



## Use of Deadly Force

### COUNTY LAW UPDATE

by Mike Rainwater on 01/29/2001 (reworded on 09/10/03 & 01/21/04)

**A police officer is not constitutionally vested with the power and authority to kill any and all fleeing felons. Deadly force can be used only against a *violent* fleeing felon.**

**Only Against *Violent* Fleeing Felon:** A use-of-deadly-force policy is constitutional only if carefully drawn to limit the use of deadly force to situations where the officer reasonably believes: 1) there is probable cause to arrest the felony suspect; 2) the felon cannot otherwise be apprehended; *and*, 3) *the felon either: a) had used deadly force in the commission of the felony; or, b) would use deadly force against the officer or others if not immediately apprehended. Mattis v. Schnarr, 547 F.2d 1007 (8<sup>th</sup> Cir. 1976); Tennessee v. Garner, 471 U.S. 1, (1985).*

**Arkansas Law Unconstitutional:** Arkansas' Deadly Force Justification statute is unconstitutional -- because it authorizes the use of deadly physical force in the apprehension of *any* felony suspect. Section 5-2-610(b)(1) of the Arkansas Code [***unconstitutionally***] states: "A law enforcement officer is justified in using deadly force upon another person when he reasonably believes that it is necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes has committed or attempted to commit a felony [i.e., against *any* fleeing felon]."

**Use of Force Policy:** Arkansas' counties should adopt a written deadly force policy which complies with the Constitution and ask each officer to read and sign. Example:

#### "USE OF DEADLY FORCE" POLICY

1. Use of deadly force (force likely to cause serious bodily injury or death) by a member of this department against a person is limited to the following:
  - a. To effect an arrest (or to prevent escape from custody after arrest) of a person whom the officer reasonably believes:
    - i) has committed a felony;
    - ii) and the felon either:
      - a) had used *deadly force* in the commission of the felony or
      - b) would use *deadly force* against the officer or others if not immediately apprehended,
    - iii) and the felon cannot otherwise be apprehended.
  - b. To defend himself or a third person from what he reasonably believes to be the use of imminent use of *deadly force*.
2. No deadly force may be used against an escaping misdemeanor.
3. The use of "warning shots" is prohibited.