

GUILDERLAND POLICE DEPARTMENT

Title: USE OF FORCE Procedure: 2.000

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I. Purpose:

The purpose of this Order is to establish a policy for the use of force by Department members that is within the limits established by Article 35 of the New York State Penal Law and consistent with training provided by the Department.

II. Policy:

Members will exhaust every reasonable means to effectively bring an incident or person under control before using force. If force is necessary, members shall use only the amount of force reasonably necessary to overcome resistance to effectively and safely bring an incident or person under control, while protecting themselves or others.

Ideally, the use of effective communication skills during officer-citizen encounters will induce compliance. Poor communication skills (e.g., rudeness/discourtesy) arouse resentment, which may in turn, precipitate physical resistance. Clear & firm directions, with which a subject complies, are the most desirable method of controlling a situation. Control may be achieved through direction, persuasion, and warnings before resorting to actual physical force. This does not mean that officers should ever become complacent and lose control of a situation, thus endangering their personal safety or the safety of others.

Since no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer is entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain or unreasonably risk physical injury before applying reasonable force to accomplish a legitimate law enforcement objective, and/or prevent injury to a member of the public or the officer.

An officer may be present during an incident involving the use of force, but not directly involved in the use of force. However, this does not relieve any officer present of the obligation to insure that the requirements of the law and Department regulations and policy are complied with. Members of this department are required to maintain control or intervene if the use of force against a subject becomes excessive. Failure to do so may result in department disciplinary action, criminal prosecution, and civil liability.

III. Definitions:

- A. Use of Force Continuum: A training model/philosophy that supports the progressive and reasonable escalation and de-escalation of officer-applied force in proportional response to the actions and level of resistance offered by a subject. The level of response is based upon the situation encountered and the actions of the subject in response to an officer's commands. Such response may progress from the officer's actual physical presence to the use of deadly physical force.
- B. Reasonable Cause to Believe That A Person Has Committed An Offense: As defined in section 70.10 (2) of the New York State Criminal Procedure Law, "exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it."
- C. Positional Asphyxia: Death that occurs from respiratory muscle failure as a result of body position that interferes with a person's ability to breathe. Positional asphyxia occurs most often following a violent struggle ["Positional Asphyxia–Sudden Death," *National Law Enforcement Technology Center Bulletin*, June 1995].
- D. Physical Contact: Physical Contact involves routine or procedural contact with a subject, less than resistant handcuffing, necessary to effectively accomplish a legitimate law enforcement objective (e.g., guiding a subject into/out of a police vehicle, handcuffing a subject, and/or maneuvering or securing a subject for a frisk).
- E. Physical Force: Physical contact or action exerted against a subject, beyond unresisted handcuffing, utilized for any legitimate law enforcement objective.
- F. Physical Injury: Impairment of physical condition or substantial pain.
- G. Serious Physical Injury: 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.
- H. Excessive Force: Occurs when it is apparent that the type or degree of force used was more than was reasonably necessary to overcome resistance.
- I. Deadly Physical Force: Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- J. Objectively Reasonable – An objective standard used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.

IV. Use of Physical Force:

- A. Officers shall use only the force reasonably necessary to overcome resistance.
- B. Officers are authorized to use Physical Force in the following situations:

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1. To make a lawful arrest or detention
 2. To protect themselves or another person from physical harm
 3. To restrain or subdue an uncooperative or resistant person
 4. To safely and effectively control an unlawful or hazardous situation
 5. To prevent the escape of a person in custody
 6. To effect other lawful objectives.
- C. Under the 4th Amendment, a police officer may use only such force as is “objective reasonable” under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene. Officers shall use force as outlined in this order. Excessive Force is prohibited and may be subject to disciplinary action, criminal prosecution and civil liability.
- D. The use or threatened use of a weapon or instrument by an officer against a person is a use of force. While on-duty, officers shall carry only the following weapons/instruments:
1. Department-issued sidearm and ammunition
 2. Department-issued shotgun and ammunition
 3. Department-issued oleoresin capsicum (OC) spray
 4. Department-issued baton
- E. Specially trained officers, in addition to the weapons listed above, are authorized to use approved specialized weapons.
- Specialized Weapons:
5. Department-issued TASER
 6. Department-issued Kinetic Energy Impact Projectile Shotgun and rounds.
 7. Department-issued Patrol Rifle and ammunition.
 8. CS Gas
 9. Department-issued Pepperball Launching System and projectiles. * *Additionally, a flashlight is authorized to be carried. Carrying cases shall match the duty belt.
- F. The use of force, or the use of a weapon or instrument, shall be done in accordance with training techniques and instruction provided or approved by the Department.
- G. Subjects who engage in violent struggles with officers may be more vulnerable to positional asphyxia. To help minimize the risk of positional asphyxia, officers shall adhere to the following procedures:
1. As soon as possible (under the circumstances), after the subject is handcuffed get the subject off of their stomach. Turn them on their side or place them in a seated position.
 2. If they continue to struggle after being handcuffed, do not sit on the subject’s back. Hold their legs down or utilize leg shackles.

3. Never tie the handcuffs to a leg or ankle restraint.
4. If needed, get the subject immediate medical attention.
5. Do not lay the subject on their stomach during transport. Instead, place them in a seated position.

V. Use of Force Continuum:

When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.

A number of factors are taken into consideration when an officer selects force options and when evaluating whether the officer used reasonable force. Officers must be able to articulate the facts and circumstances surrounding the force used in a particular situation. An officer's use of force will be judged by reasonableness and necessity under the circumstances.

A. Factors that affect an officer's force selection include, but are not limited to:

1. Officer/Subject factors
 - a. age
 - b. size
 - c. strength
 - d. skill level
 - e. exhaustion
 - f. injury
 - g. officer/subject ratio
2. The severity of the crime or circumstance
3. Apparent influence of drugs/alcohol
4. Subject's emotional condition/mental instability
5. Physical condition/disability
6. Proximity to weapons
7. Pre-attack postures, gestures, and/or statements.
8. Apparent willingness to sustain injury
9. Other environmental condition or exigent circumstances
10. Availability of other options
11. The level and immediacy of threat or resistance posed by the suspect
12. Level of threat to the community
13. The potential for injury to citizens, officers, and suspects
14. The risk or attempt of the suspect to escape
15. The knowledge, training and experience of the officer.

B. Action of Subject(s) & Officer Response Options:

A subject's demeanor and actions are instrumental factors in an officer's decision as to what level of force is appropriate to take control of a particular situation. If at all possible, situations should be resolved by effective communication skills. Often, the mere presence of the officer, coupled with effective communications skills, will be sufficient to persuade an individual to follow the officer's directions. Effective communication skills may prevent physical confrontations from occurring or escalating to higher levels.

Avoiding the use of force is preferable; however, if officer presence and/or communications skills fail to overcome an individual's resistance, the officer must be prepared to escalate the use of force.

Subject behaviors and officer response options are classified into the following categories (see Diagram 1):

1. Cooperative Subject: Cooperative and complies with verbal commands and directions.

Response Option: Restraining, firm grip, application of restraining devices.

2. Uncooperative/Passively Resistant Subject: Uncooperative when taken into custody, fails to respond/comply with verbal commands and directions, or passively resists an officer's authority and direction (e.g., body intentionally made limp - not resistive tension).

Response Option: Low-level force – Physical direction, Defensive tactics (e.g., pain compliance techniques). *Note: If possible, officers should avoid using pepper gas (Oleoresin Capsicum) or TASER on passively resisting subjects.

3. Actively Resistant Subject: Attempting to interfere with the officer's actions by physically resisting or indicating an intention to do so.

Response Option: Intermediate-level force. Officers may use pepperspray (Oleoresin Capsicum), TASER, defensive tactics (e.g., pain compliance techniques, joint-manipulation, arm-bars, take-downs), and/or personal weapon strikes (e.g., hands/fists, knees, elbows, and feet) in which training has been given to control or arrest an actively resistant subject.

- a. Impact Weapons: In the event that the officer reasonably believes that the situation cannot be resolved with the effective use of any aforementioned force options, then, officers are authorized to utilize the departmentally approved impact weapon – the baton or a police K9 (see below).

Intentional baton strikes to a subject's head, neck or throat are prohibited unless the officer reasonably believes there is an imminent threat of death or serious physical injury to themselves or another person, and the officer has no other reasonable alternative for defending themselves or another person.

Officers will make every effort to use their primary Department-issued or approved impact weapon. In the event that the officer's primary impact weapon has been lost as a result of that confrontation, broken or taken away, the officer may be justified in using an alternative impact weapon (flashlight, radio, or any other impact weapon not issued or approved specifically as a defensive weapon as a means of force). An alternative impact weapon may be used only when no other reasonable alternative is present. If an alternative impact weapon is used, it will be used in a manner consistent with the training given for Department issued or approved impact weapons.

- b. TASER: The preferred target area when deploying a TASER should be the lower torso on the front of the body, below the neck on the back of the body. The face, neck and groin area is to be avoided if at all possible.

Proper consideration and care should be taken when deploying the TASER on subjects who are in an elevated position or in other circumstances where a fall may cause substantial injury or death (e.g. pregnant woman). Officers must be fully prepared to justify such a deployment. The department's policy regarding the use of such a weapon is based on the belief that its officers should only use that degree and kinds of force thought necessary and appropriate to protect lives and property or effect an arrest. Mindful of the limitations and risks posed by the use of electronic controlled weapons, there is an enhanced level of accountability placed on officers to decrease the risk to those members of the public most at risk from sudden and unexpected death or serious injury associated with electronic restraints. Therefore, the utmost consideration and care will be given when deploying these weapons against certain individuals because of their state, age or condition. The TASER will never be used punitively or for the purposes of coercion. It is to be used as a way of averting a potentially injurious or dangerous situation.

- c. Police Canine: A police canine may be deployed to apprehend or control an individual when other less injurious techniques have been insufficient and based on
 - a) the severity of the crime at issue,
 - b) whether the suspect poses an immediate threat to the safety of law enforcement officers or others, or
 - c) and whether the suspect is actively resisting arrest or attempting to evade arrest by flight (Graham v Connor 490 US 386 104L Ed 2d 443, 109 S Ct 1865 (1989)).

Accordingly, the Guilderland Police Department's *Canine Standard Operating Procedure* (4.006), states: "Use of specially trained police canines for law enforcement responsibilities constitutes a real or implied use of force. In this, as in other cases, officers may only use that degree of force that reasonably appears necessary to apprehend or secure a suspect as governed by the department's use of force policy".

In instances where a canine apprehends a suspect by biting, the handler will call the dog off at the first moment the canine can be safely released, taking into account that the average person may continue to move, regardless of an officer's directions to the contrary, if seized or confronted by a canine. Specifically, officer(s) must be able to differentiate between a suspect's movement that constitutes active resistance and poses an immediate threat of harm to the officer(s) or others versus movement caused by the pain of a dog bite and/or fear of the police canine. The latter type of movement compels the officer to terminate the police canine's attack.

- 4. Subject Using Deadly Physical Force: Commits an attack using his/her personal weapons (hands, elbows, knees, feet etc.), an object or a weapon wherein the officer reasonably believes that the assault will result in death or serious physical injury.

Response Option: The use of a firearm or any other available weapon or means that has a reasonable likelihood of causing death or serious physical injury (see VII: Use of Deadly Physical Force).

It is important to note that an officer need not attempt to gain control over an individual by use of the lowest level of force on the continuum when reason and circumstances dictate, and the officer can articulate that a higher level of force used is reasonable. Escalation to a higher level of force may be appropriate given the resistance encountered.

VI Duty to Intervene

1. Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively.
2. reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
3. An officer who observes another officer use force that exceeds the degree of force as described in subdivision A of this section should promptly report these observations to a supervisor.

VII Use of Less-Lethal Weapons:

1. OC spray, police baton, TASER, Kinetic Energy Impact Projectile and police canine are alternative uses of force in situations where there is a potential for injury to an officer, suspect or another person.
2. The use of OC spray will be limited to the degree of force which is reasonably necessary to provide protection to the officer or another person, to prevent an escape of a person from custody or to make a legal arrest. Prior to using OC spray, a standard verbal warning will be given ordering the subject to cease action or OC spray will be released, unless such a warning would present a danger to the officer or others. When possible, the officer will allow the intended target a reasonable amount of time to comply with the warning before utilizing the OC spray.
3. The use of TASER may be used as an alternative force in situations where the potential for injury to an officer or another person exists, but where the use of deadly physical force is not appropriate. The use of TASER will be limited to that degree of force that is reasonably necessary to provide protection to the officer or another person in preventing an escape of a person in custody or to make a legal arrest.
4. The use of police batons may be used as an alternative force in situations where the potential for injury to an officer or another person exists, but where the use of deadly physical force is not appropriate. The use of police batons will be limited to that degree of force that is reasonably necessary to provide protection to the officer or another person in preventing an escape of a person in custody or to make a legal arrest.
5. The use of police canine may be used as an alternative force in situations where the potential for injury to an officer or another person exists, but where the use of deadly physical force may not be appropriate. Prior to deploying a police canine, a standard verbal warning will be given ordering the subject to cease action or a police canine will be released. The warning will be issued in a loud and clear manner, unless such a warning would present a danger to the officer or others. When possible, the officer will

allow the intended target a reasonable amount of time to comply with the warning before utilizing a police canine.

6. The use of the Kinetic Energy Impact Projectile is considered a self defense application of force when deployed to the areas of the suspect's body that are considered unlikely to cause death or serious physical injury. The use of the kinetic energy impact projectile is considered DEADLY FORCE if *intentionally* deployed at the head or neck.

VIII. Use of Deadly Physical Force:

- A. Deadly physical force is to be used only after all other reasonable means of attaining control have been considered as outlined in V (Use of Force Continuum).
- B. A police officer may use deadly physical force under the following circumstances:
 1. Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.
 2. Deadly physical force may be used to stop a fleeing suspect where:
 - a. The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and,
 - b. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
 - c. Where feasible, some warning should be given prior to the use of deadly physical force.
 3. Chokeholds and Obstruction of Breathing or Blood Circulation:
 - a. Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited unless deadly physical force is authorized.

IX Prohibited uses of force:

1. Force shall not be used by an officer for the following reasons:
 - a. To extract an item from the anus or vagina of a subject without a warrant, except when exigent circumstances are present;
 - b. To coerce a confession from a subject in custody,
 - c. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purpose of scientific testing in lieu of a court order where required;
 - d. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.
2. Warning shots are not permitted under any circumstances.
3. Officers shall not discharge a firearm from or at a moving vehicle, except in self defense or in defense of another person, and there is an imminent threat of death or serious physical injury. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall attempt to move out of its path before discharging a firearm at it or any of its occupants. Whenever possible, officers shall use tactics that avoid placing themselves in the path of vehicles.

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4. Except for general maintenance, storage, or authorized training, officers will not draw, point or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with Article 35 of the NYS Penal Law and this Order.
5. The fact that a police officer is justified in using deadly physical force does not allow reckless conduct by the officer.
6. If an officer has discharged his/her firearm, his/her patrol supervisor must forward a memo to the chief.

X. Medical / Mental Health Attention:

- A. A police or peace officer or other law enforcement entity who has custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.
 1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
 2. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.
- B. Following the use of OC spray on a subject, officers will:
 1. Assure the subject that the effects of the OC spray are temporary.
 2. If the subject displays serious respiratory/medical problems, direct Communications to dispatch paramedics to the scene of the incident or a safer location.
 3. Subjects who are obese, suffer from respiratory ailments (e.g., asthma, emphysema, bronchitis), or wear contact lenses shall be decontaminated by EMS personnel. Additionally, EMS should decontaminate any person whose health condition gives the officer cause for concern.
 4. Upon transporting the subject to Police Headquarters for arrest processing, officers will direct the suspect to decontaminate themselves by rinsing the affected area with water.
- C. Following the use of the TASER on a subject, officers will carry out the EMS responsibility as outlined in the Use of Taser in Policy Number 4.024.

XI Reporting & Reviewing Use of Force:

- A. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental standardized use of force report.
 - a. Use of force that results in physical injury or serious bodily injury.
 - b. Use of force incidents that a reasonable person would believe is likely to cause an injury.

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- c. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
 - d. Any time an officer brandishes, discharges or uses a firearm at a person,
 - e. Any time an officer displays, deploys or uses a chemical agent,
 - f. Any time an officer brandishes, deploys or uses an impact weapon,
 - g. Any time an officer Brandishes, deploys or uses a taser, or where the taser was accidentally discharged after being displayed.
 - h. Any time an officer uses a chokehold or similar restraint that may hinder breathing or reduce intake of air,
 - i. Any conduct that resulted in death.
 - j. Any time an officer uses physical touch or open handed techniques or other uses of force above the force necessary to handcuff a compliant subject.
- B. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.
- C. If the involved officer is incapable of completing the report, a supervisor will complete the report based on the officer's reporting and/or other available information.

Use of Force Report

A use of force report will be completed for each subject for which force was used upon.

1. All areas on the report must be completed.
 2. If a particular question does not apply, indicate such with an 'N/A' or if the requested information is unknown, indicate such with 'UNK'.
- D. During arrest processing, all visible injuries to a subject shall be photographed. The officer responsible for photographing arrestees shall complete the "Photos" information area on the form. If photographs were not taken, that officer shall indicate why photographs were not taken.
- E. Special Circumstances: Assisting SOS/Vice Squad Raids:

Should members of the Guilderland Police Department assist with a raid by another agencies Special Operations Squad or Vice Squad, reporting and documenting use of force becomes more difficult. To ensure adherence to the spirit of this order, the supervising personnel conducting raid operations will report and document use of force as follows:

Whenever department personnel assist in raid operations copies of the other agencies force forms will be obtained and members of the Guilderland Police Department will be included in such documentation to the extent of participation in the raid. Copies of these reports will be obtained and filed by the Guilderland Police Department.

XII. Use of Force Incident Review:

A. Initial Review

1. Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.
2. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
3. The supervisor shall ensure the completion of a use of force report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers present.
4. The supervisor will review the use of force incident and shall make a determination if the force used was proper. Said determination will be based upon the information reported to the supervisor by the involved officers and if the supervisor was on the scene, then also his personal observations. The use of force form will be accompanied by a memorandum (supervisor review of the use of force) to the Chief of Police outlining the above information.
5. Upon completing the above, the forms and memorandums will be submitted to the Chief of Police via the Chain of Command.
6. All reportable use of force incidents will be reviewed by the command staff where a determination is made if further investigation is necessary, and so order if applicable.

B. Supervisory Review of the use of force inconsistent with this policy:

1. Supervisors required to review the Use of Force Form who determine that the force used was inconsistent with this General Order shall immediately notify his/her superior for further review of the incident and possible commencement of an internal investigation as directed by the Chief of Police.

C. Police Administrative Office

1. Shall be responsible for the safekeeping of all completed *Use of Force Reports*.
2. Shall report to the Division of Criminal Justice Services all required information as per NYS Executive Law §837-t for those use of force reports meeting the reporting criteria contained in said law.

XIII. Use of Firearms Incident Review:

A. Initial Review

1. Any use of the firearm must be reported to the shift supervisor. The appropriate form(s) must be completed with regard to its use and the request for replacement ammunition.
2. The supervisor initially notified of the discharge of a firearm against a person shall complete a supervisor inquiry into the incident and as with all use of force incidents,

complete a memorandum addressed to the Chief of Police, as to the circumstances of its use.

- a. *A Use of Force Report* shall be completed in the manner described in IX and the patrol supervisor will attach a completed memorandum as stated above to the *Use of Force Report* once he/she has completed his/her review. This would include all intentional or accidental discharges against or toward a person.
- b. The Supervisory memorandum must include the following information:
 - 1) Officers name and rank
 - 2) Date and time of incident
 - 3) On or Off Duty assignment and if on duty, his/her assignment at the time.
 - 4) Location of the incident
 - 5) Lighting at the incident
 - 6) Weather at the incident
 - 7) Weapon Used including serial number
 - 8) Number of shots fired
 - 9) Results of the shot, hit, missed, damaged item, etc.
 - 10) Direction of discharge
 - 11) Reason for discharge
 - 12) Description of target or item hit
 - 13) Name, address, date of birth and other pertinent information if victim
 - 14) Extent of wounds or damage
 - 15) Target action, ie: moving, lunging etc.
 - 16) Officer Action and position
 - 17) Officers present at scene
 - 18) Officers responding after incident
 - 19) Names and addresses of witnesses
 - 20) Whether officer's statements were taken, and if not, why?
 - 21) Was weapon secured, if so by whom and where to?
 - 22) Memorandum must be signed by the supervisor.
- c. If the discharge of a firearm did not involve a person (except for the intentional use on a distressed animal) the patrol supervisor shall forward a completed memorandum outlining the circumstances to the Chief of Police.

B. Command Staff Review of Discharge of Firearm.

1. The Chief of Police will conduct or assign a member of the command staff to review the use of force report and the supervisor's memorandum. If it is determined that the discharge of a firearm was not consistent with this General Order shall immediately notify the Chief of Police who will commence an investigation or may refer the incident to the professional standards committee appointed for this purpose.

XIV **Disciplinary Protocol:**

Any disciplinary action taken as a result of inconsistencies with this policy will be in accordance with established disciplinary procedures and action and in accordance with collective bargaining agreements.

XV **Training:**

1. All officers should receive training and demonstrate their understanding on the proper application of force.
2. Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies, including but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.
3. This policy is not intended to be a substitute for proper training in the use of force. Comprehensive training is the key to the real-world application of the concepts discussed within this policy.

XVI **Public Notification of Policy:**

1. A copy of this policy will be conspicuously posted on the police department website.

Diagram 1. Use of Force Continuum

