



**ALLEGANY COUNTY  
OFFICE OF THE SHERIFF  
JAIL DIVISION  
POLICY & PROCEDURE**

**NUMBER: J – 4.19**

**EFFECTIVE DATE: 01/01/2019**

**SUBJECT: Use of Force**

**REVIEW:**

**APPROVED BY:**

**SUPERSEDES: ALL OTHERS**

**Policy:**

Agency members are expected to only use force in a lawful and justifiable manner. This means the unnecessary use of force or the use of force in an excessive or unreasonable amount or to use force in a cruel manner is an unjustified use of force and violates this policy.

Members may never use deadly physical force to effect the seizure, custody or apprehension of a person unless the member can establish reasonable cause to believe the person has the imminent intent, ability and opportunity to seriously injure or take a person's life. In such cases, deadly physical force may be used, provided it is used in a justified manner.

Members are expected to only use force in a lawful and justifiable manner.

Nothing in this policy is to be construed to hold an officer to a higher standard of care when reacting to a life--threatening situation than allowed in the principles of the "Emergency Response Doctrine," which will be discussed further on in this policy. In assessing the need to use deadly physical force, the paramount concern should always be the safety of the officers and the public.

The reasonableness of an officer's decision to use deadly physical force under this policy must be viewed from the perspective of the officer on the scene who may often be forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving and without the advantage of 20/20 hindsight.

Members are expected to justify their use of force in any criminal, civil, or administrative proceedings. Members who cannot or will not comply with this policy may subject themselves to disciplinary action up to and including termination as well as the possibility of criminal and or civil liability.

## A. Definitions

1. **Deadly Force** is any physical force, which under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
2. **Serious Physical Injury** is any physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
3. **Necessity:** In evaluating the necessity to use deadly force, two factors are relevant:
  - a. The presence of an imminent danger to officers or others, and
  - b. The absence of safe alternatives to the use of deadly force.
4. **Imminent Danger.** This type of danger means it is pending. It does not necessarily mean that it is "immediate" or instantaneous." Thus, a subject may pose an imminent danger even if he is not at that very moment pointing a weapon at the officer. For example, imminent danger may exist if the officer has probable cause to believe that:
  - a. A subject has a weapon or is attempting to gain a weapon and use it against an officer, or
  - b. The subject is armed and running to gain a tactical advantage over the officer, or
  - c. The subject has the capability of inflicting death or serious physical injury and is demonstrating an intention to do so.
5. **Safe Alternatives:** Officers are not required to use or consider the use of any type of safe alternative to deadly force if that alternative increases the danger to themselves or to others. If a safe alternative to the use of deadly force is likely to achieve the purpose of averting an imminent danger, deadly force is not necessary.

## Use of Force - Dissemination of Policy

All law enforcement and corrections officers of the Allegany County Sheriff's Office shall annually receive instruction/training concerning Article 35 of the New York State Penal Law and the policy of the Allegany County Sheriff's Office concerning the Use of Force. All members will acknowledge this training by signature.

- A. Upon completion of the annual training relative to the use of deadly physical force, Article 35 PL, all designated personnel will be tested on their knowledge of this article of the law. Any person who fails to attend the training and instruction in Article 35 PL when it is provided may be subject to disciplinary action. A person who fails to achieve a passing grade on the test that is given in conjunction with the instruction will receive immediate remedial training until a satisfactory grade is achieved.

- B. No more physical force than necessary will be used to effect an arrest or secure a prisoner as authorized by Article 35 of New York State Penal Law.
- C. All personnel will be familiar with the provisions of Article 35 of New York State Penal Law relating to use of physical force and deadly physical force. Article 35 will govern the use of physical and deadly physical force.

**B. New York State Statutes:**

Members will have a working knowledge of the Article 35.00 of the New York State Penal Law in regards to justification of the use of force.

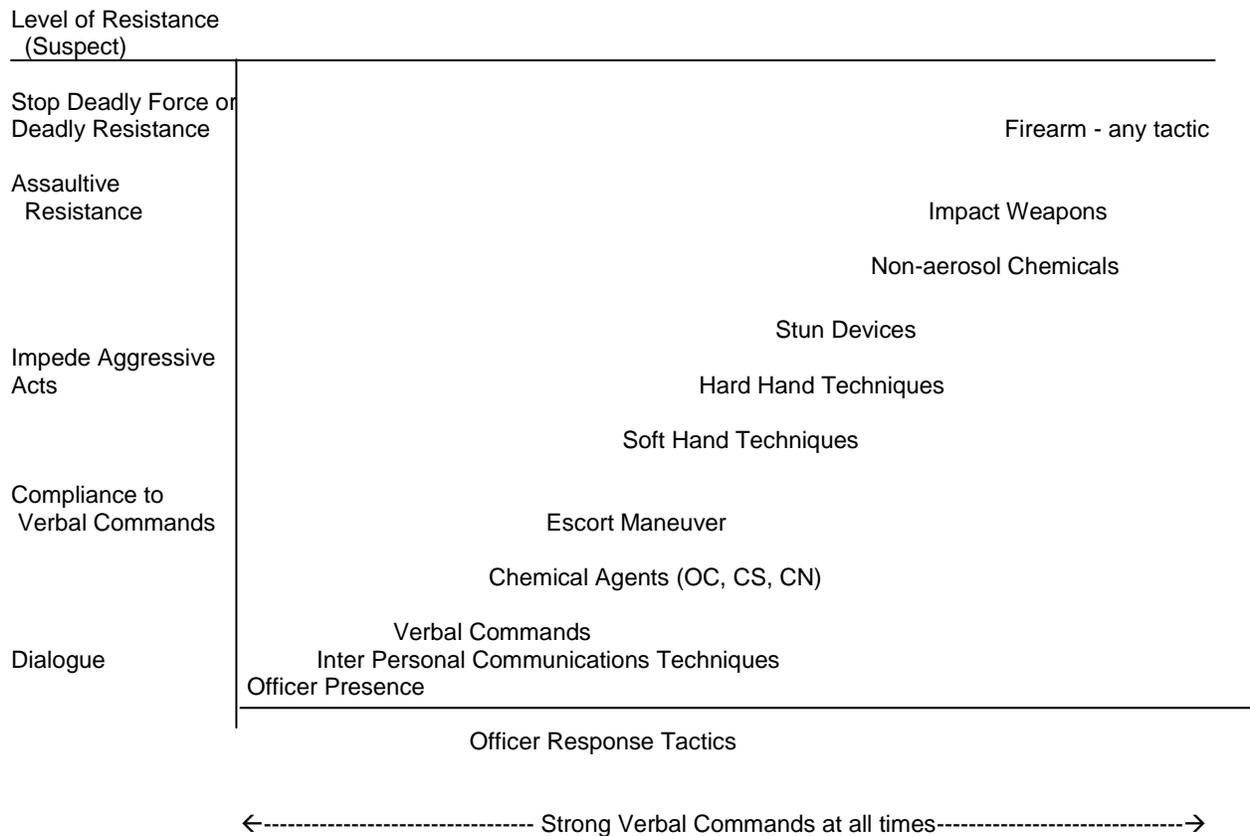
**C. Use of Control Continuum Model**

Below is the model for the Use of Control Continuum. Member's use of force must be aligned with the concepts and principles of the agency's Use of Control Continuum. The Continuum is a conceptual model that depicts the dynamic relationship between a suspect's level of resistance to apprehension and the member's level of control used to overcome such resistance.

It is imperative that members take into account the following three variables when making a use of force decision:

1. The level of suspect resistance.
2. The level of control to be used by the officer to overcome the suspect's level of resistance.
3. The tactics and/or weapons to be used by the officer to overcome the suspect's resistance.

## Use of Control Continuum



When officers use any type of force in relation to the Use of Control Continuum, all officers will properly increase and/or decrease their level of control as dictated by the subject's level of resistance or force against the officer. It is tantamount that an officer's actions be reasonable in relation to the subject's level of force. As the subject increases his/her level of resistance and force, the officer, when justified, may increase his/her force response to meet that level. Conversely, the officer will decrease his/her level of force as the suspect lowers his/her resistance and becomes more compliant. The goal is control of the subject. The Officer should consider the following factors; age, sex, size, skills and multiples. Special circumstances, suspects proximity to weapons, special knowledge of suspects disabilities, injury, exhaustion and imminent danger.

### **D. Application of Deadly Force**

1. **Defense of Life:** Officers may use deadly force only when necessary, that is, when the officer has probable cause to believe that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to other persons.
2. **Fleeing Subject:** Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:

- a. The subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death,
  - and
  - b. The subject's escape would pose an imminent danger of death or serious physical injury to the officer or other persons.
3. **Verbal Warnings:** If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.
  4. **Warning Shots:** No warning shots are to be fired by an officer of this agency.
  5. **Vehicles:** Weapons may not be fired solely to disable moving vehicles. Weapons may be fired at the driver or other occupants of a moving motor vehicle only when the officer has reasonable cause to believe that the subject poses an imminent danger of death or serious physical injury to the officer or to others, and the use of deadly force does not create a danger to the public that outweighs the likely benefits of its use.
  6. **Duration:** When the decision is made to use deadly force, officers may continue its application until the subject surrenders or no longer poses an imminent danger.
  7. **Actions to Wound Only.** When deadly force is permitted under this policy, attempts to shoot to cause minor injury are unrealistic and can prove dangerous to the officer and others because they are unlikely to achieve the intended purpose of bringing an imminent danger to a timely halt.
  8. **Recklessness:** Even when deadly force is permitted, officers should assess whether its use creates a danger to third parties that outweighs the likely benefits of its use.

**E. Emergency Response Doctrine:**

This section reaffirms the officer's right to use any level of force deemed necessary to protect the officer's life, or the life of another, when faced with a true life-threatening situation. This is the basic doctrine of emergency response. When an officer implements this doctrine, the following four conditions must be met.

1. The officer did not create the emergency situation.
2. The officer was acting under an immediate and direct threat.
3. The level and amount of force used was reasonable given the facts and circumstance at the time.
4. A reasonable and prudent person might have been expected to react similarly under similar conditions.

## **Use of Force - Reporting Requirements**

Whenever any member of the Allegany County Sheriff's Office takes action that results in or is alleged to result in injury or death of another person or applies force to the person of another through the use of a lethal or non-lethal weapon, or uses any force above that of Verbal Commands as documented on the Use of Control Continuum (J-4.19, ACSO Policy and Procedures 2008), an Incident Report will be written detailing the circumstances of the incident. Said report shall be given to the Officer's supervisor before the end of the shift in which the incident occurs unless allotted additional time by the supervisor. In the event that additional time is allotted by the supervisor, notification will be made to the Jail Administrator or Assistant Jail Administrator before the end of that shift that the incident occurred and the reason that additional time was granted to the Officer. The supervisor will forward the report immediately to the Jail Administrator for final review.