioner will fax a copy of the Petition for Emergency Evaluation to the Domestic Violence Section.
  - (b) Deputies will respond to the petitioner's location to obtain the original Petition for Emergency Evaluation, conduct the safety interview and complete the Interview Sheet.
- (3) If the petitioner is affiliated with the Montgomery County Government, deputies must respond to their location, conduct a safety interview and if the evaluatee is present, serve the petition.



D. Private Individuals as Petitioners

A private individual who has reason to believe a person is suffering from a mental disorder and the individual presents a danger to the life or safety of themselves or others may complete a Petition for Emergency Evaluation. Judicial review is required when an individual is the petitioner.

- (1) If the Courts are in session:
  - (a) The petitioner must present the petition to a judge of the District or Circuit Court for immediate review.
  - (b) If the judge determines probable cause exists, they may sign the order directing the Sheriff to take the individual into custody and transport them to an emergency facility. The order is valid for five (5) days.
  - (c) The petitioner will report to the Family Justice Center and an employee of the Domestic Violence Section must conduct a safety interview with the petitioner.
    - (i) The interview will document as much information as possible about the evaluatee and locations for service on the Interview Sheet. The Interview Sheet must be filled out completely and include all deputy safety information.
    - (ii) If the petitioner does not report to the Family Justice Center, an employee of the Domestic Violence Section must contact the petitioner and make arrangements to obtain the original Petition for Emergency Evaluation, conduct the safety interview and complete the Interview Sheet.
- (2) If the Courts are closed:
  - (a) The petitioner may respond to the nearest District Court Commissioner and complete a Petition for Emergency Evaluation.
  - (b) The Commissioner will notify the on-call judge to review the Petition for Emergency Evaluation.
  - (c) If the judge signs the Petition for Emergency Evaluation, the Commissioner will notify the Sheriff's Office.
  - (d) Deputies assigned to the Domestic Violence Section must respond to the Commissioner's Office to conduct a safety interview with the petitioner and complete an Interview Sheet. If it is not possible for the petitioner to wait until deputies arrive, the employee receiving the telephone call from the Commissioner must conduct the safety interview via the telephone.
  - (e) If Domestic Violence Section deputies are not available, and no other deputies are available, the Commissioner must be advised to contact MCP to arrange for service of the Petition for Emergency Evaluation.

**V. Serving Petitions for Emergency Evaluation**

- A. A minimum of two deputies must be assigned to serve a Petition for Emergency Evaluation. Whenever practical one of the deputies should be of the same sex as the evaluatee.
- B. The evaluatee must be taken into custody as soon as possible and transported to the closest designated emergency facility or the facility designated in the Petition for Emergency Evaluation.
- C. Deputies may not forcibly enter any premises unless probable cause exists that the evaluatee is inside. If time permits, deputies must notify a supervisor before making forcible entry into the premises.
- D. All evaluatees taken into custody must be searched, restrained and transported in accordance with General Operational Procedures 3.02, Custody and Transporting Prisoners.
- E. If attempts to locate the evaluatee were unsuccessful, deputies must record all attempts to serve the Petition for Emergency Evaluation and any other relevant information on the work sheet.
- F. If the evaluatee is located by the petitioner or other concerned persons, deputies assigned to the Domestic Violence Section must respond to serve the petition. If Domestic Violence Section deputies are not available, deputies from another section must be assigned to respond. If no other deputies are available, and delaying the service would endanger the evaluatee or others, ECC must be contacted to have MCP serve the Petition for Emergency Evaluation.
- G. *To the extent practicable, deputies must notify the emergency facility in advance that they are transporting an evaluatee to the emergency facility.*

**VI. Transporting Aggressive Mental Patients**

Transporting mental patients requires deputies to exercise caution to avoid injury to themselves or the evaluatee. If the transporting deputy believes the evaluatee cannot be safely transported in an Office vehicle, deputies must:

- A. Request assistance from Montgomery County Fire and Rescue Services (MCFRS).
- B. Assist MCFRS personnel with the application of appropriate restraints.
- C. One deputy must ride in the rear of the ambulance with the evaluatee, and a second deputy must follow behind in a cruiser. Whenever possible a deputy the same sex as the evaluatee must ride in the ambulance.

**VII. Procedures at the Emergency Facility**

- A. The emergency facility must accept the individual for evaluation upon a properly executed Petition for Emergency Evaluation.
- B. An evaluatee must be examined within six (6) hours and may not be detained for longer than thirty (30) hours from the time they are transported to the emergency facility.

- C. Deputies are required to remain at the emergency facility when the evaluatee is violent and an *emergency facility employee* requests that the deputies remain. If the request is made, deputies must:
- (1) Continue to maintain security and control of the evaluatee;
  - (2) Immediately notify an on-duty supervisor of the request; and
  - (3) Complete an Incident Report (MCSO9) prior to the end of their tour of duty outlining the circumstances of the detail.
  - (4) When deputies are requested to remain at the emergency facility, it is the responsibility of the attending physician to examine the evaluatee as promptly as possible.
- D. If the examining physician does not certify the evaluatee for admission, the evaluatee must be released immediately.
- E. If a deputy is the petitioner, deputies must provide transportation to the evaluatee from the emergency facility to the location where the evaluatee was taken into custody when:
- (1) There is no alternative transportation available to the evaluatee;
  - (2) The evaluatee is released while the deputies are still at the emergency facility; and,
  - (3) The deputies have not been dispatched to handle another assignment.
- F. If a deputy is not the petitioner, deputies will not provide return transportation for the evaluatee unless a supervisor believes extenuating circumstances dictate otherwise.
- G. If the examining physician certifies the evaluatee, the physician may order the evaluatee to be confined in an appropriate mental health facility. A private ambulance company, under contract with the County, provides transportation to this facility. It is the responsibility of the emergency facility to arrange for transportation. Deputies will not transport evaluatees, other than inmates of the Montgomery County Department of Corrections and Rehabilitation (MCDOCR), to any other facility after an evaluation has been completed, unless approved by a supervisor.
- H. The Sheriff's Office is responsible for providing the transportation of inmates committed to the MCDOCR. The transporting deputies are responsible for obtaining a detainer from the MCDOCR and providing the detainer to the mental health facility.

### **VIII. Training**

In order to prepare personnel who may interact with persons suffering from a mental disorder in an appropriate manner, the Sheriff's Office must ensure that the following training is provided. All training will be documented in accordance with General Orders/Personnel Procedure 2.28, Training.

A. Entry Level Training

Entry level training will consist of the Maryland Police and Correctional Training Commission requirements which include:

- (1) Identifying factors to be considered when handling mentally disturbed or irrational persons;
- (2) Identifying circumstances in which a mental commitment is appropriate; and,
- (3) Describing the process to initiate a mental commitment.

B. Civilian Personnel Training

Civilian personnel will be issued a copy of this directive. It will be their responsibility to read and become familiar with this policy.

C. Refresher Training

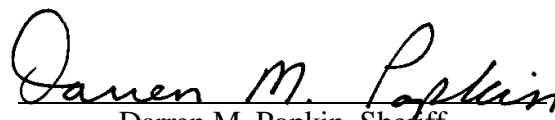
Refresher training for all personnel will be conducted at least *annually*. This training may include, but is not limited to:

- (1) Review of this directive during roll call training;
- (2) Review and testing of this directive through PowerDMS; or
- (3) In-Service training as provided by the Montgomery County Public Safety Training Academy.

**IX. Cancellation**

This directive cancels and replaces General Operational Procedure 3.13, Effective Date *04/30/15*.

AUTHORITY:



Darren M. Popkin, Sheriff

10/22/2020