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5-100 Code of Conduct

5-101 CODE OF CONDUCT DEFINED

The code of conduct of the Minneapolis Police Department is promulgated by the Chief of Police by authority of the City Charter, Chapter 6, Section 1, as amended. This code is established to promote efficiency, discipline, and good public relations in setting forth policy governing the conduct of all Department employees.

The conduct of police officers is governed by the MPD Policy and Procedure Manual and applicable State and Federal law. All employees of the Minneapolis Police Department are required to maintain a working knowledge of and to obey the code of conduct, civil service rules, Departmental rules, policies, procedures and orders, ordinances of the City of Minneapolis, the laws of the State of Minnesota and the United States. The failure of an MPD employee to comply with the standards of conduct set forth in the Manual and in law will subject the employee to discipline and/or legal action. All disciplinary actions taken will be in accordance with Civil Service rules and provisions. (10/20/88) (12/01/08)

5-101.01 TRUTHFULNESS (01/26/05) (11/15/13)

The integrity of police service is based on truthfulness. Officers shall not willfully or knowingly make an untruthful statement, verbally or written, or knowingly omit pertinent information pertaining to his/her official duty as a Minneapolis Police Officer.

MPD employees shall not willfully or knowingly make an untruthful statement or knowingly omit pertinent information in the presence of any supervisor, intended for the information of any supervisor, or before any court or hearing. Officers shall not make any false statements to justify a criminal or traffic charge or seek to unlawfully influence the outcome of any investigation. (12/14/07)

These requirements apply to any report, whether verbal or written, concerning official MPD business including, but not limited to, written reports, transmissions to MECC and officers via radio, telephone, pager, e-mail or MDC.

MPD employees are obligated under this policy to respond fully and truthfully to questions about any action taken that relates to the employee's employment or position regardless of whether such information is requested during a formal investigation or during the daily course of business. (12/14/07)

5-101.02 VIOLATIONS OF THE CODE OF CONDUCT (03/13/07) (11/15/13)

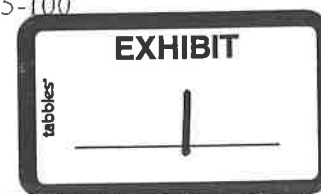
Any member of the Department who violates the code of conduct is subject to discipline. Discipline may range from a written reprimand to termination. Discipline shall be imposed following a sustained violation. Refer to Civil Service Rule 11.03 regarding discipline. (11/16/94) (03/08/95) (03/13/07) (11/15/13)

The Chief of Police may relieve a departmental employee with pay pending an investigation of an alleged violation of criminal law, or a violation of the code of conduct. Administrative leave is not discipline. (03/08/95) (03/13/07)

Probationary employees may be dismissed from service for failing to meet minimum performance standards or probationary training standards for violations of the code of conduct or for any other legal reason. There is no right of appeal for probationary employees unless the probationary employee is a veteran as provided by Civil Service Rules 11.06 and 11.07. (03/13/07)

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Employees who no longer meet minimum job qualifications or who are no longer able to perform the essential functions of their job, for a period of 90 days or more due to a criminal conviction, court ordered restriction, driver's license restriction, POST license restriction or other adverse legal action due to criminal behavior are subject to termination from employment. (03/13/07)

5-102 CODE OF ETHICS (08/01/91)

(A-D)

All sworn and civilian members of the department shall conduct themselves in a professional and ethical manner at all times and not engage in any on or off-duty conduct that would tarnish or offend the ethical standards of the department. Employees shall abide by the City's Ethics in Government Policy, Chapter 15. (05/23/07)

5-102.01 MINNESOTA LAW ENFORCEMENT CODE OF ETHICS (08/01/91)

(A-D)

MINNESOTA LAW ENFORCEMENT CODE OF ETHICS:

"As a Minnesota Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

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

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

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement."

5-103 USE OF DISCRETION

(A-D)

The police profession is one that requires officers to use considerable judgment and discretion in the performance of their daily duties. Officers have a large body of knowledge from Department policies and procedures, training, their own professional police experience and the experiences of their fellow officers to guide them in exercising proper judgment and discretion in situations not specifically addressed by Department rules and regulations. In addition, officers must always adhere to the following principles in the course of their employment with the Minneapolis Police Department:

- **POLICE ACTION - LEGALLY JUSTIFIED:** Officers must act within the limits of their authority as defined by law and judicial interpretation, thereby ensuring that the constitutional rights of individuals and the public are protected. All investigative detentions, pedestrian and vehicle

stops, arrests, searches and seizures of property by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution and statutory authority. Officers must be able to articulate specific facts, circumstances and conclusions that support reasonable suspicion or probable cause.
(11/17/15)

- **EQUALITY OF ENFORCEMENT:** Officers shall provide fair and impartial law enforcement to all citizens.
- **LOYALTY:** Officers shall be faithful to their oath of office, strive to uphold the principles of professional police service, and advance the mission of the Department.

5-104 IMPARTIAL POLICING (06/27/01) (11/17/15)

(A-D)

- A. The MPD is committed to unbiased policing and to reinforcing procedures that ensure that police service and law enforcement is provided in a fair and equitable manner to all.
- B. No person shall be singled out or treated differently as a consequence of his/her race, ethnicity, national origin, gender, sexual orientation or religion.
- C. Except as provided below, officers shall not consider race, ethnicity, national origin, gender, sexual orientation or religion in establishing either reasonable suspicion or probable cause:

Officers may take into account the reported race, ethnicity, gender or national origin of a specific suspect or suspects on credible, reliable, recent, locally-based information that links specific suspected unlawful or suspicious activity to a particular individual or group of individuals of a particular race, ethnicity, gender or nationality. This information may be used in the same way officers use specific information regarding age, height, weight, etc. about specific suspects. (12/24/01)

5-104.01 PROFESSIONAL POLICING (12/24/01) (12/01/08)

Officers shall use the following practices when contacting any citizen, regardless of the reason for the contact: (07/24/15)

- Be courteous, respectful, polite and professional.
- Introduce or identify themselves to the citizen and explain the reason for the contact as soon as practical, unless providing this information will compromise the safety of officers or other persons.
- Ensure that the length of any detention is no longer than necessary to take appropriate action for the known or suspected offense. (07/24/15)
- Attempt to answer any relevant questions that the citizen may have regarding the citizen/officer contact, including relevant referrals to other city or county agencies when appropriate.
- Provide name and badge number when requested, preferably in writing or on a business card.
- Explain and/or apologize if you determine that the reasonable suspicion was unfounded (e.g. after an investigatory stop).
- If asked, provide the procedures for filing a complaint about police services or conduct.

5-105 PROFESSIONAL CODE OF CONDUCT (01/05/16)

(A-D)

A. General

1. Sworn employees shall give their name and badge number to any person upon request. (01/05/16)

Civilian employees shall give their name and employee number to any person upon request. (01/05/16)
2. Employees shall conduct themselves in the buildings and offices of the Department in a manner which would not discredit the Department.
3. Employees shall treat all fellow employees with respect. They shall be courteous and civil at all times with one another. When on duty in the presence of other employees or the public, officers should be referred to by rank.
4. Employees shall use reasonable judgment in carrying out their duties and responsibilities. They need to weigh the consequences of their actions. (04/01/05) (05/03/05) (01/05/16)
5. Employees shall be decorous in their language and conduct. They shall refrain from actions or words that bring discredit to the Department. (04/01/93) (01/05/16)
6. Employees shall not display material that may be considered discriminatory, derogatory, or biased in or on City property. Specifically, discriminatory, derogatory or biased materials regarding race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, public assistance, or familial housing are prohibited. Such materials include, but are not limited to, calendars, cartoons, and posters. (10/18/92)
7. Employees who are required to drive a department vehicle as part of their official duties shall maintain a valid driver's license that is accepted by the State of Minnesota at all times as a condition of employment, and shall immediately report loss or limitation of driving privileges to their supervisor and to the Internal Affairs Unit. (04/23/10) (01/05/16)
8. Employees shall immediately report any violation of rules, regulations, or laws that come to their attention to the Internal Affairs Unit, regardless of the violator's assignment or rank within the Department.
 - a. Employees must immediately, or as soon as reasonably possible, report any misconduct at the scene of an incident to their supervisor or the supervisor at the scene, as well as to the Internal Affairs Unit. This includes, but is not limited to, unreasonable force. (07/28/16)
9. Any employee charged, arrested, or cited for Driving Under the Influence (DUI) or a non-traffic violation, or notified they are being investigated for a criminal offense, shall immediately notify their chain of command and Internal Affairs or an on-duty supervisor, who will notify the Internal Affairs Unit. Notification shall consist of personal telephone communication (no voicemail messages) or written contact. Required information is the formal charge or allegation, date, time, and jurisdiction of alleged occurrence, and any special or relevant factors. (4/1/05)

Employees will also notify the Internal Affairs Unit of the disposition at the time the charge or case is disposed. (10/28/94) (03/12/99)
10. When an employee is notified that an Order for Protection (OFP), Restraining Order (RA), or a Harassment Order (HA) has been filed against him or her, the employee shall immediately notify Internal Affairs and provide a copy of the OFP, RA, or HA, and the date

scheduled for hearing the allegations made in support of the request for the order. The information is required for department compliance with Federal Law 18 U.S.C. Sec. 922 (g) (8). (01/05/2000)

11. Employees shall not publicly criticize or ridicule the Department, its policies or other employees as to the performance of their duties in a manner which is defamatory, obscene, unlawful, or in any other manner which impairs the effective operation of the Department or in a manner which displays a reckless or knowing disregard for the truth. This regulation shall not be construed so as to impair the exercise of free speech by employees on matters of public concern.
12. Employees shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are under criminal investigation or indictment or who have a reputation in the community or Department for present involvement in criminal behavior, except as necessary in the performance of official duties, or when unavoidable because of family ties to the employee.
13. Employees shall not engage or participate in any form of illegal gambling at any time except in the performance of duty under specific orders of a superior officer.

B. Drugs and Alcohol (01/05/16)

1. Employees shall not bring to or keep any alcohol or non-prescribed controlled substance on departmental premises except for evidentiary purposes.
2. Off-duty employees shall not carry any firearm or ammunition while under the influence of alcohol or any controlled substance. (05/05/89) (04/01/93)
3. Employees shall not consume alcoholic beverages while on duty or in uniform unless it's necessary in the performance of a non-uniformed officer's undercover work. (3/12/99)
4. No employee shall be under the influence of alcohol or any controlled substance while on duty.
 - a. All over-the-counter and prescription drug use shall be in accordance with the Employee Health and Wellness policy (P/P Section 3-500).
 - b. All drug and alcohol testing shall be conducted in accordance with the conditions and procedures in the MPD Drug and Alcohol Testing policy (P/P Section 3-1000).
5. A reading of .02 blood/alcohol concentration is considered under the influence of alcohol.

C. Language (01/05/16)

These provisions apply to all forms of communication, including but not limited to electronic communication and social networking. These provisions are in addition to the conditions in the Computer Use and Electronic Communication policy (P/P 4-220) and the Social Networking policy (P/P 7-119).

1. (A-D) Employees shall not use derogatory, indecent, profane or unnecessarily harsh language in the performance of official duties or while representing the MPD.

2. (C-D) Employees shall not use any discriminatory, derogatory or biased terms regarding race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, public assistance, or familial housing.

D. Cases and Investigations

1. Employees shall not interfere with any criminal investigation being conducted by this department or any other law enforcement agency.
2. Employees shall not knowingly communicate in any manner, either directly or indirectly, any information that may assist persons suspected or accused of criminal acts to escape arrest or punishment or which may enable them to dispose of evidence.
3. Employees shall not recommend a dismissal, reduction of charges, or other disposition of a pending criminal case which has been previously filed in any criminal court or before a grand jury except by written approval of their division commander. A copy of the approval will be kept in the case file.
4. Employees shall not interfere with the attendance of witnesses or their testimony through coercion, bribery or other means.
5. Employees shall not attempt to have any traffic citation reduced, voided, or stricken from the calendar for personal or monetary consideration. (See Dismissal of Traffic/Parking Charges and Citations)

E. Sworn Employees

1. All officers are required to take appropriate police action toward aiding a fellow officer exposed to danger or in a situation where danger may be impending.
2. On-duty officers shall, at all times, take appropriate action within their jurisdiction, to protect life and property, preserve the peace, prevent crime, detect and arrest violators of the law, and enforce all federal, state and local laws and ordinances. (02/28/93)
3. Uniformed officers shall render a military salute to the National Anthem, United States Flag or ceremonies at appropriate times. Officers in civilian dress shall render proper civilian honors to the United States Flag and National Anthem at appropriate times.

Uniformed officers at parades need salute only the massed national colors at the head of the parade. When the flag is six paces from the officer, the flag shall be faced and a hand salute rendered until the flag is six paces beyond the officer. Other United States Flags may be saluted if the officer's immediate attention to duty is not necessary.

F. Gifts, Money and Property

1. Any money other than that received from unclaimed properties paid or sent to any employee as a result of on-duty police action shall be promptly forwarded to MPD Finance. (03/21/97)
2. All property received as a result of on-duty police action shall be forwarded to the Property and Evidence Unit. The Property and Evidence Unit shall dispose of unclaimed property

according to their policy and procedure manual. The property shall be disposed of by being sent to the City Store or to the Minneapolis Police Relief Association in accordance with state law. (03/21/97)

3. Employees shall not act as an intermediary in the payment of a reward for the return of stolen property without written authorization by the Chief of Police or his/her designee.
4. Employees shall not purchase, or have purchased for them, any auto/property sold at a city auction. Employees are also prohibited from owning any such auto/property purchased at a city auction for one year after the date that the auto/property is sold at the city auction. (01/10/97)
5. Employees shall pay all debts when due and shall not undertake any financial obligations which they know or should know they will be unable to meet. An isolated instance of financial irresponsibility will not be grounds for discipline except in unusually severe cases. However, repeated instances of financial difficulty may be cause for disciplinary action. Filing for a voluntary bankruptcy petition shall not, by itself, be cause for discipline. Financial difficulties stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline provided that a good faith effort to settle all accounts is being undertaken. (10/20/88)
6. Soliciting or accepting personal gifts: (05/23/07)
 - a. Employees shall not solicit or accept any gift from an interested person, lobbyist or principal who has a direct financial interest in a decision that that the employee is authorized to make.
 - b. Exceptions. The prohibitions in this section do not apply if the gift is:
 - i. A campaign contribution as defined in Minnesota Statutes, Section 10A.01, subd 11;
 - ii. A service to assist an official in the performance of official duties, including, but not limited to providing advice, consultation, information and communication in connection with legislation, or services to constituents;
 - iii. A service of insignificant monetary value;
 - iv. A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
 - v. A trinket or memento of insignificant value;
 - vi. Informational material of unexceptional value;
 - vii. Food or a beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before who the recipient appears to make a speech or answer questions as part of the program;
 - viii. Given because of the recipient's membership in a group, and an equivalent gift is given to the other members of the group; or
 - ix. Given by an interested person, lobbyist, or principal who is a related person to the recipient, unless the gift is given on behalf of someone who is not a related person.

- c. An employee who receives any gift prohibited by this section shall return, dispose of, or request that the city council accept the gift on behalf of the city.

5-105.01 PROFESSIONAL CODE OF CONDUCT – DEPARTMENT-SANCTIONED SOCIAL EVENTS (02/22/05)

(A-D)

In an effort to remain professional at all times, including department-sanctioned social events, the following guidelines shall be followed:

- Officers are not allowed to solicit door prizes while on-duty or in the name of the Minneapolis Police Department for an event.
- Attendance at off-duty events is optional.
- Awarding alcoholic beverages as door prizes is prohibited.
- Complimentary alcoholic beverages are prohibited.
- If the event is not held on police department property, advertising at a public establishment connecting the gathering to the MPD is prohibited.
- Officers drinking alcoholic beverages at any department-sanctioned event are prohibited from carrying any firearms.
- Supervisors, while in attendance at said events, are reminded that they are responsible for the actions of officers under their command at an event.
- Inappropriate behavior at an event should immediately be reported to a supervisor.

If security is needed for an event, arrangements should be made by the organizer.

5-106 ON-DUTY CODE OF CONDUCT (06/18/18)

(A-D)

- A. Officers shall respond without delay to calls for police service unless otherwise directed by proper authority.
1. Emergency calls for service shall take precedence. However, all dispatched calls shall be answered as soon as possible consistent with departmental procedures.
 2. If officers need to temporarily go out-of-service on a detail or otherwise be unavailable for calls, they shall notify their immediate supervisor and request permission for such details. (03/25/08)
- B. Employees shall remain alert, observant, and occupied with police business during their tour of duty.
1. When on duty, employees shall devote their entire attention to the business of the Department.
 2. It is a violation of this order for employees to conduct personal or private business while on duty or for officers to engage in policing for private interests while on duty.
- C. Employees shall not make referrals to any attorney or other business from on-duty contacts.
- D. Employees shall not allow anyone not employed by the Department to enter a police facility without permission of a supervisor.
1. Employees shall not permit any person to enter a police facility to sell goods, offer them for sale, or to canvas or solicit for any purpose without authorization from the facility's acting commander.

- E. Officers working uniformed patrol or in a marked squad who wish to go out of service for a meal break shall request OTL status from the MECC dispatcher. The request must include the requested OTL location. The dispatcher may grant or deny OTL status based on call load and staffing levels. (9/7/05)
1. Employees shall not take excessive time for meals and officers working two-officer squads must take OTL at the same time. (9/7/05)
 2. No more than three marked or unmarked squads may be OTL at the same public location unless officers are also participating in a community event. (9/7/05)

5-107 PROCEDURAL CODE OF CONDUCT

(A-D)

1. No officer shall arrest any person or search any premises except with a warrant or where such arrest or search is authorized without warrant under the laws of the United States.
2. No officer shall falsely arrest, or direct any malicious prosecution against any person.
3. No employee shall willfully mistreat or give inhumane treatment to any person held in custody.
4. Officers shall not render aid or assistance in civil cases except to prevent an immediate breach of the peace or to quell an existing disturbance. Officers may inform any citizen of the steps necessary to institute a civil suit or advise citizens on protecting their rights.
5. Employees shall not willfully misrepresent any matter, sign any false statement or report, or commit perjury before any court, grand jury or judicial hearing.
6. Employees shall not knowingly remove or destroy, or cause such action, to any report, document, or record without authorization.
7. Employees shall not give any lawyer, bondsman, agent of either, or any other person unauthorized or confidential information regarding prisoners in confinement, suspects in a case, property held, or records of the Department.
8. Employees shall not make known any information concerning the progress or future actions to be taken on an open investigation to any person not authorized to receive such information by the case investigator or the commanding officer of the investigating unit.

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5-300 Use of Force

5-301 PURPOSE (10/16/02) (08/17/07) (07/28/16)

- A. Sanctity of life and the protection of the public shall be the cornerstones of the MPD's use of force policy.
- B. The purpose of this chapter is to provide all sworn MPD employees with clear and consistent policies and procedures regarding the use of force while engaged in the discharge of their official duties. (Note: MPD Training Unit Lesson Plans – Use of Force, are used as a reference throughout this chapter.)

5-301.01 POLICY (10/16/02) (08/17/07)

Based on the Fourth Amendment's "reasonableness" standard, sworn MPD employees shall only use the amount of force that is objectively reasonable in light of the facts and circumstances known to that employee at the time force is used. The force used shall be consistent with current MPD training.

5-301.02 STATE REQUIREMENTS (10/11/02)

The MPD shall comply with Minn. Stat. §626.8452 to establish and enforce a written policy governing the use of force, including deadly force and state-mandated pre-service and in-service training in the use of force for all sworn MPD employees.(08/17/07)

5-302 USE OF FORCE DEFINITIONS (10/16/02) (10/01/10)

Active Aggression: Behavior initiated by a subject that may or may not be in response to police efforts to bring the person into custody or control. A subject engages in active aggression when presenting behaviors that constitute an assault or the circumstances reasonably indicate that an assault or injury to any person is likely to occur at any moment. (10/01/10) (04/16/12)

Active Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. A subject engages in active resistance when engaging in physical actions (or verbal behavior reflecting an intention) to make it more difficult for officers to achieve actual physical control. (10/01/10) (04/16/12)

Deadly Force: Minn. Stat. §609.066 states that: "Force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm other than a firearm loaded with less-lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force." (10/01/10)

Flight: Is an effort by the subject to avoid arrest or capture by fleeing without the aid of a motor vehicle. (10/01/10)

Great Bodily Harm: Bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

Non-Deadly Force: Force that does not have the reasonable likelihood of causing or creating a substantial risk of death or great bodily harm. This includes, but is not limited to, physically subduing, controlling,

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capturing, restraining or physically managing any person. It also includes the actual use of any less-lethal and non-lethal weapons. (08/17/07)

Objectively Reasonable Force: The amount and type of force that would be considered rational and logical to an "objective" officer on the scene, supported by facts and circumstances known to an officer at the time force was used. (08/17/07)

Passive Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. This is behavior initiated by a subject, when the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer's control efforts. (10/01/10) (04/16/12)

Use of Force: Any intentional police contact involving:(08/17/07) (10/01/10)

- The use of any weapon, substance, vehicle, equipment, tool, device or animal that inflicts pain or produces injury to another; or
- Any physical strike to any part of the body of another;
- Any physical contact with a person that inflicts pain or produces injury to another; or
- Any restraint of the physical movement of another that is applied in a manner or under circumstances likely to produce injury.

5-303 AUTHORIZED USE OF FORCE (10/16/02) (08/17/07)

Minn. Stat. §609.06 subd. 1 states, "When authorized...except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

When used by a public officer or one assisting a public officer under the public officer's direction:

- In effecting a lawful arrest; or
- In the execution of legal process; or
- In enforcing an order of the court; or
- In executing any other duty imposed upon the public officer by law."

In addition to Minn. Stat. §609.06 sub. 1, MPD policies shall utilize the United States Supreme Court decision in *Graham vs Connor* as a guideline for reasonable force.

The *Graham vs Connor* case references that:

"Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including:

- The severity of the crime at issue,
- Whether the suspect poses an immediate threat to the safety of the officers or others, and;
- Whether he is actively resisting arrest or attempting to evade arrest by flight.

The "reasonableness" of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

The calculus of 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 - about the amount of force that is necessary in a particular situation."

Authorized use of force requires careful attention to the facts and circumstances of each case. Sworn MPD employees shall write a detailed, comprehensive report for each instance in which force was used.

5-303.01 DUTY TO INTERVENE (07/28/16)

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(A-D)

- A.** Sworn employees have an obligation to protect the public and other employees.
- B.** It shall be the duty of every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required.

5-304 THREATENING THE USE OF FORCE AND DE-ESCALATION (10/16/02) (06/01/12)
(07/28/16)

(A-D)

A. Threatening the Use of Force

As an alternative and/or the precursor to the actual use of force, MPD officers shall consider verbally announcing their intent to use force, including displaying an authorized weapon as a threat of force, when reasonable under the circumstances. The threatened use of force shall only occur in situations that an officer reasonably believes may result in the authorized use of force. This policy shall not be construed to authorize unnecessarily harsh language. (08/17/07) (07/28/16)

B. De-escalation

Whenever reasonable according to MPD policies and training, officers shall use de-escalation tactics to gain voluntary compliance and seek to avoid or minimize use of physical force. (06/01/12) (07/28/16)

1. When safe and feasible, officers shall:

- a. Attempt to slow down or stabilize the situation so that more time, options and resources are available.
- i. Mitigating the immediacy of threat gives officers more time to call additional officers or specialty units and to use other resources.
- ii. The number of officers on scene may make more force options available and may help reduce overall force used.
- b. Consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
- Medical conditions
 - Mental impairment
 - Developmental disability
 - Physical limitation
 - Language barrier
 - Influence of drug or alcohol use
 - Behavioral crisis

Such consideration, when time and circumstances reasonably permit, shall then be balanced against incident facts when deciding which tactical options are the most appropriate to resolve the situation safely.

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2. De-escalation tactics include, but are not limited to:

- Placing barriers between an uncooperative subject and an officer.
- Containing a threat.
- Moving from a position that exposes officers to potential threats to a safer position.
- Reducing exposure to a potential threat using distance, cover or concealment.
- Communication from a safe position intended to gain the subject's compliance, using verbal persuasion, advisements or warnings.
- Avoidance of physical confrontation, unless immediately necessary (e.g. to protect someone or stop dangerous behavior).
- Using verbal techniques to calm an agitated subject and promote rational decision making.
- Calling additional resources to assist, including more officers, CIT officers and officers equipped with less-lethal tools.

5-305 AUTHORIZED USE OF DEADLY FORCE (08/17/07) (08/18/17)**A. Statutory Authorization**

Minn. Stat. §609.066 sub. 2 – “The use of deadly force by a peace officer in the line of duty is justified only when necessary:

- To protect the peace officer or another from apparent death or great bodily harm;
- To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force, or;
- To effect the arrest or capture, or prevent the escape, of a person who the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.”

B. United States Supreme Court: Tennessee v. Garner

In addition to Minn. Stat. §609.066, MPD policies shall utilize the United States Supreme Court decision in Tennessee v. Garner as a guideline for the use of deadly force.

The Tennessee v. Garner case references that:

“Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement.”

“The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally *unreasonable*.”

C. Sworn MPD employees shall recognize that:

- The use of a firearm, vehicle, less-lethal or non-lethal weapon, or other improvised weapon may constitute the use of deadly force.
- This policy does not prevent a sworn employee from drawing a firearm, or being prepared to use a firearm in threatening situations.

D. For the safety of the public, warning shots shall not be fired.

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Supervisors shall not conduct a force review on their own use of force. Any other supervisor of any rank shall conduct the force review. (04/16/12)

A CAPRS report entitled "FORCE" shall be completed as soon as practical, but no later than the end of that shift. A supplement describing the use of force incident in detail shall be completed and entered directly into the CAPRS reporting system (no handwritten force reports). Employees shall ensure that all applicable force portions of the CAPRS report are completed in full.

Sworn employees shall complete a CAPRS report entitled "PRIORI" for all incidents in which a person has a prior injury, or prior alleged injury, and there is actual physical contact or transportation by the police.

Transfer of Custody

Prior to transferring custody of a subject that force was used upon, sworn MPD employees shall verbally notify the receiving agency or employee of:

- The type of force used,
- Any injuries sustained (real or alleged) and
- Any medical aid / EMS rendered

5-307 SUPERVISOR FORCE REVIEW (08/17/07) (12/15/09)

On-duty Supervisor Responsibilities

The supervisor who is notified of a Use of Force incident by any sworn MPD employee shall:

1. Determine if the incident meets the criteria for a Critical Incident. If so, follow Critical Incident Policy (P/P 7-810). (09/23/15)
2. Instruct the involved employees to have the subject of the use of force remain on-scene until the supervisor arrives, if it is reasonable to do so.
 - If the subject of the use of force does not remain on-scene, the supervisor shall go to the subject's location, if necessary, to complete the investigation.
3. Respond to the incident scene and conduct a preliminary investigation of the Use of Force incident. (09/23/15)
 - a. Debrief the employee(s) who engaged in the use of force.
 - b. Note any reported injury (actual or alleged) to any individual involved.
 - c. Photograph: (09/23/15)

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B. Supervisor Responsibility

1. The supervisor shall respond to any scene in which an employee has discharged a firearm while on-duty or in the course of duty. (04/30/15) (04/05/16)
2. The supervisor is responsible for notifying the Watch Commander and when appropriate, the employee's Deputy Chief and the on-duty Homicide investigator. This does not include the discharge of a firearm with the intention of dispatching an animal, unless it results in injury to a person. (04/30/15) (04/05/16)
3. Notifications to the Internal Affairs Unit shall be made in accordance with the Internal Affairs Call-Out Notification Policy (P/P 2-101). (04/05/16)
4. The advised supervisor shall ensure that drug and alcohol testing is conducted in accordance with the conditions and procedures in the MPD Drug & Alcohol Testing Policy (P/P Section 3-1000). (04/30/15)
5. At any officer-involved shooting incident in which a person is shot, the Critical Incident Policy (P/P Section 7-800) shall be followed. (04/30/15)

C. Reporting Firearms Discharges to the State (10/16/02) (04/30/15)

Minn. Stat. §626.553 requires the Chief of Police to report to the State Commissioner of Public Safety whenever a peace officer discharges a firearm in the course of duty, other than for training purposes or when killing an animal that is sick, injured or dangerous. Written notification of the incident must be filed within 30 days of the incident. The notification shall include information concerning the reason for and circumstances surrounding discharge of the firearm. The Internal Affairs Unit supervisor shall be responsible for filing the required form(s) with the State Bureau of Criminal Apprehension. (04/05/16)

5-309 WRITTEN REPORT ON DISCHARGE OF FIREARMS (10/16/02)

All employee firearm discharges that require notification, other than Critical Incidents, shall be reported in CAPRS, including a supplement, by the employee involved and the supervisor who was notified. The report shall be titled, "DISWEAP." The supervisor shall then complete a Supervisor Force Review. (08/17/07)

If the involved employee is unable to make a CAPRS report, the supervisor shall initiate the CAPRS report.

The Watch Commander shall include all case numbers on the Watch Commander log.

5-310 USE OF UNAUTHORIZED WEAPONS (10/16/02) (08/17/07)

Sworn MPD employees shall only carry and use MPD approved weapons for which they are currently trained and authorized to use through the MPD Training Unit. If an exigent circumstance exists that poses an imminent threat to the safety of the employee or the public requiring the immediate use an improvised weapon of opportunity, the employee may use the weapon. (08/17/07)

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5-313 USE OF CHEMICAL AGENTS – POLICY (10/16/02) (08/17/07) (10/01/10) (09/04/12)

The MPD approved chemical agent is considered a non-lethal use of force. The use of chemical agents shall be consistent with current MPD training and MPD policies governing the use of force (Policy and Procedure Manual, Sections 5-300 Use of Force).

Chemical agents, regardless of canister size, shall only be used against subjects under the following circumstances: (06/10/13)

- On subjects who are exhibiting Active Aggression, or;
- For life saving purposes, or;
- On subjects who are exhibiting active resistance in order to gain control of a subject and if lesser attempts at control have been or would likely be ineffective, or; (06/10/13)
- During crowd control situations if authorized by a supervisor. (See 5-312 Civil Disturbances) (09/04/12) (06/10/13)

Chemical agents shall not be used against persons who are only displaying Passive Resistance as defined by policy. (09/04/12) (06/10/13)

Sworn MPD employees shall exercise due care to ensure that only intended persons are exposed to the chemical agents.

5-313.01 USE OF CHEMICAL AGENTS – POST EXPOSURE TREATMENT/MEDICAL AID (10/01/10)

Post exposure treatment (Medical Aid) for a person that has been exposed to the chemical agent shall include one or more of the following:

- Removing the affected person from the area of exposure.
- Exposing the affected person to fresh air.
- Rinsing the eyes/skin of the affected person with cool water (if available).
- Render medical aid consistent with training and request EMS response for evaluation at anytime if necessary

Sworn employees shall keep a person exposed to the chemical agent under close observation until they are released to medical or other law enforcement personnel. An officer who has used a chemical agent shall inform individuals accepting custody that it was used on the person.

Use of chemical agents to prevent the swallowing of narcotics is prohibited.

A CAPRS report shall be completed when chemical agents are used.

5-314 USE OF CONDUCTED ENERGY DEVICES (CED) – DEFINITIONS (08/17/07) (10/01/10)

Drive Stun: When a CED with no cartridge or a spent cartridge is placed in direct contact with the body with no documented effort to attempt three point contact.

Probe Mode: When a CED is used to fire darts at a person for the purpose of incapacitation.

Exigent Circumstances: Circumstances that would cause a reasonable person to believe that immediate action is necessary to prevent physical harm from occurring to anyone.

Red Dotting: Un-holstering and pointing a CED at a person and activating the laser aiming device. In some cases, this may be effective at gaining compliance without having to actually discharge a CED. Also known as "painting" the target.

Arcing: Un-holstering the CED and removing the cartridge and activating the CED for purposes of threatening its use prior to actual deployment. In some cases, this may be effective at gaining compliance without having to actually discharge a CED at a subject.

5-314.01 USE OF CONDUCTED ENERGY DEVICES (CED) – POLICY (10/01/10) (07/16/12)

The MPD approved Conducted Energy Device (CED) (Policy and Procedure Manual, Section 3-200 Equipment) is considered a less-lethal weapon. The use of CED's shall be consistent with current MPD training and MPD policies governing the use of force (Policy and Procedure Manual, Section 5-300 Use of Force). (07/16/12)

MPD officers are only authorized to carry CEDs that are issued by the department. Personally owned Tasers, or those issued by another agency, are not authorized to be carried or utilized while an MPD officer is acting in their official MPD capacity. (10/07/13)

The use of CED's shall only be permitted against subjects under the following circumstances:

1. On subjects who are exhibiting active aggression, or;
2. For life saving purposes, or;
3. On subjects who are exhibiting active resistance in order to gain control of a subject and if lesser attempts at control have been or would likely be ineffective.

CED's shall not be used against subjects who are demonstrating passive resistance as defined by policy. (07/16/12)

The preferred method for use of CED's is in the probe mode. Use of CED's in the drive stun mode shall be limited to defensive applications and/or to gain control of a subject who is exhibiting active aggression or exhibiting active resistance if lesser attempts at control have been ineffective.

When using a CED, personnel should use it for one standard cycle (a standard cycle is five seconds) and pause to evaluate the situation to determine if subsequent cycles are necessary. If subsequent cycles are necessary, officers should restrict the number and duration to only the minimum amount necessary to control and/or place the subject in custody under the existing circumstances. Personnel should constantly reassess the need for further activations after each CED cycle and should consider that exposure to multiple applications of the CED for longer than 15 second may increase the risk of serious injury or death.

Note: Officers should be aware that a lack of change in a subject's behavior often indicates that the electrical circuit has not been completed or is intermittent. When this is the case officers should immediately reload and fire another cartridge rather than administering continued ineffective cycles.

Unless exigent circumstances exist as defined by policy, no more than one officer should intentionally activate a CED against a subject at one time.

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Officers shall, unless it is not feasible to do so, give verbal warnings and/or announce their intention to use a CED prior to actual discharge. Use of the CED's laser pointer (red dotting) or arcing of the CED may be effective at diffusing a situation prior to actual discharge of the CED.

The CED shall be holstered on the sworn MPD employee's weak (support) side to avoid the accidental drawing or firing of their firearm. (SWAT members in tactical gear are exempt from this holstering requirement.)

Lost, damaged or inoperative CED's shall be reported to the CED Coordinator immediately upon the discovery of the loss, damage or inoperative condition. (07/16/12)

Officers who use their MPD issued CED device during the scope of off-duty employment within the City shall follow MPD policy and procedure for reporting the use of force and downloading their device. (07/16/12)

If officers carry their MPD issued CED during the scope of off-duty employment outside of the City (e.g. working for another law enforcement agency) that agency shall sign a waiver (Letter of Agreement for Off Duty Employment) which indicates that certification through the Minneapolis Police Department is sufficient for use while working for that agency. (07/16/12)

5-314.02 USE OF CONDUCTED ENERGY DEVICES (CED) – SUBJECT FACTORS (10/01/10)

Officers must consider the possible heightened risk of injury and adverse societal reaction to the use of CED's upon certain individuals. Officers must be able to articulate a correspondingly heightened justification when using a CED upon:

- Persons with known heart conditions, including pacemakers or those known to be in medical crisis;
- Elderly persons or young children;
- Frail persons or persons with very thin statures (i.e., may have thin chest walls);
- Women known to be pregnant;

Prior to using a CED on a subject in flight the following should be considered:

- The severity of the crime at issue;
- Whether the suspect poses an immediate threat to the safety of the officer or others, and;
- The officer has a reasonable belief that use of the CED would not cause significant harm to the subject fleeing unless use of deadly force would otherwise be permitted.

5-314.03 USE OF CONDUCTED ENERGY DEVICES (CED) – SITUATIONAL FACTORS (10/01/10)

In the following situations, CED's should not be used unless the use of deadly force would otherwise be permitted:

- On persons in elevated positions, who might be at a risk of a dangerous fall;
- On persons operating vehicles or machinery;

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- On persons who are already restrained in handcuffs unless necessary to prevent them causing serious bodily injury to themselves or others and if lesser attempts of control have been ineffective.
- On persons who might be in danger of drowning;
- In environments in which combustible vapors and liquids or other flammable substances are present;
- In similar situations involving heightened risk of serious injury or death to the subject.

5-314.04 USE OF CONDUCTED ENERGY DEVICES (CED) – DOWNLOADING/REPORTING (10/01/10) (07/16/12)

Officers are required to report all actual use of their CED consistent with the downloading and reporting guidelines outlined below. (07/16/12)

CED Downloading guidelines:

- The CED (and camera if equipped) shall be downloaded, when used in probe mode or drive stun mode, prior to the end of the officer's shift.
- The CED (and camera if equipped) shall be downloaded for any incident that is recorded that the officer believes might have evidentiary value.
- If a CED was used during a critical incident, the CED will be property inventoried by the Crime Lab for processing video and firing data evidence.

CED Reporting guidelines:

- When a CED is deployed and discharged on a subject, the officer shall report its use in CAPRS (including a Use of Force Report and in the supplement) as well as on the officer's CED log. Officers shall document de-escalation attempts in the Use of Force Report and in their supplement. (07/16/12)
- When a CED is only threatened by means of displaying, red dotting, and/or arcing in situations which normally would require a CAPRS report, the threatened use shall be reported in CAPRS in the supplement of the report as well as on the officer's CED log. (07/16/12)
- When a CED is only threatened by means of displaying, red dotting, and/or arcing without actually being deployed on a subject and there is no arrest or CAPRS report otherwise required, the officer may record this threatened use on their CED log and add such comments into the call. (07/16/12)
- When a CED is used during the scope of off-duty employment outside of the City (e.g. another law enforcement agency) officers shall obtain a Minneapolis CCN from MECC and complete a CAPRS report titled AOA and refer to their employer's incident report in the supplement. Officers shall then download the device and store the information under the Minneapolis CCN. (07/16/12)

5-314.05 USE OF CONDUCTED ENERGY DEVICES (CED) – POST EXPOSURE TREATMENT/MEDICAL AID (10/01/10)

Post exposure treatment (Medical Aid) for a person that has been exposed to the electricity from the CED shall include the following:

1. Determine if the subject is injured or requires EMS.
2. Render medical aid consistent with training and request EMS response for evaluation at anytime if necessary

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3. Request EMS response for probe removal if probes are located in sensitive areas (face, neck, groin or breast areas).
4. Wear protective gloves and remove probes from the person's non-sensitive body areas.
5. Secure the probes (biohazard "sharps") point down into the expended cartridge and seal with a safety cover.
6. When appropriate, visually inspect probe entry sites and/or drive stun locations for signs of injury.
7. When appropriate, photograph probe entry sites and/or drive stun locations.

Sworn employees shall routinely monitor the medical condition of a person who has been exposed to the electricity from a CED until they are released to medical or other law enforcement personnel and inform individuals accepting custody that a CED was used on the person. (10/01/10)

5-315 USE OF IMPACT WEAPONS - POLICY (08/17/07) (10/01/10)

The MPD approved impact weapons (Policy and Procedure Manual, Section 3-200 Equipment) are considered less-lethal weapons. The use of impact weapons shall be consistent with current MPD Training and MPD policies governing the use of force (Policy and Procedure Manual, Section 5-300).

Strikes from impact weapons shall only be administered under the following circumstances:

- On subjects who are exhibiting active aggression, or;
- For life saving purposes, or;
- On subjects who are exhibiting active resistance in order to gain control of a subject and if lesser attempts at control have been or would likely be ineffective.

Strikes from impact weapons shall not be administered to persons who are non-compliant as defined by policy.

5-315.01 USE OF IMPACT WEAPONS – TREATMENT/MEDICAL AID (10/01/10)

Treatment (Medical Aid) for a person that has been struck with an impact weapon shall include the following:

- Determine if the person is injured or requires EMS
- When appropriate, visual inspect the areas struck for signs of injury
- Render medical aid consistent with training and request EMS response for evaluation at anytime if necessary

Sworn employees shall routinely monitor the medical condition of a person that has been struck with an impact weapon until they are released to medical or other law enforcement personnel. An officer who has used an impact weapon shall inform individuals accepting custody that it was used on the person. (10/01/10)

**5-316 MAXIMAL RESTRAINT TECHNIQUE (05/29/02) (06/13/14) (07/13/17)
(04/02/18)**

(B-C)

I. PURPOSE

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To establish a policy on the use of "hobble restraint devices" and the method of transporting prisoners who have been handcuffed with a hobble restraint applied.

II. POLICY

The hobble restraint device may be used to carry out the Maximal Restraint Technique, consistent with training offered by the Minneapolis Police Department on the use of the Maximal Restraint Technique and the Use of Force Policy.

III. DEFINITIONS

Hobble Restraint Device: A device that limits the motion of a person by tethering both legs together. Ripp Hobble™ is the only authorized brand to be used.

Maximal Restraint Technique (MRT): Technique used to secure a subject's feet to their waist in order to prevent the movement of legs and limit the possibility of property damage or injury to him/her or others.

Prone Position: For purposes of this policy, the term Prone Position means to lay a restrained subject face down on their chest.

Side Recovery Position: Placing a restrained subject on their side in order to reduce pressure on his/her chest and facilitate breathing.

IV. RULES/REGULATIONS**A. Maximal Restraint Technique – Use (06/13/14)**

1. The Maximal Restraint Technique shall only be used in situations where handcuffed subjects are combative and still pose a threat to themselves, officers or others, or could cause significant damage to property if not properly restrained.
2. Using the hobble restraint device, the MRT is accomplished in the following manner:
 - a. One hobble restraint device is placed around the subject's waist.
 - b. A second hobble restraint device is placed around the subject's feet.
 - c. Connect the hobble restraint device around the feet to the hobble restraint device around the waist in front of the subject.
 - d. **Do not** tie the feet of the subject directly to their hands behind their back. This is also known as a hogtie.
3. A supervisor shall be called to the scene where a subject has been restrained using the MRT to evaluate the manner in which the MRT was applied and to evaluate the method of transport.

B. Maximal Restraint Technique – Safety (06/13/14)

1. As soon as reasonably possible, any person restrained using the MRT who is in the prone position shall be placed in the following positions based on the type of restraint used:
 - a. If the hobble restraint device is used, the person shall be placed in the side recovery position.
2. When using the MRT, an EMS response should be considered.
3. Under no circumstances, shall a subject restrained using the MRT be transported in the prone position.
4. Officers shall monitor the restrained subject until the arrival of medical personnel, if necessary, or transfer to another agency occurs.
5. In the event any suspected medical conditions arise prior to transport, officers will notify paramedics and request a medical evaluation of the subject or transport the subject immediately to a hospital.
6. A prisoner under Maximal Restraint should be transported by a two-officer squad, when feasible. The restrained subject shall be seated upright, unless it is necessary to transport them on their side. The MVR should be activated during transport, when available.
7. Officers shall also inform the person who takes custody of the subject that the MRT was applied.

C. Maximal Restraint Technique – Reporting (06/13/14)

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1. Anytime the hobble restraint device is used, officers' Use of Force reporting shall document the circumstances requiring the use of the restraint and the technique applied, regardless of whether an injury was incurred.
2. Supervisors shall complete a Supervisor's Force Review.
3. When the Maximal Restraint Technique is used, officers' report shall document the following:
 - How the MRT was applied, listing the hobble restraint device as the implement used.
 - The approximate amount of time the subject was restrained.
 - How the subject was transported and the position of the subject.
 - Observations of the subject's physical and physiological actions (examples include: significant changes in behavior, consciousness or medical issues).

5-317 LESS-LETHAL 40MM LAUNCHER AND IMPACT PROJECTILES (07/16/19)

I. PURPOSE

A. The MPD recognizes that combative, non-compliant, armed and or otherwise violent subjects cause handling and control problems that require special training and equipment. The MPD has adopted the less-lethal force philosophy to assist with the de-escalation of these potentially violent confrontations.

B. This policy addresses the use of the less-lethal 40mm launcher and the 40mm less-lethal round. The deployment of the 40mm launcher is not meant to take the place of deadly force options.

II. DEFINITIONS

40mm Less-Lethal round: Direct fire round used in situations where maximum deliverable energy is desired for the incapacitation of an aggressive, non-compliant subject.

III. POLICY

A. This policy applies to officers who are not working in a certified SWAT capacity.

B. The 40mm launcher with the 40mm less-lethal round should not be used in deadly force situations without firearm backup.

1. The use of the 40mm less-lethal round should be considered a level slightly higher than the use of an impact weapon and less than deadly force when deployed to areas of the suspect's body that are considered unlikely to cause death or serious physical injury.
2. Prior to using less-lethal options, officers need to consider any risks to the public or themselves.
3. When using the 40mm less-lethal round, consideration shall be given as to whether the subject could be controlled by any other reasonable means without unnecessary risk to the subject, officers, or to the public, in accordance with knowledge and training in use of force and MPD policies governing the use of deadly and non-deadly force.

C. Only officers trained in the use of the 40mm launcher and 40mm less-lethal round are authorized to carry and use them.

D. Officers shall not deploy 40mm launchers for crowd management purposes.

IV. PROCEDURES/REGULATIONS

A. Standard projectiles

1. Officers shall only carry MPD-approved 40mm rounds. Ammunition specifications are available from the Range Master.
2. The MPD Range shall issue 40mm rounds with each launcher depending on the needs of the 40mm Operator Program. The MPD Range shall replace any rounds used or damaged as needed.

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B. Target areas

1. The primary target areas for the 40mm less-lethal round should be the large muscle groups in the lower extremities including the buttocks, thigh, knees. Alternative target areas include the ribcage area to the waist, and the larger muscle areas of the shoulder areas. Areas to avoid when using the 40mm less-lethal round are the head, neck, spinal cord, groin and kidneys.
2. Officers shall be aware that the delivery of the 40mm impact projectiles to certain parts of the human body can cause grievous injury that can lead to a permanent physical or mental incapacity or possible death. Areas susceptible to death or possible severe injury are the head, neck, throat and chest (in vicinity of the heart). Unless deadly force is justified, officers should avoid the delivery of 40mm impact projectiles to any of the above-described areas.

C. Deployment

1. The 40mm launchers can be used when the incapacitation of a violent or potentially violent subject is desired. The 40mm launcher can be a psychological deterrent and physiological distraction serving as a pain compliance device.
2. If a supervisor or responding officers believe that there is a call or incident that may require the use of less-lethal capability, they may request via radio or other means that an on-duty MPD-trained operator with a 40mm launcher respond to the scene.
3. Officers shall announce over the radio that a 40mm launcher will be used, when time and tactics permit.
 - a. It is important that whenever possible, all officers involved and possible responding officers know that a 40mm less-lethal projectile is being deployed so they do not mistake the sight and noise from the deployment as a live ammunition discharge.
 - b. 40mm launchers have an orange barrel indicating they are the less-lethal platform.
4. When appropriate given the situation, officers firing a 40mm less-lethal projectile should yell "Code Orange!" prior to and during firing.

D. Carrying and storage

1. 40mm launchers shall be assigned to each precinct, City Hall and specialty units as needed.
 - a. Each 40mm launcher shall be kept its own case and in a secured gun locker.
 - b. Only commanders or their designee and MPD-trained operators will have keys to the 40mm armory lockers.
2. MPD-trained operators shall carry the 40mm launchers during their assigned shift, when available.

E. Maintenance of 40mm launchers

Only MPD certified Range personnel shall perform maintenance and repairs to the 40mm launcher.

F. Subjects injured by 40mm less-lethal projectiles

1. Medical assistance shall be rendered as necessary in accordance with P&P 5-306 and the Emergency Medical Response policy (P&P 7-350).
2. If possible, photographs should be taken of any injuries to the suspect.

G. Use of Force reporting

1. Officers that deploy a 40mm less-lethal round shall report the force in accordance with P&P 5-306, and shall complete a report entitled "FORCE."
2. Officers who deploy a less-lethal round shall immediately notify dispatch, who will notify a supervisor.

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3. A supervisor shall respond to the scene any time a 40mm less-lethal round is used. The responding supervisor shall review the incident and complete a use of force review in accordance with P&P 5-307.
4. Supervisors shall ensure that all spent 40mm less-lethal rounds are collected and property inventoried if possible.

5-318 REMOTE RESTRAINT DEVICE (10/18/19)**I. PURPOSE**

- A. The MPD recognizes that combative, non-compliant, armed or otherwise violent subjects cause handling and control problems that require special training and equipment.
- B. The purpose of a remote restraint device is to facilitate a safe and effective response by immobilizing and controlling resistive or non-compliant persons and persons with known or suspected mental health issues, and minimizing injury to suspects, subjects, and officers.

II. DEFINITIONS

Remote Restraint Device: The Bola Wrap™ is the only currently authorized remote restraint device. It is a hand-held device that discharges an eight-foot bola style Kevlar tether to entangle an individual at a range of 10-25 feet.

III. POLICY

- A. The remote restraint device has limitations and restrictions requiring consideration before its use. The device shall only be used when its operator can safely approach the subject within the operational range of the device. Although the device is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.
- B. The remote restraint device should not be used in potentially deadly force situations without firearm backup.
 1. When used according to the specifications and training, the device should be considered a low-level use of force.
 2. Prior to using the device, officers need to consider any risks to the public or themselves.
- C. Only officers trained in the use of the remote restraint devices are authorized to carry and use them.
- D. Officers are only authorized to carry department remote restraint devices while on-duty in a patrol response function. Officers shall ensure that remote restraint devices are secured at all times.

IV. PROCEDURES/REGULATIONS**A. Standard devices**

Officers shall only carry MPD-approved remote restraint devices, cartridges and cutters. No personally owned remote restraint devices shall be carried or used.

B. Target areas

1. Reasonable efforts should be made to target lower extremities or lower arms.
2. The head, neck, chest and groin shall be avoided.
3. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the remote restraint device to a precise target area, officers should monitor the condition of the subject if it strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

C. Deployment

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1. The remote restraint device may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:
 - a. The subject is violent or is physically resisting.
 - b. The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, themselves or others.
2. Remote restraint devices should not be used on individuals who are merely fleeing on foot, without other known and articulable facts or circumstances. Prior to using the device on a subject in flight the following should be considered:
 - a. The severity of the crime at issue;
 - b. Whether both of the following apply:
 - The subject poses an immediate threat to the safety of the officer or others, and;
 - The officer has a reasonable belief that using the device would not cause significant harm to the subject fleeing unless use of deadly force would otherwise be permitted.
3. The aiming laser shall never be intentionally directed into the eyes of anyone as it may permanently impair their vision.
4. For tactical reasons, the deploying officer should attempt to avoid being the contact officer.

D. Other deployment considerations

1. Certain individuals

The use of the remote restraint device on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

 - Individuals who are known to be pregnant.
 - Elderly individuals.
 - Children (known to be or who appear to be under the age of 12).
 - Individuals who are handcuffed or otherwise restrained.
 - Individuals detained in a police vehicle.
 - Individuals in danger of falling or becoming entangled in machinery or heavy equipment, which could result in death or serious bodily injury.
 - Individuals near any body of water that may present a drowning risk.
 - Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).
2. Repeated applications of the device

If the first application of the remote restraint device appears to be ineffective in gaining control of an individual, officers should consider certain factors before additional applications of the device, including:

 - Whether the Kevlar cord or barbs are making proper contact.
 - Whether the individual has the ability and has been given a reasonable opportunity to comply.
 - Whether verbal commands, other options or tactics may be more effective.
3. Dangerous animals

The remote restraint device should not be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, etc. This device was not intended for use against animals. However, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective the

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remote restraint device may be deployed to protect against harm to suspects, subjects and officers.

4. Verbal warnings
 - a. When feasible, officers should air a notification on the radio when arriving at a scene with the intention of using a remote restraint device.
 - b. When appropriate given the situation, officers discharging a remote restraint device should yell "Bola, Bola, Bola!" prior to and during discharge.
 - c. Officers shall air a notification on the radio as soon as feasible after discharging a remote restraint device to alert dispatch and other officers that the sound was a device being discharged.
 - d. The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the remote restraint device in the related report.

E. Carrying and storage

1. Officers shall only use department-approved remote restraint devices that have been issued by the Department.
2. Only officers who have successfully completed department-approved training may be authorized to carry and deploy the remote restraint device.
3. All remote restraint devices are clearly and distinctly marked to differentiate them from the duty weapon and any other device.
4. Uniformed and plainclothes officers who have been authorized to carry the remote restraint device shall wear the device in an approved holster on their person or keep the device safely and properly stored in their City vehicle.
5. Officers shall ensure that their remote restraint device is properly maintained and in good working order. Officers shall notify the Training Division of any issues, as the Training Division is in charge of inventory and maintenance of the devices.
6. Officers should not hold both a firearm and the remote restraint device at the same time.

F. Medical treatment

1. Medical assistance shall be rendered as necessary in accordance with P&P 5-306 and the Emergency Medical Response policy (P&P 7-350).
 - a. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:
 - The person is suspected of being under the influence of controlled substances or alcohol.
 - The person may be pregnant.
 - The remote restraint device pellets are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
2. Officers on scene shall determine whether transporting the person to a medical facility is necessary to remove the pellets or barbs.
3. If officers determine that cutting the tether is reasonable and appropriate, officers may cut the tether at the scene using medical scissors.

G. Use of Force reporting

1. Officers that deploy a remote restraint device shall report the force in accordance with P&P 5-306, and shall complete a report entitled "FORCE."
2. If a supervisor was not notified prior to deployment, officers who deploy the remote restraint device shall notify a supervisor to respond to the scene.
3. Officers shall document any injuries or points of contact, with photographs whenever possible.
4. A supervisor shall respond to the scene any time a remote restraint device is used. The responding supervisor shall review the incident and complete a use of force review in accordance with P&P 5-307.
5. Supervisors shall ensure that all expended cartridges, pellets, barbs and cord are collected and property inventoried if possible.

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H. Transport of subjects

If an officer transports the subject, the transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the remote restraint device.

I. BolaWrap™ pilot device form

1. In addition to incident and force reporting, deployment of the remote restraint device shall be documented by each discharging officer using the BolaWrap™ Test and Evaluation form. The following information is required on the form:
 - Device and cartridge serial numbers.
 - Date, time and location of the incident.
 - Whether any display or laser deterred a subject and gained compliance.
 - Number of device activations and the duration between activations.
 - Range at which the device was used (as best as can be determined).
 - Locations of impact from any deployments.
 - Whether medical care was provided to the subject.
 - Whether the subject sustained any injuries.
 - Whether any officers sustained any injuries.
2. The Training Division will periodically analyze the report forms to identify trends, including deterrence and effectiveness.

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7-100 Communications

7-101 EMERGENCY COMMUNICATIONS CENTER

The Minneapolis Emergency Communications Center (MECC) is the communications link between the Police Department and the public it serves. MECC coordinates the deployment of officers and department vehicles and is a source of information and assistance to officers in the field. MECC has the authority and responsibility to disseminate calls in a fashion that facilitates rapid delivery of service to the public. Prompt response to calls from the public is an objective of the Police Department.

7-102 INITIAL RESPONSE POLICY

It is the policy of the Minneapolis Police Department to respond to all calls for service within a minimum amount of time. To achieve this objective, the Police Department has provided the MECC with guidelines regarding time frames within which affirmative dispatching action is to be taken.

The general rule is to get a squad responding at the earliest possible moment. This rule means that if a nature code calls for it or common sense dictates it, the role of the dispatcher at MECC is to assign the call within the Priority Guidelines to at least one "Able" squad and then immediately do whatever is necessary to obtain the required additional squads to respond to the call. This includes pulling squads from other Precincts/Divisions, using supervisors, or calling on neighboring agencies to obtain the required second, third or additional squads. A dispatcher is not to "hold" a call that the Priority Guidelines say should be dispatched solely because of the unavailability of a second officer or second squad.

This policy places the responsibility for safe approach to a call entirely within the hands of the responding officer(s). Officers are required to make an assessment of the situation from a safe distance and then advise the dispatcher of the need for or lack of assistance.

7-103 PRIORITY CALL CODE NUMBERS AND PROCEDURES

Call code numbers are used by dispatchers and officers to indicate the seriousness of an incident and the procedures for response. The responsibility for determining the appropriate call code number rests with the responding officer based upon information communicated from the MECC or other personnel.

- CODE ONE: Indicates that an officer cannot be located or does not answer the radio.
- CODE TWO: A call to be answered or situation to be handled immediately. The red lights and siren shall not be used and all traffic laws will be obeyed.
- CODE THREE: EMERGENCY SITUATION - To be answered immediately, but in a manner enabling the responding units to reach the scene as quickly and safely as possible. MS 169.03 and 169.17 require the use of red lights and siren for emergency driving.
- CODE FOUR: Situation is under control. Responding squads that have not arrived may clear.

In order to establish common working definitions about the urgency of any situation and to facilitate the most efficient delivery of service to the public, the Police Department has provided the MECC with guidelines regarding time frames for dispatching calls. Police calls are identified by a nature code and each nature code is assigned to one of five possible priority categories. MECC call classification priorities are not the same as call code numbers.

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- PRIORITY 0 - Calls classified as Priority 0 include those situations where a known crisis exists that threatens the life of an individual. This is the highest possible priority and the fastest possible response is desired. The MECC objective is to have squads en route to the call within 30 seconds of receipt by the dispatcher.
- PRIORITY 1 - Calls classified as Priority 1 include situations where an imminent threat to personal safety, or the loss or damage to property exists. Conditions at the scene of the call are unstable. The MECC objective is to have a squad en route to a priority 1 event within 70 seconds of receipt by the dispatcher.
- PRIORITY 2 - Calls classified as Priority 2 include situations where no immediate threat of harm exists at the scene of the call. A timely police response is still desirable. The MECC objective is to have priority 2 calls assigned at the earliest opportunity or within 45 minutes of receipt by the dispatcher. If after 30 minutes the call remains in MECC due to a lack of recommended unit availability, the dispatcher may notify the affected precinct field supervisor to review the pending priority 2 calls and recommend a course of action.
- PRIORITY 3 - Calls classified as Priority 3 include situations where conditions are stable at the scene of the call. MECC may hold priority 3 calls for the squad in whose district the call is occurring for up to one hour. After one hour, the situation should be reassessed by MECC and the precinct field supervisor, if necessary, to determine if the call should be reassigned to a squad outside of the district in which the call is occurring.
- PRIORITY 9 - Calls classified as Priority 9 include administrative or service assignments. Squads on a service assignment may be reassigned to an event with a higher priority.

7-103.01 TELE-SERVE (03/21/95)

The Tele-Serve Unit is open 16 hours per day, 7 days per week. Tele-Serve is available for walk-in reports from citizens and handles non-priority reports during the hours that City Hall is open to the public over the telephone.

Access to Tele-Serve is via the direct dial number, 673-3383, or through calls received by the Emergency Communications Center (ECC). Callers should leave a message with the voice mail system and an operator will get back to them as soon as possible. MPD personnel, in those circumstances where referral to Tele-Serve is appropriate, should advise callers to call the direct dial number, 673-3383. If a squad is sent on a report call, officers should take the report and not refer the caller to Tele-Serve. Report calls are screened, and there is a valid reason for dispatching a squad to take the report.

ECC staff does have the option to send a district squad to handle a report call if it meets any of the following criteria:

- The offense is still in progress;
- Life or property is in continuing danger;
- Someone is injured at the scene;
- The suspect is still present;
- There is evidence at the scene that needs to be collected;
- There are witnesses at the scene that need to be interviewed;
- The call involves allegations of very recent domestic abuse; or
- The caller wants to see an officer, and is not satisfied with talking to a Tele-serve operator

***If there has been a considerable delay in reporting the crime, some of the criteria may not apply and a squad may not be sent.

7-104 RADIO PREFIXES, ONE AND TWO OFFICER DESIGNATION (08/13/02)

(A)

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All vehicles using MPD radio channels will use the following prefixes which indicate their type of assignment:

- "Squad" for marked vehicles
- "Car" for unmarked or civilian vehicles
- "Portable" for officers away from their vehicle
- "Chaplain" for chaplains
- "Base" for precinct, unit or division fixed operations
- "Beat" for officers assigned to a specific beat
- "Motor" for motorcycle (Park Police only)
- "Bike" for Bike Patrol

When beginning a radio transmission, officers shall begin the transmission with their appropriate radio prefix (Squad 310, not just 310).

In all communications with the MECC dispatcher, one officer squads or cars will be designated as "Able," i.e., 321A.

If during the course of an apprehension or an investigation an officer separates from a partner, the driver of the vehicle will be "A(ble)," (320A). The passenger of the vehicle shall be "B(aker)," (320B). If no vehicle is being used, the officers shall decide beforehand who shall be designated as "A" and "B."

If during a shift, one officer assigned to a two-officer squad is away from duty, the remaining officer shall immediately report the squad's change in designation to MECC.

7-104.01 RADIO PREFIXES, FTO SQUADS (07/10/92)

Squads that have an FTO and Recruit/Cadet will be designated as an FTO Squad. (Example 320 FTO or 320A FTO.) This designation will appear in the computer and on the precinct line-up sheet, but standard radio call sign procedures will be used.

All FTO squads shall be considered an Able squad until the recruit has completed the first month of the FTO program. After the first month in the FTO program, an FTO squad shall be dispatched as a two-person squad. The FTO has the right to request that the FTO Sergeant designate the FTO car as an Able car beyond the first month of training, but the FTO Sergeant will determine the proper status.

The 10-day final evaluation of the Recruit/Cadet will be as an Able squad with the FTO in civilian attire. The FTO for the final evaluation will be the FTO that trained the Recruit/Cadet for the final month of training.

7-105 RADIO CALL NUMBERS (08/13/02)

Radio call numbers are developed by the Minneapolis Emergency Communications Center (MECC) with input from the MPD Equipment Specialist. Current listings of radio call numbers are maintained by MECC and the MPD Equipment Specialist.

For precincts, call numbers are designed to indicate the precinct, sector, and sequence within the sector. For example:

- Squad 420 - Fourth Precinct, Sector Two, Primary Squad
- Squad 421 through 429 - Fourth Precinct, Sector Two, Secondary Squads

7-106 ASSIGNED CALLS

(A-B)

The dispatcher shall have the authority to assign calls to all available sworn personnel, including superior officers. Officers shall not argue with the dispatcher or refuse to take a call.

Situations may arise which require that an officer must decide whether to continue on an assigned call or handle a citizen's complaint, an observed event, or a higher priority call and cause the original call to be reassigned. Such determination should be based upon the comparative urgency and the risk to life and property of the assigned call and the intervening incident. When an officer is unable to respond to an assigned call for any reason, the officer shall promptly notify the dispatcher and provide the reason for the change in status.

When it is not possible for officers to handle a citizen's complaint or an observed event, they should, if circumstances permit, give directions for obtaining such assistance or initiate the necessary notifications themselves. When handling a call and subsequently receiving a higher priority call, officers shall advise the person of the reason for leaving and of the squad's intention of returning after the call.

Officers shall not pass on to the succeeding shift any assigned calls without the permission of the superior officer on duty. MECC is expected to and will dispatch calls up to the end of the shift.

7-107 ACKNOWLEDGING CALLS (08/13/02)

(A-B)

All officers assigned calls by the Minneapolis Emergency Communications Center (MECC) will immediately acknowledge receipt of the call via voice radio, as well as by pressing the "En route" key on the MDT/MDC. Any time a squad is responding to an event, the officers shall notify the dispatcher.

Officers shall announce their arrival at the scene by:

1. Depressing the "Arrive" status key on their MDT/MDC; and
2. Using the voice radio indicating their call number followed by the word "arrived."

Officers must clear from all calls or other assignments as soon as the call or assignment is complete. The methods described above shall also be used to clear from a call except that a disposition code shall also be provided when clearing on the MDT/MDC and clearing via voice radio.

Whenever possible, all aired status changes should be accomplished on a single radio transmission (Squad 320 is clear).

7-108 RADIO CONTACT

(A-B)

Officers working in the field (including when at lunch or any other break) are required to be in radio contact at all times. Officers handling an assigned call shall remain available for emergency or higher priority calls by maintaining radio communication via a portable radio.

7-109 BROADCASTING DESCRIPTIONS

(A)

The first officers to arrive at a crime scene or other incident that warrants the broadcasting of descriptive information shall conduct a brief interview with victims and/or witnesses. If sufficient information is obtained to justify a broadcast, and radio traffic permits, it shall be transmitted in the following manner:

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1. The officer will notify the dispatcher that a description is available. The officer will also inform the dispatcher of the extent of dissemination of the broadcast (e.g. involved channel, citywide, regional broadcast, teletype, etc.) and will indicate arrest authority (au. probable cause, attempt to locate, etc.).
2. The dispatcher will notify all squads that a description will follow and will state the location and nature of the crime. Permission will then be given for broadcast.
3. The officer will broadcast the description in the following sequence:
 - a. Type of crime
 - b. Time of occurrence
 - c. Location of occurrence
 - d. Number of suspects
 - e. Description of suspects
 - f. Weapons involved
 - g. Direction and method of flight
 - h. Description of vehicle, if applicable
 - i. Description of loss, if applicable

7-110 REQUEST FOR BACK-UP

(A)

Additional squads will be dispatched when requested by an officer or when department policy dictates a back-up be sent automatically for an "Able" squad responding to certain types of incidents.

Officers requesting a back-up shall give their squad number, location and code priority. If the requesting officer or the on-scene superior officer determines that back-up squads are not needed, the back-up squad should be canceled.

7-111 EMERGENCY OR "OFFICER NEEDS HELP" PROCEDURE

(A)

When an emergency situation arises, officers shall notify the dispatcher by doing the following:

1. Stating "Squad , EMERGENCY" or "Officer needs help."
2. Give the location of the officer needing help.
3. If time permits, give the reason for the emergency.

Whenever an emergency or "officer needs help" is announced, all other officers shall immediately clear the airway and keep the frequency clear until the dispatcher acknowledges the call. Responding vehicles should wait to give their numbers until it is obvious that the officer calling the emergency is finished giving information. When responding vehicles do give their numbers, they should be brief and then remain off the air until they arrive at the scene. Once aired, the emergency commands the channel until the dispatcher announces a Code 4 and normal radio traffic is resumed.

7-112 UNNECESSARY USE OF RADIO, MOBILE DATA TERMINAL (MDT) OR MOBILE DATA COMPUTER (04/28/03)

(A-B)

The police radio, MDT or MDC is for police business only. It is not to be used to conduct personal business or to transmit personal messages.

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Squads will begin all radio communication using their assigned call numbers and radio prefix. Information checks shall be requested only on the channel designated for such purposes. In most instances, Channel 7 will be the designated channel. When requesting information from Channel 7 or the precinct base, officers should try to include the nature of service in the initial transmission ("Squad 320, REGISTRATION," wait for acknowledgment; then "Squad 320, David Adam Paul 543").

Officers shall use Channel 5 or any other designated channel for non-emergency squad-to-squad or squad-to-precinct radio communications.

7-112.01 AUDIT OF RADIO, MOBILE DATA TERMINAL OR MOBILE DATA COMPUTER (MDC) COMMUNICATION (04/28/03)

(A-C)

MDT/MDC messages are public information and are subject to public disclosure. Any communication that may be considered "discriminatory, derogatory, biased, inappropriate or use of prohibited words" shall not be permitted on the radio or MDT/MDC at any time. Inappropriate language or remarks shall be immediately reported to a supervisor, precinct/unit/division commander or Bureau Head.

NOTE: As per the City of Minneapolis and Minneapolis Police Department policy, remarks in regard to race, color, creed, age, religion, ancestry, national origin, sex, affectional preference, disability, marital status, familial status, status with regard to public assistance, Vietnam era veteran status are prohibited.

The Minneapolis Emergency Communications Center (MECC) shall randomly retrieve MDT/MDC messages at least once a month for a 24-hour time period. The retrieved messages will be sorted by precinct/unit/division and forwarded to the respective commanders for review and action.

Commanders or their designee shall be responsible for reviewing messages for inappropriate content, i.e. language or remarks. Employees who are found to have transmitted inappropriate messages shall be subject to disciplinary action consistent with the MPD Complaint Process Manual. Any inappropriate communications identified shall be documented and maintained on a Message Review Action form (MP-8878). All Message Action Review forms shall be maintained in a precinct file for annual review by the Quality Assurance Unit.

MECC is responsible for retrieving event driven reports when requested by an investigator or MPD supervisor.

7-113 USE OF BASE UNITS

(A)

Except on the designated car-to-car channel, base unit radio transceivers located in divisions, precincts and units will not be allowed to communicate directly with their mobile or portable personnel or other base units without approval of the Minneapolis Emergency Communications Center. The base unit operator will contact the dispatcher by radio and request use of the air for the necessary transmission.

7-114 ELECTRONIC PAGING UNITS

(A)

Contact with personnel assigned to carry electronic paging units will be accomplished in the following manner. During hours when the employee is normally working, contact the employee's assigned division and personnel there will make the contact. At all other times, contact the MECC and personnel

there will contact the employee assigned to the paging unit. Contact with property crimes investigators shall be routed at all times through the appropriate precinct desk personnel.

7-115 COMMUNICATIONS RECORD KEEPING

(A-D)

All electronic communications, (telephone calls, radio transmissions, MDT traffic, computer networks, etc.) that are conducted using the facilities of the City of Minneapolis are subject to being recorded. Dissemination of communications records shall be conducted in accordance with the Minnesota Government Data Practices Act. (04/01/93)

7-116 CELLULAR PHONES (06/25/90) (10/21/05) (07/25/13) (05/29/18)

I. PURPOSE

The Minneapolis Police Department uses cellular phones in the course of police operations to enhance departmental communication. The purpose of this policy is to provide all MPD employees with guidelines for the proper use of cellular phones.

II. DEFINITIONS

Disruptive Activity: Any time that cell phone operations would be considered disruptive, such as in training sessions, court or public places where cell phone use would reasonably be deemed annoying and intrusive.

Distraction: Any time the use of a cell phone would unnecessarily or unreasonably divert the attention of an employee from official duties and/or cause a potentially hazardous situation.

III. POLICY

- A. This policy is supplemental to the City of Minneapolis Cell Phone Policy.
- B. Cell phones issued to department employees by other agencies, jurisdictions, or entities shall be governed by the same policy and regulations as phones issued by the MPD.
- C. Evidence recorded on a cell phone shall be handled in accordance with P&P 10-423 Employee Cell Phones and Recording Devices Used to Capture Evidence.

IV. REGULATIONS

A. General Use of Cellular Phones

1. Cell phones are intended to supplement to the MPD's communication system, not substitute for radio communication designated for transmission through MECC. Calls for service shall be received, coordinated and dispatched through MECC and not via an employee's personal or department issued cell phone.
2. A cell phone shall not be used when it would unnecessarily or unreasonably divert the attention of an employee from official duties or cause a potentially hazardous situation.
3. Engagement in multiple or extended cell phone conversations, text messaging or other use of cell phone devices unrelated to police business while on duty, or similar use that interferes with the performance of an employee's job duties, is prohibited.
 - a. While incidental usage of department-issued phones for non-city related business is allowed, such use should be kept to a minimum.

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4. Employees' use of a cell phone while operating City or Department vehicles shall comply with the City's Distracted Driving Policy. Cell phone use must be directly associated with a necessary, business-related function.
5. Cell phones should not be used if they may be disruptive to others.
6. The MPD is not responsible for loss or damage occurring to personal cell phones while employees are working on or off duty.

B. Department-Issued Cell Phones

1. Employees issued a cell phone by the MPD **shall**:
 - a. Ensure the voicemail function is set up and able to accept messages.
 - b. Ensure the phone is charged.
 - c. Be responsible for proper care and appropriate use of the cell phone. This includes but is not limited to: reasonable minutes and data charges incurred, proper use of the department-issued protective case, and accountability for any accessories that the employee is issued associated with the cell phone.
 - d. Keep the phone on and in an audible or vibration mode at all times while on duty except in those circumstances where it may be considered disruptive or a distraction.
 - e. Keep the phone on their persons or close enough to their person to safely answer a call while on duty.
 - f. Check for voicemail messages periodically while on duty, to ensure that any outstanding messages are returned in a timely manner.
 - g. Respond to all calls related to city operations within a reasonable length of time.
 - h. Use password protection on the phone at all times.
2. Employees issued a cell phone by the MPD **shall not**:
 - a. List the department issued cell phone as their primary phone number. Refer to 3-304 Telephone and Address Requirements.
 - b. Use the issued phone for calls to directory assistance except when exigent circumstances dictate otherwise.
3. Random audits of department-issued cell phones may be made at the MPD's discretion.
4. All data sent, delivered or accessed on a department-issued cell phone are subject to data practice laws and may be considered public data. This includes but is not limited to emails, text messages and telephone calls.
5. The MPD will not be responsible for damage to or loss of a department-issued cell phone if:
 - a. The cell phone is not housed in the department-issued protective case.
 - b. If the damage or loss occurs as a result of negligence by the employee.

7-117 COMMAND STAFF NOTIFICATION PROTOCOL (09/10/04) (10/28/04)

(A-D)

Whenever a significant event happens, the Initial On-Scene Supervisor (IOS), or his/her designee, or Watch Commander shall make notifications to the Chief and command staff. Notifications shall be made as quickly as possible once the scene is secured and life-saving measures have been rendered. Significant events/incidents include, but are not limited to, critical incidents, homicides, officer-involved shootings, in-custody deaths, natural or manmade disasters, acts of terrorism, or any other event that should be brought to the Chief's and command staff's immediate attention. The following personnel shall be notified of such events:

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- Chief of Police
- Chief's Executive Officer
- Deputy Chief of Patrol
- Deputy Chief of Investigations
- Appropriate Inspector(s)
- Watch Commander
- Captain of Central Investigations Division (CID)
- Lieutenant of Homicide
- Department City Attorney
- Department Public Information Officer
- IAU Commander (02/17/05)

The IOS, or his/her designee, or Watch Commander shall direct MECC to send an "administrative notification" to the above-listed personnel. Notifications by MECC shall be made by e-text on the cellphones. The IOS shall provide the following content in the notification:

- Date, time and location of the incident
- A brief assessment of the event
- A listing of other units or commanders contacted for assistance
- Requests for other resources as deemed necessary
- Name of contact person and his/her phone number

The notifications will be made to a large number of command staff personnel but only those associated with the event need to respond. The contact person should not be called or asked for incident-specific information except by those required to respond to the incident. The IOS, or his designee, or Watch Commander should expect a call back from the Chief, Deputy Chief of Patrol and the affected inspector.

The IOS, or his/her designee, or Watch Commander shall also submit a memo to the Chief and command staff detailing the incident. Information to be included is:

- The on-scene supervisor's name and assignment
- A logical narrative of the sequence of events (date, time, and place)
- Details of the initial call - officer's response, resources deployed, other command or unit assistance, officers and/or other person(s) injured/or killed, known hazards, extensive property damage, and/or any other significant facts that would best describe the critical incident.
- The time MECC was notified, i.e., 14:00

The IOS or his/her designee shall submit the memo via email to the appropriate members of the command staff or deliver a hard copy to the to Police Administration (Room 130). The memo shall be submitted as soon as possible or by the end of the work shift.

This policy is in addition to and does not supersede Explosives, Weapons of Mass Destruction, Phase I, II or III Alert notification protocols.

7-118 KOPS (KEEPING OUR POLICE SAFE) (09/29/04)

The Minnesota Department of Public Safety's "alert file" called KOPS (Keeping Our Police Safe) enhances officer safety by alerting officers of unsafe situations when encountering a vehicle or person involved in a recent incident by disseminating safety information statewide.

The standard CJIS (Criminal Justice Information System) queries that check person or vehicle files also hits on KOPS alerts, immediately warning officers of potentially dangerous situations. Officers should respond to the KOPS alerts in the same manner as any other CJIS hit and the message will be accompanied by the caveat "For officer safety purpose only, this is not a warrant."

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If the officers want to relay any message to alert fellow law enforcement officers, they will forward the message, with pertinent information, to their immediate supervisor for approval. Upon approval, the supervisor will forward the message to MECC (Minneapolis Emergency Communication Center) for entry into the KOPS system. There are three KOPS alert options available:

- Officer Safety
- Safety to Individual (other than officer), i.e., suicidal person
- Informational
- Alerts may be flagged to indicate when weapons may be involved.

All KOPS file information is automatically purged from the system after 72 hours except in the case of 12-hour domestic abuse pick up and hold cases.

7-119 SOCIAL NETWORKING (12/15/09)**I. PURPOSE**

To establish policy regarding employee use of social networking websites.

II. DEFINITIONS

Social Networking Websites: Sites which focus on building online communities of people who share interests and activities and/or exploring the interests and activities of others. Examples of social networking websites include: Facebook, MySpace, Friendster, Linked In, Twitter, and sites that allow users to post personal blogs. The absence of, or lack of explicit reference to, a specific site does not limit the extent of the application of this policy.

III. POLICY

The MPD has a duty to protect the reputation of the organization and its employees, as well as guard against liability and potential legal risk. Therefore, MPD reserves the right to monitor these websites, and employees are advised of the following:

Employees should exercise caution and good judgment when social networking online. Employees should be aware that the content of these social networking sites can be subpoenaed and used in criminal and civil trials to impeach the employee's testimony.

Any individual who can be identified as an employee of the MPD has no reasonable expectation of privacy when social networking online, and is subject to all pertinent City of Minneapolis policies, MPD policies, local, state, and federal laws regarding public information on arrests, investigations, and personnel data.

This policy supplements the City of Minneapolis' Electronic Communications Policy.

IV. PROCEDURE / REGULATIONS

A. Failure to comply with the following may result in discipline, up to and including discharge:

1. Where the poster can be identified as an employee of the MPD, any postings involving offensive or unethical content are not permitted.
2. Employees shall not represent that they are speaking or acting on behalf of the MPD, or that they are representing or presenting the interests of the MPD.
3. Employees are prohibited from using social networking sites to harass or attack others, including those who work for the MPD.

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B. Authorized exceptions to the above regulation include utilizing social networking websites for MPD-approved public relations and official investigative and/or work-related purposes as approved by Police Administration.

7-120 COVERT USE OF SOCIAL NETWORK SITES (05/24/13)**I. PURPOSE**

To establish procedures regarding the covert use of social network sites.

II. POLICY

The MPD recognizes that the use of covert SNS profiles can be a useful tool in the investigation of criminal activity. All covert SNS profiles shall be registered with the commander of the Strategic Information Center (SIC). In addition, any employee who wishes to use a covert SNS profile shall obtain authorization from their immediate supervisor prior to doing so.

III. DEFINITIONS

Social Networking Site (SNS): Sites which focus on building online communities of people who share interests and activities and/or exploring the interests and activities of others. Examples of social networking websites include: Facebook, MySpace, Friendster, Linked In, Twitter, and sites that allow users to post personal blogs. The absence of, or lack of explicit reference to, a specific site does not limit the extent of the application of this policy.

Covert Profile: An SNS profile created and maintained by an MPD employee, but in a user name not associated with the MPD employee, for the purpose of investigating criminal activity.

IV. PROCEDURES / REGULATIONS

A. All covert SNS profiles shall be registered with the commander of the Strategic Information Center (SIC) to include:

- The name & web address of the social network site
- The user name and screen name of the covert profile, and
- The MPD employee responsible for maintaining the profile.

B. The employee registered as the maintainer of a covert SNS profile is responsible for all content posted online under that profile. MPD employees are advised not to share covert SNS profile access information.

C. No MPD employee shall post any information using a covert SNS profile which promotes violence or criminal activity.

D. When a covert SNS profile is no longer needed it shall be deactivated or deleted from the SNS and the commander of the SIC notified.

7-121 EMAIL (06/10/13)

7-100 Communications - City of Minneapolis

MPD employees shall check their assigned City e-mail account at least once per shift while on duty, during scheduled work hours, when there is reasonable access to a computer.

Last updated Oct 5, 2018

[Minneapolis.gov](http://www.minneapolis.gov)

9-100 Adult Arrests

9-101 FELONY ARRESTS – ADULTS (05/29/02)

(A-B)

All probable cause adult felony arrests must be authorized at the scene of arrest whenever possible. In the event the supervisor is unable to respond to the scene of the arrest, authorization may be given by radio, telephone or MDT/MDC. The probable cause felony arrest may be authorized by:

- The arresting officer's supervisor, or
- An investigator from the concerned investigative unit/division, or
- Any other supervisor

Supervisors will add their remarks via MDT/MDC to indicate their approval of probable cause and also whether they made the approval at the scene or via radio/telephone or MDT/MDC. Arrests made on the basis of warrants or PC pickups do not require supervisor's approval. Prior to transporting arrestees to Hennepin County Adult Detention Center (HCADC), officers should consider a debriefing session. Arrestees shall be taken to HCADC for processing unless requested to be transported to the concerned investigative unit.

The Authority to Detain form (HC 6377) shall be completed. The approving supervisor's name and badge number must be listed in the remarks section of the Authority To Detain form. The name of the supervisor approving the arrest and continued detention of the suspect must be included in the narrative section of the CAPRS report.

The original will be left at the HCADC and the carbon copy shall be given to the Police Typist to accompany the CAPRS report. The 36-Hour Expiration Advisory (HC 6400) shall be completed. In order to comply with the Supreme Court imposed 48-Hour Rule, officers shall note the exact time of arrest. The time of arrest is not when the suspect was booked or when the reports were made. The original 36-Hour Expiration Advisory shall be left at HCADC and the carbon copy will be forwarded with the case to the appropriate investigative unit.

Arrests for criminal sexual conduct (CSC), including PC Pick-ups, require an officer to complete a Criminal Sexual Assault Victim Notification form (HC 6170).

9-101.01 FELONY AND GROSS MISDEMEANOR ARREST REPORT REQUIREMENTS PUBLIC INFORMATION – JUDICIAL PROBABLE CAUSE (05/29/02)

(A-B)

For felony and gross misdemeanor arrests, the following guidelines apply:

In Supplement Zero (0) of the CAPRS data entry screen, a pre-written prompt entitled "Public Information" appears. Following this prompt, officers are to briefly detail an incident/arrest. No names, addresses or any other information that would identify a victim or witness shall be entered in this section of the report.

The next prompt is the Judicial Probable Cause Oath statement. Following this prompt, officers shall write approximately one to two paragraphs detailing the probable cause for the arrest. Supplement One (1) of the CAPRS report shall describe the entire incident in detail.

In cases of an arrest based on a PC arrest bulletin (PC Pick-up), officers shall attach a PC Pick-up to the CAPRS report. Copies of the PC Pick-up may be obtained from the Transcription Unit's file or MPD Net.

After administering a written or oral oath, peace officers can sign a written report of another officer for the purpose of providing probable cause for the underlying arrest.

Officers shall swear to and sign their Judicial Probable Cause statement in front of an MPD notary. Peace Officers can sign a Probable Cause statement written by another officer for the purpose of providing probable cause for arrest.

MPD notaries shall witness the swearing and signing, and after such fact, shall sign the statement with their signature, license number, and the date their license expires.

The senior officer making the arrest is responsible for making sure all Probable Cause statements are notarized.

Transcription Unit staff shall distribute the signed and sworn statements to the Criminal History Unit during weekend and holiday hours and to the investigative units during normal work hours.

Criminal History staff shall fill out the court form and attach it to the arrest report.

This policy also applies to felony arrests of juveniles and to gross misdemeanor arrests.

9-102 GROSS MISDEMEANOR ARRESTS – ADULTS (05/29/02)

(A-B)

Supervisor approval is not needed for gross misdemeanor arrests. All other felony arrest procedures apply to gross misdemeanor arrests.

9-103 MISDEMEANOR ARRESTS – ADULTS (05/29/02) (09/16/04) (09/14/18)

(A-B)

A. Non-Payable Offenses

1. Adult misdemeanor violators shall be issued citations in lieu of arrest *unless* the officer believes that one of the following circumstances exists:
 - a. To prevent bodily harm to the accused or another.
 - b. To prevent further criminal conduct.
 - c. There is a substantial likelihood that the accused will fail to respond to a citation.
 - d. The officer has found that the accused has an outstanding warrant (not including Sign and Release warrants).
2. Officers making an arrest under one of the circumstances listed above must be able to articulate to the court and shall document in their report the reason(s) why it was necessary to arrest a person rather than issuing a citation.

B. Payable Offenses

When the only misdemeanor charge is a payable offense, officers shall either issue a citation or refer the case for a complaint.

C. Proper Identification

1. Proper identification includes, but is not limited to:
 - Minnesota DVS database
 - State-issued identification card or Driver's License

- Consular ID or matricula consular
 - U.S. or foreign passport
2. In cases where a citation would be issued in lieu of arrest, and
 - The officer cannot establish proper identification of the accused person, *and*
 - The officer has a specific articulable reason to believe the identification information provided is false;
 - a. The officer may transport the accused person to the Hennepin County Jail and the jail will use IBIS to identify them.
 - b. Once the process is finished the officer shall issue the citation or forward for charging by complaint, *and*:
 - i. Transport the person back to the original location; *or*
 - ii. If requested, transport the person to another mutually agreed-upon location in Minneapolis in the general vicinity of the original location; *or*
 - iii. If requested, release the person outside the Hennepin County Jail.
 - c. If the person was not identified through IBIS, the officer shall still release the person after issuing the citation or forwarding for charging by complaint.
 3. Officers shall document the attempts made to identify the individual, the reasons for any transport, and any requests for release or transport outside of the original location.

9-104 ARRESTS FOR DRIVING WHILE INTOXICATED (DWI) (05/29/02)

(A-B)

When suspects are arrested for DWI, they shall be taken to the Chemical Testing office, Room 19, for testing and video taping procedures. Suspects may be released after testing and issued a citation if they meet the conditions for issuing a citation in lieu of arrest.

9-104.01 ARRESTS FOR CRIMES OF VIOLENCE (05/29/02)

(A)

Minn. Stat. §629.72 requires that victims of crimes of violence be notified of an arrested person's release. Domestic assault victims must also be notified of other relevant case information. In order to comply with these laws, officers shall complete a Crime of Violence/Attempt Crime of Violence Information Form (HC 6194). This form shall be left at HCADC when the suspect is booked.

When a juvenile is booked at the Juvenile Detention Center for a crime of violence, a Victim Information Form must be completed. The forms are available at the Juvenile Detention Center.

9-105 ARREST REPORTS/ADULT DETENTION CENTER (05/29/02)

(A)

MPD is required to provide HCADC with a copy of the arrest report. Arrest reports are automatically routed to HCADC via the CAPRS system.

In the event that the CAPRS system is down, arrest reports shall be entered off-line and printed. Officers shall deliver a photocopy of the arrest report to HCADC.

9-106 CITATIONS IN LIEU OF ARREST AND ARREST REPORTS (05/29/02) (03/17/03)

(A)

A CAPRS report must be completed when a citation is issued for the following:

- A non-traffic offense;
- A traffic offense charged in connection with an accident;
- Any citizen's arrest;
- Driving after Revocation (DAR);
- Driving after Suspension (DAS);
- Driving after Cancellation (DAC);
- On charges of DWI, Careless Driving, Reckless Driving or any violation of the Open Bottle law.

NOTE: See Volume 8 for procedures for handling Juvenile traffic, criminal and status offenses.

9-107 CITIZEN'S ARRESTS (05/29/02)

(A-B)

Citizen arrests for misdemeanor crimes can only be made when the crime was committed in the complainant's presence.

Citizens making arrests must complete a Citizen's Arrest Form (MP-3406). Security personnel from businesses that make arrests on a regular basis may be allowed to use the standard CAPRS offense report instead of the Citizen's Arrest form.

Officers shall determine whether the circumstances justify taking the accused into custody. If officers feel that the arrest is illegal, the officer shall refer the complainant to the City Attorney's Office.

If the accused is to be taken into custody, officers shall verify the identity of the complainant and assist in completing the Citizen's Arrest Report. Complainants should be advised that the City Attorney will notify them if a formal complaint is needed.

Note: See Manual Section for Citizen's Arrest - Traffic Violation.

9-108 ARREST OR DETENTION OF INJURED ADULTS (05/29/02) (05/19/08) (06/13/14)

(A-B)

- A. Adult arrestees, who are in need of medical attention and are not cleared for booking by EMS or jail staff shall be transported to Hennepin County Medical Center (HCMC) or to a local hospital for medical evaluation and treatment.
- B. Arrested subjects who have a high probability of requiring hospitalization, including those with known or suspected drug ingestion, shall be brought to HCMC whenever possible. Note: HCSO's contract is with HCMC and they prefer to take custody of arrestees at HCMC.
- C. Officers are responsible for the custody of their arrestees while receiving medical attention.
- D. If an injured arrestee is delayed at the hospital longer than the arresting officers are able to wait, officers shall contact a supervisor. Hospital personnel or hospital security will not hold or guard an arrestee.
- E. Officers shall retain custody of arrested felons needing medical attention until the arrestee can be transported to HCJ.
- F. In the case of felony arrestees admitted to the hospital, the arresting officers shall notify their on-duty supervisor, who shall then contact the on-duty jail supervisor to arrange for relief.
- G. Officers assigned to the precinct where the arrest was made shall have custodial responsibility until properly relieved by the Hennepin County Sheriff's Office (HCSO).

9-109 HANDCUFFING ARRESTEES/DETAINEES (05/29/02)

(A-B)

All detainees/arrestees shall be handcuffed behind the back, unless a physical condition or other circumstances including sickness, injury or disability, does not allow for it. Handcuffs should also be double locked as soon as possible. Prisoners being transported to HCADC shall be handcuffed. Prisoners shall be handcuffed whenever taken outside the confines of the jail, except when handcuffing would deter the completion of an investigation. Plastic handcuffs may be used to supplement standard handcuffs in emergency situations. They may also be used in mass arrest situations and are available in all sergeants' vehicles. Plastic handcuffs should not be used in felony arrests or for restraining mentally ill individuals.

9-110 PRISONER CONTROL, SAFETY AND TRANSPORTATION (05/29/02) (07/19/18)

(A-B)

- A. When feasible, a two-officer squad shall be used to transport a felony prisoner.

- B.** One-officer squads may transport misdemeanor prisoners.
- C.** When feasible, a two-officer squad shall transport an arrestee of the opposite sex.
1. Officers transporting an arrestee of the opposite sex shall give MECC their destination and odometer reading.
 - a. Officers shall immediately notify MECC of any delay.
 - b. Upon arrival at their destination, officers shall notify MECC.
- D.** All prisoners shall remain within sight of the transporting officers at all times until the custody of the prisoner is transferred to a responsible authority, except in emergency situations.
- E.** Transporting officers are responsible for ensuring the safety of their prisoners.
1. Prisoners shall be secured with fastened seatbelts during transport in any vehicle equipped with seat belts.
 - a. If the vehicle is not equipped with seat belts in the transportation area, officers shall document in their report the lack of seat belts and the reason(s) that particular vehicle was used for the transport.
 - b. If circumstances prevent officers from safely securing the prisoner, the prisoner will be transported unsecured. The officers must document the specific reason(s) for the unsecured transport in their report.
 2. Transporting officers shall not stop or interrupt prisoner transport responsibilities unless exigent circumstances exist and the risk to the prisoner is minimal.
 3. Under no circumstances shall a prisoner be transported in the prone position. (06/13/14)
- F.** When transporting prisoners to a detention facility, officers shall comply with MPD rules, regulations and requirements until the prisoner is secure within the destination facility. Officers will then comply with the rules, regulations and procedures of the receiving facility. (06/13/14)
- G.** Once the subject is secured, an officer shall watch for any of the following signs: (06/13/14)
- Significant change in behavior or level consciousness;
 - Shortness of breath or irregular breathing;
 - Seizures or convulsions;
 - Complaints of serious pain or injury; and/or
 - Any other serious medical problem.
- H.** If officers observe any serious medical issue, they shall immediately contact EMS or transport directly to a local hospital. Officers shall also notify a supervisor. (06/13/14)
- I.** In the event of a prisoner escape during transport, the transporting officers shall immediately do the following:
1. Notify the dispatcher of the event and location.
 2. Attempt pursuit if possible.
 3. Notify a supervisor or proper jurisdictional authority of the escape.
 4. Complete the original arrest report, noting the escape from custody.

9-111**LEGISLATIVE IMMUNITY (05/29/02)**

(A)

Officers shall observe legislators' privilege from arrest as set forth in the State of Minnesota Constitution, Article IV, Section 10:

"The members of each house shall in all cases, except treason, felony, and breach of the peace be privileged from arrest during the session of their respective houses, and in going to or returning from the same."

9-112 DIPLOMATIC AND CONSULAR IMMUNITY (05/29/02)

(A)

Under international and federal law, diplomatic and consular officials are granted varying degrees of immunity and personal inviolability (i.e. freedom from arrest, detention, search etc.) depending on the position they hold. However, the privilege of personal inviolability must be balanced with the responsibility of the United States and its government bodies to protect the safety of its citizens. Police authorities may intervene to the extent necessary to halt activity that poses imminent danger to the safety of the public or when it is apparent that a serious crime may otherwise be committed.

1. Diplomatic agents, family members recognized as part of their household, and members of their administrative and technical staff and their households enjoy full immunity from arrest, detention, criminal prosecution, and search of their person, property or residence. Members of their service staff have no privileges or immunities except for immunity from prosecution for acts related to performance of their official duties. Family members of the service staff have no privileges or immunity. Family members of diplomatic agents who are also U.S. citizens have no privileges or immunities. Staff members or their families who are U.S. citizens or permanent residents of the U.S. have no privileges or immunities.
2. Consular officials, their families and staffs have no privileges or immunity related to arrest, detention, or search and seizure. The only exception is that career consular officers enjoy immunity from arrest unless the arrest is pursuant to a felony warrant.

The only authoritative document that can reliably identify a diplomatic or consular official is the identity card issued by the Department of State, Protocol Office. Other documents such as foreign diplomatic passports, U.S. diplomatic visas, tax exemption cards, or vehicle registration issued by the State Department do not conclusively indicate the diplomatic status of an individual. Officers presented with this type of identification should assume that the suspect might have some degree of immunity and attempt to verify further the diplomatic status of the suspect.

The on-duty Watch Commander must be notified of any incidents involving diplomats or consular officials. These incidents must still be fully documented on the CAPRS reports. The federal government, acting through the State Department may be able to take corrective action against foreign diplomats who violate U.S. criminal law.

9-113 ARREST AND/OR DETENTION OF FOREIGN NATIONALS (05/29/02)

(A)

It is the obligation of the United States, including local municipalities, to notify foreign authorities when foreign nationals are arrested or otherwise detained.

If a foreign national is arrested or detained, the following must be done:

1. Immediately inform the foreign national of his/her right to have his/her government notified concerning the arrest or detention.
2. If the foreign national asks that such notification be made, do so without delay by informing the consulate or embassy.
3. In the case of certain countries, such notification must be made without delay regardless of whether the arrestee/detainee so wishes. The Operations Development Unit and MECC have a copy of the Foreign Consular Offices in the United States that contains all pertinent phone numbers for Consular/Embassy offices. These are:

- Algeria
- Antigua and Barbuda
- Armenia
- Azerbaijan
- Bahamas
- Barbados
- Belarus
- Belize
- Brunei
- Bulgaria
- China
- Cost Rica
- Cyprus
- Czech Republic
- Dominica
- Fiji
- Gambia
- George
- Ghana
- Grenada
- Guyana
- Hong Kong
- Hungary
- Jamaica
- Kazakhstan
- Kiribati
- Kuwait
- Kyrgyzstan
- Malaysia
- Malta

- Mauritius
- Moldova
- Mongolia
- Nigeria
- Philippines
- Poland (only non-permanent residents)
- Romania
- Russian Federation
- St. Kitts/Nevis
- St. Lucia
- St. Vincent/Grenadines
- Seychelles
- Sierra Leone
- Singapore
- Slovakia
- Tajikistan
- Tanzania
- Tonga
- Trinidad/Tobago
- Tunisia
- Turkmenistan
- Tuvalu
- Ukraine
- United Kingdom
- Uzbekistan
- Zambia
- Zimbabwe

Foreign consular officials have the right to visit their arrested/detained nationals unless the arrestee/detainee objects to such visits.

9-114 POLICE AUTHORITY IN IMMIGRATION MATTERS (05/29/02) (04/02/18)

- A. The United States Code, 8 U.S.C. §1101, empowers the U.S. Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE), Department of Homeland Security, as the sole authority in immigration matters.
- B. The MPD works cooperatively with all federal agencies, but the MPD does not operate its programs for the purpose of enforcing federal immigration laws. In addition, City of Minneapolis Ordinance §19.30 prohibits undertaking “any law enforcement action for the purpose of detecting the presence of undocumented persons, or to verify immigration status,” except for a narrow exception for enforcing criminal laws such as relating to human trafficking and smuggling where immigration status is an element of the crime.
- C. Officers shall not undertake any law enforcement action for the purpose of detecting the presence of undocumented persons, or to verify immigration status, including but not limited to questioning any person about their immigration status.

1. The **only exception** to this prohibition is when immigration status is an element of a crime. This is a very limited exception and applies only to the types of federal crimes prohibited under 8 U.S.C. §1324, that relate to the crimes of human trafficking and smuggling.
 2. When questioning, arresting, or detaining any person under this exception, the officer must articulate and document the reason the officer believes the exception applies.
- D. Officers will take reports for missing, lost or stolen identification cards for foreign nationals in accordance with P&P 4-600 Specific Report Policies and Procedures.

9-115 FEDERAL PRISONERS - INCLUDING AWOLS

(05/29/02)

(A)

For the purposes of this section, AWOL is Absent Without Leave from Military Service. If an officer has a prisoner that they believe has a federal warrant, the officer shall confirm the warrant with Channel 7. The prisoner shall be transported to the Hennepin County Adult Detention Center where the prisoner will be received into custody per Minn. Stat. §641.03.

Last updated Sep 14, 2018

Darnella Frazier Facebook Video





Minneapolis Police Department
Use of Force Manual
Academics and Techniques
2019

EXHIBIT
3

Produced By: MPD Defensive Tactics Team

Test of Proportionality

- If unconsciousness occurred, request EMS immediately by radio
- Loosen clothing & jewelry around the SUB's neck area
- Check airway & breathing – start CPR if needed

After a Neck Restraint has been applied, you shall keep them under close observation until they are released to medical or other law enforcement personnel.

Transfer of Custody

- Prior to transferring custody of a subject that force was used upon, you shall verbally notify the receiving agency or employee of:
 - The type of force used,
 - Any injuries sustained (*real or alleged*) and
 - Any medical aid / EMS rendered

Force Reporting & Supervisor Notification

- The use of a Neck Restraint requires a Supervisor's Notification / Force Review and a PIMS report.

Two/Multiple Officer Techniques

Two Officer Handcuffing



- Verbal commands
- Escort hold
- Compression Wristlock transition to rear lower back while trapping subject's elbow under Officers arm pit. (Both Officers)
- Both Officers place inside foot behind subject's foot or inside leg between subject's leg if subject's is against a wall
- Communication between Officers, Second Officer exposes wrist for primary Officer
- Primary Officer applies handcuffs to exposed wrist using outside hand
- Secondary Officer then exposes 2nd wrist for Primary Officer to handcuff
- Check immediate area
- Check for Fit/Double lock

Hogtie Technique (*last resort - exigent circumstances only*)

One hobble secured around the SUB's ankles & the clip connected to the SUB's handcuffs in the rear (not a recommended technique). Do not hogtie unless no other option, and change to MRT as soon as possible.

Side Recovery Position

Placing a restrained subject on their side in order to reduce pressure on his/her chest and facilitate breathing.

MRT – Lifting, Moving & Transportation Options

Lifting & moving should be a team effort. One option is:

- **Officer #1** - snakes left arm under the SUB's left armpit (*facing SUB's head*)
- **Officer #2** - snake a right arm under the SUB's right armpit (*facing SUB's head*)
- **Officer #3** - wrap an arm around the SUB's ankles (*facing SUB's head*)
- **DO NOT PICK SUBJECT UP BY HOBBLE STRAPS**

Test of Proportionality

- The Maximal Restraint Technique shall only be used against subjects when lower force options either:
 - Have failed,
 - Will likely fail, or
 - Are too dangerous to attempt

Test of Proportionality

1. Position subject in recovery position as soon as possible
2. Determine if injured, and request EMS immediately by radio if necessary

Sworn employees shall routinely monitor the medical condition of a person that has been subject to the MRT until they are released to medical or other law enforcement personnel.

Transfer of Custody

- Prior to transferring custody of a subject that force was used upon, you shall verbally notify the receiving agency or employee of:
 - The type of force used,
 - Any injuries sustained (real or alleged) and
 - Any medical aid / EMS rendered

Force Reporting & Supervisor Notification

- The use of the Maximal Restraint Technique requires a Supervisor's Notification / Force Review and a PIMS report.

Chokehold

- Applying direct pressure on a SUB's trachea & airway (*front of the neck*); blocking or obstructing the airway
- Deadly Force Option

Mechanics of a Chokehold

- Wrap your arm around the SUB's neck
- Apply forearm pressure directly against the front of the SUB's neck (*trachea*)

Test of Proportionality

- Choke holds (deadly force) shall only be used against subjects when lower force options either:
 - Have failed
 - Will likely fail, or
 - Are too dangerous to attempt

Post Care Treatment

- A. Request EMS immediately by radio
- B. Loosen clothing & jewelry around the SUB's neck area
- C. Check airway & breathing – start CPR if needed

After a Choke Hold has been applied, you shall keep them under close observation until they are released to medical or other law enforcement personnel.

Transfer of Custody

- Prior to transferring custody of a subject that force was used upon, you shall verbally notify the receiving agency or employee of:
 - The type of force used,
 - Any injuries sustained (*real or alleged*) and
 - Any medical aid / EMS rendered

Transfer of Custody

- The use of a Choke Hold requires a Supervisor's Notification / Force Review and a PIMS report.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

ORDER

vs.

Mohamed Mohamed Noor,

Court File No. 27-CR-18-6859

Defendant.

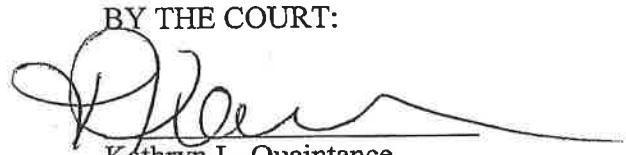
On August 15, 2018, Mohamed Mohamed Noor, "Defendant" herein, filed a Motion to Dismiss for Lack of Probable Cause. The State responded in opposition to Defendant's motion on September 5, 2018, and Defendant subsequently replied on September 12, 2018. In conjunction with the written arguments, the parties appeared before the Court for a probable cause hearing on September 27, 2018. Thomas Plunkett and Peter Wold submitted argument and appeared on behalf of Defendant. Amy Sweasy and Patrick Lofton, Assistant Hennepin County Attorneys, submitted argument and appeared on behalf of the State of Minnesota.

Based upon all files, records, and submissions, herein,

IT IS HEREBY ORDERED:

1. The Defendant's Motion to Dismiss for Lack of Probable Cause is **DENIED**.
2. Issues related to public disclosure of supporting materials will be separately considered, pursuant to the Minnesota Rules of Criminal Procedure.
3. The attached Memorandum shall be incorporated with this order.

Dated: 9/27/18

BY THE COURT:

Kathryn L. Quaintance
Judge of District Court

MEMORANDUM

After considering the evidence, the argument of counsel, and all the files, records and proceedings herein, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT & CONCLUSIONS OF LAW

A criminal complaint and supporting affidavits are required to set forth all of the essential facts and elements which constitute the charged offenses *State v. Oman*, 121 N.W.2d 616, 619 (Minn. 1963). These facts must establish “probable cause to believe that an offense has been committed and the defendant committed it.” Minn. R. Crim. P. 2.01. “Unlike proof beyond a reasonable doubt or preponderance of the evidence, probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *State v. Harris*, 589 N.W.2d 782, 790–91 (Minn. 1999) (quotation omitted). This means that probable cause is found when “evidence worthy of consideration brings the charge against the [defendant] within reasonable probability.” *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003) (quoting *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976)). Probable cause exists if “the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial.” *Florence*, 239 N.W.2d at 903.

“The district court must view the issue of probable cause “in a light most favorable to the State,” and “may not assess the relative credibility or weight of conflicting evidence.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. Ct. App. 2016) (citing *State v. Knoch*, 781 N.W.2d 170, 178 (Minn. Ct. App. 2010), *review denied* (Minn. June 29, 2010); *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. Ct. App. 1996), *review denied* (Minn. Apr. 16, 1996)). Dismissal is not appropriate when the factual record establishes “a question for jury determination on each element of the crime charged.” *State v. Lopez*, 778 N.W.2d 700, 703-03 (Minn. 2010). A probable cause hearing is not

a substitute for the discovery process mandated under the Rules of Criminal Procedure. *State v. Rud*, 359 N.W.2d 573, 578 (Minn.1984).

I. Evidence for Judicial Review

As a preliminary matter, the Court must first address the evidentiary basis for its probable cause determination. Defendant's initial brief argued probable cause within the four corners of the complaint. In response, the State enlarged the argument beyond the four corners of the complaint by alleging supplemental facts that were not supported in the record before the Court. Defendant responded to the State's motion opposing dismissal by contesting the State's facts and arguing others not contained in the record. Thus, the parties presented conflicting recitations of facts. These alleged facts were supported in documents and recordings distributed between the parties during discovery, but had not been provided to the Court. To make sense of the factual disputes, the Court directed the parties to produce all of the documents and recordings discussed in their pleadings, in order to make a probable cause determination based on its own review of items listed in the attached notes. *See generally* Minn. R. Evid. 11.03.

II. Murder in the Third Degree

Defendant is charged with one count of Murder in the Third Degree – Perpetrating Eminently Dangerous Act, pursuant to MINN. STAT. § 609.195(a). The parties do not dispute that Mohamed Noor caused the death of Justine Damond Rusczyk on or about July 15, 2017, in Hennepin County. The probable cause dispute arises from the third element of the crime:

[T]he defendant's intentional act, which caused the death of Justine Damond Rusczyk, was eminently dangerous to human beings and was performed without regard for human life. Such an act may not be specifically intended to cause death, and may not be specifically directed at the particular person whose death occurred, but it is committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening.

10 Minn. Prac., Jury Instr. Guides—Criminal CRIMJIG 11.38 (6th ed.)

A determination that Defendant's actions were "eminently dangerous to human beings and without regard for human life," can be argued based on evidence that Noor fired into an unlit residential alley in the late evening, where a bicyclist was present. The submissions also indicate an acknowledged potential for the presence of ordinary citizens in the immediate vicinity, either walking dogs or generally going about their business. Defendant either saw and fired at what he believed was a person, or he fired into the darkness at an unknown target. Under either scenario, the jury could find that his act was dangerous to human beings and was performed without regard for human life.

Further evidence that Defendant fired across his partner's body, from the confined passenger's seat of a police squad car, and out the driver's side window, could also be considered by the jury. A jury could determine that this conduct was reckless and wanton, and the Defendant possessed the knowledge that someone could be killed. The record does not contain evidence suggesting that Defendant's conduct was "not specifically directed at the person whose death occurred." What was in the Defendant's mind at the time of the incident can only be inferred at this point. There is, however, sufficient evidence from which the State could argue that Mohamed Noor fired off a round without knowing what—or who—was outside the police cruiser.

III. Manslaughter in the Second Degree

Defendant was also charged with one count of Manslaughter in the Second Degree – Culpable Negligence Creating Unreasonable Risk, pursuant to MINN. STAT. § 609.205(1). As previously stated, the Defendant concedes that he caused the death of Justine Damond Ruszczyk on or about July 15, 2017, in Hennepin County. The contested issue is whether the Defendant caused the death of Justine Damond Ruszczyk by culpable negligence: creating "an unreasonable risk and consciously [taking] a chance of causing death or great bodily harm." 10 Minn. Prac., Jury

Instr. Guides—Criminal CRIMJIG 11.56 (6th ed.). The jury must determine whether by shooting into a dark alley—either at a person or into the darkness—Defendant consciously created an unreasonable risk of causing death or great bodily harm. Obviously, Defendant may argue otherwise. When determining probable cause, the Court considers the facts in a light most favorable to the State. *Barker*, 888 N.W.2d 348, 353 (citations omitted).

CONCLUSION

Upon review of the complaint and the supporting evidence, the Court finds that there is probable cause to charge Mohamed Mohamed Noor with one count of Murder in the Third Degree—Perpetrating Eminently Dangerous Act, pursuant to MINN. STAT. § 609.195(a), and one count of Manslaughter in the Second Degree—Culpable Negligence Creating Unreasonable Risk, pursuant to MINN. STAT. § 609.205(1).

K.L.Q.

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Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

Shawn Patrick PADDEN, Appellant.

No. C1-99-506.

|
Jan. 25, 2000.**Attorneys and Law Firms**

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for appellant.

Considered and decided by AMUNDSON, Presiding Judge,
KALITOWSKI, Judge, and HARTEN, Judge.

UNPUBLISHED OPINION

KALITOWSKI.

*1 Following his convictions for second-degree manslaughter and third-degree murder, appellant Shawn Patrick Padden argues the district court erred in (1) instructing the jury on third-degree murder where his acts were directed at one person; (2) sentencing him on both third-degree murder and second-degree manslaughter; and (3) sentencing him to an upward durational departure. We affirm as modified.

FACTS

Appellant was charged and convicted of third-degree murder and second-degree manslaughter in the death of 18-year-old

G.M. On January 4, 1998, the victim was asleep when his mother left for work just before midnight. When she arrived home the next morning, she found her son hanging by a rope noose from his closet door with his hands tied behind his back. A tipped-over chair was found a few feet from his body. Evidence was presented at trial indicating G.M. could not have tipped over the chair himself and that he died sometime between midnight and 2:00 a.m.

Appellant lived a few blocks from the victim's home. He purchased alcohol for the victim and other high school students and allowed them to drink and smoke marijuana at his apartment. Appellant initially admitted seeing the victim at about 12:30 a.m. on the night he died but later denied this. Evidence was introduced at trial indicating: (1) appellant was seen walking outside at about 2:00 a.m. on the night G.M. died; (2) cigarette butts and a cigarette package of the brand smoked by appellant were found in the victim's room; (3) the cigarette butts were circumstantially proven to be from the night the victim died; and (4) a bowling pin belonging to the victim was seen in appellant's apartment but was not recovered.

In addition to the circumstantial evidence linking appellant to the crime scene, the state presented substantial evidence concerning appellant's fascination with hangings: (1) a photograph printed from the internet depicting a hanging victim was found in appellant's apartment; (2) evidence was introduced that appellant showed the hanging picture to several persons and commented that he enjoyed the picture; (3) appellant had a small toy hanging from a noose in his apartment; (4) appellant had stated he would like to see a real hanging and kept a noose in his apartment closet; (5) appellant had stated he wanted to see someone hang in real life and that if he killed someone, he would hang them; and (6) appellant had stated prior to G.M.'s death that he had once killed someone by hitting him over the head and then hanging him.

In addition, appellant had admitted to participating in hangings with the victim prior to the victim's death. Appellant explained that he or the victim would stand on a chair with a rolled-up sheet around his neck and shut the sheet in the door. The "hangman" would remove the chair and then release the person hanging by opening the door. Appellant admitted participating in such a hanging with the victim in November or December of 1997. Appellant also told police that the victim wanted to do a hanging on December 31, 1997, but appellant refused. In addition to these incidents, evidence was

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presented that appellant had tied his former girlfriend's hands using a knot similar to that used on the victim's hands.

DECISION

I.

*2 Whether appellant's acts could constitute third-degree murder is an issue of statutory interpretation. The proper construction of a statute is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn.1996). A person is guilty of murder in the third degree if the person without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life.

Minn.Stat. § 609.195(a) (1998). In a third-degree murder case, the state must prove (1) that defendant's acts caused the death of another; (2) that the death was caused by perpetrating an act eminently dangerous to others; (3) that the act evinces a depraved mind; and (4) the jurisdictional element. *State v. Mytych*, 292 Minn. 248, 257, 194 N.W.2d 276, 282 (1972). While third-degree murder must be committed without the intent to effect death, the state need not affirmatively prove lack of such intent. *Id.*

The jury instructions for third-degree murder parallel these requirements. 10 *Minnesota Practice*, CRIMJIG 11.18 (1990). The instructions provide that the state must prove: [D]efendant's intentional act which caused the death of [the victim] was eminently dangerous to human beings and was performed without regard for human life. Such an act may not be specifically intended to cause death, and may be without specific design on the particular person whose death occurred, but it is committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening.

Id. (emphasis added).

Appellant argues that the submission of third-degree murder to the jury was error because his acts were specifically directed at G.M. and therefore were not within the third-degree murder statute. We disagree. Under the plain language of the statute the state has met the requirements of third-degree murder. First, appellant's act was "dangerous to others" even if only appellant and the victim were present. *See*

Mytych, 292 Minn. at 257, 194 N.W.2d at 282 (stating that there was "no question" that the defendant perpetrated an act dangerous to others where the defendant fired a gun at her ex-boyfriend and his wife, the only persons present). In a third-degree murder case, the act need not threaten more than one person, it must only be committed without special regard to its effect on any particular person or persons. *State v. Reilly*, 269 N.W.2d 343, 349 (Minn.1978). The fact that the statutory language "dangerous to others" is plural does not mean multiple persons had to be present. In construing statutes, the singular includes the plural and the plural includes the singular. Minn.Stat. § 645.08(2) (1998).

Second, appellant possessed a depraved mind in acting out this fascination with hanging and he did so with reckless disregard for its dangerousness. Although only the victim and appellant were present when the victim was hanged, evidence was introduced indicating appellant's depravity was not particularly directed at the victim. No evidence was introduced indicating appellant had any animus for the victim nor was there evidence that appellant intended to kill G.M. The evidence instead indicates that appellant was fascinated with hanging and had expressed a desire to see *someone* die by hanging.

*3 Notwithstanding the plain language of the statute, appellant contends the district court erred in instructing the jury on third-degree murder. In support, appellant relies on two cases upholding a trial court's refusal to give a third-degree-murder instruction. *See State v. Stewart*, 276 N.W.2d 51, 54 (Minn.1979) (holding that an instruction on third-degree murder was not required where there was "no rational basis" to conclude that defendant's acts were dangerous to others); *Reilly*, 269 N.W.2d at 349-50 (holding that an instruction on third-degree murder was not required where assault was intentional and directed particularly at the victim). But the quoted language in these cases is not applicable here. Unlike the facts here and in *Mytych*, both *Stewart* and *Reilly* involve defendants *requesting* instructions on third-degree murder as a lesser-included offense where the state presented evidence affirmatively proving intent. When the issue in a case is whether a defendant is entitled to an instruction on a lesser-included offense, the court's inquiry is whether the jury could reasonably find the defendant not guilty of the greater charge, but still find the defendant guilty of the lesser charge. *See, e.g., State v. Wahlberg*, 296 N.W.2d 408, 417 (Minn.1980) (holding that instruction on third-degree murder was not required because there was "ample evidence"

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that the killing was intentional and third-degree murder is unintentional).

Moreover, in *Stewart and Reilly*, the court determined that the defendant's actions were directed at the victim in such a way that the jury could *not* conclude that the acts were depraved but not intentional. *Stewart*, 276 N.W.2d at 54; *Reilly*, 269 N.W.2d at 349. Here, there was not "ample evidence" that the act was intentional, thus preventing a third-degree murder instruction. The state introduced no evidence establishing an intentional crime such as first-degree or second-degree murder.

The district court correctly noted that here, as in *Mytych*, we are presented with an atypical case. Both *Mytych* and this case present the circumstance in which third-degree murder is not a lesser-included offense but rather is the most serious conviction. 292 Minn. at 251, 194 N.W.2d at 278-79. Also, here, as in *Mytych*, a third-degree murder charge was permitted where the only persons present at the time of the incident were harmed by the defendant's actions. *Id.* at 257, 194 N.W.2d at 283. Finally, the *Mytych* court concluded that "the trial court was justified in finding that defendant was guilty of something more serious than culpable negligence." *Id.* at 259, 194 N.W.2d at 283. We reach the same conclusion here.

Finally, appellant argues that the district court erred by considering prior offenses in determining there was evidence that appellant possessed a "depraved mind." We disagree. Prior offenses may appropriately be considered in determining a person's state of mind. *See* Minn.R.Evid. 404(b).

II.

*4 Appellant contends that the district court erred when it sentenced appellant for both third-degree murder and second-degree manslaughter. If a defendant is convicted of more than one charge for the same act, the court can only formally adjudicate and sentence on one count. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn.1984). But here, the court imposed the provisional sentence for the manslaughter conviction at appellant's express request and with the understanding that it would be vacated should the third-degree-murder conviction be sustained on appeal. Because we affirm the third-degree-murder conviction, we vacate appellant's conviction and provisional sentence for second-degree manslaughter.

III.

Appellant argues that the district court erred when it imposed a double upward departure. We disagree. Generally, in determining whether to depart in sentencing, a district court must decide "whether the defendant's conduct was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Broten*, 343 N.W.2d 38, 41 (Minn.1984). The district court is accorded broad discretion and this court will not interfere absent a "strong feeling that the sanction imposed exceeds or is less than that 'proportional to the severity of the offense of conviction and the extent of the offender's criminal history.'" *State v. Schroeder*, 401 N.W.2d 671, 674 (Minn.App.1987) (quotation omitted), *review denied* (Minn. Apr. 23, 1987).

The district court departed from the presumptive sentence of 150 months and sentenced appellant to 300 months for his conviction for third-degree murder. Although the district court cited several grounds for the departure, we conclude that the district court did not abuse its discretion in departing based on the victim's particular vulnerability and the emotional trauma to the victim's family. *See State v. Kobow*, 466 N.W.2d 747, 753 (Minn.App.1991) (holding that victim's particular vulnerability alone was sufficient to support the upward departure), *review denied* (Minn. Apr. 18, 1991).

A victim may be particularly vulnerable due to age differences or abuse of a position of trust. *State v. Harwell*, 515 N.W.2d 105, 110 (Minn.App.1994) (holding 14 year old was particularly vulnerable due to her young age), *review denied* (Minn. June 15, 1994); *Schroeder*, 401 N.W.2d at 675 (holding victim was particularly vulnerable because she trusted defendant, having known him for six years). Particular vulnerability may be used as a basis for departure in crimes that do not require intent to harm. *State v. Bicek*, 429 N.W.2d 289, 292 (Minn.App.1988), *review denied* (Minn. Nov. 23, 1988).

Appellant was several years older than the victim. He illegally provided alcohol for the victim and other young people, encouraged them to hang out at his apartment, allowed them to use his apartment to smoke marijuana, and encouraged the victim to drive him places. The record supports the conclusion that the age difference and the nature of the relationship allowed appellant to exert inappropriate influence over the victim. Moreover, at the time of his death the victim was

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also physically vulnerable because his hands were tied behind his back. See *State v. Dalsen*, 444 N.W.2d 582, 583-84 (Minn.App.1989) (holding sexual-assault victim was particularly vulnerable because her hands were tied behind her), *review denied* (Minn. Oct. 13, 1989).

*5 The district court also did not abuse its discretion in basing the departure on the particular and unique emotional trauma to the victim's family members. See *State v. Garcia*, 374 N.W.2d 477, 480 (Minn.App.1989) (holding departure was supported in part by trauma inflicted on the victim's family), *review denied* (Minn. Nov. 1, 1985). Here, appellant left G.M.'s home with G.M. hanging in his bedroom. Instead of reporting G.M.'s death, appellant left the victim hanging by his closet door to be found by his mother the next morning.

In conclusion, we affirm appellant's conviction and sentence for third-degree murder and vacate the conviction and provisional sentence for second-degree manslaughter.

Affirmed as modified.

HARTEN, Judge (dissenting).

*5 Because I would reverse on the issue of instructing the jury on third-degree murder, I respectfully dissent.

Minn.Stat. § 609.195 (1998) provides that:

Whoever, *without intent to effect the death of any person*, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree * * *

(Emphasis added.) The court relies on *State v. Mytych*, 292 Minn. 248, 194 N.W.2d 276 (1972), for its holding that appellant's intent to effect the death of this particular victim does not preclude a conviction of third-degree murder. But *Mytych* does not address the "without intent to effect the death of any person" criterion; its only reference to that criterion is to note that "affirmative proof of the lack of such intent is not necessary." *Id.* at 257, 194 N.W.2d at 282.¹

Holding that the state need not provide affirmative proof of the lack of intent to effect death, however, does not and cannot obliterate the statutory requirement that the act causing death must be perpetrated "without intent to effect the death of any person." See *In re Estate of Ablan*, 591 N.W.2d 725, 727 (Minn.App.1999) (in construing a statute, this court considers

the statute as a whole and gives effect to all of its provisions); see also *Shakopee Mdewakanton Sioux (Dakota) Community v. Minnesota Campaign Finance & Public Disclosure Bd.*, 586 N.W.2d 406, 412 (Minn.App.1998) (this court can neither make inferences from language omitted from a statute nor supply statutory language).

Moreover, later cases interpreting Minn.Stat. § 609.195, demonstrate both the force of the statutory "without intent to effect the death of any person" and the limitations of *Mytych*. See e.g., *State v. Wahlberg*, 296 N.W.2d 408 (Minn.1980) and *State v. Reilly*, 269 N.W.2d 343 (Minn.1978).

Wahlberg found no error in a district court's refusal to instruct a jury on third-degree murder "where the act was intentional and directed toward one person." *Wahlberg*, 296 N.W.2d at 411.

This statute [Minn.Stat. § 609.195 (1978)] was intended to cover cases where the reckless or wanton acts of the accused were committed without special regard to their effect on any particular person or persons; the act must be committed without a special design upon the particular person or persons with whose murder the accused is charged.

*6 * * * *

[In this case,] there was ample evidence to support a finding of an intentional killing, whereas third-degree murder is an unintentional killing.

Id. at 417-18. As in *Wahlberg*, the circumstantial evidence surrounding the killing here supplies ample evidence of intentional homicide and shows that appellant's act was committed with a special design upon his victim, not "without intent to effect the death of any person."

In *Reilly*, the supreme court again upheld the refusal to instruct on third-degree murder.

The "eminently dangerous act" here was defendant's sexual assault of the victim, which requires specific intent and is directed particularly at the victim. In the words of [*State v. Lowe*, [66 Minn. 296, 298, 68 N.W. 1094, 1095 (1896)]] defendant's act was not one "committed without special design upon the particular person * * * with whose murder the accused is charged."

Reilly, 269 N.W.2d at 349. Here, the hanging, like a sexual assault, required specific intent and was directed particularly at the victim. See also *State v. Stewart*, 276 N.W.2d 51, 54

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(Minn.1979) (upholding the refusal to instruct on third-degree murder because the accused in a death by shooting had fired only at the victim and his act was not eminently dangerous to more than one person).

The court attempts to distinguish *Stewart* and *Reilly* on two grounds: first, that those cases involved “defendants requesting instructions on third-degree murder as a lesser-included offense,” and second, that “[defendants'] actions were directed at the victim in such a way that the jury could *not* conclude that the acts were depraved but not intentional.” The first ground strikes me as a distinction without a difference. The statutory elements of third-degree murder must be proved to obtain any conviction on that charge, whether the defendant is also charged with first-degree and second-degree murder, with first-degree and second-degree manslaughter, or with all or some of them, or with nothing else. If one element (here, lack of intent to effect death) is missing, the jury cannot be instructed on the charge. See *Wahlberg*, *Reilly*, and *Stewart*; see also

State v. Leinweber, 303 Minn. 414, 416, 228 N.W.2d 120, 123 (1975) (reversing a third-degree murder conviction and remanding because the jury should have been instructed on first-degree manslaughter and on second-degree murder, third-degree murder and second-degree manslaughter). The elements of third-degree murder do not change either to accommodate or to obstruct the application of that charge in given circumstances. As to the court's second distinction, appellant's hanging was no less directed at his victim than the sexual assault in *Reilly* and the shooting in *Stewart*.

Because appellant's act did not meet the statutory criterion of being perpetrated “without intent to effect the death of any person,” and *Wahlberg* and *Reilly* both indicate that a third-degree murder instruction is inappropriate unless that element is met, the third-degree murder conviction must be reversed.

All Citations

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Footnotes

- 1 The only issue in *Mytych* was whether the depravity requisite to third-degree murder could be inferred from the accused's acts or whether she was guilty of no more than culpable negligence; the supreme court concluded that “her acts evinced a depraved mind in the sense in which that term is used in the statute defining murder in the third-degree.” *Id.* at 259, 194 N.W.2d at 283. *Mytych* therefore addresses an issue different from that addressed here and is not dispositive of the instant case.

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