

# FREDERICK COUNTY SHERIFF'S OFFICE

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TO: Sheriff Charles Jenkins

FROM: Lt. Jeffrey R. Null #0342

SUBJ: Supplemental Information to 2020 Use of Force Analysis

DATE: March 18, 2021

During 2020, there were no concerning patterns pertaining to injuries sustained by deputies or suspects as a result of use of force. Some injuries sustained by the suspect were caused by the suspect before interaction with our deputies.

- 25 injuries were sustained by suspects.
- 23 of these 25 injuries were minor in nature (includes but is not limited to minor abrasions, small cuts and scrapes or contact from taser probes).
- Two (2) were serious in nature.
  - One was a self-inflicted cut to the neck prior to any force being used by deputies.
  - One resulted in the death of a suspect who was involved in a high speed pursuit in which shots were fired at the police.
- Deputies sustained 6 injuries which included being bit by a suspect and other minor cuts and scrapes.

These results do not indicate a need for additional training beyond what is currently offered, nor a change in policy as it is right now.

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TO: Sheriff Charles Jenkins  
FROM: Lieutenant Jeff Null #0342   
Training Services Commander  
SUBJ: 2020 Annual Use of Force Analysis  
DATE: February 3, 2021

The information contained within this report covers two main topics, the Use of Force (UOF) and display of all tools/weapons, both less lethal and lethal, used by deputies of the Law Enforcement Bureau of our office during the year 2020. Our office has been progressive and ahead of the curve when it comes to Use of Force training, capturing and reporting Use of Force. We go above the minimum standard and capture data such as display of weapons which is a statistic not captured by a lot of departments.

I see two goals as being most important for this report. Those are:

- 1- To provide our office with information which could aid in identifying training needs, policy, equipment and response procedures
- 2- To inform and share information (transparency) with the public we serve as to "why" force was used and what force was used

To better enable people to clearly understand this report I will provide definitions for a few words that too often people confuse and mix up. By providing these terms and their meanings, hopefully this will clarify any confusion.

Force - conduct on the part of a deputy, special police officer or correctional officer that is designed to assist the member in controlling a situation, the actions of a person or persons, or a domestic animal<sup>1</sup>

Case Number -- a number generated to indicate a call for service

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<sup>1</sup> FCSO General Order 1.3.3

Incident – used to describe when call for service results in a UOF (use of force) report being generated

Use of force application – anytime a member uses force. Example. If a member uses force in the form of a control hold plus a takedown, that is counted as two use of force applications.

Citizen contact – anytime a member of the Sheriff's Office comes into contact with a person(s) during their official duties. This can be both as a result of a dispatched call for service or self-initiated activity such as traffic stops.

Less-lethal weapon - any weapon, other than a firearm, used to control persons or defend a deputy or correctional officer from harm such as a baton. Handcuffs are not considered a weapon but rather a restraining device (less-lethal can also be referred to as less than lethal or non-lethal).<sup>2</sup>

While this report will include some statistical data, it is more important to understand why force was used. In years past our UOF Report listed each type or call classification of a call for service in which our deputies ended up using force. This list is more accurately described as the reason for initial contact with the deputy (i.e. what brought our deputy to that scene).

This year our office conducted 11,841 traffic stops (this year was much lower in part due to COVID). Our members only used force during 7 of those 11,841 traffic stops. What's important to remember is the traffic stop itself was not the reason force was used. Each traffic stop that is conducted has a unique set of circumstances, no two are identical. Each traffic stop in which force was used all had unique circumstances that led to force being used by our deputies. Traffic stops are conducted the vast majority of the time due to a traffic violation. Our deputies then react to the situation they are presented with. If someone is stopped for a traffic violation (initial reason for contact with the deputy) and then flees on foot after resisting arrest because they had warrants for their arrest or a weapon or drugs on their person, the actions taken by the suspect are the reasons for the use of force, not the traffic stop itself. Each incident where force is used has its own set of circumstances regarding the use of force. What's most important to consider is the facts known to the deputy at the time of the UOF or display which goes to the totality of the circumstances.

In years past this report used the total number of calls for service (114,546) and compared that with how many times we responded to an incident and used force (old formula). While this provides us with a very low percentage regarding force used during calls for service, a more accurate and fair representation of our use of force ratio would be comparing how many times we were involved in an incident where force was used to how many citizen contacts we had. If citizen contacts were used as the metric, then our percentage would be even lower than the old formula. Why is this? Because of the probably hundreds of thousands of citizen contacts we make a year the overwhelming majority of those contacts do not result in force being used. Citizen Contacts are not captured by our office, in fact they are not by most. This is hard to accurately record and is a difficult statistic to capture. In fact, the last time this was done by the Federal Government and was done so by survey. This report was released in December of 2020 and was written and formulated with the data from the year 2018.<sup>3</sup> Deputies may come into contact with multiple

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<sup>2</sup> FCSO General Order 1.3.3

<sup>3</sup> See US DOJ Contacts Between Police and the Public, 2018

people during an incident/scene. They may have contact with just one person on certain call types. However, most times there are multiple people on a scene who interact with the deputies. If a Deputy shows up to a chaotic fight scene involving 10 or more people plus bystanders, that could be upwards of 10 or more citizen contacts in just one incident. This is significant because it shows how little force is actually used by our members during the course of their duties.

### **2020 Use of Force Incidents / Calls for Service**

15 Incidents (call for service) where force was used were related to mental health (suicide threats, Emergency petitions)

7 Incidents (call for service) where force was used were related to traffic stops

13 Incidents (call for service) where force was used were related to vehicles (pursuits, disabled vehicle, accidents, traffic stops – this number 13 includes the 7 traffic stops from above)

11 Incidents (call for service) where force was used were related to domestic situations

Drugs and alcohol were involved in 28 (47%) of the 59 incidents (call for service)

Weapons (guns and knives) were involved or mentioned (by the suspect or caller) in 18 of the 45 (40%) incidents (call for service)

### **Use of Force**

Section 1.3.1. of the FCSO General orders state that Force is conduct on the part of a deputy, special police officer or correctional officer that is designed to assist the member in controlling a situation, the actions of a person or persons, or a domestic animal. Deputies much weigh the circumstances of each individual case and employ only the amount of force which is necessary and reasonable to control the situation or individuals.<sup>4</sup>

The foundation of Use of Force comes out of the United Supreme Court in the case Graham v. Connor. The Court has stated, “the reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.” Further, “the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 vision of hindsight.”

What this means is a deputy or police officer acts on the information that is known to them at that time and any information found out after the fact cannot be held against that deputy or officer when determining if their use of force was lawful and reasonable. It is easy to sit down after the fact and take time to look at an incident and say this is what should have or could have been done. The difference here is the benefit of time in a calm and quiet environment opposed to the deputy or officer who has to make those decisions, some life and death, within fractions of a second in real world conditions.

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<sup>4</sup> FCSO General Order 1.3.2 B

Graham V. Connor created what is known as the three prong test: The severity of the crime, does the suspect pose an immediate threat and are they (suspect) actively resisting or attempting to escape. This is where our office can and does train our people to be good critical thinkers. Those three “prongs” must be answered in split seconds some times. Even still we train our deputies to slow things down and create a plan and communicate that plan to other responding deputies. This is done where feasible as we don’t always have time on our side. We analyze and look at the crime at hand to determine the best course of reasonable action. This in turn helps our agency determine how we respond to and handle calls for service. In other words, if Graham is the minimum, we go above it.

De-escalation is also a part of the use of force policy here at the Sheriff’s Office. It is a part of our annual in-service training we conduct each year in which we coach our members to be better critical thinkers and provide them with different ways to attempt de-escalation and handle the situation.

Starting in 2020 we received approval from MPCTC<sup>5</sup> for a course on De-escalation. This course was taught during 2020 In-service and was added to the curriculum for our use of force scenarios which already incorporates de-escalation into our scenarios (which we have done for years). While we encourage De-escalation, it should be noted that not all people can be de-escalated and may not be safe or appropriate to do so. <sup>6</sup> Deputies must use the information they have at that particular time and make a determination based on the totality of the circumstances (known to them at that time) what the best course of action is for that particular incident. While there may similarities, no two incidents/scenes are ever exactly the same.

This is part of the article titled; “Realistic De-escalation” by Von Kliem for Force Science. The Force Science Institute is dedicated to promoting the value of knowledge through empirical research in behavioral science and human dynamics. Force Science develops and disseminates high quality scientifically grounded education, training, and consultation to support fact-based investigations, inform decision processes, enhance public safety, and improve peace officer performance in critical situations.<sup>7</sup>

*“Unless you’re using medicine, de-escalation is not something you do “to” a person. Non-coercive de-escalation is recognizing, creating, and maintaining conditions that allow someone to de-escalate their own emotions. Realistic de-escalation recognizes that not everybody is able or willing to de-escalate.*

*And, although de-escalation training is aimed at reducing the number of police shootings involving people with mental illness “behaving dangerously,” realistic de-escalation recognizes that de-escalation attempts may be unreasonable precisely because of dangerousness or mental illness.*

*Finally, realistic de-escalation is about accountability. It represents law enforcement’s ethical commitment to avoid force when they can safely accomplish their mission without it. But some police use of force, even deadly force, is inevitable. And when officers are called to account for their decisions, realistic de-escalation prepares them to expertly explain why it was reasonable to stop talking and force compliance.”*

Realistic de-escalation in Law Enforcement is utilizing a systematic approach, when safe and feasible, to achieve an end goal of preserving the sanctity of life to accomplish a lawful objective. It is doing what is necessary to take a volatile and/or violent situation and making it less volatile and/or violent.” De-

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<sup>5</sup> Maryland Police & Correctional Training Commissions

<sup>6</sup> Force Science – “Realistic De-escalation” by Von Kliem, JD, LL.M / Force Science News

<sup>7</sup> ForceScience.org

escalation is utilizing tactics, and finding the right one for the situation you are dealing with, and achieving the end result of de-escalating a situation. These tactics will vary from situation to situation. No one tactic or technique is going to work for every scenario.

Deputies must preserve life, it is paramount. What is important to remember is twofold. First, de-escalation is the attempt by our member to get the suspect/person to de-escalate themselves. The facts are some people simply will not allow themselves to de-escalate. This can be complicated especially if the suspect/person we are attempting to de-escalate is under the influence of drugs and or alcohol or suffering from a mental episode that diminishes their capacity of understanding. Secondly, if a deputy shows up to a scene and observes an active assault being committed, de-escalation would not be appropriate in this circumstance. While we encourage and train our members to de-escalate, currently there is no case law that requires de-escalation be attempted.

The use of force training we conduct every year is very effective in educating our deputies in topics to include but not limited to de-escalation, use of less lethal force options (physical, taser, baton, oc), use of deadly force and 4<sup>th</sup> amendment considerations. Our scenarios incorporate these same topics and have for years. The annual training we conduct is in line with Pillar 2 as described in the “The President’s Task Force on 21<sup>st</sup> Century Policing” published in May 2015<sup>8</sup> where it says that police use of force training should emphasize de-escalation and include shoot, don’t shoot scenarios. Our training conducted here at the FCSO has met and exceeded this expectation for years, even prior to the publishing of this report.

<b>Breakdown of Physical Force in 2020</b>	<b>2019</b>	<b>2020</b>
Control Holds	44	77
Takedown	48	55
Strikes (Knee, Fist, Etc.)	10	10
Taser Probes	7	7
Pressure Point	4	4
Baton	0	0
K9	0	0
Bean bag	2	0

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<sup>8</sup>“The President’s Task Force on 21<sup>st</sup> Century Policing” *Pillar 2, Policy and Oversight, section 2.2.1 Action Item* “Law Enforcement agency polices for training on use of force should emphasize de-escalation...” *Policies should include, at a minimum, annual training that includes shoot/don’t shoot scenarios and the use of less than lethal technologies.*

**Race and Ethnicity Breakdown**

Force was used on a total of 60 people. 42 were white. Whites accounted for 70% of the total who force was used on. Of those 42 whites, 33 were males, nine (9) female. 17 out of the 60 were black. Blacks accounted for 28% of the total who force was used on. Of those 17, 14 were male, three (3) were female.

Of the 60 total people who force was used on, only 40 or 66% lived in Frederick (Frederick city included) while 19 (32%) lived outside of the county and one (1) didn't have an address. This includes 7 who had Frederick city addresses.

Out of the 42 whites who had force used on them, 30 (71%) out of 42 lived in Frederick (Frederick City Included). This includes four (4) with Frederick City addresses. Out of the 17 blacks who had forced used on them 10 lived in Frederick. This includes 3 who had Frederick City addresses.

Out of the total 60 people who force was used on 54 or 89% were non-Hispanic while only six (6) or 11% were Hispanic.

The total number of people we used force on during 2020 was down 20% from the previous year. For Whites it was down 11.1%, blacks 32% and other 80% when compared to 2019.

<b>Race and Gender Breakdown – 2020</b>								
	Black 2020	Black 2019	White 2020	White 2019	Other 2020	Other 2019	Total 2020	Total 2019
Male	14	22	33	36	0	2	47	60
Female	3	3	9	9	1	3	13	15
Total	17	25	42	45	1	5	60	75

**Age of suspects**

The average age of white males whom force was used was 36.8 years. The Average Age for White Females was 33.1 years. The average age for Black males was 29.6 years and Average Age for Black females was 35 years. The overall average age of suspects whom force was used on was came out to 34.6 years.

Four (4) suspects were juveniles. Two (2) 17 year olds and two (2) 16 year olds. The incidents in which our agency responded to for these four were a shots fired call, overdose on LSD, a physical domestic (occurred out of county) and an assault/robbery.

**TYPES OF FORCE**

Force used in 2020 ranged from control holds to deadly force. Weaponless physical force means our members went hands on with a suspect. Less Lethal tools include: stop sticks and taser. While we had three (3) applications of deadly force it should be noted those three were all during one incident in which three of our members discharged their weapons in an attempt to neutralize a deadly threat. This resulted in one suspect fatality (white male). This incident involved a suspect wanted for attempted murder with a firearm. This incident involved a pursuit, attempted murder of police officers and shots fired at the police.

<b>Types of Force Used in 2020</b>	<b>2020</b>	<b>2019</b>
Weaponless Physical Force	132	107
Less Lethal Force Tools	13	19
Lethal Force – firearm	3*	1

\*three (3) uses of deadly force were all due to one call for service by three (3) different members

**Display of Weapons / Less Lethal Tools**

Deputies displayed weapons during 59 Incidents in 2020. During those 59 Incidents, 215 weapons / Less Lethal Tools were displayed (38 incidents involved multiple people which means multiple weapons/Less lethal tools were displayed at the same time, only seven (7) incidents involved only one member displaying one weapon / Less Lethal tool).

SWAT Operations accounted for 10 of the incidents / calls for service where a display of weapon report was completed. Narcotic Operations accounted for three (3) of the incidents / calls for service where a display of weapon report was completed. These 13 Operations resulted in 121 displays, or approximately 56% of the total displays for the entire agency. When you factor out displays from SWAT and Narcotic Operations, only 94 weapons / Less lethal tools were displayed by our deputies in 2020.

<b>Weapons / Less Lethal Tools Displayed in 2020</b>	<b>2020</b>	<b>2019</b>
Handgun (Total)	142	194
Handgun (during SWAT Operations)	54	
Handgun (during Narcotic Operations)	16	
Patrol Rifle	5	15
SWAT Rifle (during Special Operations)	39	
Taser	9	12
Less Lethal shotgun	1	
40 MM Less Lethal (during SWAT Operations)	12	
Other SWAT rifle	0	82
K9	6	2
OC	1	
<b>TOTAL</b>	<b>215</b>	<b>337</b>
Displays excluding SWAT and Narcotics Operations	<b>94</b>	<b>151</b>
Displays during SWAT and Narcotics Operations	<b>121</b>	<b>186</b>

\*\*Note: Both Baton and Shotgun were not displayed in 2020\*\*



As the chart above indicates, overall we had 36% fewer display of weapons in 2020 than we did in 2019, making that the second year in a row we have seen a decline in the display of weapons. When you look at Displays excluding SWAT and Narcotics Operations we had 38% fewer displays than the previous year. Displays during SWAT and Narcotics Operations were also down by 35% from the previous year. It should be noted some data from 2019 is not listed above b/c it was not previously separated as it was in 2020

I believe we saw a decline in displays for several reasons. First, I believe our de-escalation training is working and this is just one indication of that. I also believe the way our agency responds and handles calls for service is also a factor.

**Use of Force Analysis**

We saw almost a 20% reduction in Use of Force reporting from 2019. The total number of people we used force on during 2020 was also down 20% from the previous year. While the COVID pandemic was a factor, our agency was still responding to calls for service the entire time. I believe our training in use of force scenarios to include our de-escalation training and training our people to think of different yet effective ways to handle a situation in addition to how our agency responds and handles calls for service are all factors for the reductions across the board we saw this year. Force is used because we are reacting to the suspects actions. This can include force that would be considered “preventative.” With cause, force can be used to prevent an attack or a crime before it is committed. Most times this equates to placing someone in handcuffs or stepping between subjects to prevent an assault. 55 out of 60 times this year the force we used was reactionary and in response to the actions of the suspect. Only 5 times did we use “preventative” force but again, this was a reaction based on the observations of the deputy, the actions of the suspects and all involved parties and the totality of the circumstances known to them at that time.

The box below contains the statistics for the day of the week and time of our agency’s UOF. The time frames were chosen due to the overlap of shifts, meaning our agency had two shifts working for a period of time. The time frame of 6am-5:30pm encompasses an overlap between our day and evening shifts while the time frame of 5:30pm-6am includes an overlap with our evening and midnight shifts.

<u>Day of the Week for UOF occurrences</u>	<u>Time of Day for UOF occurrences</u>
Monday: 6	6:00am-5:30pm: 22
Tuesday: 10	5:30pm-6:00am: 38
Wednesday: 8	
Thursday: 8	
Friday: 5	
Saturday: 13	
Sunday: 10	

## **Recommendations**

Less lethal tools / weapons. While our office currently uses multiple less lethal weapons I think it would be worth re-visiting an additional less lethal option in the form of a newer technology called Bola Wrap. We hosted a Bola Wrap demonstration in July of 2019 which was attended by multiple local police agencies including a contingent from South American law enforcement to include Brazil, Bolivia, Columbia, Chile, Ecuador, Honduras, Peru and Spain.

Bola Wrap claims; "Like remote handcuffs, BolaWrap safely and humanely restrains resisting subjects from a distance without relying on pain compliance tools." While every tool we use in Law enforcement, less lethal or lethal, has its advantages and dis-advantages I think it is worth us looking into different technologies that have the potential to give us other force options. If we can find a tool that gives our deputies the opportunity to use less hands on physical force, which in turn could limit the injuries to suspects as well as our members, I think it's worth consideration and more research. The one major disadvantage to this technology is just like Axon products (Tasers), this technology is very expensive. I would recommend a "pilot" program where several people from each patrol team are selected and trained in the use of BolaWrap.

I also believe inviting the public to participate and view our annual UOF scenario training would be beneficial. Not only would we receive feedback on the public's perception and listen to their input, we would be able to share and educate what we do and more importantly, why and how we do it. Too often videos of police using force only tells one side of a story. Video doesn't capture or allow you to see the important details such as the slight mannerisms and behaviors observed by the human eye or allow you to feel what the deputy/officer is seeing (the totality of the circumstances known to them at that time). By immersing people in our shoes we share with them what it is like to make decisions in split seconds that have the implications of life and death. The details on how this idea would be implemented by our department would need to be discussed and approved.

## **Summation**

I believe the training we provide our deputies in the area of use of force has been educational, fair and effective. I do not see any concerning patterns when it comes to our use of force and displays. I believe our agency will continue to lead the way with our training and our procedures for how we respond to and handle calls for service. The training we conduct every year is taught by excellent instructors, most of whom are considered experts in their particular fields. They keep up with case laws, techniques and best practices to stay sharp and current.

We were successful in fulfilling my recommendation from last year which was to purchase a computer /electronic system that records our use of force and display data. LEFTA Systems was purchased in July of 2020. After months of customization and training the system went live on January 1, 2021. This is now the method utilized by our agency which is used to create, review, approve and store our Use of Force and Display of weapon / Less lethal tools.

Implementing LEFTA Systems required not only customization of the website but also testing and training before the system went live. This was an enormous undertaking which was only successful because of a team effort.