

MISSOULA POLICE DEPARTMENT POLICY MANUAL



<i>Subject:</i> USE OF FORCE		
<i>Effective Date:</i> 9/1/2020	<i>Original Date:</i> 12/12/2001	<i>Next Review:</i> 09/01/2023
<i>Chapter</i> 7	<i>Policy #</i> 7.10	<i>Distribution:</i>
<i>References:</i> <i>Graham v. Conner, Garner v. Tennessee, MCA 45-3-102, MCA45-3-105, MCA 45-3-106, MCA 45-3-108, MCA 45-7-301, MCA 46-5-401, MPD K-9 Policy 10.80</i>		

I. Purpose

The purpose of this policy is to provide officers of the Missoula Police Department with a use of force policy that is concise, easily understood, and consistent with prevailing law. For purposes of this policy, all law enforcement classifications will be referred to as officer(s).

The Missoula Police Department recognizes and respects the value and integrity of each human life without prejudice to anyone. This policy recognizes that the use of force by law enforcement officers requires continuous evaluation. Even at its lowest level, the use of force is a serious responsibility.

There is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation. Each law enforcement officer is expected to use this policy and guidelines to make such decisions in a professional, impartial and reasonable manner based on the totality of the facts and circumstances perceived by the officer at the time of the event.

II. Policy

It is the policy of the Missoula Police Department that officers may use only that force which is objectively reasonable under the totality of the circumstances to:

- (a) Defend themselves;
- (b) Defend others;
- (c) Effect an arrest or detention; or
- (d) Prevent escape.

III. Definitions

Objectively Reasonable: The legal standard to determine the lawfulness of a use of force incident is the Fourth Amendment to the United States Constitution. *Graham v. Conner*, 490 U.S. 386 (1989). Graham states in part, “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 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. The test of reasonableness is not capable of precise definition or mechanical application.”

Deadly Force: Force that is likely to cause death or serious bodily injury.

Serious Bodily Injury: Any injury which creates: 1) Substantial risk of death; 2) Causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; 3) at the time of the injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

Intermediate Force: Any force that has a substantial risk of injury. Intermediate force may result from a variety of applications, including: 1) Chemical agents; 2) Taser; 3) Impact Weapons; or 4) Canine

Non-Deadly Force: – Any force with a minimal risk of injury.

Imminent: Black’s Law Dictionary defines imminent as “near at hand; impending; on the point of happening.”

Passive Resistance: The subject uses non-compliant inaction to resist the officer’s commands.

Defensive Resistance: The subject engages in defensive resistance by taking action to prevent being taken into custody or detained.

Active Aggression: The subject is overtly attempting to injure the officer.

Aggravated Active Aggression: The subject’s actions that are likely to result in the death or serious bodily injury to an officer or another person.

IV. Procedures

A. Use of Force Options

Selecting the appropriate force option is the decision of the officer. The decision regarding which option to select is to be based on the concepts of sound judgment, the circumstances perceived by the officer at the time, and the utilization of that force reasonable to gain control of the situation. Officers should provide a warning to an individual prior to using force if feasible. It is not necessary to move progressively from one option to the next while escalating or de-escalating the degree of force utilized.

- a. Officer Presence
- b. Verbal Commands
- c. Soft Empty Hand Techniques

Includes, but is not limited to, wrist and joint locks, and pressure points.

- d. Hard Hand Techniques

Strikes with hands, feet, arms, elbows or knees.

- e. Oleoresin Capsicum Spray and Chemical Agents
- f. Taser
- g. Impact Weapons/Less Lethal Munitions
- h. Canine
- i. Deadly Force

It is recognized that circumstances may arise in which officers reasonably believe it impractical or ineffective to use the standard tools, weapons or methods provided by the department. Officers may find it more effective or practical to improvise their response to rapidly unfolding events they are confronting. In such circumstances, the use of any tool, weapon or method of opportunity must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

B. Use of Force - General

- 1. When deadly force is not a reasonable option, officers may only use that level of force that is objectively reasonable under the totality of the circumstances to bring an incident under control.

2. Officers are authorized to use department-approved intermediate and non-deadly force techniques and issued equipment they have been trained to use to:
 - a. Protect the officer or others from physical harm;
 - b. Restrain or subdue a resistant individual;
 - c. Bring an unlawful situation safely and effectively under control.

C. Use of Deadly Force

Officers are authorized to use deadly force to protect the officer or others from what is reasonably believed to be a threat of imminent death or serious bodily injury.

D. Deadly Force Restrictions

1. Officers may use deadly force to destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured, when the officer reasonably believes that deadly force can be used without harm to the officer or others.
2. Warning shots may be fired if an officer is authorized to use deadly force. Warning shot(s) may be fired only if the officer reasonably believes it can be fired safely in light of all circumstances of the encounter. Firing a warning shot is generally discouraged, but the Missoula Police Department recognizes that there may be circumstances in doing so may reduce the possibility of the need to use deadly force.
 - a. A warning shot is not required before the actual use of deadly force.
3. An officer should only fire at or from a moving vehicle when such force is objectively reasonable.

If an officer is in the path of an oncoming vehicle the officer should, if reasonable to do so under the existing circumstances, attempt to move from the path of a vehicle causing a threat.

An officer should not purposely step into the path of a vehicle known to be attempting to flee from the police.

4. Chokeholds are prohibited, unless it is used as a last resort to defend the officer against death or serious bodily injury.

E. Use of Force to Prevent Escape

An officer, who has a person in custody, may use an objectively reasonable amount of force to prevent that person from escaping.

1. An officer may use reasonable force, up to and including force that is likely to cause death or serious bodily harm, to prevent a person, the officer reasonably believes was legally detained in a correction facility under sentence or awaiting trial, from escaping.

F. Method of Arrest

1. An arrest is made by the actual restraint of a person or by their submission to custody.
 - a. Objectively reasonable force may be used to make an arrest or effect entry to a building or property to make the arrest. A person may not be subject to greater restraint than needed to detain or hold them.
2. When arresting a person for a warrant an officer shall tell the person of the officer's authority, the intention to make the arrest, the reason for the arrest and the fact there is a warrant for their arrest.
 - a. This advisory is not necessary when the person to be arrested has fled before an advisory can be given or when providing the advisory could imperil the arrest.
 - b. The officer does not have the warrant in possession at the time of arrest, but the arrestee must be shown the arrest warrant as soon as is practicable if requested.
3. An officer making a probable cause arrest shall inform the person of the authority and intent to make the arrest, and the reason for the arrest unless the person is actually committing or attempting to commit the offense, or are fleeing or the advisory would endanger the arrest.

G. Resisting Arrest

1. Pursuant to state law, a person may not resist an arrest by an officer.
2. A person resists arrest if they purposely or knowingly, in order to avoid arrest, threatens or uses physical force or violence against an officer or they use any other means that creates the risk of injury to an officer or another.

H. Involvement In or Witnessing an Incident

1. Once a situation has been made safe, an officer shall immediately notify an on-duty supervisor of a use-of-force incident.
2. While on duty and whenever the use of force by any other peace officer (Missoula Police Department or other agency) is excessive, it is the responsibility of the observing officer to take immediate action appropriate for the circumstances.

- a. The officer's actions should include verbal and/or physical intervention necessary to mitigate the use of excessive force.
- b. The officer shall immediately notify an on-duty supervisor.

I. Supervisory Response

1. A supervisor must respond to the scene when an officer has used force and any of the following circumstances exist:
 - a. It would be reasonable to expect the force has created or may create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ.
 - b. A negligent or intentional discharge of a firearm regardless of injury.
 - c. Any use of force which results in injury or complaint of injury to an officer or other person.
 - d. Any time an intermediate force option is used.
 - e. Any time force is used on a juvenile, elderly, or pregnant person.
 - f. Any time there is any blow, kick, strike, Taser application or similar force used against a handcuffed or otherwise restrained person and in-custody subject, regardless of injury.
 - g. Any time a police vehicle is used to strike a person (in a situation where deadly force is justified), or is intentionally used to strike another vehicle.
2. The supervisor shall ensure the proper, thorough and accurate reporting procedures are followed.

V. **REPORTING THE USE OF FORCE**

Any use of force by an officer shall be documented on a "Supervisor's Use of Force Report." The report shall be considered an initial review of the appropriateness of the use of force.

Any use of force by an officer shall be documented in the following manner:

- A. Calls For Service narrative reports completed by all officers involved in the use of force.
- B. Supervisor's Use of Force Report form, completed by the appropriate supervisor.
 1. In instances where it appears to the supervisor that the use of force has or may have resulted in physical injury to either subjects or officers, the supervisor will fully document those conditions in a narrative attachment to the "Supervisor's Use of Force Report" form. The narrative shall include

detail on injuries, and any medical treatment and will include the name of the facility or medical personnel administering care. The report will also note cases where subjects have declined medical treatment.

2. Supervisors shall review all available video, reports or other documentation prior to completing the Supervisor's Use of Force Report.
3. In instances where force has been used, should, if circumstances allow, document, via photography, any injuries or lack thereof.

VII. CARE FOR USE OF FORCE SUBJECTS:

Once a subject has been either properly restrained and/or brought under control the officer shall administer first aid to any injuries observed. The subject should be monitored for any effects that could be a result of force.

Medical assistance shall be obtained for any subject who has sustained injury, expressed a complaint of injury to an officer or who has been rendered unconscious as a result of a force by an officer. Officers shall also be alert that subjects who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength, imperviousness to pain (sometimes called "excited delirium") or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. If an individual exhibits signs of distress after such an encounter the officer shall immediately summon emergency medical aid or transport the person to a medical facility.

If a subject has been sprayed with a chemical agent the officer should care for the subject once they have been properly handcuffed or brought under control.

- VII.** The Montana Code Annotated contains the primary sources of law governing police use of force.

Part 1

When Force Justified

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the conduct is necessary for self-defense or the defense of another against the other person's imminent use of unlawful force. However, the person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes that the force is necessary to prevent imminent death or serious bodily harm to the person or another or to prevent the commission of a forcible felony.

History: En. [94-3-102](#) by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, [94-3-102](#); amd. Sec. 1643, Ch. 56, L. 2009.

45-3-105. Use of force by aggressor. The justification described in [45-3-102](#) through [45-3-104](#) is not available to a person who:

- (1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or
- (2) purposely or knowingly provokes the use of force against the person, unless:
 - (a) the force is so great that the person reasonably believes that the person is in imminent danger of death or serious bodily harm and that the person has exhausted every reasonable means to escape the danger other than the use of force that is likely to cause death or serious bodily harm to the assailant; or
 - (b) in good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that the person desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

History: En. [94-3-105](#) by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, [94-3-105](#); amd. Sec. 1646, Ch. 56, L. 2009.

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in custody is justified in the use of force to prevent the escape of the arrested person from custody that the officer or other person would be justified in using if the officer or other person were arresting the person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, that the guard or officer reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the guard or officer reasonably believes to be lawfully detained in the institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. [94-3-106](#) by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, [94-3-106](#); amd. Sec. 1647, Ch. 56, L. 2009.

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest that the person knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if the person believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. [94-3-108](#) by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, [94-3-108](#); amd. Sec. 1649, Ch. 56, L. 2009.

Part 3

Obstructing Governmental Operations

45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if the person knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

- (a) using or threatening to use physical force or violence against the peace officer or another; or
- (b) using any other means that creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, if the peace officer was acting under color of the officer's official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. [94-7-301](#) by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, [94-7-301](#); amd. Sec. 1685, Ch. 56, L. 2009.

46-5-401. Investigative stop and frisk. (1) In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense. If the stop is for a violation under Title 61, unless emergency circumstances exist or the officer has reasonable cause to fear for the officer's own safety or for the public's safety, the officer shall as promptly as possible inform the person of the reason for the stop.

(2) A peace officer who has lawfully stopped a person or vehicle under this section may:

(a) request the person's name and present address and an explanation of the person's actions and, if the person is the driver of a vehicle, demand the person's driver's license and the vehicle's registration and proof of insurance; and

(b) frisk the person and take other reasonably necessary steps for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present. The officer may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe that the object is a deadly weapon until the completion of the stop, at which time the officer shall either immediately return the object, if legally possessed, or arrest the person.

(3) A peace officer acting under subsection (2) while the peace officer is not in uniform shall inform the person as promptly as possible under the circumstances and in any case before questioning the person that the officer is a peace officer.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(1) thru (3); amd. Sec. 42, Ch. 800, L. 1991; amd. Sec. 1, Ch. 343, L. 2003.

46-6-104. Method of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by the person's submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested may not be subject to any greater restraint than is necessary to hold or detain that person.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

History: En. 95-602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-602; amd. Sec. 34, Ch. 800, L. 1991.

46-6-216. Manner of arrest with warrant. (1) When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, the intention to arrest that person, the cause of the arrest, and the fact that a warrant has been issued for that person's arrest, except:

(a) when the person flees or forcibly resists before the peace officer has an opportunity to inform the person; or

(b) when the giving of the information will imperil the arrest.

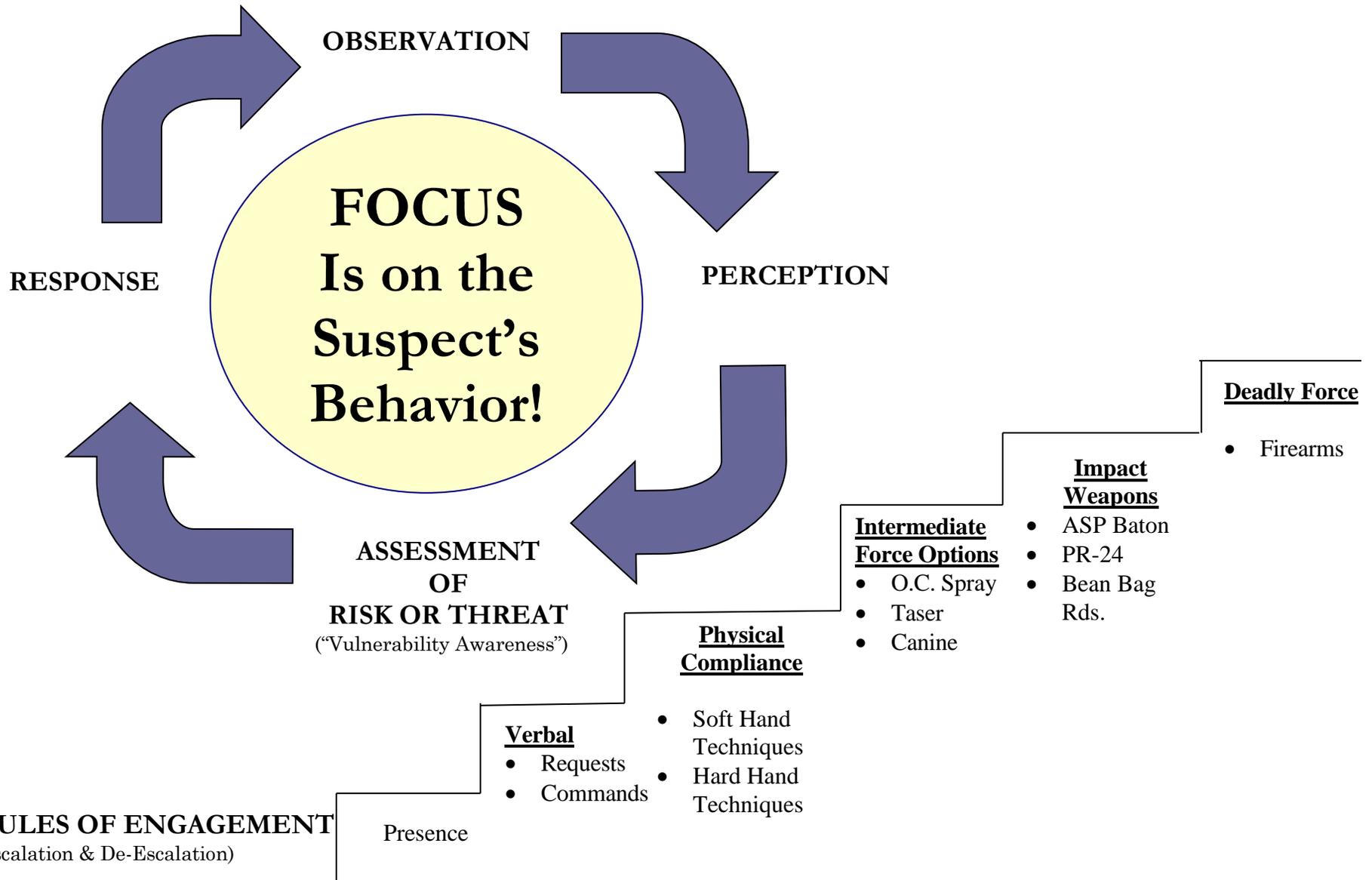
(2) The peace officer need not have possession of the warrant at the time of the arrest, but after the arrest, the warrant must be shown to the person arrested as soon as practicable if the person requests.

History: En. 95-604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-604; amd. Sec. 5, Ch. 116, L. 1979; amd. Sec. 31, Ch. 800, L. 1991; Sec. [46-6-203](#), MCA 1989; redes. [46-6-216](#) by Code Commissioner, 1991.

46-6-312. Manner of arrest without warrant. A peace officer making an arrest without a warrant shall inform the person to be arrested of the officer's authority, of the intention to arrest that person, and of the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission, after an escape, or when the giving of the information will imperil the arrest.

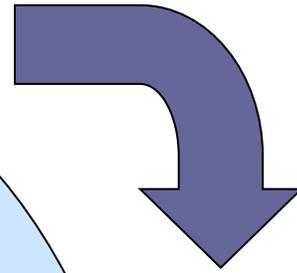
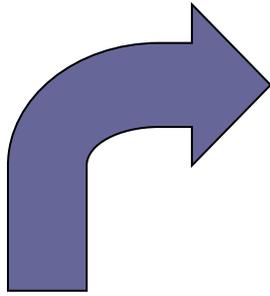
History: En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606; amd. Sec. 33, Ch. 800, L. 1991; Sec. [46-6-106](#), MCA 1989; redes. [46-6-312](#) by Code Commissioner, 1991; amd. Sec. 6, Ch. 262, L. 1993.

THE USE OF FORCE CYCLE



The Use of Force Cycle

OBSERVATION



LEVELS OF RESISTANCE

Passive Resistance: The subject uses non-compliant inaction to resist the officer's commands.

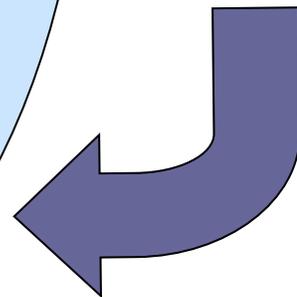
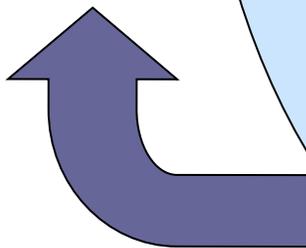
Defensive Resistance: The subject engages in defensive resistance by taking action to prevent being taken into custody or detained.

Active Aggression: The subject is overtly attempting to injure the officer.

Aggravated Active Aggression: The subject's actions that are likely to result in the death or serious bodily injury to an officer or another person.

RESPONSE

PERCEPTION



ASSESSMENT
OF

RISK OR THREAT
(“Vulnerability Awareness”)

O.C. Spray

Impact

Presence

Lethal Force

*Verbal Requests
& Commands*

*Physical
Compliance*