

2016

# Durham Police Department

**Durham Use of Force Policy Comparison v. PERF Use of Force: Taking Policing to a Higher Standard**

The following is a review and comparison of the Durham Police Department use of force policies to the Critical Issues in Policing Series, 30 Guiding Principles

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The following is a review and comparison of our existing use of force policies to the recommendations/considerations developed in the Critical Issues in Policing Series, 30 Guiding Principles “Use of Force: Taking Policing to a Higher Standard” The document is the result of several plenary meetings culminating with a presentation in Washington, DC that Chief Kurz attended with nearly 200 law enforcement officials to review and discuss new guiding principles that, if enacted would significantly remake how policing has been done for decades. The 30 principles include an unprecedented acknowledgment from leading law enforcement professionals that officers may need to consider going beyond the Supreme Court-adopted basic legal standard that asks what a "reasonable officer" would do in such a situation. While that premise will remain, the central theme is that officers should focus upon preserving all human lives in any encounter. For the purposes of this document the Guiding Principals were reviewed and compared with existing Durham Police Department policies and procedures related to all use of force notations. Those tenants in red/maroon may not be relevant to the Durham environment or not fully engaged by our policies as a result but will warrant additional assessment.

This review was conducted with the assistance and input from Sergeant Daniel Brooks, Officer Greg Ruby and Officer Thomas Kilroy, who are the department firearms and/or use of force instructors. While our review noted that the many of the agency’s policies and practices were already in sync with and often exceeded these recommendations, the exercise of reviewing the procedural and cultural attitudes of the department provided a renewal and commitment to these tenants.

**1. The sanctity of human life should be at the heart of everything an agency does.**

Immediately addressed in Policy 1.3.1 Use of Force to Accomplish Lawful Objectives-Force Continuum, it is also the very first value listed in our Values Statement where “the value of Human Life” is noted as the overriding principal. The department’s Mission Statement begins by noting that the Durham Police exist to improve our citizen’s quality of life. While it should be obvious to the casual observer, it is critical that the organization highlights that the fostering the “sanctity of human life” falls within our duties as law enforcement professionals.

**2. Departments should adopt policies that hold themselves to a higher standard than the legal requirements of Graham v. Connor.**

The department addressed this premise via Policy 1.3.6, Use of Force, Report and Review. The agency use of force instructors highlighted a concern that a policy that is substantively more restrictive than Graham v. Connor could encourage or lead to exceedingly cautious reaction on the part of officers when they are responding to dangerous situations. There have been recent instances, such as a police detective in Alabama who was disarmed and beaten with his own pistol by a suspect. It was determined that the detective’s overabundance of caution was attributable to his fear of potential political backlash of the shooting a minority who was not initially armed.

Instructors feel it is more appropriate that our training curriculum offer force alternatives. Please see this article for further details: <https://www.policeone.com/use-of-force/articles/37113006-Words-matter-Police-critics-are-floating-dangerous-ideas-about-force/>

### **3. Police use of force must meet the test of proportionality.**

Durham policies already addressed this topic in Policy 1.3.6 Use of Force, Report and Review. Additionally, “Use of Force to Accomplish Lawful Objectives” and “Use of Deadly Force” reflects the concept of proportionality and the requirement that officers must cease the response to resistance when the threat ceases.

### **4. Adopt de-escalation as formal agency policy.**

Durham practices and policy referenced this strategy in policy .1.3.1 Use of Force to Accomplish Lawful Objectives-Force Continuum. Our policy, “Use of Less Lethal Force,” reflects force alternatives. De-escalation is currently an important topic in police culture. Durham has been instructing on this strategy for many years. Each of our instructors supports de-escalation in the context of a person who is not actively endangering the public or whose level of danger can be mitigated to an acceptable level to allow for verbal negotiation. It is considered appropriate in the context of someone experiencing a mental health crisis which is absent of dangerous criminal behavior. The Amazeen case, where Durham officers shot Mr. Amazeen during an incident in 2012, would be an instance of a mental health crisis in which de-escalation either failed or was inappropriate. Instructors expressed that this is an important topic and highlighted that we are at an appropriate balance where an overly restrictive policy could encourage behavior which is dangerous to both the public and officers.

### **5. The Critical Decision-Making Model provides a new way to approach critical incidents.**

**CDM guides officers through a process of:**

**Collecting information**

**Assessing the situation, threats, and risks**

**Considering police powers and agency policy**

**Identifying options and determining the best course of action, and**

**Acting, reviewing, and re-assessing the situation.**

We do not have a policy which specifically spells this out, other than possibly “When Force Must Cease.” Although not in model form, every officer is trained to think in the totality of each and every call, even if force is not needed or utilized.

### **6. Duty to intervene: Officers need to prevent other officers from using excessive force.**

This is an important tenant that is addressed in Policy 1.1.1, Oath of Office which our code of ethics requires us to intervene in matters where it is even perceived that an officer may be acting inappropriately. This topic is openly discussed by Chief Kurz at departmental meetings using examples of Rodney King and Ferguson, MO where he articulates that it is unacceptable for Durham officers to stand on the sideline when another officer may be acting inappropriate. Additionally, the topic is frequently discussed during role call prior to busy weekend-night shifts or potential celebratory events. During briefing, on-duty supervisors have emphasized the importance of knowing when to remove them from a situation and allowing another officer to step in.

**7. Respect the sanctity of life by promptly rendering first aid.**

Addressed in Policy 1.3.5 Use of Force, Medical Aid.

“Use of Force; Medical Aid” covers this. Demonstrating that this policy is followed, in the immediate aftermath of shooting Amazeen, Durham officers rendered immediate first aid which medical professionals stated most likely saved his life.

**8. Shooting at vehicles must be strictly prohibited.**

Addressed in Policy 41.2.2.

Since development in 1998, Durham policies for Use of Deadly Force Limitations and pursuit/ pursuit termination both regulate the use of force on vehicles. Please see US Supreme Court decisions Plumhoff v. Rickard, Mullenix v. Luna, and Haugen v. Brosseau, for an instance when shooting at a vehicle was deemed to be justified. There may be instances when an offender uses a vehicle as a deadly weapon with the intent/ability to assault an officer/bystander and the environment might preclude the officer from safely removing him/herself and any bystanders to a position of safety. In this instance, the Courts ruled that shooting was the safest option. This demonstrates the importance of relevant training and solid policy guidance.

**9. Prohibit use of deadly force against individuals who pose a danger only to themselves.**

RSA 627:5, as well as our existing policy “Use of Deadly Force,” restricts the use of deadly force to instances when the suspect is a deadly or serious bodily injury danger to the officer, another, or their continued flight constitutes a substantial risk of death or serious bodily injury to the general public (Tenn. V. Garner). Danger to another must be reasonably articulable in order to utilize force.

**10. Document use of force incidents and review your data and enforcement practices to ensure that they are fair and non-discriminatory.**

Due to our accredited status, Durham Police have been completing an additional “response to resistance report” for each event. Annually, all events are analyzed to determine if there is a policy flaw, training void or if any one officer uses more force than another. Essentially the department accomplishes this task on many levels, from

an individual incident level, to the early warning system, to the end of year analysis reviews.

**11. To build understanding and trust, agencies should issue regular reports to the public on use of force.**

The completion and presentation of a number of annual reports are accomplished and disseminated at the discretion of the Town Administrator.

**12. All critical police incidents resulting in death or serious bodily injury should be reviewed by specially trained personnel.**

While this issue is addressed in Policy 1.3.6 Use of Force, Report and Review, State regulations and our policy requires that New Hampshire State Police, under the authority of the NH Attorney General, investigate all police shootings. Our policy also requires that motor vehicle accidents involving a police cruiser be investigated by an outside agency.

**13. Agencies need to be transparent in providing information following the use-of-force incidents.**

Another area currently addressed in Policy 1.3.6 Use of Force, Report and Review and demonstrated by the agency releasing the annual analysis of responses to resistance via the Friday Updates. Additionally the document is sent and is certainly available upon request and/or subject to Right to Know requests.

**14. Training and Tactics**

**Training academy content and culture must reflect agency values.**

While the agency has no direct control over the curriculum set by the New Hampshire Police Standards and Training Council, (NHPSTC), academy training is designed to provide a thorough examination of NH RSA's and federal constitutional laws combined with police procedures such as search and seizure, interrogation and other significant constitutional matters. In combination with our structured Field Training Officer (FTO) program and established departmental agency values, all of which are reflected through in-house training including Role Call training.

**15. Officers should be trained to use a Critical Decision-Making Model.**

Although we have not formally trained on this model, we do conduct realistic, carefully planned training designed to prepare a police officer to make "Critical Decisions." With that being said, training has evolved over time to incorporate the use of Simunitions and Red Man Suits. Additionally, supervisors have made a point to continuously gauge

officers' depth of knowledge and critical thinking on shift by often discussing possible scenarios an officer may possibly encounter.

**16. Use Distance, Cover and Time to replace outdated concepts such as the “21-foot rule” and “drawing a line in the sand.”**

Our instructors have performed scenario based training to reinforce the need for distance beyond 21 feet. There has been significant Roll Call coverage of the Tamir Rice incident and the effect of those officers' failing to allow for sufficient distance. Durham department instructors have discussed and reinforced the importance of keeping a much further distance, if possible and “slowing” down their approach. In this case “slowing” down refers to considering other options, waiting for more officers to arrive and/or developing better clarity in considering force options.

**17. De-escalation should be a core theme of an agency's training program.**

This topic is addressed in Policy 1.3.1 Use of Force to Accomplish Lawful Objectives-Force Continuum. This is an area that training in the future should embrace. While the agency culture foster's this attitude as the primary goal, added options for the officers in the area of communication judo, utilizing verbal de-escalation in combination with our agency emphasis in use of force alternatives/ less lethal force options would create a core theme.

**18. De-escalation starts with effective communications.**

It is important to confirm that this should be an area of enhanced training in the immediate future. That said the values are addressed in Policy 1.3.1 Use of Force to Accomplish Lawful Objectives-Force Continuum.

While the New Hampshire Police Standards and Training Council (NHPSTC) core curriculum does include verbal judo in the basic academy, additional training is warranted to reinforce the guardian mentality and approach to policing in Durham.

**19. Mental Illness: Implement a comprehensive agency training program on dealing with people with mental health issues.**

Our arrest procedures in the areas of Involuntary Emergency Admissions (IEA) and Mental Illness policy cover these topics and are reaffirmed through ongoing roll call trainings.

**20. Tactical training and mental health training need to be interwoven to improve response to critical incidents.**

We do not currently utilize a formal critical incident training program. Our instructors were not sure if the resources necessary to invest in a formal program would be well spent given the infrequency we deal with a critical mental health incident. We have not had a negative outcome that CIT would likely have effected that our instructors are aware of. Strafford County Regional Tactical Operations Unit (SCRTOU) utilizes trained negotiators integrated within the team. Mental health training is a standard instruction block at the New Hampshire Police Standards and Training (PSTC) Academy. Moreover, as part of our training program, Durham officers have attended in-service training dedicated to both mental health and autism.

**21. Community-based outreach teams can be a valuable component to agencies' mental health response.**

Our infrequent interaction with mentally ill clients does not warrant development of an active team. We frequently work with Community Partners to find the most appropriate solution to mental health issues that our clients may face. It may be appropriate to investigate the possibility of conducting joint orientation/training with Community Partners as we do with SHARPP.

**22. Provide a prompt supervisory response to critical incidents to reduce the likelihood of unnecessary force.**

This specific incident is addressed in policy 1.3.6 Use of Force, Report and Review and is currently accomplished as a general practice. During past civil disturbances in which large crowds have gathered and taken over various streets in Durham, a supervisor is generally responsible for providing clear and concise verbal commands to the crowd to disperse via a loud speaker. In the aftermath of this lawful order, many people leave the area reducing the likelihood of the need to forcefully move an otherwise much larger crowd away and off the street.

**23. Training as teams can improve performance in the field.**

According to our instructors, this is an area we may expand training. Defensive Tactics (DT) training planned for 2016 incorporates a greater amount of multi-officer responses than in the past. During a past defensive tactics training seminar, one block of instruction focused specifically on this topic. It is common practice in today's time for bystanders and witnesses to videotape citizen-police encounters. This is perfectly legal and well within the rights of those witnesses/bystanders. What is not legal or acceptable are those individuals who actively interfere with police as they are accomplishing their lawful actions. Consequently one of the training blocks consisted of a team of officers arresting an individual for a crime committed in their presence. During the arrest, "citizens" (actors) begin "videotaping" the scene while also attempting to walk within feet of the other officer engaged in making the arrest. Emphasis was placed on back-up officers providing clear verbal instructions to the actors, informing them that they can videotape, but they must stand back for their safety and the officers involved. This teamwork proves to be essential in diffusing situations that are often chaotic and ever-

changing while ensuring the rights of other citizens. Although it is not fully in-line with the team training concept put forth by PERF's plan, it is a step in the appropriate direction.

**24. Scenario-based training should be prevalent, challenging, and realistic.**

We have long engaged in scenario based training which incorporates multiple challenging and realistic scenarios, to include PRIMEX simulator, DT's, and firearms.

**25. Officers need access to and training less-lethal options.**

This area of use of force is thoroughly addressed in policy 1.3.1 Use of Force to Accomplish Lawful Objectives-Force Continuum and 1.3.10 Training Proficiency. Durham officers are trained on OC spraying tools, ASP baton, pepper-ball, Taser, and less-lethal shotguns. Durham Officers train with all weapon systems on an annual basis.

**26. Agencies should consider new options for chemical spray. (Such as considering PAVA as opposed to OC)**

We currently utilize several different chemical agents to include PAVA. OC and PAVA are both inflammatory agents of the mucous membranes. Pepper Balls contain (PAVA powder-Pelargonic Acid and Vanillyamide) PAVA is pharmaceutically manufactured. PAVA acts as an inflammatory agent to the mucous membranes of humans and animals.

**27. An ECW (Taser) deployment that is not effective does not mean that officers should automatically move to their firearms.**

When the Durham Police added Tasers to our force continuum, this was fully addressed in policy 1.3.4.6 Use of Force, TASER. The training system for both our Taser and firearms programs emphasize the specific criteria for the use of deadly force and the failure of one weapon system does not by itself raise the threat level, absent other escalating factors.

**28. Personal protection shields may support de-escalation efforts during critical incidents, including situations involving persons with knives, baseball bats, or other improvised weapons that are not firearms.**

We have riot shields available, but no ballistic shields unless the SCRTOU is activated. Although we have enough riot shields to outfit every cruiser, we do not currently have the space to keep them in the car at all times.

**29. Information Issues**



## **Well trained call-takers and dispatchers are essential to the police response to critical incidents.**

Dispatch and call-takers fall under NH E911 and Strafford County Dispatch. There is a need for police officers and dispatchers to conduct joint trainings to ensure each party involved understands the nuances of each other's positions.

### **30. Educate the families of persons with mental health problems on communication with call-takers.**

Perhaps the POP officer can liaise with Community Partners to integrate this into a family treatment plan?

## **Recommendations:**

- Durham Police Officers should continue to review the department mission statement on an annual basis.
- We should continue to include Graham v. Connor training in our lesson plans and continue to encourage officers to think about force alternatives.
- Instructors should continue to include the concept of "proportionality" in their lesson plans.
- Our force continuum is sound and our policy is comprehensive regarding de-escalation. What we need to think about and continue to emphasize to our officers is the "assessment" phase of an encounter. We currently emphasize "assessing" further threats, but we are not really emphasizing "pre-assessment" phases prior to an actual encounter. This thinking lies at the heart of the Critical Decision-Making model. To some degree it is something all officers do naturally. The pre-assessment phase would be enhanced should we start training in techniques that enhance those skills.
- Emphasis should be placed on communication skills. Incidents happen where officers may become overly excited when they perceive a situation as stressful. Training an officer's communication skills will only help enhance the ability of our officers to cope with stressful and quickly evolving situations.
- Lesson plans should continue to include training on pursuits and roadblocks.
- Instructors should include a block of classroom training that addresses encounters with people suffering from mental health issues.
- Continue training involving Simunitions and real world scenarios.
- Instructors should prepare lesson plans that address the need for team based training.
- During our review, it was revealed the some instructors were not aware we utilized PAVA as part of our Pepper Ball force option. I believe we need to continue our efforts to cross-train all of our Use of Force Instructors.
- This memo should be distributed to all instructors and a copy should be included in the 2016 Lethal-Less Lethal Training Manual.