

MISSOULA POLICE DEPARTMENT POLICY MANUAL



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| <i>Subject:</i> USE OF FORCE | | |
| <i>Effective Date:</i> 4/25/2018 | <i>Original Date:</i> 12/12/2001 | <i>Next Review:</i> 4/25/2019 |
| <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 law enforcement officers of this agency with guidelines for the use of deadly and non-deadly force.

II. Policy

The Missoula Police Department recognizes and respects the value and integrity of each human life without prejudice to anyone. It is the policy of this agency that officers use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the lives of the officer and others.

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 special responsibility. The purpose of this policy is to provide members of this department with guidance on the use of force.

III. Definitions

Deadly Force: Force that is likely to cause death

Forcible Felony: Any felony which involves the use or threat of physical force or violence against any individual.

Non-Deadly Force: – Any force other than that which is considered deadly force.

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.

Physical Force: Physical force is defined as physical contact necessary to obtain lawful compliance or overcome resistance by another. Physical force may result from a variety of applications, including: 1) Chemical agents; 2) Taser; 3) K-9; 4) Impact Weapons; 5) Physical compliance holds.

Not all physical contact constitutes physical force.

Passive Resistance: The subject does not cooperate with an officer's commands by non-compliant inaction. An example of this would be a protestor who lies down in front of a doorway, and must be carried away upon arrest.

Defensive Resistance: The subject engages in defensive resistance by taking action to prevent being taken into custody. The goal of this action is escape, but not injury to the officer. This action may include twisting, pulling, or running away.

Active Aggression: The subject is overtly attempting to injure the officer. This aggression may manifest itself through punching, kicking, biting, or pushing.

Aggravated Active Aggression: Includes actions that are likely to result in the death or serious bodily injury to an officer or another person. These actions may include the discharge of a firearm, use of a blunt or bladed weapon or extreme physical force.

IV. Procedures

A. Use of Deadly Force

Law enforcement 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 harm.

B. 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 MPD 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 finds himself in the path of an oncoming vehicle he 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.

C. Use of Force

1. Where deadly force is not a reasonable option officers may only use that level of force that is objectively reasonable to bring an incident under control.
2. Officers are authorized to use department-approved, non-deadly force techniques and issued equipment that 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.

Officers must have an understanding of, and appreciation for, the limitations of their authority, particularly with respect to overcoming resistance from those with whom they come in official contact. Just as law clothes officers with certain authority, so does it define the limits of that conferred authority.

3. Use of Force Options
 - a. Officer presence
 - b. Verbal commands
 - c. Soft Empty Hand techniques and restraining devices.
 - i. Includes but is not limited to wrist and joint locks, pressure points, handcuffs and hobbles.
 - d. K-9 application
 - e. Hard Hand techniques.
 - i. Strikes with hands, feet, arms, elbows or knees
 - f. Oleoresin capsicum spray and chemical agents
 - g. Taser
 - h. Impact weapons
 - i. Lethal force
4. Officers shall determine the level of force they employ based on the level of resistance they encounter.

- a. When an officer encounters *Passive Resistance* the officer should first attempt to gain compliance with verbal commands and may respond with soft empty hand techniques and restraining devices.
- b. When an officer encounters *Defensive Resistance* the officer may use soft empty hand techniques, O.C. spray and may also use strikes as a distraction technique.
 - i. Strikes should avoid the head, throat, spine, sternum, groin and kidneys.
 - ii. A K-9 may be deployed at the discretion of the K-9 officer or in other circumstances defined in policy 10.80
- c. When an officer encounters *Active Aggression* the officer may use strikes, a Taser or impact weapons.
- d. When an officer encounters *Aggravated Active Aggression* the officer may use force which is likely to result in death or serious bodily injury.

D. Use of Force to Prevent Escape

An officer, who has a person in custody, may use the same amount of force to prevent that person from escaping as they would be allowed to use in making the arrest

- 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.

E. Method of Arrest

- 1. An arrest is made by the actual restraint of a person or by their submission to custody.
 - a. 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 they can be given the advisory 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 they so request.
3. An officer making a probable cause arrest shall inform the person of their 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, they are fleeing or the advisory would endanger the arrest.

F. Resisting Arrest

1. A person may not resist an arrest by an officer that they believe or know is unlawful.
2. A person resists arrest if they purposely or knowingly, in order to avoid arrest threaten or use physical force or violence against an officer or they use any other means that creates the risk of injury to an officer or another.

G. 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. Any negligent or intentional discharge of a firearm whether or not anyone is injured.
 - c. Any use of force which results in injury or complaint of injury to an officer or other person
 - d. Any time a Taser is deployed, other than when a subject is only covered by the Taser.
 - e. Any time force is used on a juvenile.
 - f. Any time a less than lethal weapon (including but not limited to pepper spray, pepper balls, any impact weapon or less than lethal shotgun round) is used or is attempted to be used.
 - g. Any time there is any blow, kick, strike, Taser application, or similar force used against a handcuffed or otherwise restrained and under control in custody subject, with or without injury.
 - h. Any time a police vehicle is used to strike a person (in a situation where lethal force is justified), or is intentionally used to strike another vehicle. (Pushing a disabled vehicle with a patrol car's push bumper does not constitute striking that vehicle.)

V. USE OF FORCE POLICY AND THE LAW

Since it is the law which confers authority on officers and which also limits the use of that authority, the law should also serve as the framework for the Department's policy statement on use of force. It is therefore the policy of this Department that officers should only use that force which is lawful under the circumstances when the force is employed. The law requires that the force be "reasonable under all the circumstances".

Hence, it is the policy of this Department that officers will use no more force than that reasonably called for, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident or person under control or to protect the officer or another from harm. The "perception" of the officer must also be reasonable; hence, "reasonableness of the force used" must be judged from the perspective of the reasonable officer on the scene at the time of the incident.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. 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. As in other Fourth Amendment contexts, however, the "reasonableness" inquiry is an objective one: the question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation (*Graham V Conner* 396-397).

While the 20/20 perspective of hindsight is useful for a variety of reasons, it is the objective reasonableness of the force employed at the time the officer must respond to the threat or incident confronting him, which will determine the lawfulness of the officer's response.

Since no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate level force, if any, in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved.

Any application of force by a member of this Department must be judged by the "objective reasonableness" standard. The use of force equation must take into consideration the following factors and any others relevant to the reasonableness of the officer's response:

- The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects).
- Influence of drug/alcohol or mental capacity.
- Presence of or proximity to weapons (including any object that could be used to inflict injury or death).

- Availability of other options (what resources are reasonably available to the officer under the circumstances).
- Seriousness of the suspected offense or reason for contact with the individual.
- Training and experience of the officer.
- Other relevant life experience (for example, but not limited to, military combat experience).
- Potential for injury to citizens, officers and suspect.
- Risk of escape.
- Relative timing of events, i.e. was the officer required to really make a “split-second” decision, or was there time for reflection and planning?
- The existence, and effect upon the officer, of psychological and physiological phenomena that frequently occur in sudden, violent or deadly encounters, such as fear, visual and auditory distortion or exclusion, “tunneling”, memory and sequencing distortion, time distortion and many others.
- Other exigent circumstance(s).
- Nothing in this policy requires an officer to actually sustain or unreasonably risk physical injury before applying reasonable force to affect arrest, overcome resistance, prevent escape, or defend himself or herself or the person of another.

It is recognized that officers are often required to make split-second decisions and that the amount of time available to evaluate and respond to changing circumstances may impact an officer’s decisions, choices and reasonable options.

While various levels of force exist, each officer is expected to respond with no more than that level of force which reasonably appears appropriate under the circumstances at the time to successfully accomplish the legitimate law enforcement purpose in accordance with the law.

Use of Force Cycle: The cycle begins with the officer’s assessment of the threat level based on the suspect’s behavior and other factors. The officer’s level of response is based on that assessment, he/she then evaluates the results of his/her response and the need to escalate or de-escalate the force necessary to control the situation. The officer should continue to use the force cycle until such a time the officer feels the situation is under control.

(Please See Attached Use of Force Cycle)

VI. REPORTING THE USE OF FORCE

Any use of physical force by a member of this Department shall be documented on a “Supervisor’s Use of Force Report”. The Supervisor’s Use of Force Report shall be considered an initial review of the appropriateness of the use of force.

A supervisor shall be notified as soon as practical, following the application of physical force as defined by this policy. Any use of physical force by a member of this Department shall be documented in the following manner:

- A. Calls For Service narrative reports completed by all officers involved in the physical force application.

- 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 detailed information on the injuries, and any medical treatment that is completed including the name of the facility or medical personnel administering care, or offered to the subject and declined.
 2. In instances where force has been used, personnel should be aware of the value to document via photography the existence or lack of existence of injuries.

VII. POST 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 that he/she observes. The subject should be monitored for any effects that could be a result of a use of force application.

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 application by an officer. Officers shall also be alert that subjects who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extra ordinary strength beyond their physical characteristics, 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 the hospital.

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.

Steps should be taken to aid in the subject's recovery from chemical spray or exposure, as defined in Appendix.

VIII. CONCLUSION

The decision to use force rests with each officer. While there is no way to specify the exact amount or type of force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and safe manner.

It is important that the officer continually assess the risk or threat and is prepared to escalate or de-escalate the level of force necessary based on the objective reasonableness standard.

IX. The Montana Code Annotated contains the primary sources of law governing police 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.

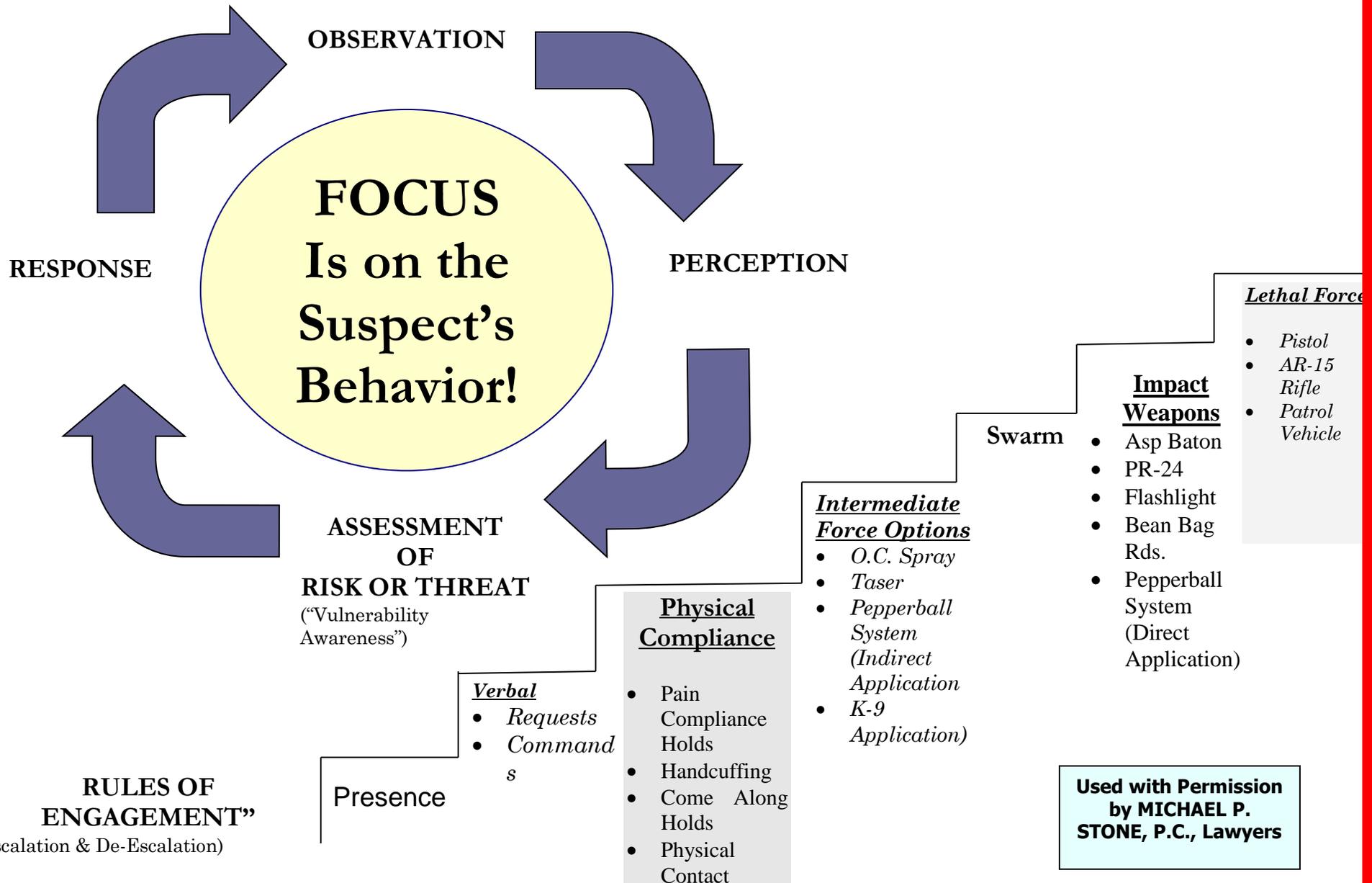
(2) The peace officer need not have possession of the warrant at the time of the arrest, but after the arrest, the warrant must be shown to the person arrested as soon as practicable if the person requests.

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.

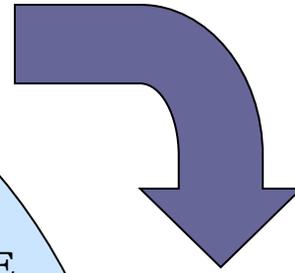
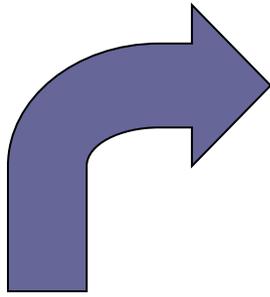
History: En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606; amd. Sec. 33, Ch. 800, L. 1991; Sec. [46-6-106](#), MCA 1989; redes. [46-6-312](#) by Code Commissioner, 1991; amd. Sec. 6, Ch. 262, L. 1993.

THE USE OF FORCE CYCLE



The Use of Force Cycle

OBSERVATION



LEVELS OF RESISTANCE

Passive Resistance: refuses to comply by balking, becoming dead weight, and/or grasping a solid structure.

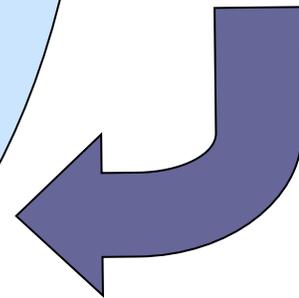
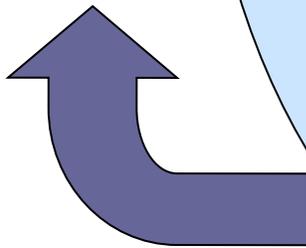
Defensive Resistance: physically resists by pulling away, attempting to escape, or powering through a control hold.

Active Aggression: displays menacing behavior, or assaults (bites, pushes, strikes, etc.), or attempts to assault.

Aggravated Active Aggression: any force, under the circumstances in which it is used, that is readily capable of causing serious physical injury or death.

RESPONSE

PERCEPTION



O.C. Spray

ASSESSMENT

OF

RISK OR THREAT

("Vulnerability Awareness")

Swarm

Impact

Lethal Force

Physical Compliance

Presence

**Verbal Requests
& Commands**