

	City Council Study Session June 29, 2020 - 5:30 PM Virtual AGENDA Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

II. Virtual Participation Link

A. Virtual Participation Link

The Auburn City Council Study Session Meeting scheduled for Monday, June 29, 2020 at 5:30 p.m. will be held virtually and telephonically. To attend the meeting virtually please click the link or enter the meeting ID into the Zoom app or call into the meeting at the phone number listed below.

Per the Governor's Emergency Proclamation 20-28 and City of Auburn Resolution No. 5533, the City of Auburn is prohibited from holding an in-person meeting at this time. All meetings will be held virtually and telephonically.

The link to the Virtual Meeting or phone number to listen to the Council Meeting is:

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. <https://zoom.us/j/97691972972>

Or join by phone:

253 215 8782
888 475 4499 (Toll Free)

Webinar ID: 976 9197 2972

B. Roll Call

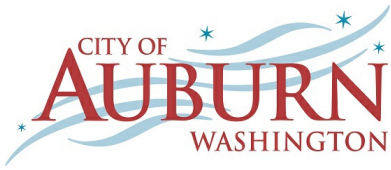
III. PRESENTATIONS

A. Police Presentation (O'Neil)(90 Minutes)

IV. NEW BUSINESS

V. ADJOURNMENT

Agendas and minutes are available to the public at the City Clerk's Office, on the City website (<http://www.auburnwa.gov>), and via e-mail. Complete agenda packets are available for review at the City Clerk's Office.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Police Presentation (O'Neil)(90 Minutes)

Department:

Police

Attachments:

[APD VNR 2020](#)

[Council 8 Cant Wait](#)

[Force Continuum](#)

Date:

June 22, 2020

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

For discussion only.

Background Summary:**Reviewed by Council Committees:****Councilmember:**

Meeting Date: June 29, 2020

Staff:

O'Neil

Item Number:

Auburn Police Department



Courage Honor Integrity Professionalism



Vascular Neck Restraint

Control the fight without the might! - No Blood, No bruises, No broken bones,....just compliance!



Vascular Neck Restraint

- VNR is designed to maximize control of violators and minimize injury of both officer and violator.
- VNR restricts the flow of blood to and from the brain.
- When agencies adopt the VNR they typically show a reduction in UoF complaints and reduction in officer injuries.
- VNR is NOT a choke.
- Chokeholds restrict the airway.
- Due to the position of a true choke the potential for airway damage and serious injury is greatly increased



Vascular Neck Restraint

ACUTE ARREST OF CEREBRAL CIRCULATION IN MAN

Rossen, Kabat, & Anderson



Vascular Neck Restraint

Physiological Processes: Rossen et.al

Rossen, Arch Neurol Psych (1943)

- 137 subjects - 126 apparently normal male volunteers, age from 17 to 31 years.
 - 11 schizophrenic
- Repeated tests were carried out on 85 of these subjects.
- Similar tests were also performed on the investigators and their associates.



Vascular Neck Restraint

Physiological Processes: Rossen et.al

- The Kabat-Rossen-Anderson apparatus: pressure in the cuff rises to 600 mm. of mercury within one-eighth second.
- The sudden inflation of the cuff to a high pressure occludes vessels to the brain prior to next heart beat, so that engorgement of the cerebral vessels is prevented.
- The subject, or physician, deflates cuff, within a fraction of a second.
- EEG and ECG recording.



Vascular Neck Restraint

Physiological Processes: Rossen et.al

The procedure has been applied repeatedly to the same subjects, with no injurious effects. Periods of acute arrest of cerebral circulation for as long as one hundred seconds appear to be well tolerated and are followed by rapid and uneventful recovery.



Vascular Neck Restraint

Are vascular neck restraints deadly force?

In order to answer this correctly we must first differentiate between a

- STRANGLE HOLD
- VASCULAR NECK RESTRAINT



Vascular Neck Restraint

Are vascular neck restraints deadly force?

STRANGLE HOLD

- Uses direct mechanical compression over the anterior (front) structures of the neck. (bar choke)
- Compressing of the trachea can restrict the person's ability to breathe and may result in asphyxiation.
- Deadly force



Vascular Neck Restraint

Are vascular neck restraints deadly force?

Vascular Neck Restraint

- Bilateral compression of the carotid arteries and jugular veins at the sides of the neck.
- Results in diminished cerebral circulation.
- This abrupt reduction of blood flow reduces the violator's ability to resist and can lead to unconsciousness.



Vascular Neck Restraint

Are vascular neck restraints deadly force?

It is very important for officers, administrators, and the media to understand that:

NO significant frontal pressure or compression is applied to the structures of the front of the neck.



Vascular Neck Restraint

Do Vascular Neck Restraints incur more liability than other force options?

VNR offers an alternative to :

- Lethal force
- Repeated use of ECWs.
 - Impact weapons
 - OC spray
 - Strikes & Kicks
- Excessive body compression during officer swarms



Vascular Neck Restraint

Do Vascular Neck Restraints incur more liability than other force options?

Applied to individuals who:

- Demonstrate a high tolerance for pain
- Are under the influence of drugs
- Are in an excited, agitated, and/or psychotic state and control can be established.



Vascular Neck Restraint

Do Vascular Neck Restraints incur more liability than other force options?

By providing an additional force option that does not rely upon electrical load, pain compliance, or blunt force trauma to gain control, VNR can:

- Reduce officer injuries
- Reduce serious injuries to suspects and
- Reduce potential for in-custody deaths.



Vascular Neck Restraint

Do Vascular Neck Restraints incur more liability than other force options?

As with any police use-of-force incident, the type of force, quantum of force, and the manner in which the force is applied is always subject to legal guidelines and public scrutiny.

The VNR must be used in a reasonable manner as set forth in federal law, state law, current case law, and department policy.



Vascular Neck Restraint

Are there legal opinions regarding the VNR?

Vascular neck restraints came under intense scrutiny in the early 1980s due to a few high profile cases.

These cases though relatively few in number in relation to the number of applications of vascular neck restraints, had a disproportionate impact on police departments authorizing the use of vascular neck restraints to control individuals.



Vascular Neck Restraint

Are there legal opinions regarding the VNR?

The U.S. Supreme Court has not offered an opinion that vascular neck restraints are deadly force and still points to the landmark decision in *Graham vs. Connor* and the standard of objective reasonableness as the measure for any force applied under the 4th Amendment.



Vascular Neck Restraint

Are there legal opinions regarding the VNR?

It must be remembered that the number of cases that have been litigated in reference to neck restraints (inclusive of “choke holds”) is relatively small in comparison to the number of times a neck restraint has been used. This number shrinks dramatically when the hold applied is a vascular neck restraint and not a bar arm strangle hold.

Many of the above cases were as much about the use of **any** force rather than the neck restraint



Vascular Neck Restraint

Are there medical opinions regarding the VNR?

While most physicians acknowledge a degree of risk with vascular neck restraints, it is clear from the research that the vast majority of vascular neck restraints do not result in death.



Vascular Neck Restraint

Are there medical opinions regarding the VNR?

Dr R.D. Hoskins writes “although there is a possibility of a fatal outcome from vascular neck restraints, the number of investigations is testament to the relative infrequency of fatal outcomes.”

Even Dr. Reay, one of the most outspoken critics of the hold, admits that “in view of the alleged frequency of their use, there have been remarkably few reported deaths.”



Vascular Neck Restraint

Are there medical opinions regarding the VNR?

Research conducted on behalf of the Judo community attributes no deaths to the hold in over 133 years of use in the sport, and the majority of studies reviewed showed no deleterious effects from the hold.



Vascular Neck Restraint

Are there medical opinions regarding the VNR?

Forensic pathologists Vincent and Dominick DiMaio wrote “carotid sleeper holds are safe if properly used.” In 2005, Dr. Gary Vilke wrote the carotid sleeper hold “is an appropriate form of restraint and use-of-force method in law enforcement’s continuum.”



Vascular Neck Restraint

Are there medical opinions regarding the VNR?

Most recently, in 2007, the Canadian Police Research Centre issued a Technical Report that concluded:

“while no restraint methodology is completely risk free, there is no medical reason to routinely expect grievous bodily harm or death following the correct application of the vascular neck restraint in the general population by professional police officers with standardized training and technique.”



Vascular Neck Restraint

Summary

- While there have been deaths associated with the use of VNR it is rare that such deaths are caused by the use of the VNR.
- As officers we know that no technology or tactic is 100%.
- The VNR has a long and proven “track record” of success and safety.
- Legal decisions and medical information supports its use at less-than-deadly force levels.



Vascular Neck Restraint

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Vascular Neck Restraint

Auburn PD Policy

Lexipole 300.3.4 Vascular Neck Restraint



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

The proper application of the VNR may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the VNR hold is subject to the following:



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

(a)

The officer shall have successfully completed department-approved training in the use and application of the VNR.



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

(b)

The VNR may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

1.

The subject is violent or physically resisting



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

2.

The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

(c)

The application of a VNR on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a VNR:



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

1. Females who are known to be pregnant
2. Elderly
3. Obvious juveniles
4. Individuals who appear to have Downs Syndrome, or who appear to have obvious neck deformities malformations, or visible neck injuries.



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

(d)

Any Individual who has had the VNR applied and was rendered unconscious, shall be promptly examined by medical personnel and should be monitored until examined by appropriate medical personnel.



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

(e)

The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the VNR and whether the subject lost consciousness as a result.



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

(f)

Any officer attempting or applying the VNR shall promptly notify a supervisor of the use or attempted use of such a hold.



Vascular Neck Restraint

Auburn PD Lexipole 300.3.4

(g)

The use or attempted use of the VNR shall be thoroughly documented by the officer in any related

Eight Can't Wait

- Ban Chokeholds & Strangleholds
- Require De-Escalation
- Require Warning Before Shooting
- Exhaust All Alternatives Before Shooting
- Duty to Intervene When Excessive Force is Being Used
- Ban Shooting at Moving Vehicles
- Require Use of Force Continuum
- Require Comprehensive Reporting



Courage Honor Integrity Professionalism

Ban Chokeholds & Strangleholds

- Allowing officers to choke or strangle civilians results in the unnecessary death or serious injury of civilians. Both chokeholds and all other neck restraints must be banned in all cases.
- **Presentation on VNR**



Courage Honor Integrity Professionalism

Require De-Escalation

- Require officers to de-escalate situations, where possible, by communicating with subjects, maintaining distance, and otherwise eliminating the need to use force.
- De-escalation is covered in these sections of our policy and procedures manual.
- Section 207 Training
- Section 304 Taser and Use of Force
- Section 430 Crisis Intervention Incidents
- Section 409 Emergent Detentions
- Section 433 Civil Disputes
- Each year, we conduct four sessions of defensive tactics that all commissioned employees are required to attend. There is an emphasis placed on de-escalation during each session. At the end of the year, we measure the success of this training with mock scenes where officers are required to demonstrate crisis communications and de-escalation.
- In addition to defensive tactics, officers get two hours of crisis intervention training through the state. This training focuses on crisis communications and de-escalation. Additionally, the State of Washington requires that 25% of all patrol officers attend a 40 hour crisis intervention training course. The Auburn Police Department exceeds this standard and requires *every* commissioned officer attend this 40 hour course. Officers also attend bias-based policing training every other year with ethics the year in between. Additionally, all members of the Auburn Police Department will attend a 10 hour course at CJTC related to Implicit Bias. On average, Auburn Police Department employees attend an average of 17,000 hours of training annually.



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Require Warning Before Shooting

- Require officers to give a verbal warning in all situations before using deadly force.
- Our department policies are based on a national standard developed through Lexipol. Our policy requires a verbal warning not only before shots are fired but before the use of any force, when feasible.
- When feasible officers also advise of the action that will occur before is used. (Example, stop resisting arrest or you will be tased)



Courage Honor Integrity Professionalism

Requires Exhaust All Alternatives Before Shooting

- Require officers to exhaust all other alternatives, including non-force and less lethal force options, prior to resorting to deadly force.
- Officers may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- State Law requires that no other reasonable alternative to the use of deadly force occur at the time deadly force is used.



Courage Honor Integrity Professionalism

Duty to Intervene

- Require officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor.
- The Auburn Police Department has had a policy for several years requiring officers to intervene and report any use of force.
- This has occurred, there have been a few incidents that have been reviewed in recent years because officers perceived what might have been inappropriate force.



Courage Honor Integrity Professionalism

Ban Shooting at Moving Vehicles

- Ban officers from shooting at moving vehicles in all cases, which is regarded as a particularly dangerous and ineffective tactic. While some departments may restrict shooting at vehicles to particular situations, these loopholes allow for police to continue killing in situations that are all too common. 62 people were killed by police last year in these situations. This must be categorically banned.
- Shots at or from a moving vehicle are rarely effective. Officers are advised to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.



Courage Honor Integrity Professionalism

Require Use of Force Continuum

- Establish a Force Continuum that restricts the most severe types of force to the most extreme situations and creates clear policy restrictions on the use of each police weapon and tactic.
- Attached Presentation



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Require Comprehensive Reporting

- Require officers to report each time they use force or threaten to use force against civilians. Comprehensive reporting includes requiring officers to report whenever they point a firearm at someone, in addition to all other types of force.
- Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.
- Use of force is reviewed by Sergeant, Commander, Assistant Chief, and in some instances the Chief of Police.



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Do Officers have In-Car Video or Body Cameras?

- Every Auburn Police Patrol Vehicle has in car video. Officers who don't operate patrol vehicles (traffic, parking enforcement, bicycle officers) are equipped with body cameras.
- Detective and Admin Vehicles do not have video systems.



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Force Incidents

Year	Incidents	Arrest	Force Incidents	% of arrest that resulted in force	% of Incidents that resulted in force
2019	86,062	4,606	183	3.9%	0.21%
2018	96,884	5,092	204	4%	0.21%
2017	97,843	5,115	203	3.9%	0.20%
2016	94,348	4,716	217	4.6%	0.22%



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Use of Force by Police

Estimated Annual Use of Force by LEOs ('96 to '18)

- **Rare in the US:** annually over 150 million CFS, Self-Initiated, & Other Police Public Contacts (PPC) [BJS: 11/15/18/20; NENA, 20; Johnson, 16]
- On average, non-deadly force used/threatened in about 1/54 PPC (1.8%)
- Annual average, about 13 mil arrests; UoF in 1:110 criminal arrests
- Annual average, about 1,000 OIS= 0.0003% PPC & 0.009% during arrest
- Annual average, about 1 Subject Prone/100 criminal arrest
- Annual average, about 800 ARD (Non-Firearm); 1:2.6 mil/PPC
- Annual average, about 1:CEW application/3,000 PPC/CFS
- Annual average, about 1:3,000,000 CEW ARDs (Non-Firearm)
- Annual ADP Jail Detainees=712,000; about 130 UoF deaths [0.008% chance]
- **LEO force rare and ARD is more rare; Given poor health of arrestee/detainees**



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Courage Honor Integrity Professionalism

FORCE CONTINUUM v. REASONABLE OFFICER STANDARD

The Use of Force Continuum

- A guide that allows officer to conceptualize what amount or type of force to use in a certain situation.
- The Use of Force Continuum gained popularity in the 80 and 90s.
- It is typically presented as a stepped approach to what level of force may be used to overcome a violator's resistance to being apprehended.
- Because the police use force to apprehend violators for a lawful purpose and not for sport, the force continuum is designed to allow the officer to use more force than the violator.

Ex. A violator strikes an officer with a punch or a kick, the officer can respond with an impact weapon.

- Three levels of Force were taught.

Level 1 Control Tactics – Pain Compliance (Counter joint movements, hair holds, takedowns, OC)

Level 2 Defensive Tactics – Impact Impedance (Strikes, Kicks, Impact Weapons, VNR, Taser)

Level 3 Termination Tactics – Deadly Force

Reasonable Officer Standard

- Reasonable Officer Standard – An officer with similar training and experience would have done something similar in the same or similar situation.
- Graham v. Connor 490 U.S. 386 (1989) – United States Supreme Court that determined objective reasonableness would be the standard to which law enforcement use of force would be judged.
 - Graham had Type 1 Diabetes/friend take him to a convenience store to get orange juice. Graham entered the store but left quickly after seeing that many people were waiting in line. Connor, a police officer, observed Graham's behavior and became suspicious/stopped them. Graham was acting Soon after questioning, Connor put Graham in handcuffs. Once Connor confirmed that nothing had occurred at the store, he released Graham.

Graham claimed that he had sustained multiple injuries from the encounter and filed a law suit against the officer for violating his Fourth Amendment rights.

- Objective Reasonableness of a particular use of force is based upon;
 - Totality of the circumstances known by the officer at the time
 - Judged from the perspective of a reasonable officer on the scene rather than with 20/20 vision of hindsight
- Determining Objective Reasonable
 - The severity of the crime at issue
 - Whether the subject poses an immediate threat to the safety of the officer or others
 - Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
 - Other factors to be considered
 - Availability of alternative methods to capture or subdue the suspect
 - Influence of drugs/alcohol, or other mental history known by the officer at that time
 - Proximity of weapons to the suspect
 - Previous history of violence, training, etc. of the suspect known by the officer at that time
 - Officer/suspect factors – age, size, relative strength, skill level, injury/exhaustion, number of officer v. suspects
 - Training and experience of the officer.

Discussion Points

Many law enforcement agencies used the Force Continuum to define or guide their policy. After many years, agencies were encouraged to move away from the Force Continuum and to adopt the Reasonable Officer Standard by professional law enforcement training groups such as Lexipole and the Washington State Criminal Justice Training Commission to name a couple for several reasons.

In a nutshell, the courts do not use the Force Continuum to determine if an officer's use of force was reasonable under the 4th Amendment. The courts use the Objective Reasonableness Standard, which is defined in *Graham v. Connor*.

To have a policy that based on factors that are not to be considered by the court is doing the citizens, the city, the department, and the officers a disservice. The Force Continuum was never meant to serve as a policy, but simply a way for officers to conceptualize what type of force could be considered under certain conditions, but the overriding factor is objective reasonableness. Furthermore, the Force

Continuum is flawed as a policy because it does not consider the totality of the circumstances. For example;

An officer encounters an elderly person using a walker or a cane to walk. The elderly person is angry about the incident and strikes the officer in the leg with the walker or a cane. The officer is not injured, the officer is about 6ft tall and over 180lbs, while the elderly person is about 5-8 tall and 130 lbs and frail.

Under the Force Continuum, the officer is justified to use level 2 defensive tactics against the elderly person, which could include punches, kicks, impact weapons, VNR, or taser. However, using the Objective Reasonableness Standard, the officer is required to consider the above factors and the totality of the circumstances before deciding to use force and what force is reasonable.

Further discussion:

Some mistakenly believe that under the Objective Reasonableness Standard, that officers are not allowed to use force on minor crimes due to the “seriousness of the crime” being a consideration for reasonableness. The fact is, officer can use force to enforce the law and apprehend suspects, per RCW and *Graham v. Connor*. They just have to consider the amount and type of force used. For example;

An officer is attempting to apprehend a shoplifter. The officer can use chase and tackle the shoplifter or use a take-down to arrest the shoplifter. Minus any other exigent circumstances, tasing the shoplifter, using a VNR, striking the suspect with a vehicle or impact weapon would appear to be unreasonable.

Response to Resistance v. Use of Force

Calling Use of Force a Response to Resistance is semantics. Some agencies, to include the APD, have changed the terms from Use of Force to Response to Resistance. Ultimately, officers are using force to overcome resistance, and no matter what we call it, the use of force must be reasonable under *Graham v. Connor*.

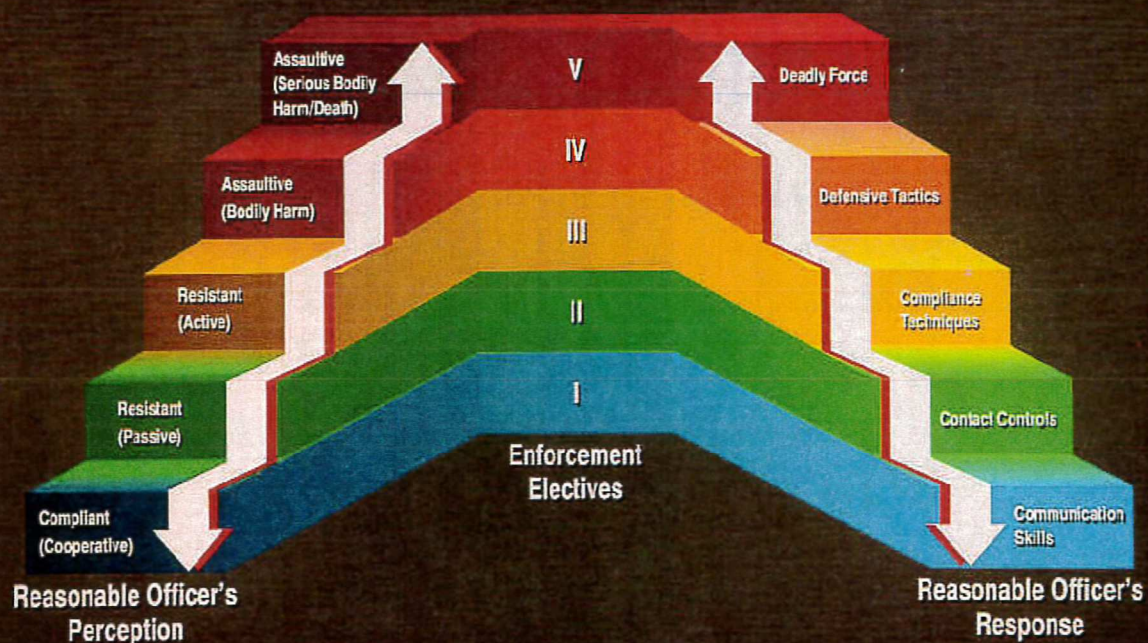
It is also important to understand that when law enforcement uses force, it is not about a fair fight; it is about subduing the violator and ensuring the safety of the public and/or the officer. The violator always has the choice whether or not to comply, resist, or flee.

Neck restraints are not air chokes and do not cause death, and do not cause any long term effects beyond temporary loss of consciousness. They are a proven method of quickly subduing a violator without minimal risk of injury to the violator and the officers. Many times, the alternative to a neck restraint is strikes and kicks, or the use of impact weapons.

CONTINUUM OF RESISTANCE: REASONABLE OFFICER'S PERCEPTIONS OF VIOLATOR'S ACTIONS						
NON VERBAL intimidation through posturing	VERBAL	PASSIVE	ACTIVE a violator who is trying to defeat your physical control			
clenched fists eyes stance	threats, statements that indicate un- cooperative subject	a subject who will not move or "come along"	<u>Static Resistance</u> actively uncooperative i.e. isometric resistive tension is generated by the violator	<u>Egressive</u> a violator is attempting to escape control using reactive type movements	<u>Aggressive</u> the violator is attacking the officer and is attempting to injure the officer in the process of resisting	<u>Aggravated Aggression</u> the violator has pre-planned the attack or is implementing weapons and/or tactics that are highly injurious or potentially lethal
<u>OFFICER PRESENCE</u> : identification by: verbal announcement, badge, vehicle, uniform etc.						
	<u>VERBAL INTERACTION</u> : dialogue, open / closed questions, persuasion, advice, or lawful order.					
This continuum is only a model to assist in		<u>ESCORT/TOUCH CONTROL</u> : guiding, escorting, and out muscling the individual who exhibits only minor resistance				
conceptualizing reasonable force options and comparing one level of force to another.			<u>LEVEL ONE CONTROL (RESTRAINT) TACTICS</u> Pain compliance via: control points, distractions, counter-joint tactics, hair hold control tactics; OC Spray TASER, LVNR, can be used at this level.			
Each situation may require the officer to utilize a different "path" through this force continuum. It is expected that officers can and should move both up and down this force continuum using only reasonable force to overcome violator resistance.					<u>LEVEL TWO DEFENSIVE TACTICS</u> Impact counter measures such as striking Techniques impact weapons; baton or flashlights; chemical agents in projectile forms, TASER, LVNR	
At any point after initial contact the officer may be required to move immediately to the highest level, conversely the officer should decrease the level of force once violator resistance has decreased and officer safety is assured.					<u>LEVEL THREE TACTICS</u> Tertiary targets with the baton or other focused impact tools, firearms, etc.	
CONTINUUM OF ENFORCEMENT: REASONABLE OFFICER'S ACTIONS						

Federal Law Enforcement Training Center

Use of Force Model



PTC0059-2