



**CITY OF
MONTPELIER
MONTPELIER,
VERMONT**

Agenda for City
Council Meeting
Wednesday,
November 9, 2011
07:00 P.M.

- 1) Call to Order by the Mayor
- 1) Call to Order by the Mayor
- 1) Call to Order by the Mayor
- 2) 11-270. General Business and Appearances
- 3) 11-271. Consideration of the Consent Agenda:
 - a) Consideration of Minutes from the October 26th, 2011 City Council Meeting (following the Community Dinner/Town Hall Meeting).
 - b) Ratification of 2011-2014 Police Union Contract.
 - c) Consideration of authorizing the purchase of an Automated emergency notification system to alert residents and business owners of emergency situations in Montpelier. Police, Fire/EMS, the Planning Department and "Montpelier Alive" were involved in the selection process. Recommendation: Based on the City's criteria, product demonstration and cost, staff believes Blackboard Connect is the best choice for this service. The annual cost of their services is \$6,687.13.
 - d) Approval and signing of a "Municipal Electronic Funds Transfer Agreement" with the Merchants Bank. The Merchants Bank Government Banking Department annually requests a review of their documents by Attorney Paul Giuliani. As part of the review, the

Electronics Fund Transfer (EFT) Agreement is included. The EFT document relates to their on-line banking product and more specifically, the capability of sending and receiving files by means of the Automated Clearing House (ACH). As ACH activity is an extension of credit, a recommendation has been made to have that reflected in the documents. As with traditional loan documents, the Merchants Bank is now requesting that the majority of the Council and the Treasurer of the municipality sign the agreement.

- e) Approval of a "Sales Order" from ACS to re-index the City's Land Records starting on December 31, 1992, and working back in time to bring these records onto the 20/20 system and making the index and images available on the computer. The City Clerk-Treasurer would like to use \$40,000 from the Records Restoration Fund to bring those land record documents online. Recommendation: Approval of the expenditure for this project and authorization for the City Manager to sign the Sales Order Agreement.

- f) Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:

- 1) Application for a Special Event Permit from Mark Simakaski, d/b/a Artesano, LLC of Groton, for the "Touch of Vermont Holiday Gift Market" scheduled to be held on Saturday, December 10th, 2011 from 7:00 A.M. to 5:00 P.M. in the City Hall Auditorium. Their beverages will be served within a 10-foot space in the vending area of the market.

- g) Payroll and Bills

- 4) 11-272. "SETTING OF TIMES" by City Council for the evening ?

- 5) 11-273. Update from The Basement Teen Center.

- a) Teen Center staff member Casey Willard contacted the City Manager's Office in October, asking if they could provide an update to the Council at one of their upcoming meetings.

- b) As part of their presentation, Casey said they will be showing a short documentary; this is something that the teens have put together which focuses on teens having an active part in the community.

- c) Recommendation: Receive the update and presentation of the documentary; opportunity for discussion.

6) 11-274. Housing Barriers Committee Report.

- a) Four Council "Summer Study Committees" were formed in the spring; the Housing Barriers Committee was one of the four. Their charge was to "identify barriers to new housing in the city; select a date to convene a 'housing summit' to identify barriers and develop options for what the City can do to foster new housing.

- b) Recommendation: Receive report.

7) 11-275. Update from the City's rep to the Central Vermont Solid Waste Management District.

- a) Mia Moore, the City's rep to the CVSWMD has asked for time on this evening's agenda to report to Council the activities of the CVSWMD during the past year.

- b) Recommendation: Receive update; discussion; possible direction to Ms. Moore.

7) 11-275. Update from the City's rep to the Central Vermont Solid Waste Management District.

8) 11-276. Receive and discuss the Taser Committee's Final Report to the City Council.

- a) This committee has met regularly since the Council appointed them in May; two public hearings were held and now the Council has received their final report.

- b) Recommendation: Review and discuss the report with committee members; Council will make their decision on November 16th.

8) 11-276. Receive and discuss the Taser Committee's Final Report to the City Council.

9) 11-277. Regional Services Meeting Follow-up

- a) The governing bodies from Barre, Barre Town, Berlin and Montpelier met on Thursday, November 3rd, at the Central Vermont Chamber of Commerce Office.
- b) Report #2 of the Public Safety Committee was presented. This Committee was formed to "Create a public safety authority that provides the four communities of Barre, Barre Town, Berlin and Montpelier with an affordable, integrated, efficient system of public safety services (fire, police, ambulance, dispatch) that protects public welfare and provides rapid responses with highly qualified personnel when emergency situations arise."
- c) As outlined in the report, the next steps the Committee's looking at are:
 - 1) Member towns commit to a non-binding ballot item in their respective communities which solicits preliminary support for a combined public safety authority.
 - 2) Each community includes \$15,000 in their respective 2012-2013 budgets for further work of the committee.
 - 3) The committee would continue to refine the preliminary cost sharing formula, as well as the governance model for the authority.
 - 4) The committee would continue an educational and outreach role in each community leading to the town meeting vote.
 - 5) If successful, the committee will facilitate the hiring of a consultant to work with the committee on the next steps needed including potential charter changes, legal review, cost sharing models, asset and liability review, and governance and transition planning.
- d) Recommendation: Discussion; possible direction to staff.

8) 11-276. Receive and discuss the Taser Committee's Final Report to the City Council.

10) 11-278. Department Reports

- a) As outlined in the City of Montpelier's FY ?13 Budget Schedule (July 1, 2012 - June 30, 2013), Reports from City Departments are scheduled to be heard this evening.
- b) Those departments presenting at this meeting will be Police, Fire and Public Works.
- c) Recommendation: Receive reports; possible direction to staff.

10) 11-278. Department Reports

10) 11-278. Department Reports

11) 11-279. Reports by City Council

12) 11-280. Mayor's Report

13) 11-281. Report by the City Clerk-Treasurer

14) 11-282. Status Reports by the City Manager

15) 11-283. Agenda Reports by the City Manager

14) 11-282. Status Reports by the City Manager

Adjournment

Adjournment

Adjournment

Adjournment



CITY OF MONTPELIER

Charlotte L. Hoyt, City Clerk & Treasurer
City Hall – 39 Main Street
e-mail address choyt@montpelier-vt.org
802-223-9500

November 3, 2011

MEMORANDUM

To: William Fraser, City Manager
Mayor Hooper and City Council Members

From: Charlotte Hoyt, City Clerk & Treasurer

Subject: Reindex Customer Land Records

Attached please find a Sales Order from ACS to Reindex the Land Records starting on December 31, 1992 working back in time to bring these records on to the 20/20 system and making the index and images available on the computer.

I would like to use \$40,000 from the Records Restoration Fund to bring those land record documents online. The Records Restoration Reserve Fund shows an unaudited balance of \$47,541.02.

Seeking authorization to expend these fund and for the city manager to sign the sales order agreement.



A xerox Company

Sales Order

CUSTOMER NO 288285	DATE 10/20/2011	Platform NA	Cost center (Sales support)
------------------------------	---------------------------	-----------------------	-----------------------------

Please use **new** customer number from the customer list.

B City Clerk	S
I	H
L City Hall	I
L	P
39 Main Street	
T	T
O Montpelier, VT 05602	O

E-mail address: choyt@montpelier-vt.orgCUSTOMER
CONTACT:Charlotte L. HoytPHONE: 802-223-9500

P.O. NO.: _____

SALES REP: Gerencser

SALES REP'S NO.: _____

PRODUCT - sales support	PRODUCT DESCRIPTION	QTY	UNIT PRICE	SALES AMOUNT
	Reindex Customers Land Records beginning with			\$ -
	12/31/1992 (Book 252 Pg 153) working back in time (one			\$ -
	year at a time). Convert images for year reindexed. Link			\$ -
	and load index and images for year onto customer's 20/20			\$ -
	system. Do not print out index until advised to do so.			\$ -
				\$ -
	Continue this process of a year at a time until total of			\$ -
	\$40,000.00 is reached. Do not exceed this total amount.			\$ -
				\$ -
	Cost of reindexing is \$0.65 per line.			\$ -
	Cost of film conversion, linking & loading is \$0.14 per page.			\$ -
				\$ -
8840104	Freight			\$ -

SPECIAL INSTRUCTIONS:	SUBTOTAL \$ -
-----------------------	---------------

TAX %
i.e. .08 or .0725

SALES TAX \$0.00

CUSTOMER ACCEPTANCE: I hereby accept the terms and conditions of this Sales Order Agreement included in page 2, and authorize ACS to proceed on this matter as set forth herein.

CUSTOMER SIGNATURE: _____ DATE: _____

FREIGHT
F.O.B.

SALES APPROVAL _____

TOTAL \$ -

Terms and Conditions:

Payment Terms: Customer agrees to remit payment to ACS within 30 days from issuance of invoice.

Limited Warranty: Hardware and Commercial Software Warranties: If third-party hardware and/or commercial software is furnished under this agreement, then ACS shall, to the maximum extent allowable by said third-party vendors, pass-through to the Customer all manufacturers' warranties for materials furnished under this agreement. ACS shall provide only the standard manufacturers' warranties, guarantees, and/or exchange policies for defective items, which are offered through the manufacturers themselves. ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE HARDWARE AND COMMERCIAL OFF-THE-SHELF SOFTWARE, IN WHOLE OR IN PART. ACS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Rights to Third Party Software: Rights to third party commercial off-the-shelf software provided by third-party software vendors, including "shrink wrap" and "click wrap" software, are subject to the provisions of the software licenses provided by those third-party software vendors, and Customer understands and agrees that acceptance and use of such third-party software shall be deemed an acceptance of the terms and conditions of the licenses. Client further agrees to use the third party software in accordance with the terms of those licenses. In the event Client requestd ACS to install third party software that contains "shrink wrap" or "click-wrap" software Client hereby authorizes ACS to accept such "shrink wrap" or "click-wrap" software on behalf of the Client when the software is installed.

Limitation of Liability: IN NO EVENT SHALL ACS BE LIABLE TO THE CUSTOMER HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING TWENTY-FIVE PERCENT (25%) OF THE FULL PRICE OF THE ORDERED GOODS AND SERVICES UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL ACS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY. THIS LIMITATION SHALL APPLY EVEN IF CUSTOMER HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST ACS ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE AGGRIEVED PARTY SHALL HAVE LEARNED OF THE INJURY OR LOSS. UNDER NO CIRCUMSTANCES WILL ACS BE RESPONSIBLE FOR THE LOSS OF DATA OR SOFTWARE.

Force Majeure: Neither party to this agreement shall be responsible for delays or failures in performance resulting from an act of God, war, civil disturbance, labor dispute, or other cause beyond the reasonable control of such party.

Ownership of Data: Customer will retain all title, rights, and ownership of all data, including associated indexes, film, and other data provided to ACS, whether stored on magnetic tape, magnetic disk, CD-ROM disk (or other "like" electronic media that may be used).

Risk of Loss & Title: ACS shall bear the risk of loss or damage to any hardware and commercial software provided under this agreement, while in transit to the Customer's designated delivery or installation site. The Customer shall bear all risk of loss or damage to the hardware and commercial software after delivery to the Customer site, unless such loss or damage is due to the negligence or willful acts of ACS, its employees, agents, representatives or subcontractors. Title and risk of loss to the hardware and commercial software shall pass to the Customer upon the date products were delivered to the customer's site.

Returns: Customer may return hardware and commercial software products purchased from ACS within 15 days from the date products were delivered to the Customer's site.

Termination for Breach: If Customer materially breaches any of the terms and conditions set forth in this agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within ten (10) calendar days (or other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, ACS may terminate this agreement for breach. Termination by ACS shall be effective upon written notice to Customer. Customer agrees to discontinue use of all ACS-owned materials no later than the effective date of termination and return such ACS-owned materials to ACS within thirty (30) calendar days after termination.

Entire Agreement: The contents of this agreement constitute the entire understanding and agreement between the parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this agreement. The terms and conditions of this agreement shall not be changed or modified except by written agreement signed by both parties. The parties agree that in event Client provides ACS with a purchase order, or any other document, containing terms or conditions that are in addition to, or in conflict with, the terms and condtions contained in this agreement, such additional and/or conflicting terms shall be deemed null and void.

Work being performed by ACS throughout the project is earned as completed; therefore, in the event the Customer cancels this sales order without cause, the Customer shall equitably compensate ACS for all services performed through the effective date of the cancellation.

Stop Work: ACS is entitled to stop work on this Agreement when the funding or cost limit specified on page 1 is reached. Under no circumstances will ACS be required to perform services or provide deliverables in the absence of available funding.



City of Montpelier, Vermont
"The Smallest Capital City in the United States"

TO: City Council Members
William Fraser, City Manager

FROM: Sandy Gallup, Finance Director

DATE: November 2, 2011

SUBJECT: Automated Notification Services –Telephone, Email and Texting

After the recent flood emergency, the City Council expressed interest in purchasing an automated emergency notification system to alert residents and business owners of emergency situations in Montpelier.

Nick Daniels, Technology Technician researched a number of providers of notification services. His recommendation is attached. We involved the Police, Fire/EMS, Planning Departments and Montpelier Alive in the selection process. Based on our criteria, product demonstration and cost, we believe Blackboard Connect is the best choice for notification services. The fact that the Montpelier School System contracts with Blackboard Connect for mass communication services to notify parents of school closings and other important messages makes our recommendation even stronger.

The annual cost of the Blackboard Connect services is \$6,687.13. Although this expenditure is not included in the FY12 budget, it is a top priority for our emergency management program. We will try to find areas in the budget to cover this unexpected expenditure.

Recommendation: I recommend purchasing Blackboard Connect of Government notification services for \$6,687.13.

RE: Notification Services

After researching the vendors offering notification services 3 prominent vendors stood out from the rest by reputation and feature set. These were Blackboard's Connect, Nixle Connect, and Everbridge's Aware/SmartGIS products. Of these Blackboard Connect and Aware/SmartGIS were the strongest offerings; Nixle's focus on mobile technology, lack of non-emergency features, and certain disclosures as part of their privacy policy left me with doubts as to their ability to not only meet our needs but to safe guard the privacy of our user's data. Furthermore multiple attempts to see a demo of their system went unanswered.

Of our 2 stand out vendors I examined them for our requirements:

- SMS Messaging
- Phone Calls
- Email
- Location Specific Messaging
- Social Media Integration
- Easy UI for end users and administrators
- Users can Opt-Out of non-emergency notifications
- The use of physical phone lines (POTS) instead of Voice Over IP (VOIP) (capacity failover excluded)
- End user portal customization

Based on these criteria and after demonstrations provided by the 2 vendors I find these services to be more or less equivalent, however I am recommending Blackboard Connect for a few key reasons:

- They are used by the Montpelier Schools; this would keep our notification system constant with theirs.
- Their web application is polished, professional, and easy to use.
- Lower price point.

Choosing a service already known to many of our citizens offers us consistency and lowers the learning curve for citizen adoption. Connects exceptional interface, rich portal customization, and robust feature offerings makes Blackboard a leader in notification services; offering us the tools to achieve our communications goals now and in the future.

Nick Daniels

Technologies Technician/Developer

Blackboard Connect for Government®

GSA Quote

Unlimited Use Service Proposal for Montpelier, VT

Company Information

Blackboard Inc.
650 Massachusetts Ave., NW, 6th Floor
Washington, DC 20001

DUNS Number: 01-613-1430
Tax ID Number: 52-2081178
CAGE Number: 1QLN4
GSA Contract Number: GS-35F-0554M

Prices Valid through 10/30/11

Service Summary: The Blackboard Connect for Government service allows government leaders to provide notices, direction, and reassurance to reach thousands of constituents in minutes without having to invest in or maintain hardware, software, or additional phone lines. Now, you can reach your entire community—quickly and reliably—with voice, text, and email messages.

Services include:

- An integrated communications suite, including Priority Communication, Community Outreach and Interactive Survey
- Voice and text/SMS delivery to multiple communication devices
- Geo-Calling feature lets you target recipients using a map
- 24/7/365 proactive Client Care support
- Unlimited use for a fixed, annual fee
- Initial set-up, training and refresher training sessions included
- Delivery to up to three phones, two email addresses and one SMS phone per contact
- Superior call routing, throttling, and load balancing expertise
- Fully hosted and managed Software as a Service (SaaS) --- no maintenance required
- Message delivery tracking with comprehensive reporting

Quote Summary: All products and services quoted are available through the Blackboard Inc. GSA Schedule GS-35F-0554M and pursuant to the Terms and Conditions negotiated therein.

PLEASE INCLUDE IN THE PURCHASE ORDER ALL THE INFORMATION IN THE PRICE QUOTE BELOW AND PLEASE MAKE SURE THAT BLACKBOARD GSA SCHEDULE # GS-35F-0554M IS CLEARLY WRITTEN ON YOUR PURCHASE ORDER. PLEASE SIGN THIS PRICE QUOTE, SCAN BOTH DOCUMENTS, AND EMAIL THEM TO richard.berryman@blackboard.com.

Barriers to New Housing Committee Council Report

November 8, 2011

Council Members:	Angela M. Timpone (Chair) and Nancy Sherman
Housing Task Force Members:	Polly Nichol and Jack McCullough
Planning Commission Members:	Alan Goldman and John Bloch
Staff:	Ken Russell and Gwendolyn Hallsmith
Members of the Community:	Jennifer Hollar and Edmar Mendizabal
Vermont Law Students:	Nolan Riegler and Breana Behrens

The committee charge: *To identify barriers to new housing in the city; select a date to convene a "Housing Summit" to identify barriers; and develop options for what the city can do to foster new housing.*

Introduction

In June 2011, the Barriers to New Housing Committee was formed by the Montpelier City Council to investigate the barriers to new housing in Montpelier and identify ways the city can promote new housing growth. This report reflects the assumption that more housing and growth are ways to relieve financial pressure on city and tax payers. More housing and more residents will increase the city's grand list, spread the cost of services over more households, and utilize excess capacity in the schools and water system. On the other hand, some residents want the city to continue as it is with limited growth. The optimal or maximum size for the city was not discussed by this committee.

Housing and residents are the life blood of the city, now and in the future. We need to plan and provide for new residents as well as the changing needs of current residents. There are many views and opinions about Montpelier's needs for housing and why needed housing is not being built. This report is an effort to look at this problem and propose some constructive recommendations that will address the problems and conditions that impede the development of new housing in the city. In addition to discussions at our regular meetings, we conducted an informal telephone survey with fifteen local realtors, land owners, lending institution representatives, and developers. They gave valuable information in response to three questions that are the basis for this report. The questions are:

1. What are the barriers that discourage or block people from building or purchasing houses in Montpelier?
2. What are the factors that attract and retain home owners/residents?
3. What can the city do to encourage the building/development of more new homes and residences and bring new owners/residents to Montpelier?

The committee was assisted by Vermont Law School students, Breana Behrens and Nolan Riegler, from the Land Use Clinic. Both Breana and Nolan attended our meetings, researched policies and regulations that other municipalities use to increase housing development. Many of the recommendations in this report came from Breana and Nolan's research findings. A full

report of their findings is in Appendix C: “Land Use Clinic – Vermont Law School: Options for Increasing Housing Development in Montpelier.” Montpelier is well positioned to make a long term commitment to implement some of these recommendations. In some cases that may take some modest expenditure of funds, but we are fortunate to have the Planning Department, the Housing Trust Fund, and the Housing Task Force to help move the recommendations forward.

Barriers: Real and Perceived

What are the barriers that prevent new housing construction in Montpelier? This question was posed to local realtors, land owners, regulators (members of the Development Review Board), representatives of lending institutions, and developers. Survey responses, with comments from Planning Director, Gwen Hallsmith in parentheses are listed in Appendix A of this report. The Planning Director’s responses are important because they provide current and correct information.

The survey responses show that many factors affect new housing; some can be addressed by the city through marketing, zoning and regulation. Our focus is on the areas where the city can take action to improve the environment for new housing.

Types of barriers identified

- A. Economic conditions
- B. The Montpelier market: Housing and land conditions and availability
- C. Preferences and attitudes of potential buyers and current residents
- D. Montpelier property taxes
- E. Regulatory conditions; state and city
- F. Financing: what’s needed and what’s available

Based on information from our surveys and the inventory of programs and procedures used in other municipalities, the committee makes the following recommendations for actions the city can pursue in order to promote the development of new housing and new residents.

Recommendations

Recommendations fall into three categories: marketing, developing new financial resources, and revisions to the regulatory environment.

Marketing

Montpelier has many assets, and survey respondents easily listed the factors that attract and retain homeowners and residents and make Montpelier a highly desirable place to live. There is, however, a lingering narrative that the city puts up unreasonable barriers to development. This makes it especially important to present clear and current information about processes, procedures and regulations that pertain to the development of new housing in the city.

- Montpelier promotion campaign – ***This is a great place to live and work!*** The city should develop a new marketing campaign that identifies the numerous assets that make the city a highly desirable place to live so that visitors and potential home buyers and residents know what the city offers. The group who answered our survey questions identified a set of factors that attract potential home buyers and retain current residents.

Montpelier school system, city services (police and fire in particular), unique character, vibrant downtown with attractive stores, businesses, and restaurants; downtown events and farmer’s market, friendly neighborhoods.

(Action by Council, Manager, Planning Department, Montpelier Alive, Staff)

- Information for builders and developers will be featured on the city website, making the steps of permit processing and zoning regulations accessible and understandable, and sending the message that Montpelier welcomes new housing. By engaging in a compelling campaign of action and information, we can shift the narrative around housing development. We can present the regulatory framework in the light of the underlying values that shape this system, based on the understanding that there is a cost to living in a clean, safe, and peaceful city. **(Action by Council, Manager, Planning Department, Staff)**
- Housing Design Competition: This idea came from the research of the Vermont Law School students on programs used in comparable cities. The idea can be explored and modified so that it promotes new housing that meets the city’s needs. The general concept is that the city would create a competition to encourage the design of housing that would meet the city’s specific housing needs, including building and lot size, energy efficiency standards, and other desired outcomes. When winning designs are selected, the city could make them available to developers, with assurance that the plans were “permit ready” for a designated period of time. (See Appendix C: “Land Use Clinic – Vermont Law School: Options for Increasing Housing Development in Montpelier” Section 1. Permit Ready Competition) – **(Action by Council, Planning Department, Staff)**

Develop New Financial Resources

In an era of limited resources, it is challenging to find the financial means to implement desired policy outcomes. Necessity, however, can inspire some effective approaches, and our law student partners found some promising innovations implemented in other municipalities that may be useful in Montpelier as well.

- City sponsored periodic tax and financing seminars for lending institutions and potential business and home owners – **(Action by Planning Department, Staff)**

- Information about existing financial options: Distribute and share information with banks and realtors – **(Action by Planning Department, Staff)**
- Clarify incentives that offset sprinkler systems and other development expenses. **(Action by Council, Staff)**
- Housing Improvement District, *see Appendix C, Section 3* -- **(Action by Council)**
- Publicize Accessory Apartment Incentives, *see Appendix A, Section 3* – **(Action by Council, Staff)**
- Expand Tax Stabilization to include in-fill housing, *see Appendix C, Section 6, Subsection ii* - **(Action by Council)**
- Adopt disincentives for vacant lots and underutilized buildings, *see Appendix C, Section 8* – **(Action by Council)**
- Create a program for individual development accounts for renters comparable to Montpelier Housing Trust Fund, *see Appendix A, Section 3* - **(Action by Council, Planning Department, Staff, Housing Task Force)**
- Explore opportunities to apply for Tax Incremental Financing (TIF), *see Appendix C, Section 3, Subsection f.* - **(Action by Council, Planning Department)**
- Develop a business/non-profit incubator program *see Appendix A, Section A #4* - **(Action by Council, Planning Department)**

Revisions to Regulatory Environment

A fair and comprehensive regulatory system will help the city and its citizens achieve desired policy ends by helping to shape development efforts in a way that helps the community achieve greater goods for all.

- Change setbacks for infill housing - **(Action by Council, Planning Department)**
- Explore adopting a Housing Preservation ordinance that would address the problem of losses in the housing stock due to demolition by neglect and conversion to office space. *see Appendix B, Jack McCullough's memorandum of 10/13/11, and Appendix C, Section 4, Subsection b.* - **(Action by Council, Manager, Planning Department, Housing Task Force)**
- Explore incentives for infill development (side yards, vacant lots, and etc.) *see, for example, Appendix C, Section 4, subsection c: ii: 9, and Section 4, subsection d: ii: 1.* – **(Action by Council, Planning Department)**
- Educate members of regulatory bodies to properly play their adjudicatory roles. – **(Action by Council, Manager)**
- Streamline approval process
 - Increase the size of projects the City Zoning Administrator can approve (currently at 2, could go as high as 4) – **(Action by Council, Planning Department)**
 - Adopt a comprehensive approval process (one stop process) – **(Action by Council, Manager, Planning Department)**

- Advocate for comprehensive permitting process at the legislature. – **(Mayor)**

Conclusion

The City Council, Planning Department, staff, Montpelier Alive!, and the Housing Task Force should work together over the next year to begin the implementation of these recommendations to insure growth of Montpelier's housing in the future.

- Montpelier's impact fees compared to surrounding communities - **(Action by Staff, Planning Department)**
- Inventory of vacant spaces and underutilized buildings - **(Action by Staff)**
- What are the housing needs by demographics? – **(Action by Community Development staff person)**

The final product should be a development plan for new housing, a collaborative effort of the Planning Department and Housing Task Force.

Appendix A Survey Findings

We conducted informal interviews, primarily by telephone, with local realtors, land owners, developers, representatives of lending institutions, and regulators. These individuals gave valuable information in response to three questions that provided useful information for this report. The questions asked and categories for the responses follow:

1. What are the barriers that discourage or block people from building or purchasing houses in Montpelier?

The responses fall into these categories:

- A. Economic conditions
- B. The Montpelier market: Housing, and conditions, and availability
- C. Preferences and attitudes of potential buyers and current residents
- D. Montpelier property taxes
- E. Regulatory conditions; state and city
- F. Financing: what's needed and what's available

2. What are the factors that attract and retain home owners/residents?
(See this section for the specific responses)

3. What can the city do to encourage the building/development of more new homes and residences and bring new owners/residents to Montpelier?
(See this section for the specific responses)

Parenthetical comments from Planning Director, Gwen Hallsmith, are important because they provide current and correct information.

Survey question 1. What are the barriers that discourage or block people from building or purchasing houses in Montpelier?

A. Economic Conditions

Response: No new jobs. No new companies hiring to fill new jobs (white or blue collar) in Montpelier. If there were a new employer in the city, new residents would want to live here.

(Planning Dept. comment: It's true that new employers coming to town might generate more demand for housing, but we have more jobs than people in Montpelier. It's hard for me to imagine that unemployment and lack of economic opportunities is the main barrier to new housing.)

Response: Need to offer incentives to businesses to locate in Montpelier

(Planning Dept. comment: I am not aware of businesses that have decided not to come here due to a lack of incentives. We need to keep the businesses we have, and grow them. The development of a business/non-profit incubator would be a good strategy for attracting and retaining businesses.)

Response: Economic development is needed in Montpelier; we need to create new jobs.

(Planning Dept. comment: New jobs are always good.)

Response: No demand for new housing in Montpelier because of the economic downturn. We are in a recession; Burlington is in slightly better economic situation.

(Planning Dept. comment: At our regular regional meeting of the Housing Partnership, the realtors report that housing has stabilized and that prices did not take a huge hit in Montpelier, unlike many other towns and cities.)

B. The Montpelier market: Housing, land conditions, and availability

Response: Physical barriers – topography of the land in Montpelier

(Planning Dept. comment: This tends to be true, although you can visit other places where steep hills and topography do not stop housing from being built. The combination of winter conditions combined with the topography is perhaps more of a barrier.)

Response: Low availability of housing at all price levels; many people are interested in houses in the middle price range.

(Planning Dept. comment: The inventory of housing that is available in Montpelier is always more limited than other towns, largely due to the demand for housing here. Right now there are 85 properties for sale, with prices ranging from \$89,000 for a condo on Franklin Street, to \$590,000 for a beautiful Victorian on Bailey.)

Response: Condition/quality of the stock of housing. Large proportion of single and multi-unit housing was modestly built, years ago. Quality of housing stock has withered and/or depreciated over time. Maintenance has been delayed.

(Planning Dept. comment: I don't think this is any more true of Montpelier than other places.)

Response: "The bloom is off the housing rose!" Perspective buyers are much more cautious. Much of the housing stock is older construction, buyers discover it is hard to plan for large, expensive items/improvements. Heating costs are as high as property taxes.

(Planning Dept. comment: Heating costs for large, older homes are high, as are property taxes.)

Response: Lack of lots in the city that are suitable for building houses

(Planning Dept. comment: This tends to be true. Right now there are five lots available, ranging from \$49,000 to \$87,500. These are all substantially more than the regional average for building lots, which tends to be in the \$25,000 - \$35,000 range.)

Response: Not a lot of land available for development.

(Planning Dept. comment: In addition to the five building lots, there are a few large sites, all which would cost over \$1,000,000.)

Response: Not a lot of vacant land in Montpelier, therefore need to do cluster developments; use established streets, water and sewer; achieve high density; enable people to walk to services.

(Planning Dept. comment: True.)

Response: Need to accept that we live in a city; don't need big spaces; new homes will be smaller than older homes; household size is smaller, too.

(Planning Dept. comment: True.)

C. Preferences and attitudes of potential buyers and current residents

Response: Need homes for young, growing families; higher end homes as well as low income housing: 20% subsidized housing.

(Planning Dept. comment: True.)

Response: Need housing for older residents – new to Montpelier and residents wanting to downsize; retirement housing with 1st floor bedroom and bath (like Westview Meadows).

(Planning Dept. comment: True.)

Response: Build infill housing in the downtown for retirees, so their houses can be resold to families.

(Planning Dept. comment: True.)

Response: Potential buyers want to be rural, with open land and a view, but in the city with city services

Response: Litigation by adjoining property owners has become inevitable and it makes development of large projects time consuming and expensive.

Response: No one really wants growth or change; growth and new houses mean change

Response: There is talk about affordable housing, but “not next door to me.”

(Planning Dept. comments: True. True. True. A significant barrier to new housing in Montpelier neighbors who fight to stop any change in their neighborhood.)

Response: Need for information and education around the value of diversity to assess how much the community is willing to support subsidized housing (moderate and below moderate cost).

(Planning Dept. comment: I actually don't think it has anything to do with affordable housing vs. market housing. I think its general aversion to change. I think Montpelier residents appreciate diversity and social equity.)

Response: Need to better inform the public about the value of having sprinkler systems in homes.

(Statistics show that lives and property are saved by sprinklers.)

(Planning Dept. comment: True.)

Response: Home buyers are not enthusiastic about living in a high density development or neighborhood

(Planning Dept. comment: True. Not why people move to Vermont. But as they get older, and we have an aging demographic, it gets more appealing.)

D. Property Taxes

Response: Property taxes are frequently identified as a barrier, in comparison with some surrounding small communities, although Montpelier's current property tax rate is lower than Barre City's rate.

Property tax is a serious item that influences many home buyers. For example, estimated annual tax bills for a \$250,000 house in Montpelier is \$6,700. Tax on a similar house in East Montpelier is \$4,000, and in Berlin \$3,500.

(Planning Dept. comment: Our property taxes are high, but people still move to town because of the high quality schools.)

Response: People interested in buying in central Vermont don't even look in Montpelier because of the taxes.

(Planning Dept. comment: Not true – the reputation of Montpelier schools and the proximity to services still brings people into the city.)

Response: City tax issues are mitigated by Act 60 and income sensitivity provisions. These prebates reduce the education portion of the property tax, so a significant proportion of Montpelier residents do not pay the full amount of their property taxes.

(Planning Dept. comment: True.)

E. Regulatory conditions: state and city

Response: Act 250 process is quite complicated.

(Planning Dept. comment: True. But the new Growth Center has raised the threshold for Act 250 projects to 50 units, so Act 250 doesn't need to be a barrier for smaller projects.)

Response: It is difficult and risky to build in Montpelier; easier to go outside the city where there is less regulation

(Planning Dept. comment: There is less regulation outside the city. But the lack of infrastructure elsewhere can make it difficult and risky there as well.)

Response: Montpelier's zoning regulations have more requirements than surrounding communities; many requirements have high costs (sprinkler systems); surrounding, smaller communities have simpler, looser zoning regulation or none. Example: To build a 6X8 deck on an existing home was long and complicated process. Getting a Zoning Permit was a straight forward, quick process at a reasonable cost (\$25). Application process for getting a building permit was unnecessarily complicated and time consuming; 2 dozen conditions had to be met for the simple addition of a deck.

(Planning Dept. comment: Other communities do not require sprinkler systems. We do have more zoning requirements than other communities, although our zoning alone is not a substantial barrier. The way residents use the zoning to stop projects is much more serious.)

Response: Montpelier zoning limits are lower than Act 250 (10 acres or 5 lots). In Montpelier, if you are developing 1 – 2 units, Clancy can give you a permit if you meet the zoning regs. 4 or more units requires taking the plan to DRB for approval.

(Planning Dept. comment: I am not aware that this requirement has stopped any housing developments.)

Response: Regulation is important to protect the public (home owners and renters), but it adds layers of cost and expense that reduce the ability and interest of people to get into the housing market

Response: Building codes are strictly enforced by building inspectors, with no leeway or flexibility; no opportunity for personal choice or long term planning

Response: Building codes are expanding and covering more: fire codes, sprinklers, lead paint, ADA
(Planning Dept. comment: Other nearby communities have not adopted building codes. This can tend to make Montpelier more challenging and expensive by comparison.)

Response: In past Master Plans, many areas eliminated for development; resource overlays, protection of ridges, primary agricultural land, conservation areas. Nothing left to build on.
(Planning Dept. comment: Right now our current zoning does not prohibit development in these areas. We have incentives built in to encourage people to cluster development in areas that are not important natural resources, but this is not a barrier. Perhaps the perception that we regulate these areas is a barrier, but not the actual code.)

Response: Keep the Building Inspector consistent
(Planning Dept. comment: We get a lot of complaints about the building inspector. They tend to be from a few people who are serial code ignorers/violators, rather than the general public.)

E. Financing and credit: what's needed and what's available

Response: Barriers to entry into the real estate market include 30 year mortgages and current interest rates that are actually incentives for buying "more" house (compared to 30 years ago). Payments plus cost of needed repairs (delayed maintenance) for existing housing block entry into the market for new housing because of the high cost of being in the property.
(Planning Dept. comment: The message is not clear, but if people can buy "more house" because of low mortgage rates and long mortgage periods, they can also choose to buy "less house" with lower O&M costs.)

Response: It is true that a portion of the property tax is covered by the State, but a banker does not know how much when qualifying someone for a mortgage loan.
Planning Dept. comment: Bankers need better tax education. I believe it is possible to figure it out.)

Response: Cost of building a development is high: Upfront costs, such as site preparation (\$40,000), street requirements (4" depth for paving), underground wiring, sprinkler systems (\$10,000), add up quickly. Builders have to put up a significant amount of money without certainty that they will sell what is built. Developers may have to invest a million dollars at 7% interest. They cannot carry this amount of debt for a long period.
(Planning Dept. comment: True. This is why we've been exploring Tax Increment Financing, so that the city can help install the required roads and infrastructure for new development. This was how it was done in the past. Downtown Montpelier was not laid out by private developers.)

Response: It is not cost effective for developers to go through permitting. Montpelier has a reputation of not being developer-friendly. Montpelier is a tough spot in terms of creating more housing.

(Planning Dept. comment: Reputations die hard. I believe it was true that the city put up unnecessary barriers to development in the past, and our high standards for development now as compared to neighboring towns can be perceived as not being developer-friendly. Our standards are par for the course in most of the industrialized world, however.)

Response: Cost of building on current city street is lower than new development – road, water, sewer, are already in place.

(Planning Dept. comment: True.)

Response: First time homebuyers do not have the down payment now required. People do not have a lot of money (not just a Montpelier issue).

(Planning Dept. comment: Often true. The Central Vermont Community Land Trust currently has six units for sale in Montpelier that have subsidized down payment assistance attached. Some have been on the market for several months.)

Response: Credit is an issue. Low credit rating means higher interest rate and lower loan amount. If the credit score is below 660, potential home buyer needs 20% down payment and cannot qualify for private mortgage insurance. Rural Development and the VA are the only possibilities for 0% own. The Vt. Home Mortgage Guarantee Board is no longer available to assist with credit issues.

(Planning Dept. comment: True.)

Survey question 2. What are the factors that attract and retain home owners and residents?

Response: Montpelier school system, and the high school in particular

Response: Montpelier city services are excellent; police and fire departments in particular

Response: City is small scale, friendly, walkable; it is possible to live within 1 mile of downtown

Response: Montpelier is a great place to raise kids

Response: Montpelier presents a “Norman Rockwell moment”. Vibrancy of the downtown, including all the activities/events supported by Montpelier Alive that include flowers and music, plus attractive stores and businesses, variety of restaurants, and farmers’ market

Response: Neighborhoods are small-scale and relatively private compared with Burlington’s neighborhoods that are more “suburbia” in character

Response: Montpelier is quite distinct from Burlington; Montpelier residents want more customized housing – not standardized large developments

Response: Being in walking distance to downtown, the farmer’s market

Response: Great schools

(Planning Dept. comments for all of the above responses about factors that make Montpelier a desirable place to live: It’s all true. People get what they pay for, even though taxes are high. Friendly, safe atmosphere of the city makes visitors want to move here.

Survey question 3. What can the city do to encourage the building/development of more new homes and residences and bring new owners/residents to Montpelier?

Response: Roll out PR campaign to get people to move to Montpelier – emphasize convenience to jobs, stores, services, quality of schools.

(Planning Dept. comment: Good idea, would cost money.)

Response: Plan and prepare for the next building cycle. Publicize CAN (Community Area Neighborhoods) that brings neighbors together and builds connections and conversations and shared interests and activities.

(Planning Dept. comment: We are planning Neighborhoods Day coming up on November 19th.)

Response: “Get real” about who we are and what works in Montpelier. Set a housing goal that is realistic. 60 is the largest number of houses ever built in a year. Success in this economy means thinking small, realistically. It is more realistic to target building/selling 24 new homes per year, and possibly some multi-units – 2 per month.

(Planning Dept. comment: We had 29 new units last year, with three lost, for a net of 26. It was an unremarkable year. I think more is possible, with the right market and incentives.)

Response: Build smaller, efficient, tight homes on attractive sites that are walkable to downtown. This is what many potential buyers are looking for. Older interested buyers are looking for 1 floor ranch or condos, like Westview Meadows but more affordable.

(Planning Dept. comment: Yes, although the condos have not fared as well as single family homes in the real estate downturn.)

Response: Bring new employers to the city; offer incentives

(Planning Dept. comment: In the Creative Economy/Internet age, we bring more employers to the city by building more housing. A lot of people are working out of their homes now.)

Response: Designate a growth center. Stand by it. Issue permits and let the building proceed.

(Planning Dept. comment: This has been accomplished.)

Response: When development is started, do not tax each plot. Charge the tax when the unit is built.

(Planning Dept. comment: That is the current practice.)

Response: City bond for roads or build the roads and then the city gets paid as lots are sold.

(Planning Dept. comment: This could be accomplished if the city is able to establish a Tax Increment Finance district, but the process is complex and costly.)

Response: Assist developers in getting permits. Give developers of large projects breaks i.e. density, infrastructure

(Planning Dept. comment: Our current zoning does this. We give people a lot of assistance.)

Response: City serve as a co-developer

(Planning Dept. comment: We did this with the Sabin’s Pasture project and the Act 250 Master Permit.)

Response: Explore tax incremental financing as a way to promote housing development and relieve developers/builders of some of the upfront costs.

(Planning Dept. comment: The opportunity to explore Tax Incremental Financing is not available now.)

Response: Montpelier attracts residents who want high quality housing. Don’t just build row housing.

(Planning Dept. comment: True.)

Response: Create more amenities for residents such as a downtown playground/park, access to the river. Why did the city not buy the salt shed and make that space a park for residents?

(Planning Dept. comment: We tried to build a park where the salt shed was. The bids came in too high and we couldn't find the additional \$100,000 that was needed to do it. We have completed the Turntable Park right next door.)

Response: Advocate for the state to resurrect the Vt. Home Mortgage Board.

(Planning Dept. comment: This idea needs more explanation.)

Response: Inform the public that Council recently approved the use of Montpelier Housing Trust Fund dollars for accessory apartments. Promote and encourage more accessory apartments.

(Planning Dept. comment: We have been working to amend our Housing Trust Fund program to accommodate more accessory apartments.)

Response: Create Individual Development Accounts for Montpelier renters. City would match what renters save toward the purchase of a house in Montpelier, using Montpelier Housing Trust fund, provided it is funded adequately.

(Planning Dept. comment: An interesting idea that can be investigated.)

Response: Property tax breaks for new home owners in the city. Offer a reduction (x% for y years) on the municipal portion of the property tax for households with children that buy homes in Montpelier and send their children to Montpelier Public Schools. Advocate with Vt. Dept. of Taxes to make this happen.

(Planning Dept. comment: Interesting idea; it would increase home sales and possibly home construction but not create a corresponding increase in property tax revenues. Needs further investigation.)

Response: Make home improvement funds available without household income restrictions. Middle class families often have trouble affording big ticket items, such as a new roof.

(Planning Dept. comment: Good idea, would cost money.)

APPENDIX B

Memo:

Date: 10/13/2011

To: Barriers to New Housing Committee

From: Jack McCullough

RE: HOUSING PRESERVATION

While the emphasis of the committee's work has been housing creation, the committee believes it is important not to overlook the very real issue of housing preservation in Montpelier's housing market. In recent decades Montpelier has seen significant losses of housing stock due to demolition or conversion to office space. These losses have come at a time when the need for housing units has been growing, and have run counter to the city's policy to encourage residents and housing units. In addition, this change is particularly harmful to the community because most of these lost units have been located in the downtown core, which means that we have replaced housing units that encourage pedestrian traffic with office spaces heavily dependent on automobiles, consequently placing greater burdens on city streets forced to accommodate more vehicular traffic and parking.

The second force that has caused the loss of decent housing, particularly rental housing, has been neglect by property owners. Neglect by residential landlords has caused the loss of housing units that could provide needed housing to low- and moderate-income residents and contributes to blighted neighborhood conditions.

The Master Plan has already recognized the ability to address these drivers of housing loss by adopting ordinances requiring replacement of lost housing units, discouraging demolition by neglect, and encouraging rental housing maintenance.

The committee recommends that the City take action on the following items from the Master Plan:

6a Consider an apartment inspection, registration, and certificate of occupancy program.

6e Consider a housing replacement and demolition by neglect ordinance to address the loss of housing units to commercial conversion or demolition or neglect.

APPENDIX C

Land Use Clinic
Vermont Law School, 164 Chelsea Street, PO Box 96
South Royalton, VT 05068, (802) 831-1332 (phone)

MEMORANDUM

Date: October 18, 2011
To: Barriers Against Housing Committee, City of Montpelier
CC: Peg Elmer, LUC Associate Director
From: Breana Behrens, Land Use Clinician
Nolan Riegler, Land Use Clinician

Re: Options for Increasing Housing Development in Montpelier

This has been an exciting and interesting project to work on. Thank you for including us in exploring ways to increase development in the City of Montpelier. If there is any further research or way that we can be involved, please do not hesitate to contact us.

TABLE OF CONTENTS/SECTIONS

1. Permit Ready Competition
2. Linkage Ordinances
3. Housing Improvement Districts
4. Penalties for Blighted and Dilapidated Properties
5. Loans and Grants
6. Development Tax Incentives
7. Quid Pro Quo Investment
8. Inclusionary Zoning

1. Permit Ready Competition

- a. Portland implemented the “Living Smart” competition in conjunction with an urban growth boundary and higher density zones to encourage infill development
 - i. Portland design requirements: must be built on 25-foot wide lots, meet the needs of first-time homebuyers, provide design compatibility with a variety of neighborhoods, and respond to a range of market demands are all desired outcomes
- b. Resulted in development incentives
 - i. Developers purchase building permits and receive plan sets free of charge with the assurance that the plan will be approved (changes to the exterior are allowed, but will be subject to normal review criteria)
 - ii. “Fast track program” where developers get approval within 10 working days
 - iii. Applicants receive a 50% discount on Bureau of Development Services (BDS) charges related to plan reviews and inspections
 - iv. Prices of houses ranged from \$290,000 to \$400,000 (the first one built was \$319,000 and at the time the average home sales price was \$320,000)
- c. Resulted in two publications
 - i. Portland Catalogue of House Designs for Narrow Lots (21 designs specifically suited to Portland’s neighborhoods)
http://www.portlandonline.com/bds/PDXCatalog_combined.pdf
 - ii. Design Excellence Monograph (49 designs for narrow lot development in general)
http://www.portlandonline.com/bds/Living_Smart_Design_Excellence_Monograph.pdf
- d. Currently Suspended
 - i. The City contracts allowing the BDS to use the Permit Ready Plans expired and could not be extended
 - 1. The pro of having permit designs expire is that it ensures the designs are current (for purposes of zoning and community need)
 - 2. The con is that the designs cannot be used after a certain time (regardless of their efficacy or community need). To reinstitute the designs the city would have to go through a whole new competition, which can be costly
 - ii. From 2006-2011 **13** Permit Ready building permits were issued
- e. University students at Middlebury and Norwich are designing and constructing solar panel houses for different national competitions
 - i. The City may consider engaging with these programs for the competition
 - 1. Middlebury focuses on affordability
 - 2. Norwich is doing it through their architecture program
- f. The City might also consider basing the competition on designs for cottage housing
 - i. Cottage housing is ideal for young families, can create a sense of community and can be designed for the larger available lots
 - ii. See Kirkland, WA’s Cottage Housing Ordinance
 - 1. http://www.huduser.org/portal/casestudies_iss1_1.html
- g. Legal Issues
 - i. I do not see any legal issues with implementing a competition of this nature in Montpelier. So long as each development obtains the requisite permits, the development should be valid in the state of Vermont

- ii. The City should be cautious of whether certain designs or building on certain lots would require modifying the zoning regulations, require variances, or the like
- h. Resources
 - i. Portland Living Smart website: <http://www.portlandonline.com/bds/index.cfm?&a=271560&c=51302>
 - ii. HUD website: http://www.huduser.org/portal/casestudies_iss1_2.html

2. Linkage Ordinances

- a. Linkage ordinances allow municipalities to collect exactions, or linkage fees, from developers in return for permission to build new development
- b. The fees fund community development/redevelopment programs
 - i. Such as programs that advocate or build affordable housing, programs that create employment opportunities, child care facilities, transit systems and the like
 - ii. Municipalities can either require payment of a specific amount to fund the needed programs/facilities, or require the developer to actually construct the facilities or implementing the programs
 - 1. linkage payments are generally fixed payments that do not increase and are payable over a period of years
 - iii. Similar to impact fees, but linkage fees are more problem mitigation/abatement than payment for infrastructure
 - iv. Also known as “soft” or “social” impact fees
 - v. Most often associated with office development
- c. Montpelier might consider imposing linkage fees on new development as a source of funding for downtown festivals, adaptive re-use programs, historic residences rehabilitation programs, enhancing child day care facilities, and other growth programs aimed at encouraging families to move into the City
- d. Legal Issues
 - i. First, it must be determined that the City is authorized by statute to implement a linkage fee
 - ii. Second, it must be determined that the linkage fee does not infringe on the constitutional rights of the developer
 - 1. Impact fees are authorized in Vermont under 24 VSA 131, however there is no direct statutory authority for linkage fees
 - 2. Linkage fees are not treated differently than impact fees at the national level. In Nollan v. California Coastal Commission, 483 US 825 (1987) the court held that any conditional development approval was valid so that so long as there is a nexus to a valid governmental purpose. Once it is determined that an essential nexus exists, then it must be determined that there is a reasonable relationship between the extent of the exactions and the impact of the proposed development. Dolan v. City of Tigard, 512 US 374 (1994)
 - a. The reasonable relation test determines whether the development creates a need that it should be asked to address and whether the obligation imposed on the development is proportional to the need created

3. There is no case law suggesting linkage fees are unconstitutional in Vermont. Thus, it is likely that a linkage fee would be a valid exaction so long as it meets the constitutional requirements described in Nollan and Dolan
4. Other cities and states have been upholding linkage fees:
 - a. Boston and San Francisco have both adopted linkage fees for commercial development to fund affordable housing
 - b. New Jersey had recently upheld linkage fees on the ground that new development possesses and consumes raw land, the primary source for affordable housing
 - c. Resource-based development exactions (that require protection of environmental resources as a condition of development) are also likely to withstand challenges in court
5. Finally, it is important to address whether the fee is a regulatory fee or a tax. The City may impose a regulatory fee under its police power, but it can impose a tax only under taxing authority specifically conferred by the state legislature
 - a. An impact fee associated with a school is likely determined to be a tax, not a regulatory fee
- e. Resources
 - i. VT Statutes online:
<http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=24&Chapter=131>
 - ii. http://lawlibrary.unm.edu/nrj/43/3/07_nicholas_juergensmeyer_market.pdf
 - iii. Sources of revenue—Government exactions—Impact and linkage fees: 15 McQuillin Mun. Corp. § 39:5 (3rd ed.)
 - iv. National Agriculture Law Center website:
http://www.nationalaglawcenter.org/assets/bibarticles/mudge_impact.pdf
 - v. http://toolkit.valleyblueprint.org/sites/default/files/02_agricultural-mitigation_xxxx_xxxx_0.pdf

3. Housing Improvement Districts

- a. A Housing Improvement District (HID) is premised on a Business Improvement District (BID). BIDs receive special services from the municipality in exchange for additional assessments
 - i. Burlington's Church Street is an area where property owners get year-round maintenance, management of licenses/permits, as well as advertising and promotions in exchange for a fee
- b. In theory, the creation of a HID would allow the City to collect fees from landowners in a residential area to pay for rehabilitation or adaptive reuse programs/projects, community events, street cleaning, pedestrian and streetscape enhancements, affordable housing, and community centers/playgrounds/gardens
 - i. Funds might also go towards marketing the initiatives to encourage development and movement into the area
- c. Formation
 - i. A significant fraction of landowners that would be subject to the HID can begin the formation process by signing a petition
 1. The petition proposes the district's boundaries and outlines the basic aspects of its financial and service plan

2. While usually the private sector is the impetus for the creation of these districts, the City might propose the district itself
 - a. If it does, the City must hold hearings and provide for public response, either through petition or veto power
 - ii. Once agreed upon, the City enacts a local law or ordinance establishing the HID
 1. The regulation should address the HID boundaries, functions, budget and financing formula
 2. HIDs can be operated by non-profit orgs or a quasi-governmental body
 - iii. Fees can be determined by square footage, frontage, place within the district, property tax etc.
- d. Pros and Cons
 - i. BIDs have been criticized as being a privatization of government funds, violating equal protection under the law, and requiring all property owners to pay the fee even if they oppose the BID
 1. Some properties may be exempt (such as government or non-profit properties)
 - ii. BIDs are beneficial in that they eliminate the free rider problem and are thought as a self supporting district where BID fees go directly back to the landowners
- e. Legal Issues
 - i. Municipalities, in general, are permitted under 24 VSA 3253 to apportion a special assessment on properties to be benefited
 - ii. Designation of downtown development districts under 24 VSA 2793 permits the City to impose a broad range of special assessment districts (including BIDs and HIDs) to raise funds for operating and capital expenses
 - iii. BIDs do not violate equal protection under the law by providing a different voting scheme for members of the district
- f. Alternative, TIFs
 - i. TIF programs are permitted under 24 VSA 4403 and 1892
 1. Vermont Act 183 and 24 VSA 2793 specifically promote creating TIFs in downtown districts
 - ii. TIF programs allow local governments to finance redevelopment projects with the increased tax revenue generated by the redeveloped property
 - iii. A HID could be implemented as a TIF district in the downtown
 1. The property taxes at the time the District is created are determined and then continue to go to the taxing entities at that rate
 2. At first the municipality incurs debt to spur real property development. Then, seventy-five percent of the incremental municipal and state property taxes that are generated are used to pay the infrastructure debt and twenty-five percent continues to go to the taxing entities (municipality and state). After the twenty-year property tax retention period, 100% of the property taxes generated go to the taxing entities.
 3. The District may only utilize municipal property tax revenues for programs
 4. If the municipality requires the utilization of incremental state education property tax revenues, further statutory requirements apply, including the requirement to apply to the Vermont Economic Progress Council to obtain approval of a TIF District Plan and a TIF District Financing Plan

5. Municipalities must closely follow the statutory rules and procedure for establishing a TIF District
 - a. There must be no other available financing mechanisms and there must be a substantial need for this kind of redevelopment program
- g. Resources
 - i. TIF website: <http://www.dhca.state.vt.us/TIF/tif%20homepage.htm>
 - ii. Bennet Heart et al., Conservation Law Found. & Vt. Forum on Sprawl, Community Rules: A New England Guide to Smart Growth Strategies 4-5, 51 (2002)
 - iii. Downtown Designation website: <http://www.smartgrowthvermont.org/toolbox/tools/downtowndesignation/>
 - iv. Briffault, Richard "A Government for Our Time? Business Improvement Districts and Urban Governance" 99 Colum. L. Rev. 365 (1999)

4. Penalties for Blighted and Dilapidated Properties

- a. The City might consider imposing some sort of penalty for vacant or abandoned properties to encourage landowners with unused properties to rehabilitate or transfer the property for residential use
 - i. Should be paired with a rehabilitation ordinance
- b. Demolition by Neglect
 - i. Under this theory the City would order any neglected structure to be demolished. The ordinance might be narrowed to target only structures in the downtown, in residential areas or on lots that might be used for residential use
 - ii. Legal Issues
 1. Goal C(6) of the Montpelier Master Plan suggests implementing a housing replacement and demolition by neglect ordinance to address the loss of housing units to commercial conversion
 - a. This goal does not seem to have been implemented in the Master Plan or Zoning and Subdivision Statutes for the City of Montpelier
 2. Under 20 VSA 2733 the fire commissioner may order a landowner to repair or rehabilitate a property. If it remains in a dangerous condition for more than a week after being notified the commissioner may order it to be demolished
 3. "Whenever a structure, by reason of age, neglect, want of repair, action of the elements, destruction, either partial or total by fire or other casualty or other cause, is so dilapidated, ruinous, decayed, filthy, unstable, or dangerous as to constitute a material menace or damage in any way to adjacent property, or to the public, and has so remained for a period of not less than one week, the commissioner may order such structure demolished and removed" Vt. Stat. Ann. tit. 20, § 2733 (b)
 4. The Montpelier City Charter Title XII Section 10, might also provide support
 5. The State may also seize unclaimed property under the Vermont Unclaimed Property Law (27 VSA 1241)
 6. Tearing down structures that pose a threat to the public safety is within the City's police power to preserve the public health, safety and welfare

- a. However, the statutes use extreme language, suggesting that for demolition to be ordered there must be a strong public need to abate a real danger to the public
 - b. Such orders are vulnerable to taking claims when done without compensation
 - c. In the case of neglect the City must provide the owner with notice, a hearing, and opportunity to correct
 - d. The nuisance cannot be abated in any other way, demolition must be a last resort
 - c. Fines imposed on neglected or vacant properties
 - i. The City may consider imposing a fine on any property that is not maintained or left vacant
 - 1. Could be done through code enforcement
 - 2. Fines could fund rehabilitation programs
 - ii. Municipalities across the country have implemented ordinances imposing fines for neglected or vacant properties
 - 1. Chula Vista, CA: Residential Abandoned Properties Program
 - 2. Hartford, CT: Anti-Blight Initiatives
 - 3. New Haven, CT: Livable City Initiative
 - 4. Jacksonville, FL: Proactive Code Enforcement Initiative
 - 5. Bowling Green, KY: Property Donation, Maintenance, Rehabilitation Programs
 - 6. Westland, MI: High Grass Ordinance
 - 7. Albany, NY: Block-by-Block Initiative
 - 8. Germantown, TN: Neighborhood Preservation Program
 - 9. Bryan, TX: Bryan's Unified Infill Lot Development Initiative
 - a. See the US Conference of Mayor's Best Practices for Vacant Properties publication:
<http://usmayors.org/bestpractices/vacantproperties08.pdf>
 - iii. SB 1137 in CA authorizes municipalities to impose a fine up to 1,000 per day (and may issue a citation or any violation) for failure to maintain a foreclosed property. These fines are then applied to local nuisance abatement programs
 - 1. May experience political back-lash from banks who will likely be responsible for the fines
 - iv. Legal Issues
 - 1. The City must be authorized by State statute or the City Charter to enact an ordinance to fine neglected properties
 - d. Land Banks
 - i. Some states have instituted legislation establishing land bank programs, where tax-delinquent properties are transferred to the State. The State can then transfer these properties to an established land bank (or other authority) that can rehabilitate the property and re-sell it
 - ii. Michigan Land Bank Fast Track Authority (Foreclosure Law PA123) permits the State to transfer tax delinquent properties directly to the County Treasurer or the County, which can transfer land to designated land banks at their discretion. The law also allows profits from tax delinquent land sales to be directed to a Land Reutilization Fund to pay operating costs of managing land acquisition.
 - 1. The Land Banks work with a reutilization council to:
 - a. Aide families in risk of losing homes to foreclosure

- b. Demolish dilapidated structures
 - c. Rehabilitate lots assembled for city and non-profit development
 - d. Encourage new infill housing in particular
 - 2. See specifically the Genesee County Land Bank and Neighborhood Stabilization Program; Dallas, TX Urban Land Bank Demonstration Program
- iii. Legal Issues
 - 1. Vermont has not established land bank legislation that authorizes counties or municipalities to transfer properties to the State for rehabilitation
- e. Resources
 - i. Vermont Unclaimed Property Statute website: <http://www.vermonttreasurer.gov/unclaimed-property/state-statues>
 - ii. Michigan Land Bank Fast Track Authority website: <http://www.michigan.gov/treasury/0,1607,7-121-34176---,00.html>
 - iii. Genesee Land Bank website: <http://thelandbank.org/default.asp>
 - iv. Buildings that are menaces or public nuisances- removal or destruction
McQuillin Mun. Corp. § 24:557 (3rd ed.)

5. Loans and Grants

- a. Types of loans and grants
 - i. Rehabilitation and Improvement Loans
 - 1. Emergency Improvement Loans – usually to low-income homeowners.
 - 2. Rental Property Upgrades
 - 3. Deferred Repayment – some loans are 0% interest, payment deferred until the homeowner sells the property.
 - ii. Renter's assistance – can take the form of either loans or grants.
 - iii. Homebuyer Assistance – typically take the form of loans; used to reduce the down payment or cover closing costs.
 - 1. Range from \$1000 to \$10,000.
 - 2. Cities may have multiple loans (Madison being a good example)
 - 3. Low interest and flexible repayment plans are common, may include deferred repayment (Austin, TX)
 - iv. Pre-development loans – loans that cover the beginning stages of development for larger projects, including architectural and design costs, as well as impact studies.
- b. Implementation Strategy
 - i. Housing trust fund – Montpelier's fund is currently used to provide loans to cover rehabilitation and updates, as well as some deferred repayment loans to first time homebuyers.
 - ii. Development revolving loan fund.
 - 1. Municipally owned
 - 2. Federally funded – distributed by a community land trust, Credit Union or development entity – in Vermont, the Central Vermont Community Land Trust is such an entity.
 - 3. Private investor funded – Vermont Community Loan Fund
 - 4. The largest markets have multiple funds within their trust or multiple trusts dedicated to certain types of loans and grants (for rental agreements; ownership funds, etc.)
 - iii. Pre-development loans are available from the Vermont Housing Finance Agency

c. Pros and Cons

- i. If Montpelier wants to expand the types of loans that it provides, it does need to generate revenue, which is difficult in a down economy.
- ii. Expanding the available options to potential homebuyers and providing rental assistance is an incentive to get a variety of potential residents to consider Montpelier.
- iii. An alternative might be to foster deeper partnerships with local loan institutions or any of the land trusts.
 1. May be able to convince them to expand some of their options, in exchange for the city doing some guaranteeing or investment.
 2. Many of the loan options mentioned above are already available through these entities, so it benefits the city to advertise these opportunities to local developers.
- iv. Deferred repayment plans (loans at zero percent interest that are paid in full when the property is sold) can be used to expand city-controlled properties and generate revenue.
 1. Can require that some additional percentage of the equity be paid in addition to the loan amount when the property is sold. In other words, no interest accrues while the property is owned by the original borrower, but the city is guaranteed some return on its investment.
 2. These loans may also contain a durational clause (10 years) to provide an alternative repayment option and prevent the city from being stuck should a homebuyer decide to live in that home for a long time.
 3. May also include a right of first refusal to the city to purchase the property at fair market value.
6. TIF financing takes the form of a loan or a bond. Some municipalities have incorporated a pay-as-you go approach—a bond that places the risk on the developer, not the city—with well-financed developers. If the city chooses to create a TIF district, it may want to consider using different financing options for particular projects to better manage risk.

d. Legal issues

- i. None that I can foretell at this point, this mechanism falls within the city's powers, the primary hurdles here are fiscal, not legal.

e. Sources

- Vermont Community Loan Fund; <http://www.investinvermont.org/housing-a-community-facilities>
- City of Madison; http://www.cityofmadison.com/cdbg/home_assist_progs.htm; <http://www.cityofmadison.com/planning/cedu/Documents/comparisonaddivshomebuy.pdf>
- City of Eugene; <http://www.eugene-or.gov/portal/server.pt?space=CommunityPage&control=SetCommunity&CommunityID=229&PageID=525>;
- City of Austin/Austin Housing Finance Corporation; http://www.ci.austin.tx.us/ahfc/first_dpa.htm
- Central Vermont Community Land Trust; <http://www.cvcvt.org/services/>
- Minnesota TIF Pay-as-You Go http://www.osa.state.mn.us/other/Statements/tif_pay-as-you-go_0904_statement.pdf

6. Development Tax Incentives

i) Types of Incentives

(a) Tax Free Zoning – Create Overlay Zones that eliminate all Property, Municipal, and most Income taxes

1. State Programs in Michigan, Pennsylvania, North Dakota
2. All differ in implementation and focus; Michigan and North Dakota's Renaissance Zoning laws apply to all development in certain areas, while Pennsylvania's focuses on business development.
3. Either designate certain areas, or implement a process by which a Municipality can designate small, contiguous areas as "Renaissance Zones."
4. They are limited in time; in MI each zone designation named in its Act expires after 15 years. The tax incentives are gradually drawn back during the final 3 years of the program.
5. In ND, there is a more fluid system, once a municipality submits its plan to the board of Commerce and is approved its designated zone has a 15 year window of application
 - i. Incentives last for a 5 years, commencing when someone living in or already owning property in a zone, makes improvements to their properties or someone moves into a zone to reside or do business.
 - ii. For example: I decide to rehab my property to build an accessory apartment in back during year 13 and my friend Mike moves in during year 14 of the zone designation period. Both of us are eligible for 5 years of tax reduction incentives, even though some of those years fall outside of the 15 year period.
 - iii. The boundaries of the zone can be shifted during the 15 year window to exclude areas that have been sufficiently rehabilitated, and include others as long as the zone remains contiguous.

6. In both, there is an income limit to some of the incentives (like income tax), but there are no limits on others (development fees, municipal property tax).

(b) Real Estate Tax Abatement Programs – the City of Philadelphia allows 10 Year Tax Abatements for development that increases the value of property.

1. 100% of improvements to existing residential property with a Fair Market Value (FMV) under \$193,125 and capped at an increase in the FMV of \$48,100.
2. 100% of value added for improvements to new or existing commercial, industrial or other business property.
3. 100% of value added for newly constructed residential properties.

(c) Development Fee Relief – contained within many of these programs is a relief from development fees to further incentivize developers and property owners to make improvements.

ii) Implementation Strategy

(a) Tax Abatement is facially similar to the Tax Stabilization Contracts authorized to municipalities under 32 VSA §§ 4969 and 4985.

1. Sections allow TSCs for forest, farmland, industrial and commercial property. The city has entered into one with a business developer, so it's arguable that this could apply to residential developers as well.

(b) Tax Free Zoning requires state action to implement it. 32 VSA § 4601 requires taxes to be uniformly determined, and most tax structures are implemented by state statute. No state laws that I could find that would allow a municipality to relieve all taxes and fees.

1. There is some possible avenue to argue legislative intent, thus, precedent for creating these incentives: 24 VSA § 2785 provides cities with powers to effectuate "urban renewal projects" in a slum or "blighted area."
 2. Tax free zoning could be argued as a market, as opposed to government,-driven means to do the same thing.
- (c) Supposing that the city does not want to ask the state to create new legislation, it does have the power to relieve development fees. It already waives the water connection charge for non-residential development if that waiver provides an incentive to new development.
- iii) Pros and Cons
- (a) Tax Free Zoning has been successful where it has been implemented
 1. In Mandan, ND a Renaissance Zone has led to \$8 Million in private investment commitments and the rehabilitation or redevelopment of 23 properties.
 2. In Muskegon, MI, Renaissance Zoning has led a factory rehabilitation and conversion to a 127 unit apartment building, and a 200 unit mixed-use development closer to its downtown center.
 - (b) Tax free zoning requires state action to implement it. 32 V.S.A. § 3847 allows a 5 year tax exemption to neighborhood housing programs financed in whole or in part by a community land trust, however.
 - (c) Tax abatement and development fee reduction can be implemented in some form without a request to change the state laws.
- iv) Legal Issues
- (a) As far as I can tell, incentivizing individuals does not raise federal constitutional issues. Nor have tax incentives been litigated as a constitutional issue in Vermont.
 1. The individual tax incentives are geared towards all people moving into a particular area.
 2. Family focused incentives may want to preclude geographic distinctions
 3. Families are not a "protected class," nor are "individuals who are not families," so the city should be able to show a rational basis for its decision.
 - (b) Incentivizing development is common, and less likely to carry a constitutional burden, generally.
 1. All broad tax relief programs that I found were state-mandated and controlled, so the city would have to lobby the state to change its laws to provide complete tax relief
- e. Sources
- <http://ref.michigan.org/medc/services/sitedevelopment/renzone/businessstax/index.asp>
 - <http://ref.michigan.org/medc/services/sitedevelopment/renzone/residentialtax/index.asp>
 - <http://www.muskegon-mi.gov/services/business-services/renaissance-zone/>
 - <http://www.communityservices.nd.gov/uploads%5Cresources%5C161%5Cnd-rz-guidelines-revised-6.27.11.pdf>
 - http://www.cityofmandan.com/index.asp?Type=B_BASIC&SEC={7777E54A-4CDB-4F82-80E9-EE5BCE584C36}
 - <http://www.leg.state.vt.us/statutes/sections.cfm?Title=32&Chapter=133>
 - <http://www.philadelphiataxreform.org>
 - <http://www.phila.gov/ohcd/taxabate.htm>
 - http://opa.phila.gov/opa.apps/OnlineApps/abatement_home.aspx
 - http://www.montpelier-vt.org/upload/groups/206/files/3-III_WaterDepartment.pdf
 - <http://www.montpelier-vt.org/story/546/City-Provides-Tax-Incentive-For-New-Commercial-Building.html>

- <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=32&Chapter=125&Section=038>
47

7. Quid Pro Quo Investment

- i) I found little to go on based on my explanation, but I did read the Community Reinvestment Act and several parts of the Code of Federal Regulation that implement it.
 - (a) My understanding of the law is that it incentivizes lenders who work within their community by a rating system. This rating has a direct impact on whether hat then determines whether the federal government approves certain profitable business ventures the lender may choose to undertake (i.e. mergers and large acquisitions).
 - (b) The act suggests a multitude of different ways that banks can expand their options—including investment in a Community Development Corporation or a land trust—and they are encouraged to "be creative."
 - (c) I found nothing regarding the scheme that I had explained: investment of municipal funds in exchange for some form of preferential treatment, via lower rates or more approvals.
 - (d) I don't think that this would be disallowed by federal regulations, but the logistics of this plan may be tricky.
- ii) I haven't found precedent for this arrangement, so it may take going to banks or credit unions in the area and asking if they are amenable to this situation.
 - (a) It is difficult to anticipate whether or what lenders may require of the city, besides its investment. The city could be required to co-sign for loans, or to guarantee them in some way.
 - (b) A benefit to approaching a community land trust, development corporation entity, or a credit union is that they have access to revolving loans created by the Community Reinvestment Act.
- iii) At this point, I am uncomfortable making a recommendation either way. I do think the large number of non-profit development and loan making entities—like the Vermont Housing Finance Agency—are excellent resources, however. There is a history of partnership on specific projects with many local non-profits, so it may be useful for the city to form a close partnership with one or more of them as it determines how to fund housing development.
- iv) Sources:
 - 12 U.S.C. §2901 *et. seq.*
 - 12 C.F.R. Part 25 *et. seq.*
 - 12 C.F.R. Part 203 *et. seq.*
 - 12 C.F.R. Part 228 *et. seq.*
 - 12 C.F.R. Part 345 *et. seq.*
 - 12 C.F.R. Part 563e *et. seq.*
 - The CVCLT website has been recently redesigned, but its former site had several projects located in Montpelier.
<http://www.cvclt.org/real-estate-development/current-projects/>
<http://www.cvclt.org/real-estate-development/past-projects/>
 - <http://www.vhfa.org/about/overview/>
 - <http://www.investinvermont.org/housing-a-community-facilities>

8. Inclusionary Zoning

- i) Types of Inclusionary Zoning
 - (a) Mandatory – all projects meeting certain size requirements must set aside a certain percentage of units as affordable housing.
 - (b) Voluntary – while the city provides incentives to developers who do include affordable units in their developments, it does not mandate that they do so.

- (c) Hybrid – development that mandates affordable units in projects, but can be flexibly implemented or offer developers a means to opt out.
- ii) Implementation
 - (a) Definition of Affordable – defined based on the Adjusted Median Income of an Area.
 - 1. Typically, an affordable unit is one in which a household of appropriate size making some percentage of the AMI for an area—usually 60-80%—pays no more than 30% of its income to live in that unit.
 - 2. This 30% figure is inclusive of all of the costs to rent or own that unit (e.g. rent and utilities, or mortgage, utilities, and taxes).
 - (b) Circumstances that Trigger Inclusionary Requirements
 - 1. Type of development – in Burlington, these requirements apply to nearly every type of residential development. Some laws apply only to new development.
 - 2. Size of development – In some markets, cities have a size threshold that a development must meet in order to be required to set aside affordable units.
 - i. In Burlington and San Francisco, the thresh-hold is lower (5 units or more).
 - ii. In other markets, the thresh hold can be 100 units or more.
 - iii. Size and Type may also work in concert with one another, so the thresh-hold might be higher for new development as for rehabilitated or converted development.
 - 3. Incentive-based or permit based – these typically operate within hybrid systems, developers obtaining certain types of incentives from the city, or applying for certain permits or waivers from the city's Development Review body, are required or expected to set aside a certain percentage of affordable units.
- iii) Unique Examples
 - (a) Chapel Hill, NC
 - 1. The bylaw creates an expectation that developers seeking rezoning or special use permits will include 15% affordable housing in their developments.
 - 2. During the predevelopment phase of each project city then has lot of flexibility to negotiate with each developer on a case by case basis.
 - 3. It has resulted in the creation of 100 affordable units in 10 years all owned by land trusts to ensure affordability in perpetuity.
 - 4. To build on this success, the city convened a task force to research expanding the program into a mandatory one.
 - (b) Chicago
 - 1. A system based on quid pro quo principles, in which developers must include 20% affordable units in order to receive financial assistance from the city, including TIF funding.
 - 2. It also requires affordable units in projects developed on land purchased city and projects that require rezoning or special use as in Chapel Hill.
 - 3. Developers can pay \$100,000 *per unit* to opt out of these requirements and build no affordable units.
 - 4. The funds raised from these opt-out fees were then reinvested into the city's housing trust fund.
 - 5. The original 2003 plan enabled city alderman to choose when they would enforce the inclusionary requirements.
 - i. City Alderman are elected neighborhood officials who make many of the land use decisions for neighborhoods anyway.

- ii. The result of this was some alderman made inclusionary housing de-facto required, while others ignored it, concentrating affordable development in certain areas.
 - iii. In 2007, the city updated its plan to roll back much of that power.
 - 6. During the housing boom, while the city lost out on affordable development to some extent, it significantly grew its trust fund.
 - i. Based on development figures, the city could have had 7000 new affordable units if zones had been mandatory instead of the 4500 that were built
 - ii. Housing Trust Fund grew by \$20M over this time period.
- iv) Pros, Cons and Montpelier-specific Considerations
 - (a) As a market based mechanism, inclusionary zoning may not be useful in area that has shown little growth due to its own circumstances or an economic downturn
 - (b) At the same time, it is useful for long-term planning if a city wants to insure equitable growth.
 - (c) Special Considerations
 - 1. Montpelier is already fighting with the preconception that it is over-regulated and anti-growth.
 - i. Should consider coupling a system like Chicago's with tax-free zoning or another development-friendly incentive.
 - ii. These financial options would appear to make affordable housing de facto mandatory in lean times, and provide for a revenue stream during booms.
 - iii. The effects of Chicago's alderman system in mind, Montpelier should be sure to implement inclusionary zoning equitably across the city.
 - iv. Alternatively, Chapel Hill's approach, which at first mandated inclusionary development in very specific circumstances and now applies to all development, operated as a more gradual phasing-in of mandatory inclusionary zoning.
 - 2. The city's housing goals are not limited to expanding affordable housing.
 - i. Consider expanding the definition of inclusionary to include starter homes for families.
 - ii. It may also want to create inclusionary commercial zoning that would incentivize live-work developments.
 - 3. The city wants to encourage lots of different types of development.
 - i. Consider keeping thresh-holds low, incorporating inclusionary requirements into many different forms of development.
 - ii. Alternatively, it may be preferable to provide more flexibility to smaller developments as opposed to larger ones, since it is often smaller developments that can least afford to make concessions.
 - 4. Consider tools for maintaining the affordability of properties in perpetuity.
 - i. Shared-equity ownership, or ownership by a land trust.
 - ii. City-owned lean on the price differential between market-value and affordability value.
 - 5. Whatever the City chooses to do, I suggest that it be very carefully worded so that its implementation is inclusive of most types of development, predictable, and efficient.
 - i. Consider following the lead in Burlington and partner with the CVCLT.
 - ii.

v) Sources:

- http://www.housingpolicy.org/toolbox/strategy/policies/inclusionary_zoning.html?tierid=116
- http://townhall.townofchapelhill.org/agendas/2010/03/15/1a/1a-2-draft_inclusionary_zoning_ordinance-zoning
- <http://www.ci.chapel-hill.nc.us/index.aspx?page=1298>,
- <http://www.ci.chapel-hill.nc.us/Modules/ShowDocument.aspx?documentid=6988>
- http://www.cedoburlington.org/housing/inclusionary_zoning.htm, And the ordinance itself (the link on the page is currently dead).
- <http://www.cityofchicago.org/content/dam/city/depts/dcd/general/housing/AROfactsebvrsion.pdf>
- http://www.cityofchicago.org/city/en/depts/dcd/supp_info/chicago_communitylandtrust.html



**CITY OF MONTPELIER
MONTPELIER, VERMONT**

Agenda for City Council Meeting

City Council Chambers, City Hall

Wednesday, November 9, 2011

7:00 P.M.

- 1) Call to Order by the Mayor
- 2) 11-270. General Business and Appearances
- 3) 11-271. Consideration of the Consent Agenda:
 - a) Consideration of Minutes from the October 26th, 2011 City Council Meeting (following the Community Dinner/Town Hall Meeting). 
 - b) Ratification of 2011-2014 Police Union Contract.
 - c) Consideration of authorizing the purchase of an Automated emergency notification system to alert residents and business owners of emergency situations in Montpelier. Police, Fire/EMS, the Planning Department and “*Montpelier Alive*” were involved in the selection process. Recommendation: Based on the City’s criteria, product demonstration and cost, staff believes **Blackboard Connect** is the best choice for this service. The annual cost of their services is \$6,687.13. 
 - d) Approval and signing of a “Municipal Electronic Funds Transfer Agreement” with the Merchants Bank. The Merchants Bank Government Banking Department annually requests a review of their documents by Attorney Paul Giuliani. As part of the review, the Electronics Fund Transfer (EFT) Agreement is included. The EFT document relates to their on-line banking product and more specifically, the capability of sending and receiving files by means of the Automated Clearing House (ACH). As ACH activity is an extension of credit, a recommendation has been made to have that reflected in the documents. As with traditional loan documents, the Merchants Bank is now requesting that the majority of the Council and the Treasurer of the municipality sign the agreement. 

- e) Approval of a “Sales Order” from ACS to re-index the City’s Land Records starting on December 31, 1992, and working back in time to bring these records onto the 20/20 system and making the index and images available on the computer. The City Clerk-Treasurer would like to use \$40,000 from the Records Restoration Fund to bring those land record documents online. Recommendation: Approval of the expenditure for this project and authorization for the City Manager to sign the Sales Order Agreement. 
 - f) Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:
 - 1) Application for a Special Event Permit from Mark Simakaski, d/b/a Artesano, LLC of Groton, for ***the “Touch of Vermont Holiday Gift Market”*** scheduled to be held on Saturday, December 10th, 2011 from 7:00 A.M. to 5:00 P.M. in the City Hall Auditorium. Their beverages will be served within a 10-foot space in the vending area of the market. 
 - g) Payroll and Bills
- 4) 11-272. “SETTING OF TIMES” by City Council for the evening ...
 - 5) 11-273. Update from The Basement Teen Center.
 - a) Teen Center staff member Casey Willard contacted the City Manager’s Office in October, asking if they could provide an update to the Council at one of their upcoming meetings.
 - b) As part of their presentation, Casey said they will be showing a short documentary; this is something that the teens have put together which focuses on teens having an active part in the community.
 - c) Recommendation: Receive the update and presentation of the documentary; opportunity for discussion.
 - 6) 11-274. Housing Barriers Committee Report.
 - a) Four Council “Summer Study Committees” were formed in the spring; the Housing Barriers Committee was one of the four. Their charge was to “***identify barriers to new housing in the city; select a date to convene a ‘housing summit’ to identify barriers and develop options for what the City can do to foster new housing.***”

- b) Recommendation: Receive report.
- 7) 11-275. Update from the City's rep to the Central Vermont Solid Waste Management District.
 - a) Mia Moore, the City's rep to the CVSWMD has asked for time on this evening's agenda to report to Council the activities of the CVSWMD during the past year.
 - b) Recommendation: Receive update; discussion; possible direction to Ms. Moore.
- 8) 11-276. Receive and discuss the Taser Committee's Final Report to the City Council. 
 - a) This committee has met regularly since the Council appointed them in May; two public hearings were held and now the Council has received their final report.
 - b) Recommendation: Review and discuss the report with committee members; Council will make their decision on November 16th.
- 9) 11-277. Regional Services Meeting Follow-up 
 - a) The governing bodies from Barre, Barre Town, Berlin and Montpelier met on Thursday, November 3rd, at the Central Vermont Chamber of Commerce Office.
 - b) Report #2 of the Public Safety Committee was presented. This Committee was formed to *"Create a public safety authority that provides the four communities of Barre, Barre Town, Berlin and Montpelier with an affordable, integrated, efficient system of public safety services (fire, police, ambulance, dispatch) that protects public welfare and provides rapid responses with highly qualified personnel when emergency situations arise."*
 - c) As outlined in the report, the next steps the Committee's looking at are:
 - 1) Member towns commit to a non-binding ballot item in their respective communities which solicits preliminary support for a combined public safety authority.
 - 2) Each community includes \$15,000 in their respective 2012-2013 budgets for further work of the committee.

- 3) The committee would continue to refine the preliminary cost sharing formula, as well as the governance model for the authority.
- 4) The committee would continue an educational and outreach role in each community leading to the town meeting vote.
- 5) If successful, the committee will facilitate the hiring of a consultant to work with the committee on the next steps needed including potential charter changes, legal review, cost sharing models, asset and liability review, and governance and transition planning.

d) Recommendation: Discussion; possible direction to staff.

10) 11-278. Department Reports

- a) As outlined in the City of Montpelier's FY '13 Budget Schedule (July 1, 2012 – June 30, 2013), Reports from City Departments are scheduled to be heard this evening.
- b) Those departments presenting at this meeting will be Police, Fire and Public Works.
- c) Recommendation: Receive reports; possible direction to staff.

- 11) 11-279. Reports by City Council
- 12) 11-280. Mayor's Report
- 13) 11-281. Report by the City Clerk-Treasurer
- 14) 11-282. Status Reports by the City Manager
- 15) 11-283. Agenda Reports by the City Manager

Adjournment

On Wednesday evening, October 26, 2011, the city council members met at the Montpelier High School Cafeteria for a Spaghetti Dinner and Town Hall Meeting.

Present: Mayor Hooper; Council Members Weiss, Sherman, Jarvis, Golonka, Hooper, and Timpone; also City Manager Fraser. Department Heads were also in attendance.

Community Dinner

City Council and Staff advertised, inviting members of the community to a Spaghetti Dinner and a Town Hall Meeting.

The Spaghetti Dinner took place from 6:00 P.M. to 7:00 P.M.

Call to Order by the Mayor

Mayor Hooper called the meeting to order at 7:03 P.M.

She thanked the kitchen staff and everyone who had provided assistance and food for the Community Dinner. Child care was being provided. She also spoke about the Neighborhood CAN meetings being scheduled for November 19th.

11-262. "SETTING OF TIMES" by City Council for the evening ...

Skipped for this evenings meeting.

11-263. "Town Hall Meeting"

This will give the attendees an opportunity to weigh in on City funding priorities before the FY 2013 Budget is drafted.

City Manager Fraser provided a power point presentation which gave key questions and information from the 2009 National Citizen Survey. He explained how the budget worked, gave a breakdown of the tax rate and where the money was spent. The major cost factors were health insurance, energy costs and infrastructure/equipment. He spoke about the Matrix Report and the consultants conclusions and reviewed the budget process that leads up to the March 6th Annual City Meeting. A copy of the presentation is attached to the minutes.

Mayor Hooper moderated the meeting where the following comments and questions were discussed. The comments and questions were provided by City Manager Fraser.

Comments and Questions from Community Dinner 10/26/11

What revenue options are available?

What would it take to fix streets and sidewalks?

Raise parking rates and use revenue for other purposes.

What causes roads to deteriorate?

Set a tax rate/budget target and ask management to hit the target.

Concerned about the effect of the tax rate on the health of the city

6th highest tax rate in the state

Can we bond for infrastructure backlog?

Identify new or added programs in recent years

Address vacant store fronts – vacancy tax?

Factor in climate change in infrastructure planning

Promote conservation

Jockeying for retail space downtown

Businesses also pay personal property tax

Crosswalk painting – very important

School budget – have similar meeting

City salaries/benefits – too high

City needs more residents – get rid of sprinkler requirement, fix Barre & Main intersection

Permit system is not business friendly

Health insurance – employees should share cost

Appreciated the updates during Irene

Appreciates Montpelier Alive

Do we get full PILOT from state?

Tasers on November 16th

Affordable housing? Need single family housing

Houses aren't available

Increase housing trust fund

Don't pin hopes on 500 new housing units

Commit one person to inspire economic development

Not getting our share of creative entrepreneurs

District heat – what's happening?

What is status of water fund? Biggest problem down the road

How can we get citizens opinions on issues?

Use bonding for infrastructure, rates are low right now

Implement Local Options taxes

Services cost money, people vote yes

Look at attrition to reduce staff

THE TOWN MEETING PORTION OF THE MEETING ENDED SHORTLY BEFORE 8:30 P.M. A SHORT RECESS TOOK PLACE BEFORE THE REMAINDER OF THE MEETING WAS CONDUCTED.

Council will conduct other business as part of their regularly scheduled Council Meeting for this evening.

11-264. Consideration of the Consent Agenda:

Consideration of the minutes from the October 12th, 2011 City Council Meeting.

Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:

Ratification of the issuance of a Catering Permit to Valley Bowl, Inc. for a Dance held on Saturday, October 22nd, from 5:00 P.M. to 12:00 A.M. at the College Hall Chapel. 0

Application for an Educational Sampling Event Permit from Cameron Keitel for a "winter wine tasting" to be facilitated by Calmont Distributors for the purpose of educating consumers on new and existing wines at Hunger Mountain Co-op. This event is being held at a private home at 20 Bailey Avenue but sponsored and staffed by the Co-op. 0

Additional Catering Permit

Application for a catering permit received from Yebba, Inc dba The Abbey Pub & Restaurant to cater a cocktail party at the Capitol Food Court, 115 State Street, Montpelier, VT from 2:00 P.M. to 7:00 P.M. on October 29, 2011.

Payroll and Bills

None signed this evening.

Motion was made by Council Member Jarvis, seconded by Council Member Hooper to approve the consent agenda with the additional catering permit. The vote was 6-0, motion carried unanimously.

11-265. Consideration of an Application for a Municipal Planning Grant. 0

The Planning Commission approved the submittal of this application. The project description on this application reads: "To bring the zoning ordinance into compliance with the new Master Plan by reviewing and revising the City's land use regulation, drafting neighborhood level development standards, and creating performance criteria for smart growth, historic preservation, and rural uses and livelihoods."

A copy of the application is attached which describes the project in further detail.

Recommendation: Approve the application as requested by the Planning Commission.

Council Members expressed concern about not having a copy of the application or information needed to make a decision. Concern was also expressed about receiving updates on the Zoning Revisions.

Motion was made by Council Member Sherman, seconded by Council Member Jarvis to approve submission of the application and meet with the Planning Commission at a later date to understand their intentions and that the council will have a right to reject the funding if awarded. The vote was 4-2, with Council Member Weiss and Golonka voting against the motion.

11-266. Mayor's Report

- 11-267. Report by the City Clerk-Treasurer
- 11-268. Status Reports by the City Manager
- 11-269. Agenda Reports by the City Manager

City Manager Fraser informed the council that the city had received approval from the Federal Government to proceed with the Carr Lot Project. The next steps would be to prepare preliminary design and begin the appraisal work.

Adjournment.

Motion was made by Council Member Jarvis, seconded by Council Member Timpone to adjourned the council meeting at 9:10 P.M. Motion carried unanimously.

Attest: 
Charlotte L. Hoyt, City Clerk

WELCOME!
Community Dinner & Discussion
Montpelier City Council
October 26, 2011
City of Montpelier, VT

Key Questions

- **What does the community need/want from city government?**
- **How do we pay for it?**
- **What additional information would be helpful?**

Resident Priorities and Concerns

From 2009 National
Citizen Survey "Key
Drivers"

- **Police/Public Safety**
- **Planning & Zoning**
- **Parks**
- **Roads**
- **Schools**
- **Taxes**
- **Affordable Housing**
- **Jobs**
- **Maintain Services**
- **High Quality of Life**

From Survey Open
Ended Question

From Survey Policy
Question

How Does the Budget Work?

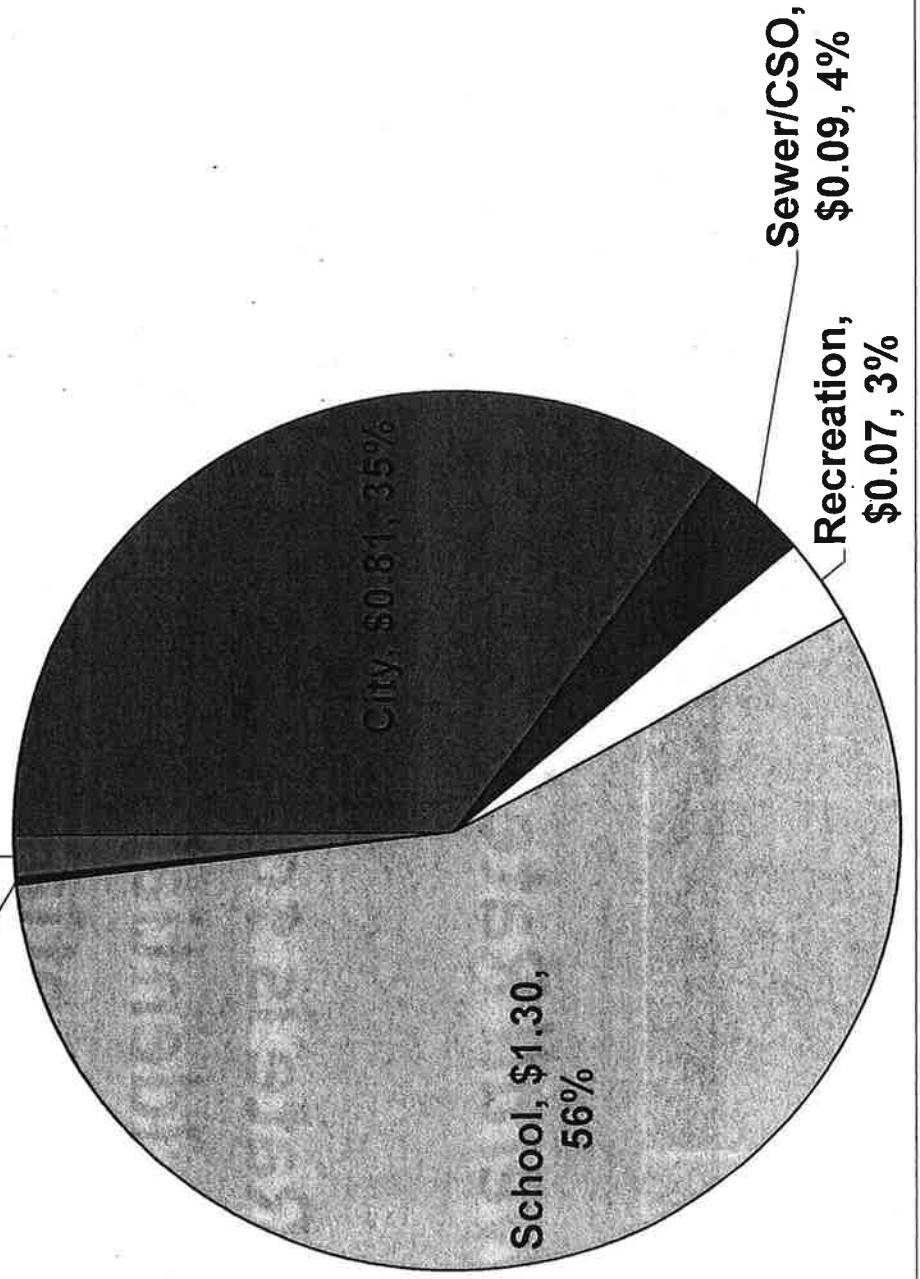
- + Expenses for services, departments, projects, etc.
- - Less Revenues from fees, grants
- = Difference raised by Taxes
- \$ Tax dollars divided by total assessed valuation (Grand List) =
Property Tax Rate

Property Tax Rate

- **Current Overall Rate is \$2.32 per \$100 of value**
- ***Municipal* Rate is \$0.92 per \$100 of value**
- **Average Residential property is \$223,000**
- **Average Residential tax bill is \$5,173**
- **One Cent on Tax Rate raises \$83,000**
- **One Cent on Tax Rate costs \$22.30 to average resident.**

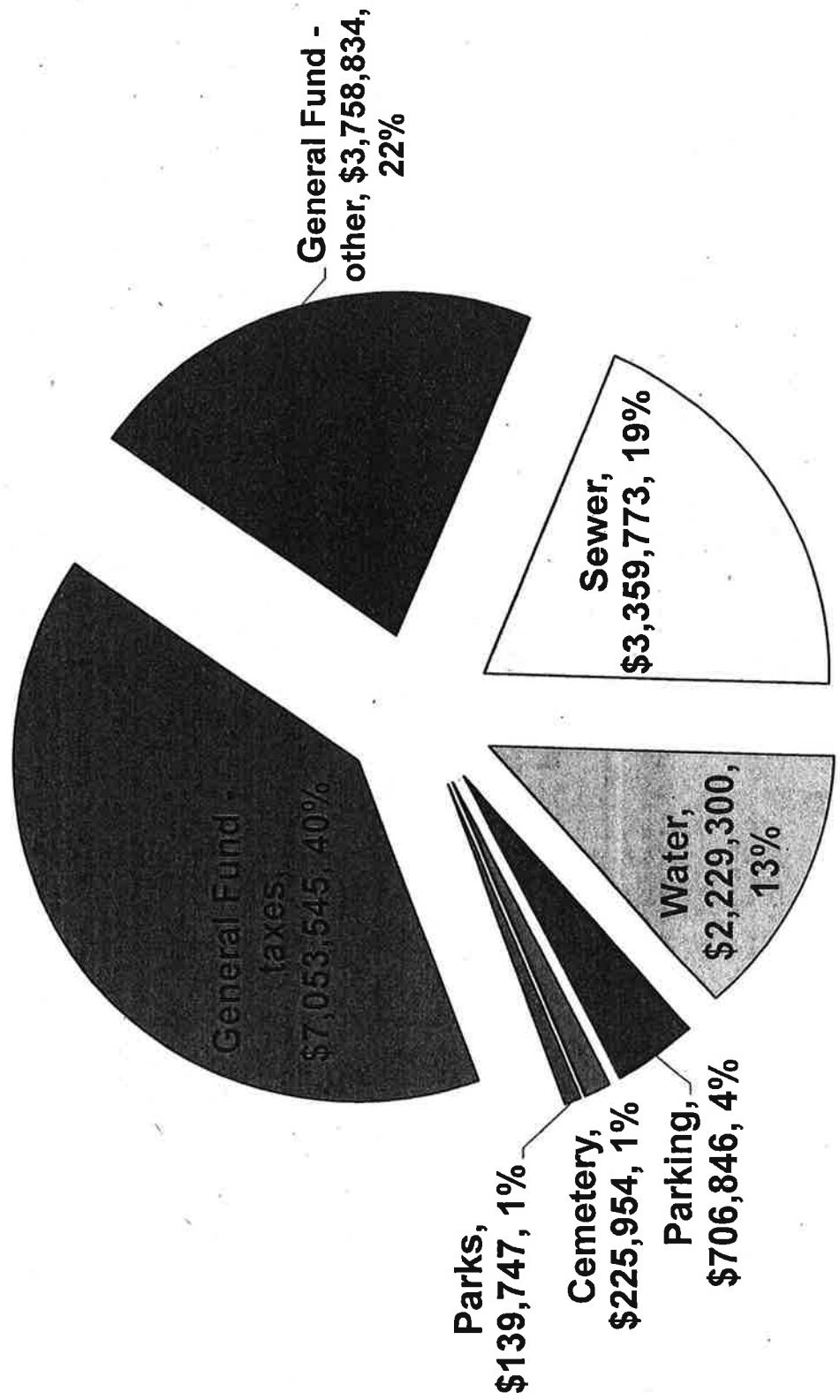
Property Tax Breakdown

FY12 Residential Tax Distribution



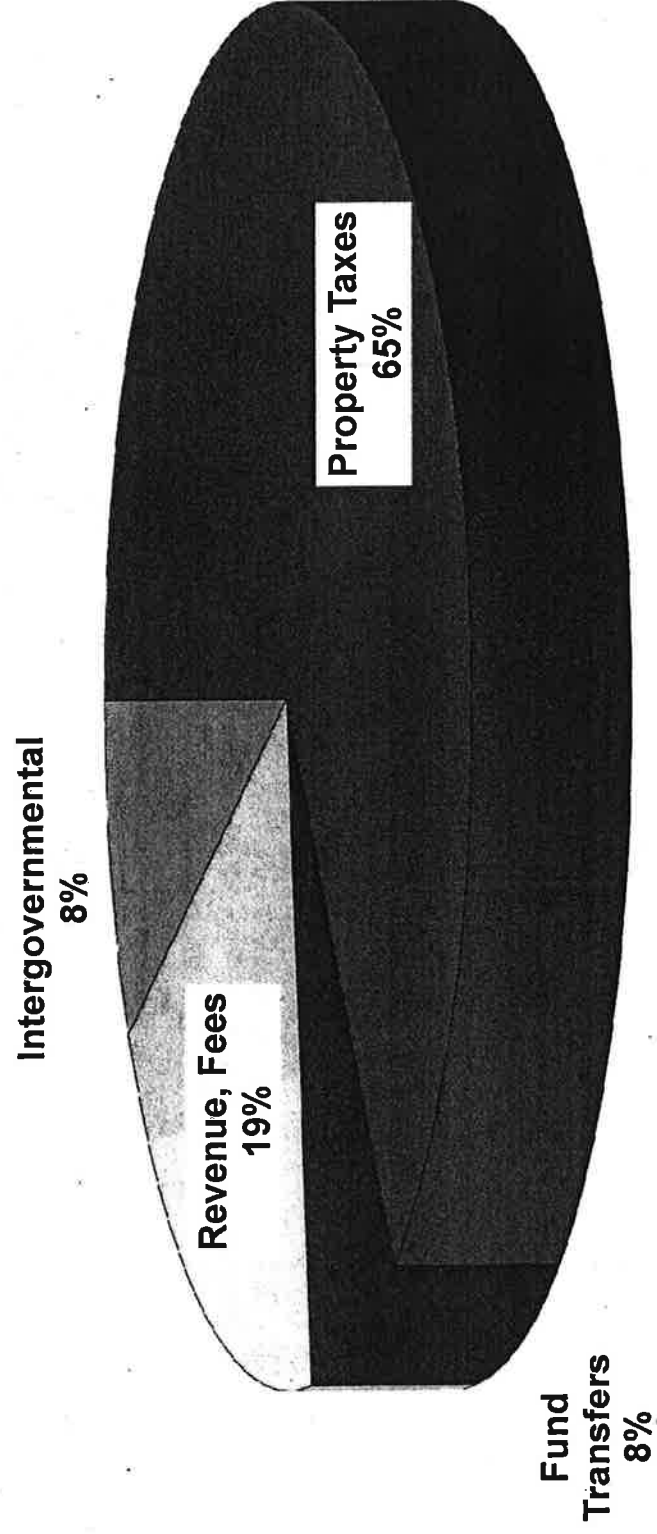
Overall City Budget

All Funds \$17,473,999



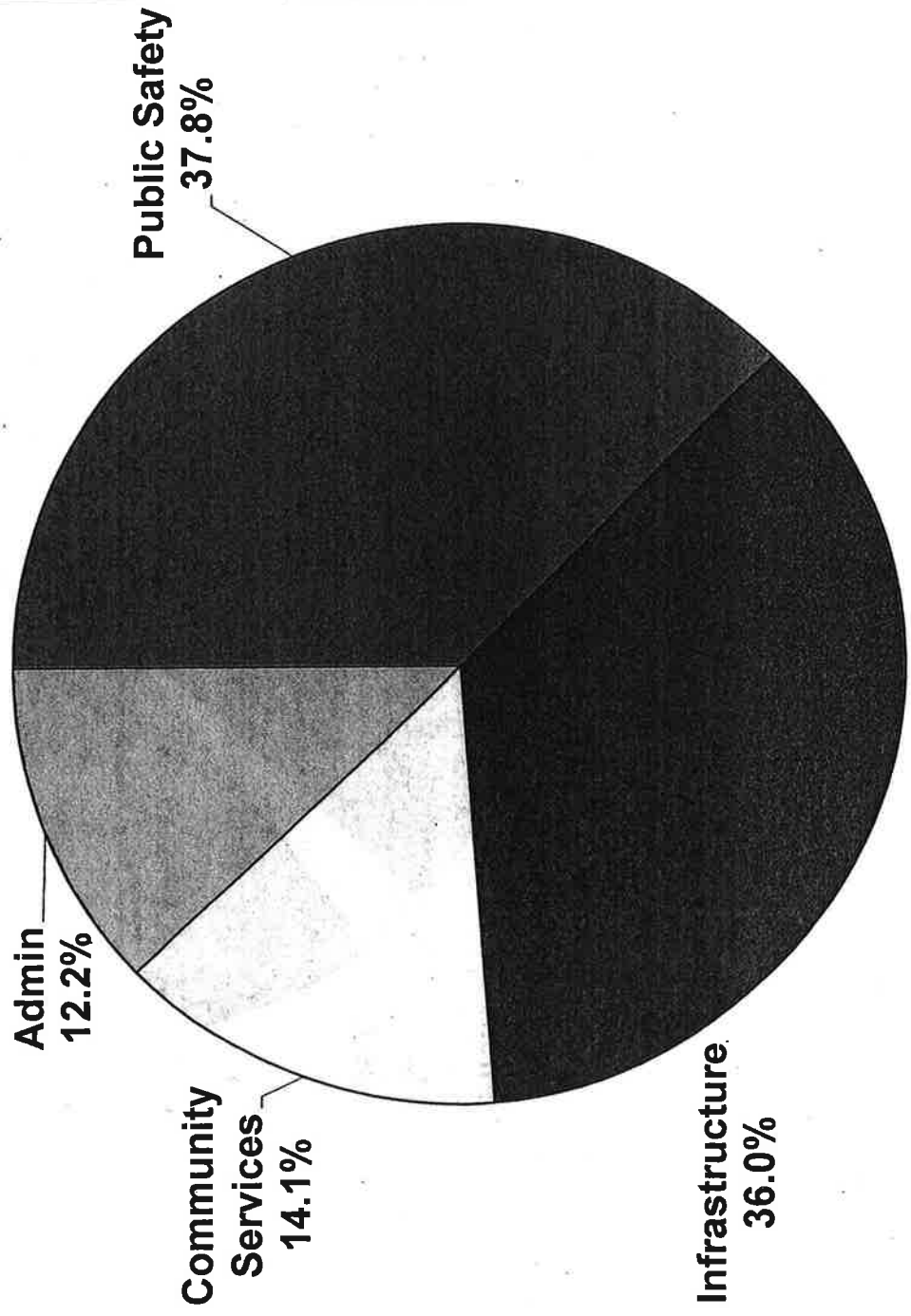
Where does GF
money come
from?

**FY12
GENERAL FUND REVENUES**

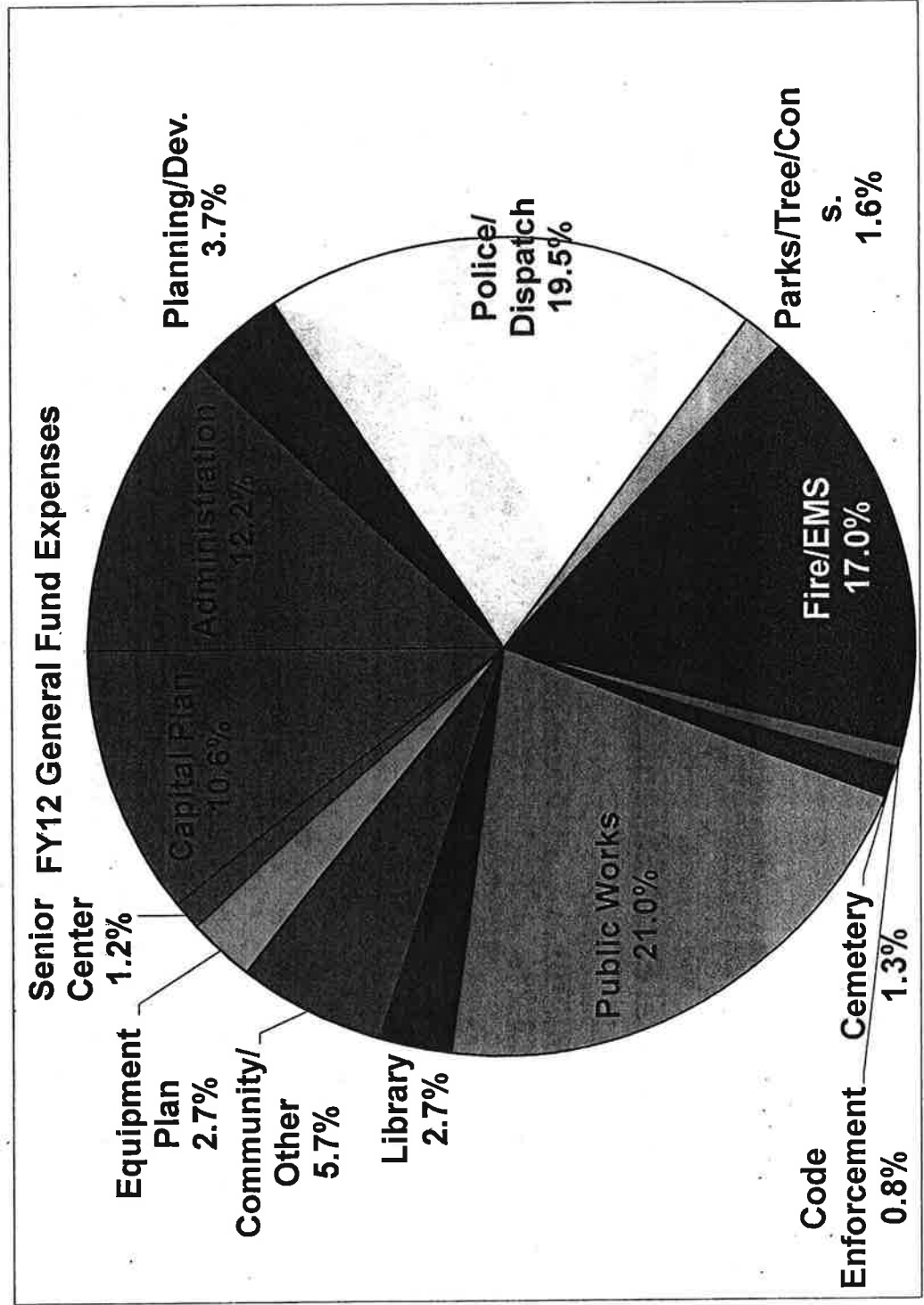


**Where is
money spent?**

General Fund Expenses by Broad Category



Expenses by Department



Expenses by Category

FY12

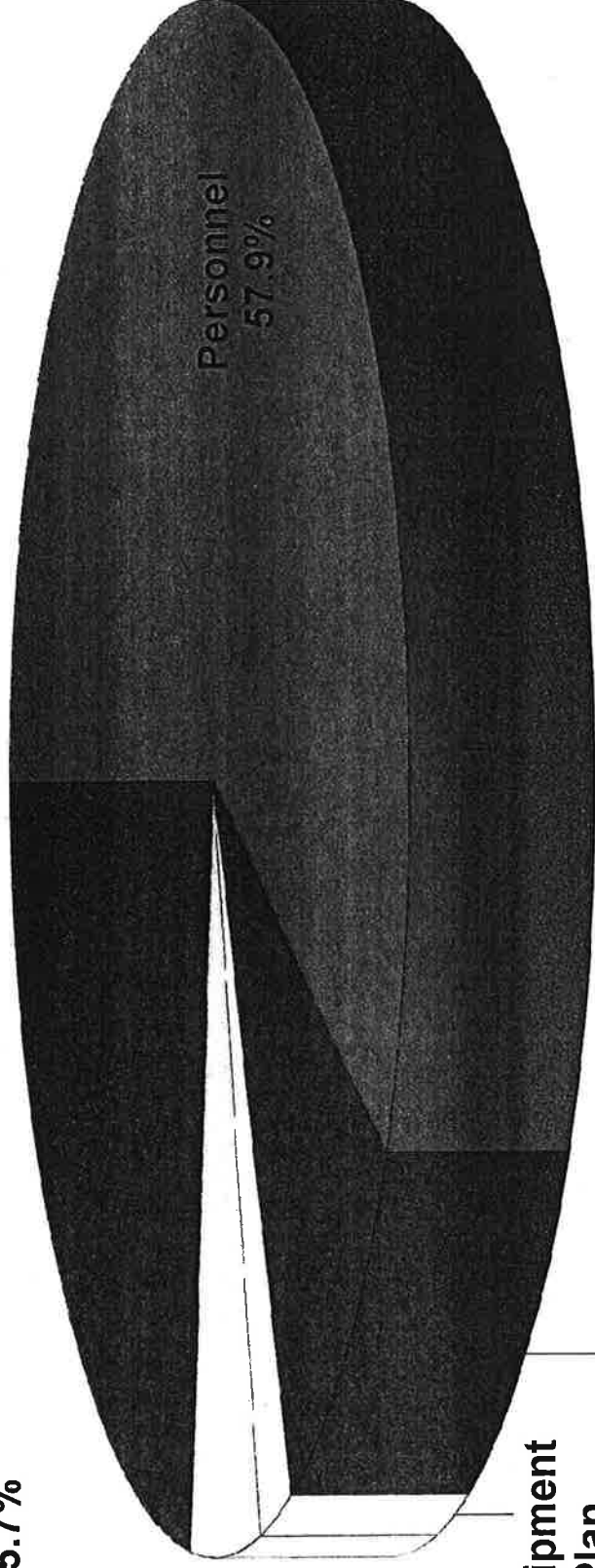
General Fund Categories

Operating Expenses
23.1%

Community/
Other
5.7%

Personnel
57.9%

Equipment
Plan
2.7% Capital Plan
incl. Debt
10.6%



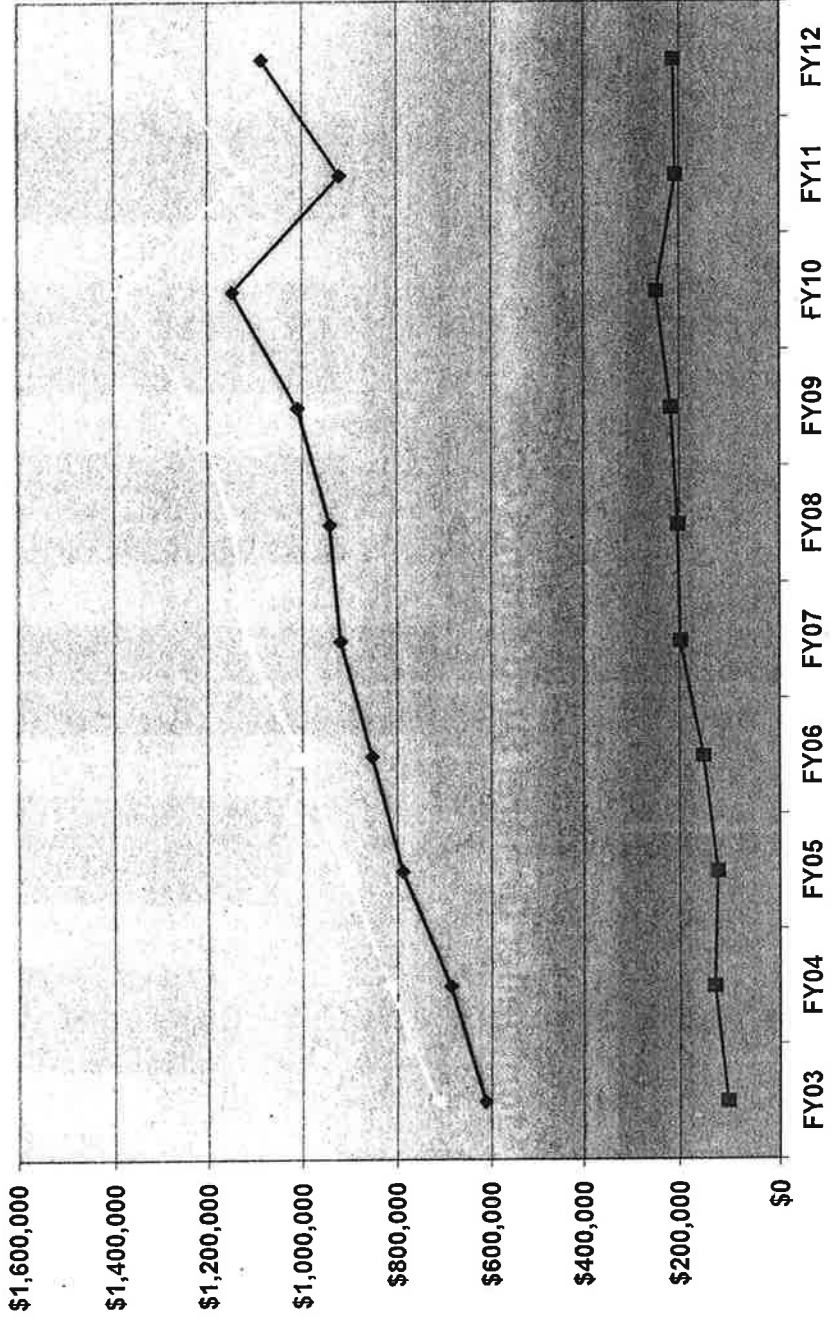
Major Cost Factors

- **Health Insurance**
- **Energy costs**
- **Infrastructure/Equipment**

Health Insurance

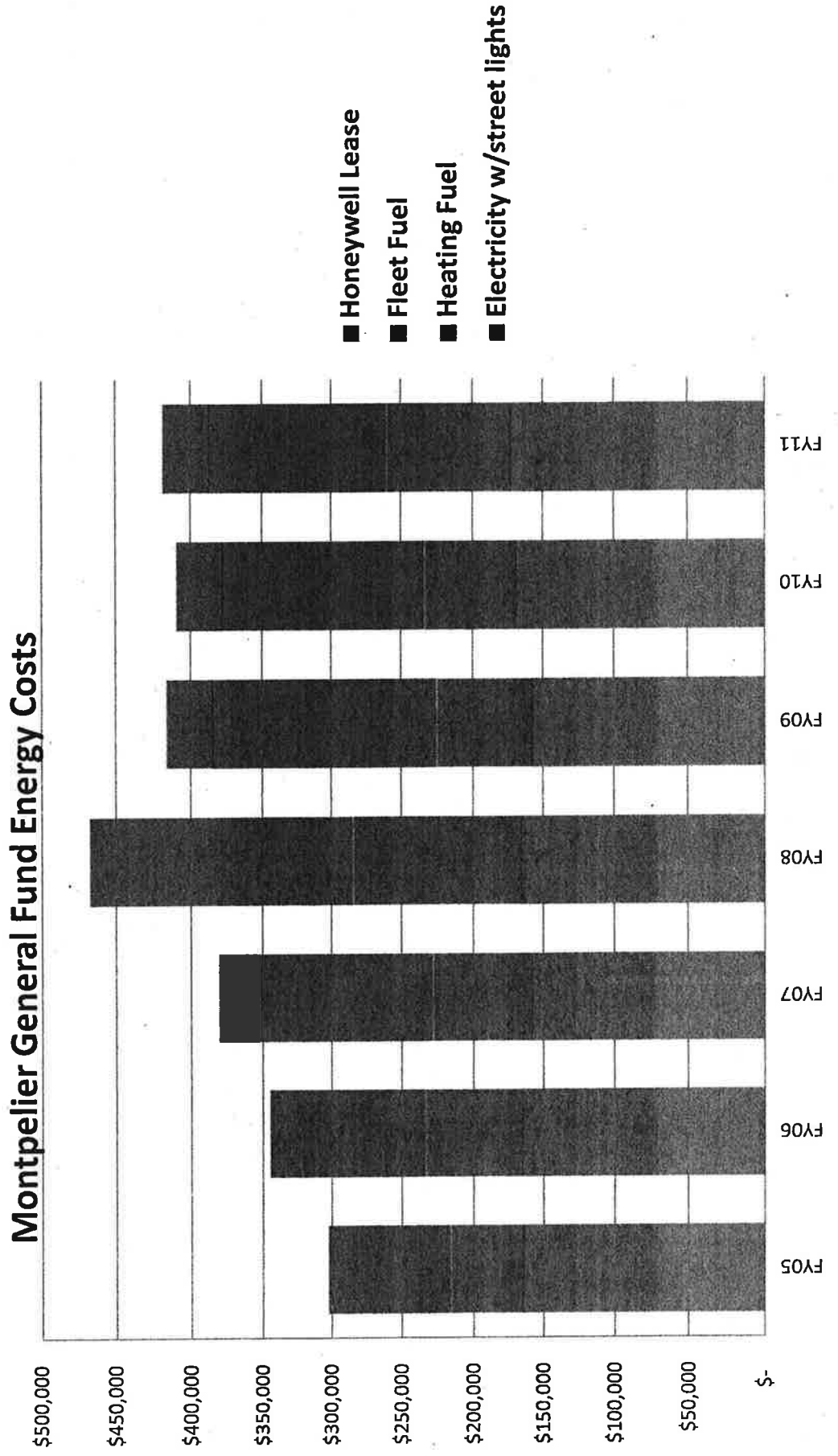
Health insurance costs 10 cents on the tax rate

City of Montpelier Health Insurance Premiums/HRA Funding Paid



◆ City (Employer)
■ Employee
Total Premiums Paid

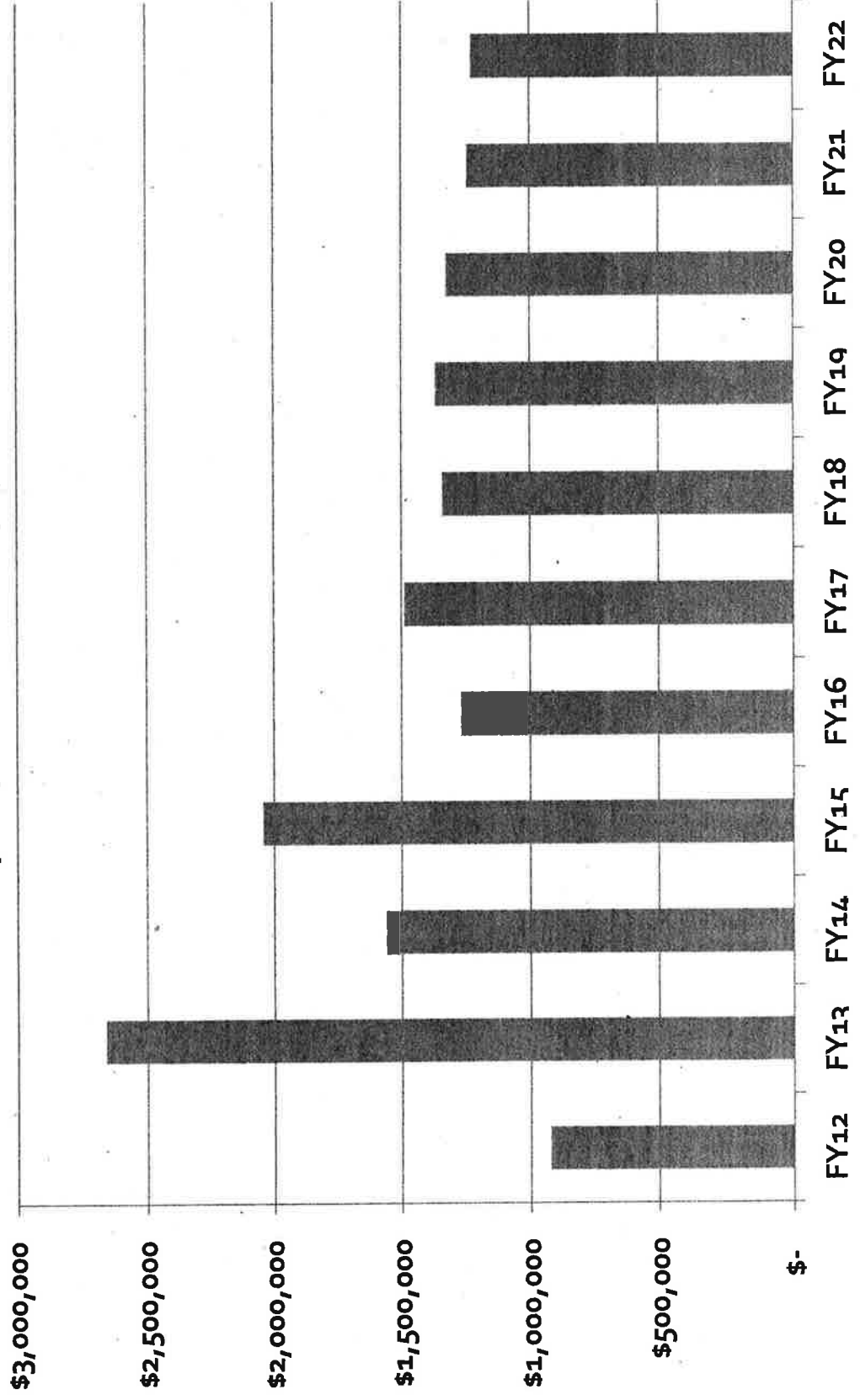
Energy Use



Capital & Equipment

Projected increase of \$500,000 per year to meet current/future needs.

Capital, Facilities & Equipment Needs



National Citizen Survey 2009

Highlights

Quality of life

Public trust

Public safety

Opportunities

Street repair

Affordable housing

Employment opportunities

Economic development



Policy questions

How important, if at all, is it for the City to maintain the following services at current levels:	Percent reporting "essential" or "very important"
Water	91%
Sewer	89%
Ambulance	89%
Fire	87%
Roads	86%
Schools	85%
Sidewalks	83%
Dispatch	82%
Police	81%
Capital Projects (i.e., road construction, buildings, bridges, etc.)	81%
Library	74%
Senior Services	73%
Parks	72%
Planning	71%
Recreation	66%
Downtown (i.e., events, promotions, etc.)	65%
Community Justice Center	59%

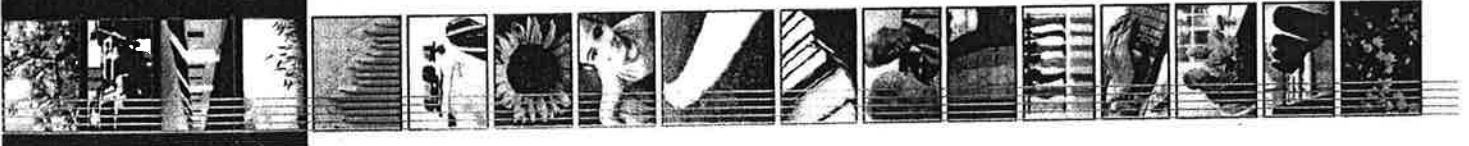
In Their Own Words

What is the most important issue the City of Montpelier will face over the next five years?

Jobs – people will want to move here, but we need employment opportunities, encourage business to invest here and create jobs. Also encourage small businesses to stay here.

We are taxed to the max – my family could be forced to move out of Montpelier.

Affordable housing – people who work here can't afford to live here.



Matrix Consultant Conclusions 6/8/11

- The City of Montpelier is generally providing a high level of service to the public within the allocated staff and financial resources.
- There is a high utilization of cross-trained staff and inter-departmental cooperation to provide back-up and additional resources when needed.
- Staffing levels in the organization are generally “right” and “tight” for service expectations placed on departments.
- There are many strengths present in the organization that will serve as a strong base for implementing future improvements.
- Project team focused on solutions that could maintain / improve services with the least investment in additional resources.

Schedule

**All at City Hall, Open to the Public, Accessible,
Broadcast on Local Cable. Streamed and archived
on website**

- **Dec. 7 – Overview, DPW, Capital/Equip.**
- **Dec. 14 – Revenue, CJC, Parks,
Cemetery, Administration, Senior Center**
- **Dec. 21 – Planning/Dev., Police, Fire**
- **Jan. 4 – Recreation, Adjustments**
- **Jan. 12 – First Public Hearing**
- **Thurs., Jan. 26 – Second Public Hearing,
Petition Deadline**
- **Mar. 6 – City Meeting Vote, 7 AM to 7 PM**

Where to Get Information

William Fraser, City Manager, 802-223-9502
wfraser@montpelier-vt.org e-mail
www.montpelier-vt.org web site includes Matrix Study,
National Citizen Survey, Budget information, Meeting
video –live and archived, other notices



City of Montpelier, VT

Twitter @vtmontpelier

ORCA Media, local cable television
Montpelier Bridge, monthly page
Annual Report

Key Questions:

We're here to listen to you!

- 1. What does the city need/want?
(add, keep, cut)**
- 2. How should the city pay for what it
needs/wants?**
- 3. What information would be helpful?**



275 Kennedy Drive
South Burlington, VT 05403

October 24, 2011

Charlotte L. Hoyt, Clerk/Treasurer
City of Montpelier
39 Main Street
Montpelier, VT 05602

Dear Charlotte:

Annually the Merchants Bank Government Banking Department requests a review of our documents by Paul Giuliani, Esquire, of McKee, Giuliani & Cleveland.

As part of the review we included the Electronics Fund Transfer (EFT) Agreement. The EFT document relates to our on-line banking product and more specifically the capability of sending and receiving files by means of the Automated Clearing House (ACH). As the spirit of ACH activity is an extension of credit, a recommendation has been made to have that reflected in the documents. Additionally, as with traditional loan documents, we are now requesting that the majority of the board and the treasurer of the municipality sign the enclosed agreement.

Should you have any questions please do not hesitate to contact me.

Sincerely,

Shelley B. Quinn

Shelley B. Quinn
Assistant Vice President
Government Banking
(802) 865-1644 or (802) 881-1267

MERCHANTS BANK

MUNICIPAL ELECTRONIC FUNDS TRANSFER AGREEMENT

This Agreement (the "Agreement") is between City of Montpelier (hereinafter called "Account Holder") (if more than one undersigned, each jointly and severally), and **Merchants Bank** (hereinafter called "Bank") for the delivery of initiation of Electronic Funds Transfer entries as described below.

Section 1. Certain Definitions

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Operating Rules.

"Available Balance" means the Current Balance minus all Holds.

"Business Day" means a day during which the main office of Bank is open for business, in accordance with specified cut-off times during which Bank may initiate an Electronic Funds Transfer.

"Current Balance" means the balance of the Settlement Account shown on the books of the Bank, including all deposit and withdrawal items posted on the books of the Bank as of a specific date and time.

"Customer" means any business, consumer, or employee with which Account Holder has a written agreement to initiate a debit or credit to their bank account through Electronic Funds Transfer.

"Electronic Funds Transfer" means a debit or credit to a Customer's bank account in accordance with the Operating Rules of the National Automated Clearing House Association (the "NACHA").

"Entry or Entries" shall have the meaning provided in the Operating Rules and shall also mean the data provided by the Account Holder to the Bank from which Bank prepares Entries.

"Hold" means an amount of the Current Balance which is not presently available to Account Holder pursuant to applicable bank laws, rules, policies, or regulations.

"Investable Balance" means the Current Balance less Required Reserves and Uncollected Funds, on which Earnings Credit is calculated during the statement period.

"Operating Rules" means the Operating Rules of the NACHA.

"Required Reserves" means the percentage of Bank's deposits required to be kept on deposit at the Federal Reserve Bank. This percentage of the Settlement Account is unavailable to Bank or Account Holder for investment and does not earn Earnings Credit.

"Settlement Account" means the Municipal deposit account of Account Holder with Bank identified on the Electronic Funds Transfer Services Application and approved by the Bank in writing from which all Electronic Funds Transfers will be initiated. A Settlement Account must

be a business account established by the Account Holder and used by the Account Holder for business purposes.

“Settlement Date” means the business day upon which an Entry is to be debited or credited to the Settlement Account in accordance with the deadlines contained in the Operating Rules.

“Uncollected Funds” means funds that are in the Federal Reserve System clearing process; deposits constituting Uncollected Funds are unavailable to Bank or Account Holder for investment.

Section 2. Overview of Function Capabilities

- a) Account Holder wishes to initiate Entries through the Bank for deposit (“Credit”) and/or payment (“Debit”) of money to and from the accounts of Account Holder’s Customers maintained at the Bank and at other Participating Depository Financial Institutions (“PDFI”) by means of the Automated Clearing House (“ACH”).

Account Holder will comply with the Operating Rules, and the Bank will act as an Originating Depository Financial Institution (“ODFI”) with respect to such Entries.

- b) Account Holder shall deliver Entries to Bank in compliance with the formatting and other requirements defined by Bank and as disclosed on Account Holder’s Municipal Online Banking Application for the Settlement Account and approved by an authorized officer of Bank.
- c) Bank shall transmit Entries to the ACH network prior to the effective date shown in Entries, provided (i) such Entries are received by Bank’s related cut-off times on a Business Day, (ii) the effective date for the Entry is at least one Business Day after receipt of debit Entries and at least two Business Days after receipt of the credit Entries, and (iii) the ACH Operator is open for business on the Business Day on which the Entry was received.

Section 3. Acknowledgment of Account Holder

- a) Before the initiation by Account Holder of the first credit or debit Entry to a Customer’s account, Account Holder will obtain written authorization from Customer. Account Holder warrants and represents to Bank that such written authorization from Customer contains such disclosures, if any, required by and is in compliance with all applicable laws, rules and regulations, including but not limited to the Electronic Funds Transfer Act (15 U.S.C. §1693 et seq.) and Regulation E issued by the Board of Governors of the Federal Reserve System promulgated thereunder. Account Holder shall provide the Customer and the Bank with a copy of such authorization upon request. Account Holder agrees that no Entry of any kind shall be initiated without written permission from Customer. All authorization forms will be retained by Account Holder for a period of one year after termination of the authorization and Account Holder will provide upon request a copy of authorization to Bank. Account Holder agrees that each authorization for debit Entries that vary in amount will be in accordance with the Operating Rules.

- b) Bank strongly recommends that, at least five (5) days prior to the date Account Holder wishes to initiate an Entry, Account Holder send to Bank a notification that it intends to initiate an Entry or Entries to a Customer's account ("Prenotification"). Such Prenotification shall be provided to the Bank in the format specified by the Bank.

Bank shall provide each Prenotification to the appropriate Receiving Depository Financial Institution ("RDFI"). If Account Holder receives notice that such Prenotification has been rejected by the RDFI within the period of time specified, Account Holder agrees that it will not initiate any corresponding Entry to such Customer's account until the cause for rejection has been corrected and another Prenotification has been submitted and accepted by the RDFI.

- c) Account Holder shall deliver to the Bank all transaction input Entries unless otherwise agreed upon by the Bank and the Account Holder. All Entry information shall be delivered in the format required by the Bank. The Bank reserves the right to not process any Entry which does not meet these requirements, which may be amended or altered from time to time.
- d) Upon notification from NACHA or any RDFI that any Entries initiated by the Account Holder have been rejected, Entries will be returned and appropriately credited or debited to Account Holder's Settlement Account. Bank assumes no other responsibility with respect to such rejected and returned Entries. Account Holder is responsible for remaking and resubmitting said Entries or otherwise handling the transactions.
- e) Account Holder agrees that Entries submitted by Account Holder shall be effective as an authorized Entry of the Account Holder.
- f) All Entries shall be initiated by Account Holder in accordance with this Agreement and in accordance with the Operating Rules.
- g) Entries will be made only in accounts held at Bank or other PDFI as defined by the Operating Rules.
- h) If the amount of a debit Entry initiated by the Account Holder for processing differs from that of the preauthorized amount or range of amounts for such Account Holder, the debit entry may not be processed.

In order to have such a debit Entry processed, Account Holder shall send to Customer, with a copy to Bank, a written notification of the amount of such debit Entry and the date on or after which such Entry is scheduled to be debited to the Customer's account. Such notice shall be provided no less than three (3) business days prior to the date on or after which such Entry is scheduled to be debited to the Customer's account.

If an objection by the Customer to the debit Entry in such amount is not received by Bank prior to the date such Entry is scheduled to be debited, the Bank will permit the debit Entry to be processed.

- i) Account Holder will maintain a Settlement Account with Bank with collected balances sufficient to offset any Entries submitted and against which any rejected Entries may be credited or debited. In the event there are insufficient available funds in the Settlement Account to cover Account Holder's obligations under this Agreement, Account Holder agrees that Bank may debit any account maintained by Account Holder with Bank or that Bank may offset against any amount it owes to Account Holder in order to obtain payment of Account Holder's obligations. The Bank may also require one or more personal guarantees to support any obligations of Account Holder under this Agreement. Any remedies available to the Bank to recover funds owed to it under this Agreement are cumulative and are not exclusive of any rights or remedies provided by laws or any other agreement, and may be exercised separately or concurrently.
- j) If the Account Holder discovers that any Entry it has initiated was in error, it may notify the Bank of such error and the Bank will utilize its best efforts on behalf of Account Holder, consistent with the Operating Rules, to correct the Entry. In all such cases, it shall be the responsibility of the Account Holder to notify its affected Customer that an Entry has been made which does not comply with the Customer's authorization or is otherwise erroneous.
- k) In the event an Entry is rejected or returned by ACH for any reason, it shall be the responsibility of Account Holder to remake and resubmit such Entry or otherwise resolve the rejection or return in accordance with the Operating Rules. However, the Bank shall remake such Entry in the event rejection by ACH is due to mishandling of such Entry by the Bank and sufficient data is available to the Bank to permit it to remake such Entry. The Account Holder shall retain and provide the Bank on request all information necessary to remake any entry for three (3) days after midnight of the day the Entry is made to the Customer's account. In all other instances, Bank's responsibility will be to receive rejected and returned Entries from ACH, perform necessary processing, control and settlement functions, and forward such Entries to the Account Holder.
- l) Bank may reject any Entry which does not comply with the requirements of this Agreement, or which contains an effective date for the Entry more than fourteen calendar days after the Business Day such Entry is received by the Bank. Bank shall have the right to reject an Entry drawn on the Bank for any reason for which an Entry may be returned under the Operating Rules. Bank shall have the right to reject any Entry if the Account Holder has failed to comply with its account balance obligations. Bank shall notify Account Holder by telephone or electronic transmittal of such rejection no later than the Business Day such Entry would otherwise have been transmitted by Bank to the ACH Operator, or in the case of an Entry on the Bank, its effective date. Bank shall have no liability to Account Holder by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided herein.
- m) Account Holder shall have no right to cancel or amend any Entry after its receipt by Bank. However, Bank shall use reasonable efforts to act on a request by Account Holder for cancellation of an Entry prior to transmitting it to the ACH Operator or, in the case of an Entry on the Bank, prior to crediting/debiting a

Customer's account, provided such request complies with the Operating Rules, but shall have no liability if such cancellation is not effected.

- n) With respect to each and every Entry initiated by Account Holder, Account Holder represents and warrants that (i) each Entry is for a sum due and owing to Account Holder or the Customer, (ii) the Account Holder has complied with requirements outlined on this Agreement and by the Operating Rules, including compliance with all applicable security procedures, (iii) each Entry is timely, authorized and prepared in accordance with instructions set forth in the Operating Rules including the requirements that the effective date for debit Entries is at least one (1) Business Day in advance, and the effective date for credit Entries is at least two (2) Business Days in advance, (iv) the authorization for such Entry has not been revoked or terminated by Beneficiary, (v) each Entry contains the correct account number of the Customer and all information necessary to enable the Bank to comply with the requirements of the Operating Rules, (vi) each Entry shall be in compliance with and shall in no way violate any Federal, State or local statutes or regulations pertaining to electronic fund transfers, including the Electronic Fund Transfer Act and Regulation E.
- o) Account Holder represents and warrants that the Settlement Account is a business account and that Account Holder it is not a "consumer" as that term is defined in 12 CFR §205.2(e) of Regulation E.
- p) In the event of a breach of any of the warranties contained in this Agreement, the Account Holder agrees to indemnify and hold the Bank harmless, at Account Holder's expense, against any claim, demands, actions, or loss including attorney fees, except for losses solely attributable to the Bank's gross negligence or willful misconduct.
- q) Account Holder acknowledges the right of Customer to obtain a refund of the funds debited from Customer's account by Customer sending a notice to the RDFI. This notice shall be sent within forty-five days after the debit Entry is made to Customer's account or within fifteen days after Customer receives their monthly statement, whichever comes first. The notice must identify the Entry, state that an error occurred and the nature of the error, and request that the amount of the debit Entry be credited to Customer's account. Account Holder agrees to promptly reimburse Bank for all funds disbursed in error.
- r) Account Holder acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the RDFI might be made by the RDFI or Bank, in the case of an Entry on the Bank, on the basis of the account number even if it identifies a person different from the named Receiver, and that Account Holder's obligation to pay the amount of the Entry to Bank is not excused in such circumstances.
- s) Payment for service will be debited automatically from a pre-approved account held by the Account Holder as disclosed on the Bank's Municipal Online Banking Application. Fees will be calculated according to the schedule of fees for services rendered under this Agreement as disclosed on the Municipal Online Banking Fee Schedule, attached hereto as *Schedule A*. These fees are in addition to any fees and service charges currently being paid.

Any pricing or policy changes adopted by Bank in the future will constitute modifications or addenda to this Agreement but will not nullify it. If any fees remain unpaid for thirty days, Bank may cease providing the services required by this Agreement. In this case, the Bank will not be held liable for any requirements indicated in this Agreement.

t) Account Holder acknowledges and agrees that it shall not initiate an Entry which would violate the laws of the United States, including, without limitation, the laws and regulations administered by the Office of Foreign Assets Control ("OFAC"). The Account Holder represents and warrants to Bank that Account Holder is not violating any OFAC enforced sanctions with respect to any Entry data delivered or transmitted to Bank at any time pursuant to this Agreement, and that Account Holder will not be acting on behalf of, or transferring funds to or from any person subject to such OFAC sanctions.

u) Account Holder affirms that no amounts transferred through this or any account will be for the purpose of making or accepting bets or wagers for internet gambling.

v) Account Holder acknowledges and agrees that Bank's liability to Account Holder, Customer or third parties, under this Agreement, shall in every case be limited to correcting, reversing, or otherwise making accurate any Entry initiated by Bank. Except as specifically required by law, Account Holder agrees that Bank shall not be responsible for any damages, loss, or property damage incurred as a result of Account Holder using Bank's services set forth in this Agreement. Bank shall have no liability to Account Holder, or any other person or entity, for any loss, damage, cost, or expense arising out of this Agreement or the services, regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds, and regardless of whether the remedies available fail of their essential purpose, except as provided by applicable law for any error or delay in performing the services provided for in this Agreement. Bank shall have no liability for not effecting an Entry if:

- (1) Bank receives actual notice or has reason to believe that Account Holder or Customer has filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
- (2) The ownership of funds involving an Entry or the authority to transmit an Entry is in question;
- (3) Bank suspects a breach of security procedures;
- (4) Bank suspects that the Account Holder's account has been used for illegal or fraudulent purposes;
- (5) Bank reasonably believes that an Entry is prohibited by federal law or regulation, or otherwise so provided in the Agreement; or
- (6) Transmitting the Entry would result in the Bank exceeding any limitation imposed on it by any governmental or regulating body.

In no event shall Bank be liable for any indirect, consequential, punitive, or special damages or losses that Account Holder may incur or suffer by reason of this Agreement or any transaction effected under this Agreement.

(w) In addition to the provisions of Section 3(i), in the event there are insufficient available funds in the Settlement Account to cover Account Holder's obligations

under this Agreement, such deficiency shall be deemed to be a general obligation of the Account Holder, the payment of which is secured by a pledge of the full faith and credit of the Account Holder. Such deficiency shall be deemed to be a current liability and a current expense as provided in 24 VSA 1523(c) and 1786, and shall be payable upon ten (10) days advance written notice from Bank to Account Holder.

Section 4. Acknowledgments, Responsibilities, and Liabilities of Bank

- a) Bank shall notify Account Holder by telephone or electronic transmission of the receipt of a returned Entry from the ACH Operator no later than one Business Day after the Business Day of such receipt.
- b) Bank shall notify Account Holder of all notifications of change received by Bank related to Entries transmitted by Account Holder by mail no later than five (5) business days after receipt thereof.
- c) Except for acts of gross negligence or willful breach of duties by Bank, Bank will not be liable to Account Holder for any matters related to this Agreement, including without limitation lost profits or consequential, special, or punitive damages, inaccuracy, or delays in transmission of information.
- d) As set forth in UCC Article 4A, Account Holder agrees to notify Bank immediately upon discovering an error in transmission, such as duplicate or inaccurate transmissions. The Bank, as the ODFI, warrants responsibility for any transmissions sent to the wrong Receiver. If the Bank transmits an Entry which is greater than, or less than Account Holder's instructions, the Bank will be considered liable for damages, as limited by Paragraph c) of this Section 4, resulting from such action. Account Holder is required to review their transmissions for error and exercise ordinary care to determine, on the basis of the information available, whether an entry was executed erroneously. Account Holder must advise Bank of any error within a reasonable time, not to exceed ninety (90) days from the date of such error.
- e) Bank shall be excused from failing to act and for delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, natural disaster, emergency conditions, or other circumstances beyond Bank's control.
- f) From time to time Bank may amend any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any Business Day. Such amendments shall become effective upon receipt of notice by Account Holder or such later date as may be stated in Bank's notice to Account Holder.

Section 5. Joint Acknowledgments and Representations

- a) Account Holder and Bank agree to comply with the Operating Rules as amended from time to time. Upon request of Account Holder, Bank will promptly deliver to Account Holder a copy of the Operating Rules and thereafter will promptly deliver revisions thereto as it receives them.

- b) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Vermont, regardless of the fact that Account Holder is or may be resident of, or maintain its Account Holder place of business in, a state other than Vermont. The parties agree that any lawsuit under this Agreement may only be brought in the courts of the State of Vermont or any federal court sitting in the State of Vermont and consents to the non-exclusive jurisdiction of each such court. The Account Holder hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit was brought in an inconvenient court.
- c) The parties knowingly, voluntarily and intentionally waive their right to trial by jury in any litigation arising out of, or in connection with, this Agreement or any course of conduct, course of dealing, statements or actions of the parties in connection with this Agreement or otherwise.
- d) Unless otherwise stated herein, all notices and other communications provided for in this Agreement shall be in writing and delivered by overnight courier or by telecopier, provided receipt shall be confirmed by the party to whom such notice is sent.
- e) Headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- f) This Agreement incorporates by reference all information on Account Holder's Municipal Online Banking Application and Electronic Funds Transfer Service Application, which Account Holder represents are true and complete in all respects.
- g) Account Holder has read and understands this Agreement and has had opportunity to review this Agreement with an advisor of its choice prior to execution if so desired.
- h) This agreement may be terminated by either party upon thirty (30) days prior written notice to the other party. However, in the event of a material breach of the terms of this Agreement by either party, the other may terminate this Agreement effective immediately by written notice. Notwithstanding such termination, this Agreement shall remain in full force and effect as to all transactions taking place under this agreement prior to the termination date.
- i) This Agreement is the complete and exclusive statement of the agreement between Bank and Account Holder with respect to the subject matter hereof and supersedes any prior agreements and contemporaneous oral agreements of the parties concerning its subject matter.
- j) This Agreement shall (a) be binding upon each party and its respective successors and assigns, and (b) inure to the benefit of, and be enforceable by, each party and its respective successors and assigns, provided, that the Account Holder may not assign all or any part of this Agreement without the prior written consent of the Bank.

- k) Each party represents and warrants to the other that it is authorized to enter into this Agreement.
- l) No delay on the part of the Bank in exercising or partially exercising any of its options, powers, or rights shall constitute a waiver thereof. The remedies provided herein in favor of the Bank shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in favor of the Bank existing at law or in equity.
- m) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- n) Bank will supply an updated copy of the ACH Rules Book, Corporate Edition, to Account Holder, annually, upon request.
- o) The parties acknowledge that Account Holder is a municipal corporation, organized and existing as a political subdivision of the State of Vermont. The Account Holder represents that the officers executing this Agreement on its behalf are duly authorized to do so, evidence of such authority being contained in the resolution of the Account Holder's legislative body attached hereto and made a part hereof.
- p) Account Holder represents that it is in full compliance with all public bidding, procurement, deposit, investment and contracting laws and regulations with respect to its approval and acceptance of this Agreement, and that all matters relating to the consideration of this Agreement have occurred at one or more duly called, noticed and conducted open meetings of the legislative body of the Account Holder.

Section 6. Signatures

Account Holder

Name: Charlotte L. Hoyt

(Please Print)

Date: _____

Signature: _____

Title: Treasurer

Merchants Bank Authorized Agent

Name: Shelley B. Quinn

Date: _____

Signature: Shelley B. Quinn

Title: Assistant Vice President

All or a Majority of its City Council

AGREEMENT
BETWEEN
CITY OF MONTPELIER
AND
THE AMERICAN FEDERATION OF
STATE, COUNTY & MUNICIPAL EMPLOYEES,
VERMONT PUBLIC EMPLOYEES COUNCIL,
LOCAL 2787, COUNCIL 93
AFL-CIO

July 1, 2011

through

June 30, 2014

FINAL COPY

TABLE OF CONTENTS

1.	Recognition.....	5
2.	Payroll Deduction of Union Dues.....	6
3.	Management Rights and Employee Obligations.....	7
4.	Non-Discrimination and Sexual Harassment.....	8
5.	Grievance and Arbitration Procedure.....	9
6.	Discipline and Discharge.....	11
7.	Hours of Work.....	12
8.	Overtime.....	14
9.	Private Jobs.....	18
10.	Holidays.....	20
11.	Vacations.....	22
12.	Sick Leave, Work-Related Injury Leave, and Disability Income Insurance.....	24
13.	Bereavement Leave.....	27
14.	Leaves of Absence.....	28
15.	Probationary Period.....	29
16.	Seniority.....	31
17.	Promotional Vacancies.....	32
18.	Employee Conduct.....	34
19.	Personnel Files.....	35
20.	Compensation.....	36
21.	Agency Service Fee.....	38

TABLE OF CONTENTS (Continued)

22.	Insurance.....	39
23.	Uniforms.....	41
24.	Miscellaneous.....	42
25.	Union Business and Operation.....	43
26.	Law Conflict of the Contract.....	44
27.	Chain of Command and Corporal Designation.....	45
28.	Military Leave.....	46
29.	Differential Time and Pay.....	47
30.	Pension and Retirement.....	48
31.	Medical Exam and Health Club Membership.....	49
32.	Physical Qualification Test.....	50
33.	Health and Safety.....	51
34.	Tuition Reimbursement.....	52
35.	Duration of Agreement.....	53
APPENDIX 1 - Acknowledgment of Arbitration.....		54
APPENDIX 2 Delta Dental Insurance Benefit Summary.....		55
APPENDIX 3 - Sexual Harassment Policy.....		57
APPENDIX 4 - Wage Schedule.....		61
APPENDIX 5 - Physical Fitness Testing and Scores		60

- THIS PAGE LEFT INTENTIONALLY BLANK -

This Agreement between the City of Montpelier (the "City") by and through its Manager, and American Federation of State, County and Municipal Employees, Vermont Public Employees Council, Local 2787, Council 93, AFL-CIO (the "Union").

W I T N E S S E T H :

ARTICLE 1.
RECOGNITION

Section 1. In accordance with the Certification of the State Labor Relations Board dated April 9, 1974, as amended on the 13th day of April, 1989, the City recognizes the Union as the sole and exclusive collective bargaining agent for the purpose of negotiating wages, hours and conditions of employment for all permanent police patrol officers, detectives, parking meter enforcement officers and clerk dispatchers, excluding all other employees.

Section 2. The City, through its Manager, Mayor, City Council or any City Council member, will not negotiate with nor make individual agreements with employees or groups of employees covered by this Agreement except with the express prior consent of the Union. It shall be considered a violation of this Agreement for employees or groups of employees or anyone acting on their behalf who is not a Union agent to approach the Manager, the Mayor, the City Council or any City Council member concerning any matter which is a mandatory subject of collective bargaining between the City and the Union.

ARTICLE 2.
PAYROLL DEDUCTION OF UNION DUES.

The City agrees to deduct Union dues, on a payroll basis, from the pay of employees who have given written authorization to the City for such deductions and to transmit the amounts collected by direct deposit to the bank of the Council Office of the AFSCME, as designated in writing to the City by the Union.

In the event the employee does not have any pay for a particular period, or in the event that the employee does not have a sufficient sum due him after deductions have been made for taxes, social security, pension, medical insurance, or other deductions required by law, it will be the responsibility of the Union to collect the dues directly from the employee. When an employee is not on the payroll, and is returned to said payroll, then the City will renew its deductions so long as the authorization is valid.

The Union shall indemnify, defend and save the City harmless against any and all claims, demands, suits, or other form of liability which shall arise out of, or by reason of, action taken by the City in reliance upon payroll deductions in accordance with authorization cards submitted by the Union to the City.

Remittance of the amount of deductions will be made to the Union Treasurer within fifteen (15) working days after the month in which the dues are deducted.

ARTICLE 3.
MANAGEMENT RIGHTS AND EMPLOYEE OBLIGATIONS.

Section 1. Except as specifically limited by an express provision of this Agreement, the City, its Manager, Mayor, City Council and Police Chief reserve and retain all rights granted by law and customarily belonging to or exercised by public management.

Section 2. During the life of this Agreement, employees shall not strike, nor shall the Union encourage any such strike. A "strike" is a withholding of services in any form or a deliberate interference with the performance of municipal functions. The Union shall disavow any such strike and take prompt and vigorous action to end it. Full compliance by the Union with this Section shall excuse the Union from financial responsibility for the strike.

ARTICLE 4.
NON-DISCRIMINATION AND SEXUAL HARASSMENT

Section 1. Neither the City nor the Union shall discriminate against an employee on the basis of race, religion, color, ancestry, national origin, sex, sexual orientation, place of birth, age, political affiliation, or membership or non-membership in the Union or against a qualified individual with a disability.

Section 2. The City's sexual harassment policy, which is attached as Appendix 3 shall be applicable to members of the bargaining unit. During the life of this Agreement, the City may modify this policy based upon legal dictates; however, any modification which is not the result of legal dictates must be negotiated with the Union.

ARTICLE 5.
GRIEVANCE AND ARBITRATION PROCEDURE.

Section 1. A grievance is any dispute concerning the interpretation or application of this agreement, except as provided in Article 15, Probationary Period, arising after its effective date and shall be processed as follows:

Step 1. The written grievance to the immediate supervisor outside the bargaining unit at the time the grievance is submitted, who shall respond in writing within two (2) days.

Step 2. The written grievance to the Chief who shall meet with the grievant and not more than two (2) Union representatives within two (2) days after receipt of the written grievance and who shall respond in writing within three (3) days after the meeting.

Step 3. The written grievance to the City Manager who shall meet with the grievant and his/her Union representative within four (4) days after receipt of the written grievance and who shall respond in writing within seven (7) days after the meeting.

Section 2. If an alleged grievance is denied because it does not meet the definition of a grievance as set forth in Section 1, then the determination that the alleged grievance does not meet the definition as a grievance as set forth in Section 1 may be appealed to the succeeding step(s) of the grievance procedure. If the City determines that the alleged grievance cannot be submitted to arbitration in accordance with Section 3, because the alleged grievance does not meet the definition of a grievance as set forth in Section 1, then the procedure for determining the arbitrability of the alleged grievance would be in accordance with the applicable provisions of Vermont law, provided, however, that the Union and the City may, by mutual agreement, submit the issue of arbitrability of the alleged grievance to an arbitrator.

Section 3. If the grievance is still unsettled, the Union, and not any individual employee(s), may request arbitration. If the parties fail to agree on an arbitrator, the arbitrator shall be selected from a panel provided by the Federal Mediation and Conciliation Service ("FMCS"), in which event the arbitration will be conducted under the rules of the FMCS. The expenses for the arbitrator's services shall be shared equally by the City and the Union. The arbitrator's decision shall be final and binding on the parties. The arbitrator shall have no power to add to, subtract from, alter or modify this Agreement or any of its provisions, nor to impose any remedy or right of relief for any period of time prior to the effective date of this Agreement.

Section 4. A grievance shall be deemed waived and settled on the basis of the City's last answer unless:

(a) submitted at Step 1 within ten (10) days after the Union or the grievant knew or should have known of the occurrence or non-occurrence of the incident upon which the grievance is based, except that in the case of a discharge, submitted at Step 2 within (5) days;

(b) submitted to Step 2 within three (3) days after the response of the supervisor is due;

(c) submitted to Step 3 within three (3) days after the response of the Chief is due;

(d) submitted to arbitration within ten (10) days after the Manager's response is due.

Submission to arbitration shall be accomplished by letter, postage prepaid, addressed to the Federal Mediation and Conciliation Service (or to a mutually selected arbitrator) and postmarked within the time limit herein provided. A copy of such letter will be mailed concurrently to the City Manager. The limits hereunder may be extended by mutual agreement.

Section 5. "Days" hereunder shall mean work days. "Work days" as used in this Section shall mean Monday through Friday inclusive, excluding Saturdays, Sundays, and days on which City Hall is closed.

Section 6. In any case where an individual employee is processing a grievance without Union representation, the Union shall be entitled to attend and participate at any step of the grievance procedure.

Section 7. NOTICE: SEE APPENDIX I FOR ACKNOWLEDGMENT OF ARBITRATION.

ARTICLE 6.
DISCIPLINE AND DISCHARGE.

Section 1. An employee who has completed his/her probationary period shall not be disciplined or discharged except for just cause. Any dispute under this Section shall be expedited through the grievance procedure, and in the case of discharge, in writing at Step 2 within five (5) working days.

Section 2. The parties jointly recognize the deterrent value of a disciplinary action. Accordingly, whenever appropriate, the City will:

- (a) act promptly to impose discipline within a reasonable time of the offense;
- (b) apply discipline with a view toward uniformity and consistency of punishment;
- (c) ordinarily employ a procedure of progressive discipline:

First Violation - Written warning;
Second Violation - Suspension (with written notice);
Third Violation - Discharge, and
- (d) base discipline upon violations of the Police Department's Rules and Regulations or this Agreement or both.

Nothing in this Section shall prohibit the City from bypassing progressive discipline when just cause requires, or from applying disciplinary action of differing degrees. The failure of the City to employ progressive discipline in any such case shall not by itself be deemed a violation of the "just cause" standard.

Section 3. Disciplinary action (written warning, suspension or discharge), or the discussion thereof, will be taken privately and, except where not reasonably practical, in the presence of the Union steward or a Union officer, if requested by the employee. The Union Steward shall be notified prior to any disciplinary action or discussion, to ensure that each member has the opportunity for representation.

Section 4. A written warning will be removed from the employee's personnel file after two (2) years unless merged into a suspension or discharge and placed into a department record of disciplinary action file. This file is to be maintained as a departmental liability file and cannot be used as a basis of further disciplinary action. The employee shall be notified in writing when a written warning is removed from the employee's personnel file.

Section 5. When the term "when just cause requires" is used in Section 2 of this article, it means that there are appropriate cases that may warrant the City to bypass progressive discipline or applying discipline in differing degrees as long as it is imposing discipline for just cause.

ARTICLE 7.
HOURS OF WORK.

Section 1. General. It is recognized that employees' daily and weekly schedules are based on police protection requirements and are subject to change. The City necessarily retains the right to schedule employees for work, and it is the obligation of the employees to work as scheduled.

Section 2. Work Week.

(a) The payroll period shall consist of two consecutive work weeks. The work week shall consist of forty (40) hours, five (5) work days, within a period of seven (7) consecutive calendar days. The work day shall consist of eight (8) hours within a period of twenty-four (24) consecutive hours, beginning at 0001 hours and ending at 2400 hours.

Employees will normally be scheduled for two (2) consecutive days off per work week.

(b) Or, upon recommendation of the Chief of Police, subject to the approval of the City Manager after consultation with the City Council, a 4-10 work week may be established which shall consist of forty (40) hours, four (4) work days, within a period of seven (7) consecutive calendar days. The work day shall consist of ten (10) consecutive hours within a period of twenty-four (24) consecutive hours, beginning with the starting time and ending with the starting time the following day. Employees will be scheduled for not less than two (2) consecutive days off and will normally be scheduled for three (3) consecutive days off, subject to the work schedule requirements of the Department. Work schedules shall be posted 30 days in advance.

(c) Subject to Section 1 above, and Section 3(a) of Article 8, no employee of the Department will volunteer for, nor be scheduled for work that exceeds sixteen (16) hours in any twenty-four (24) hours period. Further, no employee of the Department shall work more than seventy-two (72) hours in any given work week. For the purpose of this subsection, "work" shall include overtime and private jobs.

(d) Department Meetings. The Chief of Police may schedule up to two (2) Department Meetings totaling not more than four (4) hours per year. These meetings shall be considered as hours worked and shall be paid at the appropriate rate.

(e) Travel Pay. Employees will be compensated at their normal rate of pay when traveling to and from Department mandated functions, provided, however, that except as may be required by "applicable law," employees shall not be compensated for "home-to-work" travel. Travel time shall not be considered as hours worked for purposes of computing overtime and/or time and one-half payments under any provision of this contract, including scheduled days off, except as required by applicable law. The amount of travel time for which the employee is compensated shall be determined by the Chief, which determination will not be unreasonable. The employee shall discuss with the Chief the amount of travel time for which the employee is to be compensated. This discussion may take place either prior to or after the actual date of travel. Except as required by applicable law, travel time shall not include delays or unscheduled holdovers. In the event that the use of the employee's motor vehicle for travel is authorized, the employee shall be reimbursed at the allowable federal mileage rate in effect.

Section 3. Where practical and subject to the operating needs of the Department as determined

by the Chief,

(a) Employees other than dispatchers will not be scheduled to work split shifts.

(b) A work shift will have regular starting and quitting time. Under the present operating schedule, the normal starting and quitting time for a shift is as follows: (Note: If option (b) of Section 2 is exercised and becomes effective, this subsection (b) of Section 3 shall become null and void.)

First Shift 12:00 Midnight to 8:00 AM.

Second Shift 8:00 AM to 4:00 PM.

Third Shift 4:00 PM to 12:00 Midnight.

(c) Subject to the operating needs of the Department, the Chief will maintain a policy of combined rotating and semi-permanent shifts. Assignment to any particular shift is in the sole discretion of the Chief, who may consider individual cases.

Section 4. The Chief reserves the right to change the regular starting and quitting time of a shift, to abolish existing shifts or to create new or additional shifts, to establish new day-off schedules, or to transfer employees from one regular shift to another regular shift. Any such change shall be posted promptly.

To the extent that operating conditions permit, the Chief will give seven (7) days notice before any such change is instituted, except in the case of an employee who is permanently transferred from one shift to another shift.

Any employee permanently transferred from one shift to another shift shall be given notification of the transfer and the reason(s) for the transfer. To the extent that operating conditions permit, the Chief will give the employee notification of the transfer at least fourteen (14) days prior to the effective date of such transfer.

Section 5. Permanent Part-time Employees - Are defined as those bargaining unit employees regularly scheduled to work twenty (20) hours, or more, in a work week as defined in Article VII, Section 2. Employees under this category shall receive leave benefits on a prorated basis measured by the ratio that the average number of hours in their work week bears to a forty (40) hour work week. Full insurance benefits are available, or a prorated premium basis, only as allowed by the City insurance carriers.

Section 6. Extra work - If an employee is required to attend a department-represented function, such as traffic court, parade, or a required meeting, that has received approval by the on-duty supervisor or the Chief of Police, and that function is not during the employee's scheduled work hours, that employee will receive four hours of compensation at one and one-half their base rate of pay. If an employee starts their scheduled shift in less than four hours of the previously described function, the employee will be paid as above between the function start time and the start of their shift.

ARTICLE 8.
OVERTIME.

Section 1. Overtime work shall be paid at time and one-half the straight time hourly rate determined by dividing weekly pay by forty (40). Compensatory time off may be taken in lieu of overtime pay at the rate of one and one-half hours of compensatory time for each hour of overtime worked, if requested by the employee and granted by the Chief in his/her sole discretion. **Compensatory time can be accrued up to a maximum of seventy two hours (72).** The use of compensatory time shall not be unreasonably denied. Overtime shall be computed to the next quarter hour. Upon 30 days notice, all requests for compensatory time off shall be granted.

Section 2. Overtime work shall be defined as all assigned or approved work in excess of the regular work week as defined in Article VII, Section 2. Paid sick leave, vacation leave, compensatory time off and incidental leave shall be considered as time worked for the purpose of computing overtime under this Section.

Section 3.

- (a) Employees may be required to work overtime in emergencies or as the needs of the Department require.
- (b) Subject to (a) above, if the City decides to temporarily fill a vacant bargaining unit position for all or any part of the time which the position is vacant by the use of overtime, or if the City decides to temporarily replace an officer in the bargaining unit who is on authorized leave for all or any part of the time that the officer is on such leave by the use of overtime, for the first five (5) consecutive calendar days or less for each incident, then the Chief or his/her designee shall first offer such overtime work to regular police officers in the bargaining unit, by seniority, as follow:
 - 1. The overtime will first be offered to the senior regular police officer, without regard to day off, unless the police officer has eight (8) or more hours of actually worked overtime in the current work week; the work week being defined from Tuesday through Monday inclusive. When an officer has less than eight (8) hours of overtime in the current work week, the officer will maintain the officer's position on the seniority call list. That officer will be eligible to work up to an additional full eight (8) hours of overtime in that current work week.
 - 2. If the senior officer has eight (8) hours or more of actually worked overtime in the current work week, or has refused the overtime, then the overtime will be offered to the next police officer in line of seniority, without regard to day off.
 - 3. If the next officer in line of seniority has eight (8) or more hours of actually worked overtime in the current work week or has refused the overtime, this process shall continue down the seniority call list until such overtime is filled.
 - 4. In the event that overtime is not able to be filled with bargaining unit police officers, the overtime may be offered to other officers, including special officers,

in the sole discretion of the Chief or his/her designee.

5. In the event that the position is temporarily filled by the use of overtime, or the City temporarily replaces a regular officer in the bargaining unit by the use of overtime for more than five (5) consecutive calendar days, then the overtime work for the first five (5) consecutive calendar days for each incident shall first be offered to regular police officers in the bargaining unit in accordance with the above. The Chief or his/her designee may offer any overtime after the first five (5) consecutive calendar days to regular police officers in the bargaining unit, by seniority, in accordance with the above, or to other officers including special officers.

6. Reasonable efforts to reach or contact such officers shall suffice in all of the above Section 3, subsections (b) #1, #2, #3, #4 and #5.

7. Nothing contained in this section shall limit the rights of the City to temporarily fill a vacant bargaining unit position for all or part of the time it is vacant, or to temporarily replace a regular officer in the bargaining unit for all or part of the time the officer is on authorized leave of absence by means other than overtime; however, the parties agree that in either of such events, if the position is filled or the officer is replaced, the first day and up to five (5) consecutive calendar days will first be offered to regular police officers in the bargaining unit.

8. Overtime that is posted and signed up for by a member of the bargaining unit is approved overtime. The employee who has signed up for the overtime shall not be bumped under any other provision of the contract when there is less than twenty-four (24) hours remaining before the start of the overtime. A bargaining unit employee who signs up for a portion of an eight hour shift can be bumped by a bargaining unit employee who wishes to work the entire posting. A bargaining unit employee, who, with less than twenty-four (24) hours before the start of the posting, removes their name from the sign up, shall immediately notify the supervisor on duty of the action. It is also the responsibility of the canceling employee to find a replacement, unless the supervisor agrees to accept that responsibility.

- (c) Overtime rules apply for all members of the bargaining unit, within their separate classifications, and then certifications.
- (d) Reasonable efforts to reach or contact officers or dispatchers shall suffice. If the City is unable to contact a member of the bargaining unit, the Department shall treat the lack of contact as a refusal. In the event that a member of the bargaining unit uses an answering machine, the Department will leave a message on the answering machine indicating the need for overtime. In any event the offer of overtime will be considered a refusal unless the officer or dispatcher recalls the Department and accepts the overtime, should the overtime still be available.

- (e) Subparagraphs (b), (c) and (d) shall not apply to any employee who is called in early to work prior to the normal commencement of the employee's scheduled work shift and an employee who is required to remain at work after the normal termination of the employee's scheduled work shift.
- (f) Each member of the bargaining unit will be given the opportunity to make a statement of exclusion from the overtime list.

Each member of the bargaining unit can elect to remove their name from overtime consideration for brief and specific periods of time. Such notice shall be in writing to the scheduling officer. It is the responsibility of each member of the bargaining unit to indicate in writing the right to return their name to the overtime list.

- (g) Overtime, when authorized, shall be offered first to members of the bargaining unit by seniority according to the eligibility list. Members of the bargaining unit who have worked eight (8) or more hours of overtime in the current work week will not be contacted for overtime until all other eligible members of the bargaining unit have had an opportunity to be contacted and accept or decline according to the provisions of the Article.
- (h) In the event overtime is created by the absence of a Corporal who is scheduled to serve as the shift's supervisor, the overtime shall first be offered to regular supervisors. In the event the overtime can not be filled with a regular supervisor, the overtime shall be offered to the remaining Corporals by seniority in accordance with Section 3 (b).
- (i) Those officers who have been designated Corporals, retain their seniority based eligibility for patrol overtime. Should the Department offer overtime to fill a vacancy in a Supervisor's position, it will be offered first to all Supervisors. Should no Supervisor accept the overtime then it shall be offered to Corporals by seniority in accordance with Section (b).
- (j) For the purposes of this Section, probationary employees will be considered bargaining unit members, unless otherwise disqualified.

Section 4. In no event will overtime or private job assignments be offered or accepted if the officer is on sick leave or so-called sickness in the family during the applicable twenty- four (24) hour period.

Section 5. If an employee who has left his/her last work station or last duty assignment after having completed work on his/her regular shift is recalled to work, s/he shall be paid on an overtime basis for all such time and shall be guaranteed a minimum of four (4) hours of overtime pay. An employee who is called in early to work prior to the normal commencement of his/her scheduled work shift and works continuously from the time s/he reports, or who works beyond the quitting time of the scheduled work shift, shall be paid on an overtime basis for the actual time worked in excess of the regular work shift, but not be guaranteed the four (4) hour

minimum.

Section 6. In the event that an employee is scheduled by the City to work sixteen (16) consecutive hours, the second eight (8) hours shall be paid at the rate of time and one-half the employee's straight time hourly rate.

Section 7. Overtime work shall not include swapped work shifts between individual officers by their mutual agreement. The swapping of work shifts shall be subject to the approval of the Chief or his/her designee.

Section 8. In the event that the Federal Fair Labor Standards Act is amended so as to apply to local governments, it shall then be recognized that the statutory definition of "hours worked" or "overtime" may differ from the definitions under this contract. The City reserves the right to declare work periods other than specified in this Agreement to be applicable in cases where the definitions of the FLSA are deemed to apply by operation of law, so long as there is no violation of this Agreement.

ARTICLE 9.
PRIVATE JOBS.

Section 1. DEFINITIONS: A private job is outside work in law enforcement or related activities, on a special detail through the Montpelier Police Department, for a separate and independent employer (public or private). Private jobs are performed by law enforcement officers solely at the officer's option.

Section 2. An officer who works for a private job shall be paid at the rate of one and a half their base rate of pay per hour, with a four (4) hour minimum guarantee, time computed to the nearest quarter hour. If the event, for which the Officer was scheduled to work, is canceled and the Officer is not notified within four (4) hours prior to the start of the detail, the Officer will receive a four (4) hour minimum.

The City reserves the right not to provide outside work services in the event of payment disputes with a contracting firm, agency, and/or individual.

The City reserves the right to charge the outside employer more than the hourly paid detail rate which the employee receives through the City's payroll system.

Section 3. Work for a private job shall be on a voluntary basis. Notice of approved jobs shall be posted as they become known, in a designated location at the Police Department. Work on private jobs shall be subject to the approval of the Chief of Police or his/her designee.

A. Work on private jobs shall be on a rotating basis without consideration to rank, seniority or days off. For purposes of rotation, an officer's last actually worked private job will determine whether the officer has first choice to work the private job. The officer who has the least current date of a private job actually worked will have first choice for the duty.

B. Officers who have actually worked a private job will have the responsibility, upon completion of the duty, to initial the OUTSIDE WORK CALENDAR for documentation of actually worked private jobs. The OUTSIDE WORK CALENDAR, designated by the Chief, shall be referred to in determining the date last worked for the purpose of rotation concerning this article.

C. An officer who has volunteered for a private job, within twenty-four (24) hours from the starting time of such private job, accepts the responsibility (subject to the discretion of the Chief) to work the private job, unless the private job is filled with another officer, subject to Section 3A of this article. An officer who is sick during the applicable twenty-four (24) period shall notify the on duty supervisor of that officer's inability to work such private job. An officer who violates this paragraph shall be considered as having worked the private job for the purpose of rotation.

When an officer volunteers for a private job within the applicable twenty-four (24) hours

of such private job, that officer shall not be offered or accept overtime, as defined in Article 8, Section 2, which coincides with the private job.

D. In no event will any officer accept or be offered any private job if that officer is on sick leave or so-called sickness in the family during the applicable twenty-four (24) hour period.

E. Regular officers shall have preference over special officers.

F. The Chief reserves the right to remove from the detail list any officer whose work on private jobs impairs his/her ability to perform regularly scheduled police work.

G. The rotation set forth above shall not apply to any alcohol enforcement project such as PADD, SHARP, or START. An officer who is not scheduled to work may volunteer for this assignment. Once an officer has volunteered for this assignment, all other officers who have not volunteered shall have first refusal prior to that officer again being eligible to volunteer for such an assignment.

Section 4. An officer who voluntarily works for another law enforcement agency and, arising from that employment, is summoned to court for the purpose of giving testimony arising from that employment, shall not be entitled to compensation from the City of Montpelier. Other work provided under this article shall not be considered as time worked for the purpose of computing overtime under Article 8.

ARTICLE 10.
HOLIDAYS.

Section 1. The following days shall be recognized as holidays:

New Year's Day	January 1 st
Martin Luther King Day	3 rd Monday in January
President's Day	3 rd Monday in February
Town Meeting Day	1 st Tuesday in March
Memorial Day	Last Monday in May
Independence Day	July 4 th
Bennington Battle Day	August 16 th
Labor Day	1 st Monday in September
Columbus Day	2 nd Monday in October
Veterans Day	November 11 th
Thanksgiving Day	4 th Thursday in November
Christmas Day	December 25 th

Section 2. Eight hours are to be credited annually for the Day after Thanksgiving. Use of this time shall be consistent with all other provisions contained herein concerning the use of compensatory time.

Section 3. Each permanent and probationary employee shall be entitled to receive holiday pay, up to a maximum of eight (8) hours, for each official legal holiday, as herein established, computed on the regular base rate of pay.

Holiday's will be paid during the pay period in which they fall.

In the event that an employee is on disability leave on the day before Christmas and works Christmas Day, or the employee is on disability leave the day before New Year's Day and works New Year's Day, the employee will be excused by the Chief and will be paid for the holiday.

Section 4. In the event that work is required of any employee on any of the scheduled official holidays, the employee shall be paid time and one-half for all hours work on said holiday computed at the employee's base rate of pay. This is in addition to the holiday pay mentioned in section 3 of this article.

Section 5. In order to be eligible for holiday pay, an employee must work on the holiday, including the day before Christmas Day and the day before New Year's Day, if scheduled, and the employee's last regularly scheduled tour of duty before the holiday and the employee's first regularly scheduled tour of duty after the holiday, unless the employee is on approved sick leave, vacation, compensatory time, work related injury leave, or excused by the Chief, which excuse will not be unreasonably denied. In no event shall an employee who is receiving short term disability income insurance benefits, in accordance with Article 12, Section 9, be eligible for pay for any holiday occurring during the time of the employee's disability.

As used herein, the phrase "regularly scheduled tour of duty" shall include the tour of duty to which an absent employee otherwise would have been regularly scheduled.

Section 6. In the event of an employee's death, his/her accrued holiday pay will be paid to his/her designated beneficiary.

Section 7. In the event of a special holiday proclaimed by the President or the Governor of Vermont or the Mayor of Montpelier, for which holiday all City employees except Public Safety employees receive a work day or a fraction of a work day off without loss of pay as a result of said proclamation, employees covered by this Agreement shall be granted extra straight time pay, computed on the employee's base wage, for the time off that other City employees receive without loss of pay, up to a maximum of eight (8) hours, or compensatory time off at the rate of one (1) hour of compensatory time for each hour of time off that other City employees receive without loss of pay, up to a maximum of eight (8) hours. The City shall determine whether an employee shall receive extra straight time pay or compensatory time off, in its discretion.

Section 8. Upon termination of employment for any reason, voluntary or involuntary, an employee will be paid his/her accrued holiday pay.

ARTICLE 11.
VACATIONS.

Section 1.

A. Each permanent employee in a full-time position shall accrue vacation days as follows:

- (a) A new employee shall not accumulate nor use vacation days until the completion of his/her probationary period.
- (b) Upon completion of the probationary period, an employee shall be credited with one (1) vacation day per completed calendar month of employment during his/her probationary period.
- (c) An employee who has completed the probationary period, but with fewer than seven (7) years of full-time employment, shall accrue vacation days at the rate of one (1) day per completed calendar month of employment. Total accumulation may not exceed thirty (30) days.
- (d) An employee with seven (7) or more years but fewer than fourteen (14) years of full-time employment shall accrue vacation days at the rate of one and one-half days per calendar month of employment. Total accumulation may not exceed thirty-five (35) days.
- (e) An employee with fourteen (14) or more years of full-time employment shall accrue vacation days at the rate of two (2) days per calendar month of employment. Total accumulation may not exceed forty (40) days.

B. Working Vacations Disallowed. Vacations with pay are intended as a period of rest and relaxation, and no employee shall be allowed to work for the City during his/her vacation to receive extra pay, except as noted in Section 2.

Section 2. Vacation leave shall ordinarily be time off with regular weekly straight time pay, except that in extraordinary circumstances as determined by the Chief, an employee may be required to work on a vacation day. An employee who is required to work on his vacation day shall receive his/her regular vacation pay for such day, and in addition shall receive either an extra vacation day with pay, plus an extra half-time premium for work on the vacation day; or an extra day's pay at time and one-half for work on the vacation day.

Section 3. Upon written notice of at least 30 days, an employees' request for planned vacation time shall not be unreasonably denied subject to the operating needs of the department. Seniority will control in the event of any conflict between employees over vacation scheduling where operating requirements permit

The Chief of Police may approve a request for less than five (5) days vacation leave submitted in writing not less than five (5) days prior to the commencement of the vacation leave. Such approval or disapproval shall be in writing. No such approval shall be granted in any case where

the request or any part thereof conflicts with the written request of an employee submitted at least thirty (30) days prior to the commencement of his/her vacation.

Posting of available overtime for a requested vacation does not constitute approval of vacation leave. Vacation leave must be specifically approved by the Chief of Police or his/her designee.

Section 4. An employee whose employment is terminated involuntarily by death or dismissal, or an employee who voluntarily quits or retires after having given two (2) weeks' advance notice to the Chief shall receive pay for his/her unused vacation time.

ARTICLE 12.
SICK LEAVE, WORK-RELATED INJURY LEAVE,
AND DISABILITY INCOME INSURANCE.

Section 1. Paid sick leave shall accrue at the rate one (1) day for each month in which the employee actually works twelve (12) or more tours of duty. Vacation time shall be considered as actual work for the purpose of this Section. Unused sick leave may accumulate from year to year, to a maximum of 120 days.

Section 2. Sick leave will be granted in case of illness or disability of the employee which is not work related. In the event of the serious illness of a member of the employee's immediate family requiring the personal attention of the employee to arrange for care, the employee may be granted sick leave not to exceed two (2) tours of duty in any instance. At the discretion of the Chief, an employee will be granted additional time beyond the two (2) tours of duty to care for an immediate member of his/her family in the event of unusual circumstances. Subject to the needs of the Department, as determined by the Chief, an employee may be released from his/her tour of duty on a paid sick leave basis when such employee is required to undergo medical, optical or dental treatment which cannot be scheduled during off-duty hours. The employee shall give the Chief as much advance notice as possible of such scheduled appointments.

Employees who have submitted a resignation shall not be eligible for sick leave unless a doctor's certificate is provided by the employee's physician indicating that the employee is indeed ill and unable to work. This provision may be waived by the Chief of Police in reasonable circumstances.

In the event that a leave may be granted under the provisions of Article 14, Section 2, Incidental Leave, and Article 12, Section 2, Sick Leave, the employee shall have the option to apply for leave under either section.

Section 3. Employees absent for reasons set forth in Section 2 shall report such absence to the Chief immediately, together with the reason for the absence. A doctor's certificate may be required by the Chief of Police in any instance of absence in excess of two (2) consecutive tours of duty, or a pattern of abuse. The cost of the visit to obtain a certificate will be paid by the City.

Section 4. As an incentive program, each employee who works three consecutive work schedules without using sick leave will be granted a bonus of eight hours pay. Eight hours of personal leave may be granted in lieu of eight hours pay, if requested by the employee and granted by the Chief of Police in his/her sole discretion. The employee would then be able to again start earning the incentive upon the start of the next work schedule.

Should an employee not take any sick leave for thirteen consecutive work schedules an additional bonus of eight hours pay. This additional bonus may be taken as eight hours of personal leave, in lieu of eight hours pay, if requested by the employee and granted by the Chief of Police in his/her sole discretion.

The use of bonus personal leave, once accrued, shall not be unreasonably denied. Upon thirty (30) days notice, all requests for bonus personal leave time shall be granted.

Except as required by applicable law, the aforesaid bonuses shall not be considered in

determining base pay, wage adjustments, overtime or any other benefits under this Agreement. The aforesaid bonuses shall not be cumulative.

Section 5. Notwithstanding the above, any employee who develops a pattern of sick leave or abuses the sick leave program shall be denied the bonus aforesaid in Section 4, and in addition may be denied sick leave compensation and be subject to disciplinary action. Both the Union and the City will cooperate in making this program effective.

Section 6. Accumulated and unused sick leave shall not be payable on termination of employment.

Section 7. Work-Related Injury Leave.

(a) In the case of job-related injury or illness, the City will pay the difference between the employee's base weekly salary and the amount of Worker's Compensation benefits to which the employee is entitled under 21 V.S.A. Section 642. for a period not to exceed ninety (90) calendar days.

(b) The City shall also advance to the employee the amount to which the City estimates the employee is entitled under 21 V.S.A. Section 642, until the first payment of benefits under 21 V.S.A. Section 642 by the City's insurance carrier, or a denial of all or part of the employee's claim for benefits under 21 V.S.A. Section 642 by the City's insurance carrier, whichever shall first occur. At such time, the employee shall pay back to the City all sums advanced under this paragraph. In the event of a denial of the employee's claim by the City's insurance carrier, the employee shall have the right to use the employee's accumulated and unused sick leave and vacation leave at the hourly rate then in effect, to repay the amount advanced. The City agrees to indemnify and hold the employee harmless from any Federal and State taxes assessed against any sum advanced by the City to which the employee is entitled under 21 V.S.A. Section 642, and which would have been exempt from Federal and State taxation, if paid directly to the employee by the City's insurance carrier.

(c) In the event that an employee is absent for three (3) days or less due to a job-related injury or illness, and would otherwise be entitled to benefits under 21 V.S.A. Section 642, the City shall pay the employee the employee's base wage for each regularly scheduled tour of duty for which the employee is absent, not to exceed three (3) tours of duty.

Section 8. Short Term Disability Income Insurance. The City will provide, at a total cost to the City, Short Term Disability Income Insurance for the employees of the Police Department. No compensation payments under this agreement may be used to supplement benefits under this program, except that paid sick leave may be used to supplement the maximum weekly benefits under this program up to a total of one hundred percent (100%) of the employee's base weekly salary or wage. An employee who is disabled by reason of sickness or injury shall file a timely claim for coverage under the city's short term disability plan, usually not later than fourteen (14) calendar days following the onset of the disability.

Section 9. The City shall continue to keep employees informed of benefits available in the Short Term Disability Income Program.

Section 10. The City shall provide Long Term Disability Income Insurance for the employees of the Police Department.

ARTICLE 13.
BEREAVEMENT LEAVE.

Section 1. Paid bereavement leave shall be granted for a death in the immediate family (parents, spouse, brothers, sisters, children, grandparents, or a relative living in the household) in accordance with the following schedule:

- A) Employee's immediate family: Not to exceed three (3) working days;
- B) Employee's spouse's immediate family: Not to exceed three (3) working days.

Paid bereavement leave not to exceed one (1) day in any instance may be granted by the Chief in appropriate cases.

ARTICLE 14.
LEAVES OF ABSENCE.

Section 1. A written request for leave of absence without pay and with seniority accruing directed to the Chief may be granted by the Chief with the approval of the Manager for up to one (1) year.

Section 2. Incidental Leave. The Chief, in his/her discretion, may grant an employee up to three (3) days per year of incidental leave without loss of pay. Incidental leave may be used for dental appointments, appointments for physical examinations, transportation of a sick member of the immediate family to or from a hospital or doctor's office, to perform voting privileges, family emergencies, or to conduct urgent personal business, such as real estate closing, which cannot be scheduled outside normal working hours. Incidental leave may also be granted to members of the department to attend Police oriented functions such as sporting events, competitions or gatherings which promote the department in a positive and productive manner. The aforementioned leave shall not be unreasonably denied.

Section 3. The City shall comply with all State and Federal family leave requirements.

Section 4. Absence for Jury Duty. Leave of absence with pay shall be granted to a permanent employee for the performance of jury duty. In order to receive pay for such leave of absence, the employee, upon the employee's receipt of payment for jury duty service, shall remit to the City Treasurer's office the daily payment received for the days that the city paid the employee. The city will not request for payment of jury pay on the days the employee was not scheduled to work. Travel expenses included in such compensation shall be returned to the employee. On a day that an employee attends jury duty, they will not be expected to work any shift or any part there-of and will receive payment as stated above.

Section 5. In the event that a leave may be granted under the provisions of Article 14, Section 2, Incidental Leave, and Article 12, Section 2, Sick Leave, the employee shall have the option to apply for leave under either section.

ARTICLE 15.
PROBATIONARY PERIOD.

The probationary period for all new employees and newly promoted employees, except dispatchers, shall be nine (9) months from the date of hire or promotion, unless extended as hereinafter provided.

The probationary period for dispatchers shall be six (6) months from the date of hire, unless extended as hereinafter provided.

Dispatchers shall receive a progress report and shall be evaluated in writing prior to the expiration of the initial six (6) month probationary period. It is the responsibility of the City for completion of the evaluation prior to the expiration of the probationary period. Should the City fail to provide said written evaluation, it will be deemed that the employee has successfully completed their probationary period. The initial six (6) month period may be extended by the Chief for an additional three (3) months, provided the employee is given written notice of the reason(s), including any deficiencies, for the extension prior to the expiration of the initial six (6) month period.

All other employees or newly promoted employees shall be evaluated prior to the expiration of the initial nine (9) month probationary period. All other employees shall be evaluated in writing prior to the expiration of the initial nine (9) month period. It is the responsibility of the City for completion of the evaluation prior to the expiration of the probationary period. Should the City fail to provide said written evaluation, it will be deemed that the employee has successfully completed their probationary period.

The initial nine (9) month period may be extended by the Chief for an additional three (3) month period, provided that the employee is given written notice of the reason(s), including any deficiencies, for the extension of the employee's probationary period prior to the expiration of the initial nine (9) month period. The Union shall be notified in writing when an employee satisfactorily completes the employee's probationary period. This notification shall be given no later than one week following said completion.

In the event that an employee is absent from work during the employee's probationary period, including any extension thereof, the employee's probationary period shall be extended for the total amount of time that the employee was absent from work.

Employee evaluations under this article and any matter relating thereto shall not be subject to the grievance and arbitration procedure under Article V of this contract, except the failure to evaluate the employee within the time set forth in this article.

The reason(s), including any deficiencies, for the extension of the employee's probationary period, and any matter relating thereto, shall not be subject to the grievance and arbitration procedure under Article 5 of this contract, except the failure to give written notice to the employee within the time set forth in this Article.

Written notice shall be sufficient if hand-delivered to the employee or if placed in the employee's box at the police station. If the notice is placed in the employee's box at the police station, the date and time of such notice shall be deemed to be the date and time stamped upon the notice or the envelope containing the notice by use of the time clock in the police Department.

Notwithstanding anything contained in this Article, the City shall retain the right to discharge a probationary employee at any time during the employee's probationary period, including any extension thereof allowed under this Article, without just cause and without access to the grievance process set forth in Article 5.

ARTICLE 16.
SENIORITY.

Section 1. Definition.

A. BARGAINING UNIT SENIORITY shall mean the length of continuous service with the City since the last date of hire in the bargaining unit. Employees will be placed on the seniority list upon completion of the probationary period, retroactive to date of hire.

B. CITY SENIORITY shall mean the length of continuous service with the City. This seniority shall only apply towards levels of fringe benefits.

Section 2. Posting of List. On or before January 1st of each year, the City shall post on the bulletin board a seniority list showing the continuous service of each employee. A copy of the seniority list shall be furnished to the Union when it is posted.

Section 3. An employee's continuous service record shall be broken by voluntary resignation, discharge for just cause, layoff in excess of twenty-four (24) months and retirement, but not by vacation, sick leave, injury time, temporary layoff, suspension, any authorized leave of absence, or call to military service. Seniority shall continue to accrue during such period.

Section 4. In the event of a reduction in force, layoff shall be in inverse order of seniority and any recall shall be by seniority. Probationary employees will be laid off first in any instance.

Section 5. Bargaining unit employees, who have completed their probationary periods within the bargaining unit, accepting positions with the City outside the bargaining unit shall retain their status and seniority in the bargaining unit until they have completed their trial probationary period. Should the City or the employee feel the new position is not working out, the employee shall return to the previous position. Should the employee satisfactorily complete the trial probationary period in their new position and be made permanent, the employee shall forfeit all bargaining unit seniority for their previous position. Employees who have not completed their probationary periods before accepting positions outside of the bargaining unit will not carry forward any seniority and will have no automatic rights of return to the previous position and, if they do return, shall be considered new employees with new start dates for the purposes of calculating seniority, probationary period, leave accumulation and other benefits specified in this agreement.

Section 6. As agreed in the previous contract, the following employee changed his anniversary hire date to July 1st of each year for evaluation of their step increase only. Each year, this individual shall receive his annual step increase on July 1st and not on his anniversary hire date, and this shall continue throughout the length of this contract. This change was instituted to recognize the approximate twenty (20) years of employment this individual has given to the City. This individual is Mark Moody.

ARTICLE 17.
PROMOTIONS and ASSIGNMENTS

A. Promotions.

Following notice by the Department of its intent to fill a promotional vacancy, members of the bargaining unit who desire to be considered for the promotion shall notify the Chief of Police in writing of that desire according to the posted notice.

When the City decides to fill a promotional vacancy, a notice shall be posted by the Chief in a conspicuous place within the Department for fifteen (15) days. The position shall be filled by competitive examination. Any such examination shall be in writing and oral, and upon such matters that will further test the knowledge and aptitude of the applicant for the requirements of the position to be filled.

Upon prior written consent of the applicant, such applicant's scores from each area of testing shall be posted in the Police Department for a period of three (3) days prior to the effective date of the promotion. Upon prior written consent of the applicant, the Union shall receive all results of said applicant's tests upon written request.

The Chief of Police shall consult with the supervisors and review performance appraisals as part of any decision on offering the promotion.

B. Detective Assignment

The assignment of an officer to the position of detective is made in order to provide for greater experience and opportunity for increased responsibilities to more members of the department. This assignment is not considered a promotion.

Compensation shall be based upon the wage scale for detective as defined in this agreement. Officers so assigned would retain their step placement in the wage scale and move to the appropriate classification. (Example: pay grade 14-IX would then move to 15-IX for the assignment.) Periodic wage adjustments and step increases would be in accordance with the collective bargaining agreement. At the conclusion of the assignment the officer would retain the wage scale of the detective's position and remain at that pay grade until such time that the pay classification steps of the patrol officer equals the detective's pay grade. This provision will not apply to an officer who is assigned to detective for six (6) months or less.

It is intended that the assignment to detective would be for no less than two (2) years. It is recognized that there is a large operational need for a detective, and as such, the position should remain filled unless there is an operational need to reassign the officer.

C. School Resource Officer Assignment

The assignment of an officer to the position of school resource officer is made in order to provide for greater experience and opportunity for increased responsibilities of safety and presence in the Montpelier School System. This assignment is not considered a promotion.

This officer benefits from this position with a schedule of day shift during the week, as well as other benefits. These benefits may be changed based on the operational needs of the department and the continued funding of this position.

It is intended that the assignment to school resource officer would be for no less than two (2) years. It is recognized the need of a school resource officer, and as such, the position should remain filled unless there is an operational need to reassign the officer or a loss of school funding for the position.

D. Senior Dispatcher

The assignment of a dispatcher to the position of Senior Dispatcher is made to provide for greater communication between the dispatch function and the patrol and management function of the police department. This position does not have any authority to discipline members of the collective bargaining unit. The main goal of the position is to provide a link between the dispatch management function and the management function of the police department by service as a "point" person for the dispatchers. This assignment is not considered a promotion.

Following notice by the department of its intent to make an assignment, dispatchers of the bargaining unit who desire to be considered for the assignment shall notify the Chief of Police in writing of that desire according to the posted notice.

The Chief of Police shall consult with the supervisors and review performance appraisals as part of any decision of offering the assignment. The Chief of Police will also consider experience and knowledge of the various systems within dispatch.

The compensation for this individual shall be started at a rate of 2.5% higher than the current highest paid dispatcher.

E. Corporals. Promotion to Corporal will follow the provisions of section 17A. The City shall have up to four (4) corporals in the bargaining unit who are assigned to general patrol. The School Resource Officer and Detective may also be corporals in addition to the four assigned to patrol. Effective upon the execution of this agreement, Corporals Mark Moody and Stephen Nolan will be promoted to Corporal without following the process outlined in section 17A.

ARTICLE 18.
EMPLOYEE CONDUCT.

Section 1. Outside Employment. No person shall engage in outside employment of the kind or character which, in the judgment of the Chief, disparages the reputation of the Montpelier Police Department. No person shall engage in outside employment in the nature of police or quasi-police work without the prior approval of the Chief. An employee whose outside employment impairs his/her ability to perform City work shall be the subject of disciplinary action.

Section 2. Pecuniary Interests. No employee of the City shall have any financial interest in or profit from any contract, service, purchase, sale or work performed by the City; nor shall any employee solicit, receive or agree to receive any compensation, gift, reward or gratuity from any source except the City of Montpelier for any matter or proceeding connected with or related to the duties of such employee unless otherwise provided for by law.

Section 3. Duties and Responsibilities. Every employee shall fulfill, to the best of the employee's ability, the duties and responsibilities of the employee's position. The employee shall, during the employee's hours of duty and subject to such other laws, rules and regulations that pertain thereto, devote the employee's full time, attention and efforts, to the employee's office and employment. The employee shall not use the employee's position to secure special privileges or exemptions for the employee or others. The employee shall not use City property or equipment for the employee's private use or for any use other than that which serves the public interest, except with the approval of the Chief.

Section 4. Confidential Information. An employee shall not disclose confidential information gained by the employee by reason of the employee's official position except as authorized or required by law, nor shall the employee otherwise use such information for the employee's personal gain or benefit.

Section 5. Notice of Resignation. An employee should give notice of resignation as soon as his/her decision to leave is made, but in no case less than two (2) full weeks prior to the resignation date. No employee will suffer adverse consequences as a result of submitting a timely notice of resignation. Employees are encouraged to notify the police chief at the time they apply for employment and will not suffer adverse consequences as a result of their candidacy.

ARTICLE 19.
PERSONNEL FILES.

Section 1. No adverse information shall be placed in an employee's personnel file unless the employee is so informed at the time and is furnished a copy. An employee shall have the right to submit a written comment to be included in his/her personnel file or to grieve the adverse information.

Section 2. An employee shall have the right to inspect material (other than pre-employment material) in his/her personnel file during normal business hours by appointment with the Department personnel clerk or supervisor who is the custodian of the files. An employee shall be furnished a copy of such material upon his/her request. Ten (10) pages shall be copied free of charge by the City each fiscal year. Any additional pages shall be copied by the City at the employee's own expense.

ARTICLE 20.
COMPENSATION.

Section 1. All employees currently in the step system will move into the “new” consolidated system by going to the closest step w/o any reduction in wage.

Year 1 - 2011-2012 – No cost of living adjustment – Employees receive step increase on their anniversary date

All employees at the maximum step shall receive a longevity bonus on their anniversary date based on the following:

2080 hours x. years of service x. 02

Year 2 - 2012-2013 – All employees receive a cost of living adjustment of 1% as well as a step for those who are eligible.

All employees at the maximum step shall receive a longevity bonus on their anniversary date based on the following:

2080 hours x. years of service x. 02

Year 3 - 2013-2014 – All employees receive a cost of living adjustment of 2% as well as a step for those who are eligible.

All employees at the maximum step shall receive a longevity bonus on their anniversary date based on the following:

2080 hours x. years of service x. 02

Section 2. All employees who have reached the maximum step within their job title shall receive a longevity bonus on their anniversary date based on the following:

2080 hours x. years of service x. 02

Section 3. Each employee shall receive a step increase on their anniversary hire date each year during the contract, in accordance to Section 4. The schedule attached in Appendix 4 (Page 60) will be used for annual base rate of pay increases and step increases.

Section 4. Periodic Wage Adjustment. Periodic wage adjustment in any position in the classified service shall be made on the basis of merit, determined through the process of evaluation of job performance, attitude, initiative, knowledge, skill and experience. Wage increases, when granted, shall be in increments defined in Appendix 4. Periodic wage increases shall be granted only upon the recommendation of the Chief of Police and approval of the City Manager in accordance with the following:

Step I. The initial appointment for entrance or probationary level for new employees shall be at Step I at any classified position, unless in the opinion of the Chief an applicant has unusual abilities, training and experience. Employees at this level shall have served at least one (1) year and have successfully completed his or her probationary period prior to the initial evaluation for advancement to Step II.

Step II to XIV Employees at Steps II to XIV in any classified position shall serve not more than one (1) year prior to the initial evaluation for advancement to their next step. This evaluation should occur annually on each employee's date of hire anniversary.

Section 5. Step Increase Evaluation. Should the City fail to provide the employee with the written evaluation prior to the expiration of the given time periods stated within this article, the employee will be deemed to have successfully completed the advancement to their next step.

ARTICLE 21.
AGENCY SERVICE FEE.

Employees are not required to join the Union as a condition of employment, but non-probationary employees covered by this Agreement who elect not to join the Union shall, during the term of this Agreement, pay a service fee in an amount not to exceed the Union dues.

Upon written notice from the Union that an employee has not paid the service fee as aforesaid, such employee shall be subject to the provisions of ARTICLE 6, DISCIPLINE AND DISCHARGE.

The Union shall indemnify the City and hold it harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any action taken by the City for the purpose of complying with the provisions of this Article.

This Article shall be subject to the Constitution and laws of the United States of America and the State of Vermont.

ARTICLE 22.
INSURANCE.

Section 1. Hospital and Medical Insurance.

- a) All eligible employees may opt to enroll in the CIGNA HDHP 2250 Value Insurance Plan with a \$2250/\$4500 deductible, combined with a Health Reimbursement Arrangement (HRA), \$3000/\$6000. This plan also includes a co-insurance after the deductible has been met.
- b) Employees shall pay deductibles, co-insurance and out-of-pocket expense as provided above, along with a contribution to the City's health insurance costs. Employee health insurance costs shall be paid through bi-weekly payroll deductions. The bi-weekly employee share for 2010 health insurance costs are as follows: \$13.38 for a single person plan, \$87.81 for a two person plan and \$125.28 for family coverage.

In the event an employee is off payroll for any reason, the employee shall remain responsible for their share of the health insurance cost.

If the City of Montpelier chooses to continue to provide the CIGNA HDHP 2250 Value Insurance Plan beyond calendar year 2010, employees shall continue to be responsible for a share of the City's cost of health insurance. The City's cost of health insurance includes premium and full HRA \$3000/\$6000 Plan. The employee share for 2011 shall be 5% for a single person plan and 20% for a two- person and family plan.

- c) The City of Montpelier shall rollover 10% of the year-end unused employer contribution (\$3000 for a single person plan and \$6000 for a two -person and family plan) to the individual employee HRA.

The rollover shall not exceed \$500 for a single person plan and shall not exceed \$1,000 for a two -person or family plan in any given year. In no event will the individual employee HRA annual available balance exceed \$3500 for a single person plan or \$7000 for a two- person or family plan.

- d) If the City of Montpelier chooses to continue to provide the CIGNA HDHP 2250 Value Insurance Plan beyond calendar year 2010, the City of Montpelier shall utilize a portion of the annual unused claim reserves associated with moving to the CIGNA HDHP 2250 Value Insurance Plan, as described, to maintain the current funding level of the HRA's for single, two-person and family plans and/or to offset insurance premium increases in the future.

Section 2. Life Insurance. The City will continue to provide life and accidental death and dismemberment insurance for all permanent employees in accordance with the following:

One Thousand Dollars (\$1,000.00) of coverage for each One Thousand Dollars (\$1,000.00) basic annual earnings, rounded off to the nearest thousand dollars.

Section 3. Other Coverage. The City will continue to provide individual liability, false arrest and other special coverage to the extent provided immediately prior to the effective date of this Agreement.

Section 4. The City retains the right to change carriers and revise plans for life, health, dental and pension benefits so long as the overall net employee benefits do not decrease.

Section 5. Dental Insurance. The City will provide to all permanent employees dental benefits as set forth in Appendix II. The City will pay one hundred percent (100%) of the premium for employees and employees shall pay 100% of the premium for dependent (two-person or family minus single person) coverage. The city will provide the orthodontic rider (Coverage D) with the employee paying 100% of the premium for this rider.

Section 6. Section 125 Plan. The City may provide a Section 125 plan in accordance with all Federal and State laws. The City will contribute \$250 into the flexible spending plan of participating employees. In 2010 only, the City will reimburse any employee who did not participate in the Section 125 plan up to \$250 for documented vision expenses.

Section 7. Medical Insurance after Retirement. Upon retirement an employee may purchase medical insurance at the group rate provided other City employees until the retiree and dependent, if any, become Medicare eligible. The retiree shall be responsible for 100% of the premium and any administration fee up to a maximum of five percent (5%).

ARTICLE 23.
UNIFORMS.

Section 1. The Chief and/or his/her designee shall meet periodically with not more than two (2) representatives of the Union to discuss the standardization of the uniforms. It is understood that the final determination and specification of any such item of uniform is reserved to the Chief.

Section 2. The City will continue its practice of supplying initial issue of uniforms and equipment to new hires, and of maintaining and cleaning uniforms. Failure of an employee to be in uniform shall be subject to disciplinary action, provided that sufficient uniforms have been provided in accordance with the practice.

Detectives shall receive a reimbursement of Five Hundred Dollars (\$500.00) for the purchase of clothing and work shoes or authorized and approved Police related equipment.

The City shall provide three (3) sets of summer and winter uniforms for Police Department Dispatchers. The City will have uniforms cleaned.

Section 3. The City shall reimburse each regular police officer and each community service officer for the cost of one (1) pair of work shoes, weather protective footwear, work shoe repairs and authorized and approved Police related equipment up to the total sum of Two Hundred Dollars (\$200.00) per fiscal year. Reimbursement will be made within 30 days after the officer submits receipts.

ARTICLE 24.
MISCELLANEOUS.

Section 1. Gender. Whenever the male gender is used in this Agreement, it shall be construed to include male and female employees.

Section 2. Each employee shall be furnished a copy of this Agreement. Copies shall be made available to new employees shortly after hire.

Section 3. The Union and the City shall share equally the cost of printing or duplicating this Agreement.

ARTICLE 25.
UNION BUSINESS AND OPERATION.

Section 1. Union Business Leave.

- (a) Not more than two (2) Union officers or designees shall be granted time off without loss of pay for contract negotiations or grievance hearings.
- (b) Subject to the operating needs of the Department, and only with written advance notice, paid leave not to exceed five (5) person-days per year may be granted to Union designees for the purpose of attending Union conventions or education conferences. Such leave may be granted only with the understanding that no overtime obligations will be incurred by the City.

Section 2. Bulletin board space will be provided for routine Union announcements.

Section 3. Union representatives will be granted access to the premises for individual discussions of grievances with employees, provided that work is not interfered with and provided that the Police Chief is notified of his/her presence in advance.

Section 4. The City shall issue a written bulletin to each employee advising the extent of insurance coverage on private jobs or outside employment (if applicable) and of the benefits provided in ARTICLE 22.

Section 5. Newly Created Positions. In the event that the City creates a new permanent position within the bargaining unit, the City will post a written job description in a conspicuous place within the Department.

ARTICLE 26.
LAW CONFLICT OF THE CONTRACT.

Section 1. Should any provisions of this Agreement be held to violate a federal or state law, or the City Charter, all other provisions shall remain in force. Should any provision of this Agreement conflict with any City ordinance, this Agreement shall prevail to the extent permitted by law. If the City ordinance is held to prevail, the Manager and the Union will cooperate in seeking an amendment to such ordinance, or this Agreement, in order to give effect to this Agreement, and all other provisions shall remain in force. The provisions of this Agreement shall be deemed to supersede any conflicting provision of the City employee's personnel plan. Employees covered by this Agreement shall not be covered by said plan.

ARTICLE 27.
CHAIN OF COMMAND AND CORPORAL DESIGNATION.

Section 1. Chain of Command. The Chief shall notify all employees in writing of the Table of Organization and chain of command on each shift.

Section 2. Employees of the Police Department who are married to each other shall not work in a supervisory capacity with each other except in an emergency at the discretion of the Chief.

Section 3. Corporal Designation. Employees promoted to the position of Corporal will be given Corporal stripes (two chevrons per sleeve) to be worn on the uniform sleeves.

Section 4. Corporal Shift Assignments.

The City intends to assign one corporal per patrol shift. Corporals will be assigned to shifts at the sole discretion of the Chief based on the operating needs of the department. Corporals agree to forgo their opportunity to make a statement of exclusion from the overtime list, as it pertains to non-unit supervisory positions. The School Resource Officer and Detective, if Corporals, may be exempted from this requirement upon approval by the Chief.

Section 5. Corporal Responsibilities.

In the event that a non-unit supervisor who is assigned to a shift is on paid time off or is otherwise unavailable to perform the duties of a shift supervisor, and no other non-unit supervisor agrees to assume responsibility of the shift, then the Corporal assigned to each shift will assume and be required to perform the duties of a non-unit supervisory position, on an acting basis.

In the event that a Corporal is on paid time off or is otherwise unavailable to perform the duties of a shift supervisor, and no non-unit supervisor agrees to assume responsibility of the shift, the vacant Corporal shift will be filled by another Corporal. The Department shall make every attempt to cover a non-unit supervisory position with a non-unit supervisor or Corporal.

Patrol officers and/or senior patrol officers, so-called, will not be required to perform the duties of a non-unit supervisory position, except in the event of an emergency and at the discretion of the Chief. In the event that a patrol officer and/or senior patrol officer is required to temporarily perform the duties and responsibilities of a non-unit supervisor, an additional one dollar (\$1.00) per hour while performing such duties, to be added to the employee's straight time hourly rate, calculated to the next quarter hour

Any patrol coverage overtime that is caused or created when a Corporal assumes the duties and responsibilities of a non-bargaining unit supervisory position, will first be offered to other bargaining unit members, in accordance with the provisions of Article VIII (Overtime).

The Chief shall use his/her best efforts to clarify the duties and responsibilities of a patrolman serving as corporal and the patrolmen serving under him/her.

ARTICLE 28.
MILITARY LEAVE.

Section 1. Military Leave. An employee who is a member of any Military Reserve Component of the Armed Forces of the United States such as the National Guard shall be entitled to a leave of absence with pay to attend the activities of such Military Reserve Component for a period of time not to exceed fifteen (15) days in any one year. The City has agreed to pay the employee the difference between military pay received and the employee's normal base bi-weekly pay for those fifteen (15) days. Weekend duty with Military Reserve Components shall be on the employee's own time but the employee shall be entitled to swap shifts with another employee in the event the employee is required to work on a drill weekend. In the event the employee is called up to active duty, the City will maintain health insurance benefits until employee has successfully transferred into U.S. Military health insurance program.

ARTICLE 29.
DIFFERENTIAL TIME AND PAY.

Section 1. Day Off for Employees Assigned to the 2400-0800 Shift.

- (a) Subject to the operating needs of the Department, a full-time, permanent employee who is assigned to the 2400-0800 shift for at least one (1) full twenty-eight (28) day work period shall receive six (6) hours off with pay for each such twenty-eight (28) day work period. In the event that the employee has taken six (6) "diff" hours off in that assigned twenty-eight (28) days and at the conclusion of that assigned twenty-eight (28) day period has taken more than ten (10) days of authorized leave within that same twenty-eight (28) day period, then that employee shall not be able to have a "diff" day during the subsequent twenty-eight (28) day period. The twenty-eight day period shall be counted from the start of the schedule assignment. The employee must request the day off at least three (3) days prior to the date of the day off. If the day off is not taken in the twenty-eight (28) day work period in which it accrues, it shall be banked up to forty-two (42) hours. In no event shall an employee be paid for a day off not taken.
- (b) Subject to the operating needs of the Department, a full-time, permanent dispatcher who is assigned to the swing shift, which involves working two (2) midnight to eight shifts per week, and the full-time, permanent officer who is assigned to the swing shift from 7:00 PM to 3:00 AM shall receive six (6) hours off with pay every twelve weeks. The employee must request the day off at least three (3) days prior to the date of the day off. If the day off is not taken in the eighty-four (84) day work period in which it accrues, it shall be banked up to forty-two (42) hours. In no event shall an employee be paid for a day off not taken.
- (c) All union employees that work between hours of 16:00 (4:00 PM) and 8:00 (8:00 AM) will receive an additional \$0.65 per hour worked for differential.

These rates will not be increased for overtime or extra duty worked.

ARTICLE 30.
PENSION AND RETIREMENT.

Section 1. Effective January 1, 2003, the employees shall be members of the Vermont Municipal Employees Retirement System (VEMRS) Group C with all related benefits and contribution schedules as established by VMERS.

ARTICLE 31.
MEDICAL EXAM AND HEALTH CLUB MEMBERSHIP.

Section 1. Annual Medical Examination.

The City and Police Department encourage each of its employees to obtain a medical examination. It is further recommended that each regular police officer have such an examination prior to taking the physical assessment as required in Article 32, Section 1.

The medical examination, if chosen by the employee, shall be paid by the employee's health insurance provided under this agreement to the extent of the coverage. In the event that as a result of the examination, the employee exceeds the employee's allowance for usual and customary office visits under the employee's health insurance provided in this agreement, the City will reimburse the employee for any payment by the employee not covered by insurance for usual and customary office visits, and deductible costs, except that the total of such reimbursements shall not exceed the cost of the annual examination.

In the event that the annual examination reveals medical conditions that require further examination beyond a normal and customary office visit associated with such an exam, the terms of the employee's health insurance shall govern.

The Police Department will maintain no records of this examination other than financial and other assorted records associated with reimbursement.

Section 2. The City will purchase a corporate health club membership for bargaining unit employees of the Police Department at First In Fitness. The bargaining unit employees who choose to be members of First in Fitness shall pay one half of the determined corporate monthly charge. The City will reimburse employee up to 50% of the cost of employee health club membership. Should a member of the bargaining unit choose membership in another fitness facility, the City will reimburse the employee for up to 50% of the monthly charge, up to an amount equal to that paid for those members at First in Fitness.

Should a bargaining unit employee achieve a score of 50% or greater on the physical qualification test referenced in Article 32 Section 1, the city will reimburse 100% of the cost of employee health club membership at First In Fitness. Should an employee of the bargaining unit choose membership in another facility and score 50% or greater on the physical qualifications test, the City will reimburse the employee to 100% of the monthly charge, up to an amount equal to that paid for those members at First In Fitness. Should an employee of the bargaining unit score 50% or greater on the physical qualifications test and choose not to join a fitness facility the City will pay the employee an amount equal to 100% of an employee health club membership at First In Fitness, issued no later than two (2) pay periods after submitting their score to the Chief.

ARTICLE 32.
PHYSICAL QUALIFICATIONS TEST.

Section 1. Physical Qualifications Test.

Each officer of the Department will be given a copy of the physical assessment standards of the Vermont Criminal Justice Training Council (see addendum for standards). Prior to July 1st of each calendar year, each officer will submit a certification of participation, indicating the officer has taken each portion of the standardized test, achieving a minimum forty percent (40%) score based on the Vermont Police Academy entrance standard, signed by a certified physical fitness trainer as evidenced by a nationally recognized fitness organization. The forty percent (40%) score applies only to officers hired after July 1, 2001. Officers hired prior to June 30, 2001 are not required to achieve the forty percent (40%) score on any physical qualification test. In the event an employee is medically unable to participate in the physical fitness evaluation, such employee will submit a medical release form signed by the employee's treating physician. The City will pay all costs associated with the administration of the physical qualification test.

See Appendix 5 (Page 60) of this contract for the percentiles and established guidelines for conducting the physical qualification testing.

ARTICLE 33.
HEALTH AND SAFETY.

Section 1. Health and Safety Meetings. Representatives of the Union and the City, not to exceed two (2) representatives from each, shall meet at mutually agreed upon times to discuss matters of mutual concern relating to issues of health and safety.

Section 2. The parties agree that nothing contained in Article 33 shall require the parties to bargain collectively over any issues relating to health and safety.

ARTICLE 34.
TUITION REIMBURSEMENT.

Section 1. Tuition Reimbursement

The City will reimburse an employee for fifty percent (50%) of the cost of tuition for courses taken after July 1, 1990 at an institution of higher education accredited by the State of Vermont. The employee must successfully complete the course with a "C" or a 2.0 on a 4.0 scale.

Reimbursement shall be provided for not more than four courses per semester or a maximum of eight courses per fiscal year per member. The operation of this program is subject to the availability of funds, not to exceed \$6,000 per year. Continuation of this program beyond the day of this agreement shall be contingent on the re-negotiation of this benefit and specific funding provided as a result thereof.

If funds made available are not sufficient to meet all requests that would otherwise be approved, the City may pro-rate the available funds among all approved requests or may limit the approvals to the amount of funding available.

If the employee leaves the employment of the City, he/she shall be responsible for repaying the City for tuition reimbursement moneys paid to them according to the following schedule. For calculation of "month of leaving", any portion of a calendar month will be counted.

Month of Leaving	Reimbursement to
1 through 12	100.0%
13	100.0%
14	91.7%
15	83.3%
16	75.0%
17	66.7%
18	58.3%
19	50.0%
20	41.7%
21	33.3%
22	25.0%
23	16.7%
24	8.3%

ARTICLE 35.
DURATION OF AGREEMENT

Section 1. Consent of Parties. Notwithstanding any contrary provision, this Agreement represents the full and complete agreement between the parties and it is understood and agreed that any subject matter, whether or not referred to in this Agreement, shall not be open for negotiations during the term of this Agreement except as the parties hereto mutually agree.

Section 2. Duration of Agreement. This Agreement shall be effective July 1, 2011, except as otherwise specifically stated in this Agreement. This Agreement shall expire **June 30, 2014.**

Section 3. Modification or Termination. Either party may notify the other party of its desire to terminate or modify this Agreement by written notice sent by registered or certified mail, postage prepaid, postmarked no later than November 1, **2013.** Negotiations for a successor agreement shall commence as soon as possible after a timely notice.

Section 4. Failure to Notify. Should neither party send a timely notice to modify or terminate this Agreement as provided in Section 3, this Agreement shall be considered to have been automatically renewed until **June 30, 2015,** and from year to year thereafter unless a timely notice is sent postmarked no later than November 1 of any subsequent year.

Dated at the City of Montpelier this ____ day of October, 2011.

A. F. S. C. M. E.
VERMONT PUBLIC EMPLOYEES COUNCIL
LOCAL 2787, COUNCIL 93 AFL-CIO

CITY OF MONTPELIER

By _____
Negotiating Committee

By: _____
City Manager

Negotiating Committee

Police Chief

Negotiating Committee

Finance Director

APPENDIX 1
ACKNOWLEDGMENT OF ARBITRATION

Local 2787, AFL-CIO American Federation of State, County and Municipal Employees, Vermont Public Employees Council, AFL-CIO (hereinafter called the "Union"), and the City of Montpelier (hereinafter called the "City"), understand that this Agreement contains an agreement to arbitrate. After signing this document, the Union and the City understand that the Union, any individual employee, any group of employees, and the City will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead the Union and the City agree to submit any such dispute to an impartial arbitrator.

Dated at the City of Montpelier this _____ day of October, 2011

AFSCME LOCAL 2787

FOR THE CITY OF MONTPELIER

By: _____
Negotiating Committee

By: _____
City Manager

Negotiating Committee

Police Chief

Negotiating Committee

Finance Director

APPENDIX 2
Delta Dental Insurance Benefit Summary

**VLCT HEALTH TRUST AND NORTHEAST DELTA DENTAL
DENTAL INSURANCE BENEFIT SUMMARY**

DEDUCTIBLE
(Applies to Coverage B and C only.)

↓		↓	
COVERAGE A	COVERAGE B	COVERAGE C	ORTHO. RIDER
DIAGNOSTIC: Evaluations – two in a 12-month period X-Rays Complete series or panoramic film once in a 3-year period; Bitewing x-rays once in a 12-month period; x-rays of individual teeth as necessary. Oral cancer screening once in a 12-month period. PREVENTIVE: Cleanings: four in a 12-month period. Fluoride twice in a 12-month period to age 19. Space maintenance to age 16. Sealant application to permanent molars: once in a 3-year period per tooth, for children to age 19.	RESTORATIVE: Amalgam (silver) fillings Composite (white) fillings for anterior teeth only. ORAL SURGERY: Surgical and routine extractions. ENDODONTICS: Root canal therapy. PERIODONTICS: Periodontal maintenance (cleaning) <i>Four cleanings are covered in a 12-month period; this can be routine (Coverage A) or Periodontal (Coverage B), in any combination.</i> Treatment of gum disease. Clinical Crown Lengthening once per lifetime per site. DENTURE REPAIR: Repair of removable dentures to its original condition. EMERGENCY PALLIATIVE TREATMENT.	PROSTHODONTICS: Removable and fixed partial dentures (bridge); complete dentures. Rebase and reline (dentures). Crowns Onlays Dental Implant	ORTHODONTICS: Correction of crooked teeth for dependent children up to age 19. Adult orthodontic also available.
↑	↑	↑	↑
CONTRACT YEAR MAXIMUM			LIFETIME MAXIMUM

**PLEASE REFER TO ATTACHED SHEET FOR INFORMATION ON DEDUCTIBLES,
COINSURANCE AND MAXIMUM OPTIONS.**

Delta Dental Premier Dentist Network

You'll get the best value from your program when you receive your dental care from a Delta Dental Premier participating dentist:

▲ **No balance billing:** Because participating dentists accept Delta Dental's approved amount for service, you will normally pay less when you visit a participating dentist.

▲ **No claim forms:** Participating dentists will prepare and submit claim forms for you.

▲ **Direct payment:** Northeast Delta Dental pays the dentist directly, so you don't have to pay the covered amount up-front and wait for a reimbursement check.

To find out if your dentist is part of the Delta Dental Premier network, call your dentist or visit our web site at www.nedelta.com. Click on Locate a Dentist, then Local or National Dentist Directory. You can also call our Customer Service Department at 1-800-832-5700 or 603-223-1234.

Claim Submission Process for Participating Dentists

▲ Present your ID card to the dentist at the time of your visit.

▲ The dentist will submit your claim to Northeast Delta Dental.

▲ Northeast Delta Dental will send you a NOB (Notification of Benefits) detailing what has been processed under your program's coverage. You are responsible to pay any remaining balance directly to the dentist.

For Non-Participating Dentists: If you visit a Non-Participating Dentist within the Northeast Delta Dental operating area of Maine, New Hampshire, and Vermont, you may be requested to bring a claim form that is available by calling Northeast Delta Dental or that may be downloaded from www.nedelta.com. Unless otherwise required by State law, payment for services rendered will be made directly to you and will be limited to the lesser of the Dentist's actual submitted charge or the company's allowance for Non-Participating Dentists located in the tri-state region. It will be your responsibility to make full payment to your Dentist.

For Dentists Outside Maine, New Hampshire and Vermont:

If you visit a Dentist outside the operating area of Northeast Delta Dental, you may be requested to bring a claim form that is available by calling us or may be downloaded from www.nedelta.com. For benefits provided to a Subscriber or Eligible Dependent by a Dentist outside the Northeast Delta Dental geographic area, benefits will be paid directly to the Dentist if the Dentist is a Participating Dentist with the local Delta Dental member company unless it is noted on the claim form that payment should be sent to you. If the Dentist does not participate with the local Delta Dental member company, payment will be made to the Subscriber unless the state in which the services are rendered requires that assignments of benefits be honored and Northeast Delta Dental receives written notice of an assignment on the claim form before payment for benefits is made. Payment for treatment performed by a Non-Participating Dentist will be limited to the lesser of the actually submitted charge or an amount equal to a selected percentile of a nationally recognized database of dental charges for the geographic area in which the services were provided. When there is not sufficient fee information available for a specific dental procedure, Northeast Delta Dental will determine an appropriate payment amount.

Predetermination of Benefits

Northeast Delta Dental strongly encourages predetermination of cases involving costly or extensive treatment plans. Although it's not required, predetermination helps avoid any potential confusion regarding Delta Dental's payment and your financial obligation to the dentist.

Coordination of Benefits

When a covered individual under this program has additional group dental coverage, the COB (Coordination of Benefits) provision described in your Dental Plan Description booklet will determine the sequence and extent of payment. If you have any questions, please contact our Customer Service department at 1-800-832-5700 or 603-223-1234.

Identification Card

Two identification cards from Delta Dental will be produced and distributed shortly after your enrollment. Both cards are issued in the subscriber's name, but can be used by everyone covered under the program.

Dental Plan Description Booklet

You will receive a Dental Plan Description booklet shortly after your enrollment. This booklet describes the benefits of your program and tells you how to use your plan. Please read it carefully to understand the benefits and provisions of your Northeast Delta Dental program.

Who is Eligible

All eligible employees and their dependents, defined as:
Spouse or Civil Union partner;
Unmarried, dependent children to age 19;
Unmarried, full-time dependent students to age 25, and
Incapacitated dependent children, regardless of age.

If enrolling one eligible dependent, all eligible dependents must be enrolled unless they are covered elsewhere.

Guarantee Of Service Excellence™ Program

Northeast Delta Dental is committed to providing extraordinary service to all of its customers. We believe that when our people are inspired to pursue excellence in order to achieve a higher level of customer satisfaction, all of those who share in Northeast Delta Dental will benefit. To emphasize our commitment, we guarantee seven major areas of service to our clients and reinforce them by our comprehensive group refund policy.

Claims Inquiry

If you have further questions, please contact Northeast Delta Dental's Customer Service department at 1-800-832-5700 or 603-223-1234. This information should be used only as a guideline for your dental benefits program. For detailed information on your group's terms, conditions, limitations, exclusions and guarantees, please refer to your Dental Plan Description booklet or consult your employer.



Northeast Delta Dental
One Delta Drive
P.O. Box 2002
Concord, NH 03302-2002
www.nedelta.com

APPENDIX 3
CITY OF MONTPELIER
SEXUAL HARASSMENT POLICY

It is against the policies of this employer, and illegal under state and federal law for any employee, male or female, to sexually harass another employee. This employer is committed to providing a workplace free from this unlawful conduct. It is a violation of this policy for an employee to engage in sexual harassment.

What is “sexual harassment?”

Sexual harassment is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to that conduct is made either explicitly or implicitly a term or condition of employment;
- (2) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or,
- (3) the conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

Examples of sexual harassment include, but are not limited to, the following when such acts or behavior come within one of the above definitions:

- either explicitly or implicitly conditioning any term of employment (e.g. continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
- touching or grabbing a sexual part of an employee’s body;
- touching or grabbing any part of an employee’s body after that person has indicated, or it is known, that such physical contact was unwelcome;
- continuing to ask an employee to socialize on or off-duty when that person has indicated s/he is not interested;
- displaying or transmitting sexually suggestive pictures, objects, cartoons or posters if it is known or should be known that the behavior is unwelcome;
- continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
- referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;

CITY OF MONTPELIER SEXUAL HARASSMENT POLICY

Page 2

- retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g., ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering that person's duties or work environment, etc.);
- derogatory or provoking remarks about or relating to an employee's sex or sexual orientation;
- harassing acts or behavior directed against a person on the basis of his or her sex or sexual orientation;
- off-duty conduct which falls within the above definition and affects the work environment.

What this employer will do if it learns of possible sexual harassment:

In the event this employer receives a complaint of sexual harassment, or otherwise has reason to believe that sexual harassment is occurring, it will take all necessary steps to ensure that the matter is promptly investigated and addressed. The employer is committed, and required by law, to take action if it learns of potential sexual harassment, even if the aggrieved employee does not wish to formally file a complaint. Every supervisor is responsible for promptly responding to, or reporting any complaint or suspected acts of sexual harassment. Supervisors should report to City Clerk-Treasurer, Assistant City Manager, Finance Director (individuals who have been designated to receive such complaints or reports), or to the City Manager. Failure by a supervisor to appropriately report or address such sexual harassment complaints or suspected acts shall be considered to be in violation of this policy.

Care will be taken to protect the identity of the person with the complaint and of the accused party or parties, except as may be reasonably necessary to successfully complete the investigation. It shall be a violation of this policy for any employee who learns of the investigation or complaint to take any retaliatory action which affects the working environment of any person involved in this investigation.

If the allegation of sexual harassment is found to be credible, this employer will take appropriate corrective action. The employer will inform the complaining person and the accused person of the results of the investigation and what actions will be taken to ensure that the harassment will cease and that no retaliation will occur. Any employee, supervisor, or agent who has been found by the employer to have harassed another employee will be subject to sanctions appropriate to the circumstances, ranging from a verbal warning up to and including dismissal.

If the allegation is not found to be credible, the person with the complaint and the accused person shall be so informed, with appropriate instruction provided to each, including the right of the complainant to contact any of the state or federal agencies identified in this policy notice.

What you should do if you believe you have been harassed:

Any employee who believes that she or he has been the target of sexual harassment, or who believes she or he has been subjected to retaliation or having brought or supported a complaint of harassment, is encouraged to directly inform the offending person or persons that such conduct is offensive and must stop. If the employee does not wish to communicate directly with the alleged harasser or harassers, or if direct communication has been ineffective, then the person with the complaint is encouraged to report the situation as soon as possible to City Clerk-Treasurer, Assistant City Manager or Finance Director at City Hall (individuals who have been designated to receive such complaints or reports), or to her or his supervisor, or to the City Manager at City Hall (the head of this organization). It is helpful to an investigation if the employee keeps a diary of events and the names of people who witnessed or were told of the harassment, if possible.

**CITY OF MONTPELIER
SEXUAL HARASSMENT POLICY**

Page 3

If the complainant is dissatisfied with this employer's action, or is otherwise interested in doing so, she or he may file a complaint by writing or calling any of the following state or federal agencies:

1. Vermont Attorney General's Office, Civil Rights Unit, 109 State Street, Montpelier, Vermont 05602, Telephone: (802) 828-3171 (voice/TDD). Complaints should be filed within 300 days of the adverse action.
2. Equal Employment Opportunity Commission, 1 Congress Street, Boston, MA 02114, Telephone: (617) 565-3200 (voice); (617) 565-3204 (voice/TDD). Complaints must be filed within 300 days of the adverse action.
3. Vermont Human Rights Commission, 133 State Street, Montpelier, VT 05633-6301, Telephone: (802) 828-2480 (voice/TDD) (Only if you are employed by a Vermont State Agency.) Complaints must be filed within 360 days of the adverse action.

Each of these agencies can conduct impartial investigations, facilitate conciliation, and if it finds that there is probably cause or reasonable grounds to believe sexual harassment occurred, it may take the case to court. Although employees are encouraged to file their complaint of sexual harassment through this employer's complaint procedure, an employee is not required to do so before filing a charge with these agencies.

In addition, a complainant also has the right to hire a private attorney, and to pursue a private legal action in state court within 3 or 6 years, depending on the type of claims raised.

Where can I get copies of this policy?

A copy of this policy will be provided to every employee, and extra copies will be available in the City Manager's Office. Reasonable accommodations will be provided for persons with disabilities who need assistance in filing or pursuing a complaint of harassment, upon advance request.

PHYSICAL QUALIFICATION TESTING STANDARDS

There are five (5) elements of the physical assessment. Although these elements may not be directly representative of essential job functions to be performed by an entry-level police officer, such elements do measure an officer's physiological capacity to learn and perform the essential job functions. The minimum score for entry into the Academy as set forth below represents the fortieth (40th) percentile of fitness for each of the elements of the assessment (meaning they are as fit as at least the lower 40th percentile of the population of that gender and age). If an officer does not successfully pass the four (4) initial elements **and** score to the fortieth (40th) percentile of fitness in the 1.5 mile run, then the officer shall not be deemed to have successfully completed the physical fitness assessment. Nothing shall preclude the administrator of substituting an element of the test battery, which the administrator has determined and validated to accurately assess the officer's physiological capacity to learn and perform essential job functions. The 1.5 mile run shall only be administered to officers who have successfully completed the four (4) elements of the test battery.

1. **1.5 MILE RUN** - Cardiovascular capacity and aerobic power, it requires nearly exhaustive effort. It takes place on an indoor or outdoor track or other suitable, relatively level running area, and is measured with a stopwatch.
2. **ONE (1) REPETITION MAXIMUM BENCH PRESS** - Absolute strength test involves forcing a muscle group to exert a maximum force, using Dynamic Variable

Resistance (DVR) protocol. The score indicated is a ratio of weight pressed divided by body weight. Equipment to be utilized will be a universal weight machine to record the weight of the repetition. Officer will start off with warm-up repetitions of 2 body weight and increasing the weight in five (5) or ten (10) pound increments until the officer has successfully reached the fortieth (40th) percentile.

3. **ONE (1) MINUTE OF BENT KNEE SIT-UPS** - This event tests muscular endurance of the abdominal area, and hip flexors, which is the ability to contract muscle repeatedly over a period of time. The officer lies on his/her back, knees bent, heels flat on the floor, hands behind head and with a partner holding the feet down, then does as many sit-ups in correct form as possible in one minute. In the “up” position, officers must touch their elbows to their knees, and both shoulders must touch the surface in the “down” position. The up position is the only rest position is allowed.
4. **ONE (1) MINUTE OF PUSH-UPS** - This event tests muscular endurance of the upper body (anterior deltoid, pectoralis major, triceps). The officer starting in the “up” position where the hands are placed about shoulder width apart, elbows fully extended, legs and back are kept straight, and knees off the ground at all times, and lower him/her self until their chest is approximately three (3) inches from the surface thus completing one repetition. The only rest position allowed is arching the back upward. No hands or feet shall be moved off the surface while conducting the event. Qualified trainers shall be responsible for the score of correct push-ups.
5. **SIT AND REACH TEST** - This event measures flexibility of the upper and lower trunks of the body, specifically lower back, hips, and hamstring muscle groups. The test requires a metal or wooden box, and a yardstick with a fifteen (15) inch mark at the edge or an engraved pre-measured box with the fifteen (15) inch mark on the box. The officer warms up slowly, and then he/she removes their shoes. The officer sits on the floor with legs extended, feet placed squarely against the box, and reaching forward with arms extended, hands placed on top of each other with fingers extended and joined, and reaches out slowly forward with both hands as far as possible, and hold position momentarily. The distance reached on the yardstick or on the box by the fingertips in inches in the best of three (3) trials is the flexibility score.

The above information was taken from the VTJTC Academy policy and procedures. The indications in reference to candidates has been replaced with the word officer.

The following are the forty percent (40%) and fifty percent (50%) scores based on the Vermont Police Academy entrance physical testing exam as of July 1, 2011. The following scores will be used as the achieving the minimum forty percent (40%) score and the possible fifty percent (50%) score throughout the length of this contract.

See the next page for the Physical Assessment Standards in the 50th and 40th percentiles. The standards are base on the current VCJTC standards as of the signing of this contract and are subject to change by the VCJTC during the term of this contract.

Physical Assessment Minimum Standards: 40th Percentile Requirements

<u>MALE</u>	<u>Flexibility</u>	<u>Bench Press</u>	<u>Sit-ups</u>	<u>Push-ups</u>	<u>1.5 Mile Run</u>
<u>20-29</u>	16.5"	0.99	38	29	12:29
<u>30-39</u>	15.5"	0.88	35	24	12:53
<u>40-49</u>	14.3"	0.80	29	18	13:50
<u>50-59</u>	13.3"	0.71	24	13	15:14
<u>FEMALE</u>	<u>Flexibility</u>	<u>Bench Press</u>	<u>Sit-ups</u>	<u>Push-ups</u>	<u>1.5 Mile Run</u>
<u>20-29</u>	19.3"	0.59	32	15	15:05
<u>30-39</u>	18.3"	0.53	25	11	15:56
<u>40-49</u>	17.3"	0.50	20	9	17:11
<u>50-59</u>	16.8"	0.44	14	7	19:10

Physical Assessment Minimum Standards: 50th Percentile Requirements

<u>MALE</u>	<u>Flexibility</u>	<u>Bench Press</u>	<u>Sit-ups</u>	<u>Push-ups</u>	<u>1.5 Mile Run</u>
<u>20-29</u>	17.5"	1.06	40	33	11:58
<u>30-39</u>	16.5"	0.93	36	27	12:25
<u>40-49</u>	15.3"	0.84	31	21	13:05
<u>50-59</u>	14.5"	0.75	26	15	14:33
<u>FEMALE</u>	<u>Flexibility</u>	<u>Bench Press</u>	<u>Sit-ups</u>	<u>Push-ups</u>	<u>1.5 Mile Run</u>
<u>20-29</u>	20.0"	0.65	35	18	14:13
<u>30-39</u>	19.0"	0.57	27	14	15:14
<u>40-49</u>	18.0"	0.52	22	11	16:13
<u>50-59</u>	17.9"	0.46	17	N/A	18:05

THIS IS THE FINAL VERSION OF THE CONTRACT



CITY OF MONTPELIER, VERMONT

- THE SMALLEST CAPITAL CITY IN THE UNITED STATES -

Mayor Mary S. Hooper

City Council:

Tom Golonka
Andy Hooper
Sarah Jarvis
Nancy Sherman
Angela Timpone
Alan Weiss

William Fraser,
City Manager
wfraser@montpelier-vt.org

Beverlee Pembroke Hill
Assistant City Manager
bhill@montpelier-vt.org

MEMORANDUM

To: Mayor Hooper & City Council Members
From: William Fraser, City Manager
Re: Police Union Agreement
Date: October 28, 2011

On September 8th, the Police Union bargaining team and City bargaining team reached tentative agreement on a new proposed three year collective bargaining agreement. The terms of the agreement were ratified by the union on October 23rd. City ratification will be on the consent agenda of the November 9th Council meeting.

Summary:

Contract will run for three years, from July 1, 2011 through June 30, 2014. (FY12, 13 and 14)

Annual cost of living adjustments will be 0% for FY12, 1% for FY13 and 2% for FY14.

14 step wage scales will be compressed to 10 steps with top and bottom of the scales to remain the same. We found that our starting pay rates and our top pay rates were competitive but we fell behind in the middle years.

Longevity pay (for those above the top step) will be converted from a lump sum \$600 to a lump sum based on years of service. \$41.60 per each year worked (2 cents per hour based on 52 weeks and 40 hours per week). 10 year employee would get \$416, 15 year employee \$624, 20 year employee \$832 etc.

Comp time is allowed to accrue to 72 hours instead of 40.

Administrative changes were made in holiday pay and uniform allowances.

Highest cost of the contract will be in FY13 when most people convert to new rates on the new scale. The terms of the agreement are all within the parameters previously discussed with you.

Report #2 of the
Public Safety
Committee

Presented to:

Municipal Governing Bodies

November 3, 2011

Central Vermont Public Safety Committee

November 3, 2011 - Executive Report

PURPOSE:

Create a public safety authority that provides the four communities of Barre, Barre Town, Berlin and Montpelier with an affordable, integrated, efficient system of public safety services (fire, police, ambulance, dispatch) that protects public welfare and provides rapid responses with highly qualified personnel when emergency situations arise.

COMMITTEE:

The committee was formed by the appointment of representatives from the four communities listed below and have met regularly over the past year and a half.

Pete Fournier and Dom Etli - Barre City

Alan Weiss and Tom Golonka - Montpelier

Paul McGinley and Allan Heath - Barre Town

Patti Lewis and Nancy Driscoll - Berlin

George Malek and Donna Bate – Chamber of Commerce

With the assistance of Paul Gillies, Jim Fay (Champlain Water District), Brian Searles, Gary Margolis, and numerous local public safety personnel, the Committee has determined that we have reached a point to both report progress to the communities and to solicit interest in expanding on our findings

BACKGROUND:

1. Currently 28,000 residents, 13,000 housing units, and 1,500 business locations in 80 square miles. Studies indicate this is an ideal size for consolidation.
2. The area is currently served by four police departments, two full-time fire departments, two call fire departments, four dispatching providers and three ambulance services.
3. \$13,000,000 in current annual expenses with \$4,300,000 in generated revenues (Net cost \$8,700,000)
4. A successful model of integration and cross municipality cooperation exists in Vermont through the Champlain Water District
5. Collectively, we respond to approximately: 4,400 ambulance calls, 1,500 fire responses and 5,500 police incidents annually.

CONCLUSIONS:

1. A Public Safety Authority can be created, appropriately governed and launched into operation without a major increase in annual expenditures.
2. Better communication, response times, training and utilization of resources can be realized through a combined safety authority.
3. Future combined cost containment efforts have a greater chance of success through a common safety authority.
4. The management of administrative costs, equipment purchases and facility utilization can be better coordinated in a combined entity.
5. Regionalized grant efforts would enhance chances for success.
6. A professional consultant will need to be hired to assist the committee in determining specifics to make a more informed decision.

NEXT STEPS:

1. Member towns commit to a non-binding ballot item in their respective communities which solicits preliminary support for a combined public safety authority.
2. Each community include \$15,000 in their respective 2012-2013 budgets for further work of the committee.
3. The committee would continue to refine the preliminary cost sharing formula as well as the governance model for the authority.
4. The committee would continue an educational and outreach role in each community leading to the town meeting vote.
5. If successful, the committee will facilitate the hiring of a consultant to work with the committee on the next steps needed including potential charter changes, legal review, cost sharing models, asset and liability review, and governance and transition planning.

Central Vermont Public Safety Committee

November 3, 2011

	MONTPELIER	BARRE CITY	BARRE TOWN	BERLIN	TOTALS:
REVENUES					
POLICE REVENUE	\$924,503	\$380,354	\$72,075	\$129,460	\$1,506,392
DISPATCH REVENUE	\$144,693	\$59,000	\$0	\$0	\$203,693
FIRE/EMS REVENUE	\$409,966	\$709,300	\$1,528,000	\$0	\$2,647,266
	\$1,479,162	\$1,148,654	\$1,600,075	\$129,460	\$4,357,351
EXPENSES					
POLICE EXPENSES	\$2,237,053	\$2,085,673	\$780,000	\$782,416	\$5,885,142
DISPATCH EXPENSES	\$469,473	\$427,186	\$247,665	\$0	\$1,144,324
FIRE/EMS EXPENSES	\$1,769,232	\$1,782,564	\$2,313,783	\$162,260	\$6,027,839
					\$13,057,305
REVENUES:	\$1,479,162	\$1,148,654	\$1,600,075	\$129,460	\$4,357,351
EXPENSES:	\$4,475,758	\$4,295,423	\$3,341,448	\$944,676	\$13,057,305
NET COST:	\$2,996,596	\$3,146,769	\$1,741,373	\$815,216	\$8,699,954
	MONTPELIER	BARRE CITY	BARRE TOWN	BERLIN	TOTALS:
POLICE EMPLOYEES	19	19	7	7	52
DISPATCH EMPLOYEES:	6.5	8	0	0	14.5
FIRE/EMS EMPLOYEES	18	17	19	3	57
POPULATION:	7760	8837	8005	2822	27424
NET COST POLICE:	\$1,312,550	\$1,705,319	\$707,925	\$652,956	\$4,378,750
COST PER EMPLOYEE:	\$69,082	\$89,754	\$101,132	\$93,279	\$76,820
COST PER CAPITA:	\$169	\$193	\$88	\$231	\$160
NET COST DISPATCH:	\$324,780	\$368,186	\$247,665	\$0	\$940,631
COST PER EMPLOYEE:	\$49,966	\$46,023			
COST PER CAPITA:	\$42	\$42	\$31	\$0	\$34
NET COST FIRE/EMS:	\$1,359,266	\$1,073,264	\$785,783	\$162,260	\$3,380,573
COST PER EMPLOYEE:	\$75,515	\$63,133	\$41,357	\$54,087	\$59,308
COST PER CAPITA:	\$175	\$121	\$98	\$57	\$123
TOTAL COST PER EMPLOYEE:	\$80,989	\$87,410	\$66,976	\$81,522	\$79,816
TOTAL COST PER CAPITA:	\$386	\$356	\$218	\$289	\$317

Background & Consultant Excerpts

In order to assist those who have not been previous involved in the process that began in April of 2009 with a meeting of the towns, the Public Safety Committee has included a few excerpts and operational outlines provided by consultants Brian Searles and Gary Margolis. These consultants assisted the Committee by making preliminary personnel and equipment estimates before meeting with local department heads in December of 2010 and then offering revised estimates afterward at minimal cost.

The following pages include consultant comments on meeting with local department heads, revised executive summary, adjusted personnel and equipment estimates, and organizational chart.

For additional information:

The preliminary (2010) report is posted at www.central-vt.com/psapreliminary.pdf and a few hard copies will be available at our meeting Nov. 3, 2011.

Report #1 of the Committee was presented to municipal officials March 18, 2010. Copies of that report are posted at www.central-vt.com/psareport1.pdf and a few hard copies will be available at the meeting.

NEWTOWNCITY PROPOSAL - Update of May 31, 2011

This addendum is the result of a meeting on December 16, 2010 and subsequent feedback from the police chiefs, fire chiefs and other emergency service providers that was well-attended and lasted for the full three hours allotted. It has also been updated, as has the main body of the report, as a result of feedback from the Committee since the last update on February 11, 2011.

The consultant team was encouraged by the positive view of this process by those present and not surprised by the questions concerning the overall goals and objectives of the plan along with the size and scope. It was suggested that this was all about money and that it was too big an effort and should focus on one element, such as dispatch. There were questions about process and the "order of things" and the team praised the committee's process as groundbreaking and urged the group to give this a chance to progress by being the main players from this point on. They agreed to do that and then made a number of suggestions about staffing and equipment, which are reflected in updated versions of those pages of the report (attached). It is from these documents that cost estimates will be made.

On the staffing side, we have revised our assumptions concerning reliance on full-time fire service and after careful review of other similar organizations lowered our assumption of part-time to .4 FTE for all services and provided for and more supervision on the police service side. You will notice significantly lower cost estimates as we revised some salary assumptions downward, based on updated data and corrected an earlier oversight by reducing the overall personnel costs to reflect vacancy savings.

The team still has questions concerning the fire service full-time schedule issues and the determination of rotation and shift length could affect the number of personnel and costs. This appears to be the area that will be most difficult to deal with for purposes of merger since the individual communities deal with staffing in such very different ways. This may argue for phasing this plan as police and dispatch are likely to be a much lighter lift and could provide the momentum necessary to make it all work.

Although there is an increase in equipment, particularly ambulances and pumpers, we were assured that this equipment already exists and will not lead to significant capital expense at implementation.

We thank the Central Vermont Chamber of Commerce, the Public Safety Committee members and the leadership of your public safety agencies for the forward looking stance you all have taken relative to the future delivery of service for your communities.

Brian Searles
Dr. Gary Margolis

PRELIMINARY FINDINGS ON POTENTIAL FOR CONSOLIDATION OF EMERGENCY SERVICES IN NEWTOWNCITY, VERMONT

Executive Summary

The charge to the team taking a first outside look at the feasibility of a combined service delivery system for police, fire and emergency medical services deliver was to imagine that nothing exists at the present time; a "clean slate". From that perspective it certainly is possible to have one department or "authority" that delivers these services in the 80 square miles and for the approximately 28,000 people who live in the existing service delivery areas of Barre City, Barre Town, Berlin and Montpelier.

The Central Vermont Public Safety Authority Committee has taken bold and creative early steps to envision this possibility and to craft a document, with our help, that will serve as a starting point for discussion with the larger community. It is only a starting point.

In the end the best people available to facilitate the community discussion that must take place before implementation are those who are currently delivering these essential emergency services. They must believe, as we do, that these services can be delivered more effectively and efficiently by joining together. It has to be demonstrated to them and then to residents that this is in everyone's best interest and this report does not pretend to get the Committee, existing departments or the communities involved to that point. There is a long way to go and with that understanding these are some of the more significant conclusions that we have drawn through our work on this project.

Management - An Authority should be created through action of the four communities that would combine police, fire, EMS and communications functions under and Executive Director who is answerable to a Board of Directors, representative of the governing bodies of the four communities. Two primary functions, police and fire, would be headed by Chiefs. Managers would be employed for administrative and communications (dispatch) functions that would be answerable to the Executive Director. Emergency Medical Services would be headed by a Manager who reports to the Fire Chief.

Staffing - Including the aforementioned management personnel the Authority would be staffed by a total of 138 full-time and 85 part-time employees with an assumption that each part-time employee represents .4 full-time equivalent positions (FTE), for a total FTE of 172. The police division would consist of 51 full-time and 20 part-time officers, fire division 35 full-time and 50 part-time firefighters, EMS 21 full-time and 10 part-time emergency medical professionals, communications 26 full-time and 5 part-time dispatchers and administration 5 full-time employees including a Business Manager.

Stations - We envision four locations for combined station facilities; a central station in Berlin and stations in Montpelier, Barre City and Barre Town. The central station would also house Authority management and administrative functions. (Our team fully understands the reality of existing facilities and that another location for central station will likely be implemented in the near-term).

Advantages of Authority:

Flexibility of Deployment - Primary areas of patrol and first responder responsibility can be redefined without regard for municipal boundaries but, rather, guided strictly by strategic objectives such as response time, crime trends, and fire risk.

Quality of Service - The increased exposure to a variety of calls for service, complex investigations, building inspections, difficult medical emergencies and other matters will lead to a higher level of expertise for Authority members across the board. This will result in a higher level of service.

Leadership/Management Consolidation - This will lead to swifter and more effective response to both policy and service delivery decisions that affect people in more than one community.

Cost Controls - Efforts to reduce duplication of effort, equipment, supplies, communications and high level management show the potential to reduce costs.

Career Development - The larger department presents more opportunities for career enhancement from training (and cross-training) to promotions along with the opportunities to work in specialized areas within the major functions. This will aid recruitment and retention and add to the quality of service.

Next Steps - This preliminary review of the potential for the NewTownCity Public Safety Authority will now move to the discussion stage with both the Committee and the current management team that delivers these services from their municipal platforms. We will then wrap up our involvement by including information from those discussions that will likely amend this report. The Committee will likely have the need to have the further assistance of consultants to move toward implementation to ensure that full advantage is taken of existing assets.

However, we must reiterate that the best consultants going forward are those professionals who are currently delivering these services and the sooner they take co-ownership of this process the more likely it will succeed. It is then, and only then, that the residents of the four communities can engage and assess the potential for what we think is a potentially valuable public service organization.

NEWTOWNCITY, VERMONT PUBLIC SAFETY AUTHORITY
Proposed Staffing Levels

Administration:

Executive Director	1
Business Manager/Grants Administrator	1
Administrative Assistants	3

Police Division

Police Chief	1
2nd Level Managers (Capt., Lt.)	4
3rd Level Supervisors (Sgt.)	6
Police Officers (Patrol Officers, Detectives)	40
Part-Time Police Officers (20/.4 FTE)	8

Fire/EMS Division

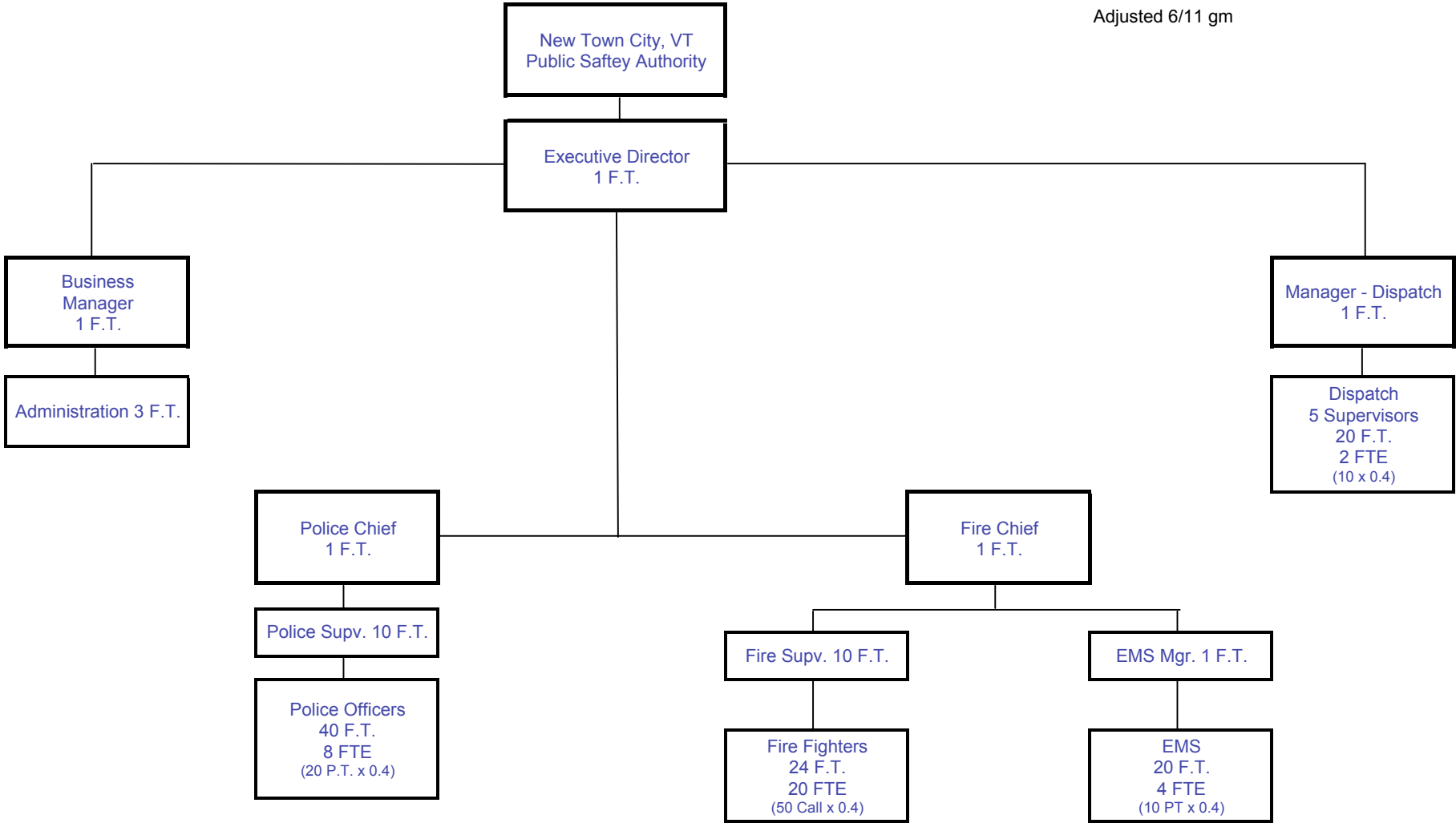
Fire Chief	1
Fire Management/Supervisors (Deputy Chief, Capt., Lt. etc.)	10
Firefighters	24
Call Firefighters (50/.4 FTE)	20
EMS Manager	1
EMS Professionals (EMT and Paramedic)	20
EMS Professionals, Part-time (10/.4)	4

Communications Section

Emergency Dispatch Manager	1
Dispatch Supervisors	5
Dispatchers	20
Dispatchers, Part-Time (5/.4 FTE)	2

TOTAL	Full Time - 138	138
	Part-Time - 85 (.4 FTE)	34
	Total FTE	172

Adjusted 6/11 gm



172 Total Public Safety FTEs

NEWTOWNCITY, VERMONT PUBLIC SAFETY AUTHORITY
Proposed Space/Equipment List

Central Station (HQ)

(Admin Offices for E.D, Police and Fire Chiefs, Emergency Dispatch,
Four Fire Bays, EMS Bay, training space, living quarters, and Police HQ, prisoner
processing, holding cells, evidence facility, estimate of square footage needed 20,000)

Tower Truck	1
Engine (Pumper, Ladder etc.)	1
Engine Rescue	1
Large 4-wheel drive SUV	1
ATV's	2
Ambulance (including spare)	4
Tanker (dependent on water supply issues)	2
Police Vehicles - Marked for Patrol	8*
Police Vehicles - Special Use, unmarked	4

Two Regional Stations (Downtown Districts, Three Bay, smaller office requirements,
living quarters, 3,000 sq. ft.) (Numbers reflect need of **each** station)

Engine (Pumper, Ladder)	2
Quint (w/ 75' ladder)	1
Ambulance	2
Brush Truck	1

One Regional Station (Barre Town, Websterville, Three Bays, small fire office
requirements, no living quarters, police office space, EMS Bay staffed by call force only,
3,000 sq. ft.)

Engine (Pumper, Ladder)	1
Quint (w/Ladder)	1
Tanker (dependent on water supply issues)	2
Ambulance	2
Brush Truck	1

* Marked police vehicles deployed to regional stations on regular basis. They represent a
literal "office on wheels" making fixed office space less important but most will be
deployed at regional stations.

STATE OF VERMONT
DEPARTMENT OF LIQUOR CONTROL
13 Green Mountain Drive
Montpelier, VT 05602

APPLICATION FOR SPECIAL EVENT PERMIT

Fee: \$25.00

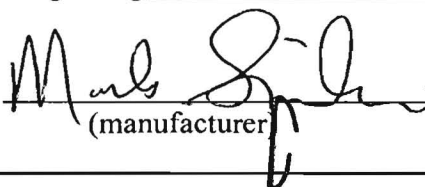
Check payable to Vermont Department of Liquor Control must accompany this application

Licensee name Artesano LLC mark Simakaski
d/b/a (802-584-9000)
Address: 6320 Scott Hwy
Town/City: Groton, VT 05046 Zip _____
Manufacturer's License No: 6929-001-MANU-01 Email: mark@artesanomead.com

1. Describe the special event: Touch of Vermont Holiday Gift Market
2. Location (specify defined area, include address of event): Defined area includes a 10 foot space at the Montpelier City Hall auditorium in the vending area of the market.

3. Date of event: 12/10/11

4. Hours of operation: Beginning 7:00 AM Ending 5:00 PM

Signed:  Date 10/29/2011
(manufacturer)

(circle one)

APPROVED

DISAPPROVED

Town/City Clerk signature

Town/City

Date

Vermont Liquor Control Board:

APPROVED

DISAPPROVED

(authorized agent)

(date)

*Report and Recommendations of the
Committee on Tasers
to the
Montpelier City Council*

November 2, 2011

Submitted by:

Jeffrey Dworkin (chair)
Polly Ellerbe
Zack Hughes (co-chair)
Marilyn Mode

Not joining, and submitting
a separate report:

Nick Marro

Table of Contents

Executive Summary	i-ix
Introduction and Conclusions	1
I. A General Orientation to Tasers	1
II. Weighing the Risks against the Potential Utility of Tasers in Montpelier	3
1. How Safe Are Tasers? The Research and the Views	5
2. The Widely-Recognized Dangers, Cautions and Limitations Pertaining To the Use of Tasers	9
3. Studies Indicate That Tasers: 1) Do Not Cause A Reduction in the Use of Lethal Force, 2) Do Cause an Earlier Resort to Higher Levels of Force, and 3) Are Frequently Recklessly Deployed in Violation of Accepted Standards.	13
4. The Montpelier Use-of-Force Reports and Their Meaning	15
5. The Montpelier Assault-on-Officer Reports and Their Meaning	16
6. Putting Our “Typical Force Scenarios” in a Taser Context	17
a) A Montpelier Case Example	
b) Comparing Montpelier to Some Other Vermont Communities	
7. The Community Views and the Police-Community Relationship	21
8. The Workers Compensation Argument	21
9. The Expansion of Municipal Liability Exposure	22
10. A Realistic Appraisal of the True Total Costs	23

III. The Police Department Has Not Proposed a Prudent and Protective Policy Regarding Tasers, Raising the Prospect of the Introduction into the Community of a Poorly-Regulated New Weapon.

24

A. The Introductory Language of the Proposed Policy Seeks to Make Its Provisions Legally Unenforceable By A Citizen Aggrieved By Police Use of Force.

B. The Proposed Policy Locates Tasers Dangerously Low on the Use of Force Continuum, Encouraging Early and Premature Resort to a Potentially Lethal Weapon

C. The Proposed Policy Chooses A Vague and Dangerously Permissive Standard To Govern When Tasers May Be Used on Subjects.

D. A High Policy Standard Regarding the Deployment of Tasers is Especially Important for Public Protection, in Light of the Low Standard Used by the Federal Court Regarding Allegations of Excessive Force.

IV. In Light of the Lack of Objective Showing That Tasers Are Necessary Here, There are Better, More Productive Ways to Spend the Money To Advance Public Safety

33

V. If the City Council Approves the Purchase of Tasers, The Following Preconditions To Their Purchase and Use Should Be Adopted

36

Executive Summary

Introduction

A committee of Montpelier residents was appointed by the City Council and charged to recommend whether the Council should approve buying Tasers for the city police force, and if so, to recommend any conditions, limitations or standards that should pertain. The Committee met weekly from May through October, 2011, taking various forms of evidence on the subject.

The Committee recommends that Montpelier not authorize the purchase of Tasers for the police. The Committee further recommends that should the Council decide to authorize the purchase, certain prerequisites should be in place before a purchase is made and the weapon is deployed, in order to increase community safety and confidence.

I. A General Orientation to Tasers

The Taser is a pistol-shaped weapon that fires two probes at a person (“probe mode”). The probes are connected to the Taser by wires, and when fired they embed in the person and deliver an electric charge of 50,000 volts. The electric charge is experienced as excruciating pain, full-body muscle contraction, and a loss of physical control. The Taser can also be pressed against the person (“drive stun” mode), which causes extreme pain without muscle contraction. The amount of electricity delivered by a Taser is 100 times that which causes intolerable pain in laboratory studies. Because the Taser probes are propelled by nitrogen (rather than by an explosive propellant), the device is subject to no government oversight or regulation. Further, the device has not been adequately studied to determine its effects on various human populations. The company refers to the device as “less lethal”. It is capable of causing death and serious bodily injury.

II. Weighing the Risks against the Potential Utility of Tasers in Montpelier

Strong arguments are made on both sides of the question whether to buy Tasers for the Montpelier police. There are hypothetical situations when a Taser could be useful. But the Committee was charged with making an “assessment of need” for the weapon here, in Montpelier; and to do that the Committee focused on what really happens here, not what can be imagined. Many communities have adopted Tasers, in and out of Vermont; many have not. The threshold question for the Committee was whether Tasers are necessary, advisable and appropriate in Montpelier, based on this city’s unique circumstances.

As a guiding rule for this analysis, the Committee looked to the highly respected International Association of Chiefs of Police (IACP), which states, in a position paper on “Use of Force”:

The National Law Enforcement Policy Center does not advocate the use of any specific non-deadly force weapons. The appropriateness of any such weapon depends largely on the needs and desires of each police department in the context of **the community in which it operates** and in accordance with the **service demands** and **typical force scenarios** faced by its police personnel. . . . A critical element

of that decision-making process is an assessment of the **limitations of each device** or technique, and the **potential for its abuse or failure**. [Emphases added.]

Chief Facos has advocated for Tasers based on his belief that: 1) there have been frequent-enough incidents where Tasers would have been the best option; 2) there have been frequent incidents of assaults on police officers in Montpelier; and, 3) Tasers would lower worker compensation claims. Our research presents a different picture regarding each of these points.

1. How Safe Are Tasers? The Research and the Views

The Taser company has maintained that the risk of death or serious injury from the device is extremely low. But after the company lost two multi-million dollar lawsuits, in 2008 and 2011, due to having insufficiently warned of the dangers of the device, it began to publish more realistic warnings about the device for its user-clients. In 2009, and again in 2010, the company warned users to curtail the use of Tasers to a very limited group of people, to very limited parts of the body, and to very limited situations. As a consequence of these new warnings, any report before 2009 on the dangers and utility of Tasers is outdated in that it likely underestimates the dangers of the device. In the new warnings:

1. The company now says that Tasers should not be used on people who are members of the high risk, or vulnerable, populations, including: those who are physically infirm, elderly, or pregnant; suffering from drug effects, alcohol effects, or cardiac disease; in mental health distress; and suffering one of a long list of pre-existing conditions. **Most of the subjects in typical “street” encounters are no longer safe targets for Tasers.**

2. The company now advises not to shoot at the chest, because of serious cardiac-related concerns. The company further warns not to shoot at the head, throat, chest/breast, known pre-existing injury areas, and eyes. "The preferred target areas are the lower center mass (below chest) for front shots and below the neck area for back shots." **Much of the body is now not safely targetable.**

3. The company now says that people especially at risk of serious injury or death are those who could fall and hit their heads, are on an elevated area, are restrained, are anywhere near a knife, are in motion, or are in water. **Many situations are no longer safe for Taser use.**

The number of deaths associated with Taser use is difficult to calculate. Amnesty International claims 349 such deaths from 2001-2008. Some regard this figure as low, others as high, but that the device has been a contributing cause of numerous deaths, and many more injuries, is undeniable. The company now concedes the risk of death associated with the device.

Single shots of Tasers are regarded by the U.S. Department of Justice as probably safe for "healthy, normal, non-stressed, non-intoxicated persons". But this healthy, normal population is not the one against whom the weapon is predominantly deployed. Most confrontational situations encountered by the police nationally, and virtually all encountered by the Montpelier police, involve either intoxicated or mentally distressed persons – two populations on whom the Taser company itself now warns against use of the weapon.

The company's new warnings likely understate the danger of the weapon. An analysis of various product safety studies that have been conducted on Tasers found that the likelihood of a study concluding Taser devices are safe was 75 percent higher when the studies were either funded by the manufacturer or written by authors affiliated with the company, than when studies were

conducted independently.

When all the cautions, prohibitions and limitations are accounted for, it is apparent that a **Taser may only be discharged against a healthy, sober, rational, and clear-headed non-elderly adult who is not pregnant, running, nor in a dangerous environment, and that the device must be capable of being reliably aimed at the abdomen or the back.** All current limitations show that the Taser is now a weapon of extremely limited safe applicability.

Added to this is the fact that Tasers have a high potential for erroneous deployment, with the possibility of tragic consequences. That is because an officer in the field, managing difficult circumstances, simply cannot know enough to know if it is safe to use a Taser. How can he or she know if a suspect has a heart condition, is pregnant, is intoxicated, mentally ill or cognitively impaired, to name just a few of the vulnerable populations on which a Taser must not be used?

A further risk for safe deployment is the fact that the probes from a Taser cannot be aimed as precisely as a gun or pepperball launcher, because the Taser probes move further apart as the distance they fly increases, at the rate of one foot for every seven feet of travel. This difficulty in accurate aiming means it is exceedingly difficult in the field to avoid hitting the prohibited areas of the body. As the company admits: “[T]his is not a precision aiming device. There will be many times when people are hit in head, chest, and eye.”

Overall, the unknowability of the health and circumstances of the subject, coupled with the inherent dangers and imprecision of the device, put police in a stressful conundrum: In the rapidly-evolving and perceptually challenging circumstances of police-citizen confrontation, the police cannot know as much as they need to know about the subject to be able to feel reasonably confident that the device can be safely deployed. As the Maryland Attorney General’s Report states: “[A] use-of-force option that normally is not deadly, may in some instances be lethal even where the officer had no intention of using lethal force, did not believe lethal force was necessary, and used the force tool in a manner that normally would not increase the risk of death”. All the warnings about, and all the trainings in the use of, the weapon cannot remove this dilemma for the officer and this danger to the public.

2. Studies Indicate That Tasers: 1) Do Not Cause A Reduction in the Use of Lethal Force, 2) Do Cause an Earlier Resort to Higher Levels of Force, and 3) Are Frequently Recklessly Deployed in Violation of Accepted Standards.

Taser proponents often assert that when the police have Tasers, the use of firearms goes down. Data from three departments in Arizona that serve 2.3 million residents show that this hypothesis is not true. This study showed no reduction in the use of firearms by police where Tasers were in the arsenal. It also showed that the presence of Tasers was associated with an earlier resort to a higher level of force against subjects.

This same conclusion was reached in a study of the Houston police. The Houston Chronicle reported in 2007 that “officers have shot, wounded and killed as many people as before the widespread use of the stun guns.” Thirty-five per cent of the Taser deployments led to no crime being charged.

And in a just-released study of Taser incidents in New York State, 60% of reported incidents using Tasers did not meet a criterion of aggression by the suspect or a risk of physical injury. More than 25% of Taser incidents involved shocks to the subject's chest area, in spite of the explicit warnings by the company that targeting the chest can cause cardiac arrest. 85% of tased subjects were neither armed nor believed to be armed.

Thus, the available data indicate that Tasers do not result in a reduced resort to lethal force, but that they do cause an earlier resort to higher levels of force where less severe force would suffice, thus exposing the citizenry to higher overall levels of force and attendant risks to life and health. The data also indicates an alarming lack of compliance with accepted standards governing the weapon's deployment. These data bear out the concern expressed in many studies and by numerous witnesses before the Committee, for the likelihood of "mission creep".

3. Are Tasers Right for Montpelier, in the Light of Our Own Data and Typical Force Scenarios?

The Committee analyzed various factors and data that bear on the decision whether there is a bona fide need for Tasers in Montpelier.

a) Use-of Force Reports. The committee analyzed police reports that document any use of force by police from the latter part of 2008 through June of 2011. These reports reveal that no party, neither officer or suspect, received a single serious injury in any of these incidents. In addition, 12 of the 15 incidents involved vulnerable populations or flight, which constitute populations and a situation in which Tasers are prohibited except in the most extreme circumstances. All fifteen incidents were handled competently and effectively by the police with their present array of skills and weaponry. It is apparent that we do not have "typical force scenarios" here that would warrant the addition of Tasers to our police arsenal.

b) Assault-on-Officer Reports. The committee was initially informed by Chief Facos that Montpelier had eight assaults on officers in 2008, and that this was the highest number of any Vermont city or town that reported that statistic. During Committee hearings he reduced this number to five. The committee analyzed documentation of assaults on officers from 2009 to date. They showed that four of the incidents involved no contact or injury whatsoever. Of the remaining 11, some minor injuries occurred, primarily in the nature of scrapes and pain. All the assaults were in the nature of simple assaults, none was aggravated. Again, the officers were able to handle all the incidents efficiently without serious injury to either party with the skills and weapons they have. Importantly, *every one* of these assault-on-officer cases involved an individual who was in a vulnerable population on which a Taser should not be used except when lethal force would be justified.

c) Different Communities, Different Choices. At Chief Facos's suggestion, the Committee interviewed the deputy police chief of Burlington and the police chief of South Burlington, both being cities which employ Tasers. For a contrasting approach, the Committee interviewed the chiefs of the Bennington and Middlebury police forces, both being towns which considered but declined to buy Tasers. It is clear that Montpelier's size, crime rate, arrests and typical force scenarios more resemble those of Bennington and Middlebury than those of the "more combative" environments of Burlington and South Burlington. .

d) A Deeply Divided Community. The community of Montpelier appears deeply divided over the issue of Tasers. This is borne out by the nearly even split in public opinion on the issue in this year's Doyle Poll. It is also noteworthy that most of the public comment at both the City Council's and the Committee's hearings on the matter indicated strong opposition to acquiring the weapon. Introducing this weapon in such a divided community, where the necessity for it has not been shown, is both unwarranted and could be harmful to the police-community compact, the most important asset of law enforcement.

e) The Workers Compensation Argument. Chief Facos asserted that Tasers will lower

our worker compensation claims. The Committee analyzed claims from 2008 to the present. These showed only minor injuries from any cause, and just one claim that led to a loss of work time, stemming from an officer stubbing his toe while walking from a roadway to a sidewalk. There was no incident underlying these claims in which the deployment of a Taser would have been appropriate, or in which its use would have avoided even the minor injuries for which claims were made.

g) The Expansion of Municipal Liability Exposure. The effect of the Taser company's recent and extensive limitations on its use is that the manufacturer has insulated itself from the kind of liability exposure it suffered in its 2008 and 2011 litigation losses. This "move" by the manufacturer now removes it as a "deep pocket" litigation target for product liability, and leaves police officers, municipalities and their insurers now standing alone in lawsuits alleging negligent use, excessive force, and substandard training and supervision.

h) The Real Costs. The cost of the weapon itself is only one part of the total cost of using Tasers. The Committee brought this up with Chief Facos, upon which he agreed to calculate the cost of the Taser units plus the prudent and necessary items mutually agreed upon, but the Chief did not produce such an estimate. Those agreed items and expenses include, for example, Crisis Intervention Team training, body cameras, defibrillators and data storage. The cost of these items is far above the cost of the units themselves. Any further consideration of Taser purchase by the Council should be preceded by a full and detailed calculation of all related costs, so that everyone, including taxpayers, can understand the true investment this weapon would require, in light of competing city needs and priorities.

III. The Police Department Has Not Proposed a Prudent and Protective Policy Regarding Tasers, Raising the Prospect of the Introduction into the Community of a Poorly-Regulated New Weapon.

A clear and specific use-of-force policy is in everyone's interest, citizens and police alike. As stated by the International Association of Chiefs of Police:

Police administrators should not be hesitant to develop comprehensive, strong, and definitive policies and procedures for fear that they may prove prejudicial to a future court assessment of an officer's conduct. In fact, **failure to adopt a use-of-force policy in clear and unequivocal terms will almost certainly have more serious consequences for the officer's agency and employing jurisdiction.**
[Emphasis added/applied.]

The policy that has been proposed by Chief Facos is the model policy provided by the Vermont League of Cities and Towns (VLCT), the insurance company which ensures Montpelier. This policy is primarily written to protect insurance companies from financial liability, not to provide sound police guidance, nor citizen protection from low standards. The policy uses vague and non-mandatory language, poorly defines its terms, offers a confusing and low standard of deployment for Tasers, and purports that citizens have no legal right to sue based on violations of the policy. The insurer's own representative noted that the company does not expect a police force to put their model policy "directly on the shelf", but rather to modify it to fit the community. Unfortunately, this model policy has been taken whole-cloth by Chief Facos, and not modified by him to fit the circumstances and values of this community.

Contrary to his formal request for Tasers for use in “violent encounters”, Chief Facos has, in his proposed policy, advocated the lowest Taser deployment standard used anywhere— that of “active resistance”, which can be satisfied by as little as a “stiffening” “hunching” or pulling away. The standard for use of a Taser here should be “a threat of imminent serious bodily injury,” otherwise known as a lethal force standard. This is the standard that is recommended by several of the organizations that have studied Tasers, as well as the several human rights-oriented attorneys who spoke to the Committee. Any lower standard would be an invitation to the abusive deployment of the weapon that the public most fears, undermining the police-community relationship.

A high deployment standard is also important in light of the fact that our Second Circuit Court of Appeals, which presides over federal court appeals from Vermont, has shown a disturbingly unprotective view toward citizens alleging excessive force by police. This has recently been demonstrated when the court found no constitutional violation in the recent case of the Brattleboro protesters who were tased while passively protesting at a development site. It is a case that all police witnesses, including Chief Facos, said was wrongly decided, and an attitude on the part of the court that Chief Facos conceded is of “concern” to him.

The Chief’s proposed policy would place Tasers on the use-of-force continuum on a par with pepperballs. This is too low in light of the potential lethality of the weapon. Tasers should be located immediately below firearms on the continuum, to recognize their dangerousness, to discourage abusive or premature deployment, and to protect the public.

IV. In Light of the Lack of Objective Showing That Tasers Are Necessary Here, There are Better, More Productive Ways to Spend the Money To Advance Public Safety.

The City is facing difficult choices, in light of the condition of its infrastructure, schools, and tax base. Given that the evidence demonstrates a wish for Tasers based on hypothetical scenarios but not a real and present need for the device, any further expenditure for law enforcement should be directed toward more effective remedies.

We recommend that Crisis Intervention Team training be required as part of Montpelier police training. Such training in handling mental health issues goes far beyond the Act 80 training that every Montpelier Police Department employee now receives. A strong majority of Committee witnesses, including most of those from the field of mental health, advocated for CIT training to enable police to identify mental health issues and de-escalate difficult encounters. The FBI is a strong proponent of the training, and Chief Facos endorses the idea.

An alternative to CIT training is the funding of a staff position of a police social worker. This person would be trained in crisis intervention techniques, and could accompany officers to a disturbance or be called there quickly in order to de-escalate a confrontational situation and decrease the likelihood of violence.

V. Should the City Council Approve the Purchase of Tasers, The Following Preconditions To Their Purchase and Use Should Be Adopted.

Should City Council, despite the Committee’s recommendation, approve the purchase of Tasers, it is critical that high standards, strict safety measures, extensive training, and methods for

heightened police accountability be implemented before such purchase and deployment. The following, culled from the major studies of Tasers, are essential preconditions to their acquisition and deployment by the Montpelier Police Department.

1. Require Crisis Intervention Team training: The Committee further recommends this training for our officers even if Tasers are not added to the police arsenal.

2. Create a police social worker position in the police force.

3. Require and develop in-depth police training in the use and dangers of the device: The major research regarding Tasers expresses virtually universal skepticism regarding the company's assurances of safety. There is likewise a universal recommendation that local police forces not rely solely on the company's in-house training in the device, but rather supplement it with more in-depth and objectively arrived-at training standards. Officer certification in Taser use should also include personal exposure to a full-force and full-duration(five-second) discharge.

4. Adopt an “imminent threat of serious bodily injury” deployment standard: Tasers should be subject to an “imminent threat of serious bodily injury” deployment standard. The lower “risk of harm” standard is more atmospheric than substantive, does not restrain abusive or premature deployment, and is insufficiently protective of the public.

5. Position Tasers immediately below firearms on the force continuum.

6. Equip officers with body cameras: Police must be equipped with body cameras, for the protection they offer to everyone involved and to the City itself. Body cameras require policy that requires they be “on” at the beginning of any “street” encounters. Chief Facos has no objection to equipping officers with body cameras.

7. Carry defibrillators in cruisers and require officer training and competency in their use: Tasers are especially dangerous for individuals with heart conditions or who are highly agitated, including the intoxicated and the mentally ill. Heart complications, such as ventricular defibrillation, are a serious concern and a prominent suspect in Taser-related deaths. The Committee and Chief Facos agree with the wisdom of placing a defibrillator in every cruiser. Officers must be trained and shown competent in its use.

8. Collect and preserve data indefinitely: The Committee believes that it is imperative that Taser-related data be preserved indefinitely. Chief Facos agrees with this.

9. Add pepper foam to the police arsenal, and consider other less lethal alternatives to Tasers: The Police arsenal should include pepper foam. This weapon was specifically developed to offset one of the limitations of pepper spray, being that its gasses can be drawn into a ventilation system. The Committee also recommends the police department investigate other, non- and relatively less-lethal weapons, such as projected bean bags, foam batons, and the newly-developed police devices that immobilize by means of intense light.

10. Create a Citizen Review Board: The Committee strongly recommends, and Chief Facos believes could be beneficial, the creation of a Citizen Review Board, to review use-of-force incidents. Such a board would not only be a helpful investigatory tool for the city, but would also help maintain or improve police-community relations, especially in light of the deep division of public opinion regarding Tasers. The Committee recommends such a board regardless of whether Tasers are acquired. This board would need sufficient resources, unrestricted access to information, and meaningful powers, for it to have credibility in the community.

11. Prohibit drive stun mode: The Committee recommends the prohibition of the device in drive stun mode, to prevent both the aggravation of an encounter and to make less likely the potential for abusive deployment of the device.

12. Prohibit tasing a fleeing or running subject: All major studies prohibit deploying Tasers on fleeing or running subjects, due to the increased risk of injury or death.

13. Use specific, descriptive and mandatory language in written policy: The proposed VLCT policy is replete with suggestive, non-mandatory language that does not protect the officer or the public. Terms such as “should”, “it is recommended”, “should consider”, and similar non-mandatory language should be replaced with mandatory terms (“must”, “shall”) when possible. The lack of such language fails to guide police and is an invitation to municipal liability.

14. Include in any policy the current policy’s humane and cautious principles regarding an escalating use of force: Our current Use of Force policy, on page one, contains several common-sense, humane and cautious principles that the proposed VLCT policy omits. These principles require using escalating force, and only that amount of force which is necessary to control the situation or persons. These principles should be incorporated into any proposed or future use-of-force policy, to protect the public and limit potential city liability.

15. Fully specify all populations and circumstances relevant to limitations on Taser deployment: The itemizing of the prohibitions listed earlier in this report, *including the cognitively disabled*, should be set out with specificity in any written use of force policy.

16. Require warnings when possible before deployment.

17. Prohibit use of a taser as a pain compliance weapon or general force tool.

18. Prohibit multiple shots and continuous or prolonged exposure except where lethal force would be justified: Taser shocks should be as brief as possible. The death rate of subjects rises when multiple or continuous shocks are used..

19. Prohibit Taser use on subjects in restraints except where lethal force would be justified.

20. Avoid impairment of respiration: Respiratory complications are associated with

Taser use. Following Taser deployment, an officer must not employ a restraint method that could impair a subject's respiration.

21. Provide emergency medical care immediately after *all* taser use.

22. Monitor tased subject's health closely while in custody: Studies indicate that the in-custody death rate rises after the introduction of Tasers.

23. Reporting, supervision and monitoring: All Taser incidents must be reported on a use-of-force form extensively detailing events leading up to and following the discharge.

24. Supervisors should respond to the scene of any Taser deployment as soon as possible.

25. Conduct rigorous investigation following each deployment: A supervisory-level or higher inquiry must be conducted to determine the appropriateness of every deployment and whether there was strict adherence to policy and training. External investigation, by Citizen Review Board or otherwise, occur when a subject dies or is seriously injured, when there has been a substantial deviation from policy or training, when the subject is a restrained, or when a Taser is deployed against a member of a vulnerable population as defined in this report.

26. Monitor Taser use by the agency: The police force should use a tracking database that is capable of maintaining detailed information as to each device and each deployment, can reveal the circumstances of every Taser deployment, and can show the extent to which officers are relying on the device compared to other forms and methods of control. This information and data must be available to the public.

Report and Recommendations

Introduction and Conclusions

In the spring of 2011, the Montpelier City Council appointed six residents¹ to a committee to investigate and make recommendations regarding an issue which has been before the Council for several years – whether to grant the request of the Police Chief for funding to purchase fourteen electronic control devices (“Tasers”, “ECWs” [electronic control weapons], “ECDs” [electronic control devices], “stun guns”) for distribution to and use by officers in the police force. The appointees were selected from city residents who volunteered for the task. The Committee met weekly from May to November of 2011, hearing from experts, community leaders, and members of the public; reviewing numerous research and reports on Tasers; reviewing various video testimonies on the subject; and interviewing others with relevant information. The Committee deeply appreciates the scores of individuals who gave of their time to inform the Committee on the issues, by direct testimony, telephone interview, email and teleconference. The Committee is especially appreciative of the many Tuesday evenings Chief Facos devoted to this effort. Although this report reflects some differences of view between the Committee and the Chief, we were fortunate to have his strong advocacy a part of our process, and we are fortunate to have his dedicated leadership of the Montpelier Police Force.

The Council’s charge to the Committee was that it recommend:

- 1) whether the Council should approve the purchase of Tasers by the Police Department, and
- 2) if so, under what conditions, limitations and standards.

This report answers those questions in that order, followed by certain specific recommendations. It represents the views of four of the five Committee members. A separate minority report will accompany this one. The Committee concludes:

Recommendation 1: Montpelier should not purchase Tasers for the police.

Recommendation 2: Should the City Council authorize the purchase of Tasers notwithstanding the Committee’s recommendation, then certain conditions and prerequisites should be implemented prior to purchase and deployment in order to increase safety and community confidence.

I. A General Orientation to Tasers

The Taser (the most common brand of ECW) is a pistol-shaped, hand-held, battery-

¹ One Committee member resigned in September.

powered device that can be either fired at or pressed against an individual, discharging 50,000 volts of electricity into the subject. In its “probe” mode, two barbed darts are fired at the subject, typically from a distance of up to 21 feet. The darts are connected to the base unit by electrical wires. When both barbs successfully embed in the subject’s body, the Taser, wires and subject’s body complete an electrical circuit, causing a discharge of electricity into the subject. Each electrical discharge lasts for a predetermined five-second interval or, at the officer’s choice, for a continuous, indefinite length of time. In the probe mode the device causes excruciating pain, full-body muscle contraction, loss of physical control, immobilization and falling. In its “drive stun” mode, the base unit makes direct contact with the body. The electrical shock in this mode does not cause muscle contraction and physical immobilization; rather, it is strictly a pain-compliance device in this mode, inducing extreme pain continuously for as long as the device makes direct contact with the person’s body. The Police Executive Research Forum has warned that Tasers used in this manner “may have limited effectiveness” – it can cause the exacerbation of a confrontational situation – and so has discouraged police forces from using Tasers in the drive stun mode, although some forces still permit it, and the company still endorses use of Tasers in this manner.

There are misconceptions as to the force of the electric charge of a Taser.² The Taser company publishes the assertion that the X26 model, which is the one sought by Chief Facos, delivers an *average* current of 2.1 milliamps. However, a Taser doesn’t deliver its charge to the subject as an average, but rather as a series of pulses, which series is made possible by a capacitor that, like a bucket, stores power for each pulse. Thus, tased individual experiences the actual “delivered charge”, which for each pulse is approximately 100 micro-coulombs. To put this in perspective, laboratory experiments of human subjects show that intolerable pain is felt at 1.0 micro-coulombs.

In their original form, the Taser relied on a gunpowder-fired probe cartridge, and because of that explosive propellant the device was subject to federal regulation and oversight by the Bureau of Alcohol, Tobacco and Firearms and Explosives. However, since 1994 the the Taser company has manufactured the cartridge with nitrogen as the propellant, thereby removing the device from all meaningful government oversight and regulation.³ It is conceded by all interested parties, including the company, that the device has not been adequately studied to determine its effects on various human populations.

Tasers are commonly referred to as “less lethal” weapons, indicating they are considered to have less potential lethality than a firearm; they are nevertheless capable of causing death and

² The Committee’s attention was called to this issue by John Burton, a plaintiff’s attorney from Pasadena, California, who won the first successful verdicts against the Taser company, in 2008 and 2011. The explanation of the way the Taser functions electrically, which follows, is taken from Appendix A of the Braidwood Inquiry, a Canadian government study of that country’s use of Tasers, conducted following the 2007 death of a man who was tased at the Vancouver Airport.

³ The Consumer Product Safety Commission has the legal power to oversee the device, but has conducted no testing of it, nor offered any opinion as to its safety.

serious bodily injury.

II. Weighing the Risks against the Potential Utility of Tasers in Montpelier

Strong arguments are made on both sides of the question whether or not it would be helpful and prudent to add this weapon to the Montpelier police arsenal. On the one hand is the forceful position that both citizens and officers are protected by Tasers, because they may handle some police-citizen encounters in a manner that controls a difficult situation and subdues a violent individual without serious injury to either subject or officer, or without the resort to a firearm. A companion argument by proponents is that Tasers would lower police workers compensation claims. On the other hand, strong arguments are made that the device is unnecessary here, given: the nature of our crime statistics, the proven ability of the police to handle confrontations effectively and safely with its present skills and weaponry, the inherent dangerousness of the weapon, the ease with which the weapon can be abused, the temptation to make early resort to a Taser (“mission creep”) rather than rely on traditional non-lethal weapons and crisis intervention methods, the true costs of the weapon beyond simply its purchase price, and the effect acquiring this device may have on police-community relations.

It is indisputable that there are hypothetical situations of police-citizen confrontation in which Tasers might be helpful as a control device. In his testimony before the Committee, Police Chief Tony Facos offered frequent descriptions of such possibilities, and even had he not, it takes little effort to imagine such situations occurring anywhere, including here. But if simply being able to imagine and describe dangerous situations where a Taser could be useful were a sufficient and determining factor in the City Council’s decision-making, this Committee would never have been appointed. The City Council, like many around the country, has wrestled with this issue. This Committee was appointed because this decision is far more complex, difficult and multi-factorial than simply whether a situation could arise here in which a Taser could be useful. The complexity of this decision is reflected in the fact that while many cities, from Los Angeles to Chicago and Vermont communities such as Burlington and Barre and Brattleboro and St. Albans have adopted Tasers, many others, from San Francisco to Memphis and Vermont communities such as Bennington, Middlebury, Waterbury, Barre Town and the Washington County Sheriff’s Department⁴, have not.

As will be seen below, the Committee studied the major research and reports nationwide that have been conducted on Tasers. However, the relevant and overarching question that this

⁴ Sheriff Hill of the Washington County Sheriff’s Department was interviewed by a member of the Committee on July 14, 2011 by telephone. He said that although he considers the Taser an “excellent tool”, he has concluded: “I haven’t felt the need for them here”. The typical police-citizen encounter by the Sheriff’s Department involves vehicle stops such as for drunken driving, as well as the transport of prisoners, mental health commitments and juveniles – precisely the typical police-citizen scenarios that generate the use of force on the part of the Montpelier Police Department, as demonstrated by a survey of Montpelier police incident reports, set out *infra*. The Sheriff’s deputies are equipped with the same weapons as the Montpelier police officers and, like the Montpelier police, they have not had many work injuries, and no significant ones, from forceful encounters. See *infra*.

report seeks to answer is not how popular Tasers are among law enforcement agencies around the country or in Vermont, nor whether they could be beneficial in certain extreme circumstances, but rather whether they are advisable and appropriate here, in *this community*, at *this point in time*. As stated by the Maryland Attorney General’s Task Force on Electronic Weapons (“the Maryland Report”):

In deciding whether to add ECWs as a force option, the agency and community must recognize that the inclusion of ECWs will have an impact on an agency’s use-of-force program beyond simply adding a new force option. Agencies and communities that fully consider the many facets of adding ECWs will be in a better position to determine if the tool is right for their community.⁵

With that in mind, it will be seen that this report pays special attention, and gives special emphasis, to our own unique circumstances as a community. A helpful framework to begin that discussion comes from the well-respected International Association of Chiefs of Police (“the IACP”). In a position paper titled “Use of Force”, the IACP’s National Law Enforcement Policy Center states:

The National Law Enforcement Policy Center does not advocate the use of any specific non-deadly force weapons. The appropriateness of any such weapon depends largely on the needs and desires of each police department in the context of **the community** in which it operates and in accordance with the service demands and **typical force scenarios** faced by its police personnel. . . . A critical element of that decision-making process is an assessment of the **limitations of each device** or technique, and the **potential for its abuse or failure**. [Emphases added.]⁶

The Committee made use of this standard as a lodestar in assessing the need and appropriateness of acquiring this weapon, although, as shown below, other factors also entered into the equation. Chief Facos, both before City Council and the Committee, proposed that there exists a strong need for Tasers here. He based his view on what he believed was the safety of the weapon, as well as what he asserted was a history of frequent incidents when the police need to subdue combative subjects in circumstances where a Taser would have been the preferred and prudent force option. He also based his view on what he believed were frequent incidents of assaults on

⁵Maryland Report at 17. This is the most thorough of the various studies on Tasers, and the City Council is encouraged to read it for a foundational understanding of the subject. Other studies that the Committee found especially competent are the reports of: the American Civil Liberties of California, the National Institute of Justice, Amnesty International, the International Association of Chiefs of Police, the Police Executive Research Foundation, the American Civil Liberties Union of Arizona, and the Braidwood Inquiry (Canada). All are referenced in the bibliography following this report.

⁶ Even the Taser company, which has to be regarded as highly motivated by a pecuniary interest to see its product disseminated as widely as possible, mirrored this individualized community approach when it stated, in its training manual: “Each agency is responsible for creating their own use-of-force policy and determining how Taser devices fit into their use-of-force matrix based on legal and community standards”.

police officers here. Last, he based his view on his belief that Tasers would lower police workers compensation claims. The Committee investigated each of these claims by doing extensive research into the safety and limitations of the weapon. The Committee also requested, and received, the department's use-of-force reports and assault-on-officer reports for the past four years, and the department's workers compensation documents for the last several years. This research, and these documents, present a different picture.

1. How Safe Are Tasers? The Research and the Views

The Taser company has steadfastly advocated the safety of the device, maintaining that the risk of death or serious bodily injury is extremely low. Over the nearly two decades since the device has been manufactured in its current general form, the company has assured potential users that Tasers present no significant safety concerns. When it could not achieve an involuntary dismissal of a lawsuit, the company has, over much of the last decade, avoided judgments against it by settling such cases out of court, generally with a confidentiality agreement regarding the amount of the settlement. For that reason it could boast, somewhat disingenuously, that it had never lost in court. That stance changed after 2008, when a federal court jury held the company liable for approximately \$6.2 million in the case of a man who was tased five times by five officers while effecting his arrest.⁷ A second jury verdict against the company, for \$10 million, was awarded for the 2008 death of a 17 year-old boy, from cardiac arrest, after he was tased in a Charlotte, North Carolina convenience store for 37 continuous seconds and then an additional 5 seconds.⁸ These verdicts were based on the failure of the company adequately to warn of the inherent dangers of the weapon.

On the heels of these verdicts, the company began to publicly recognize more fully the dangerousness of the device, in a series of warnings and alerts beginning in 2009.⁹ Technically, the company had made an earlier recognition of the possibility of dangerousness when, in a Form 10-K Annual Report for the year 2005 which it filed with the Securities Exchange Commission, it stated its product "may result in serious, permanent bodily injury or death to those involved. Our products may cause or be associated with these injuries". But the 2009 and 2010 post-verdict warnings by the company went far further and published them in detail to its user-clients. In its September 30, 2009 training alert, it warned:

Physiologic or Metabolic Effects. The ECD can produce physiologic or metabolic effects which include, but are not limited to, changes in: acidosis; adrenergic states; blood pressure; calcium, creatine kinase ("CK"); electrolytes (including potassium), heart rate and rhythm; lactic acid; myoglobin; pH;

⁷ *Heston et al. v. City of Salinas, TASER International*. Post trial, the court omitted the jury's \$5.2 million award of punitive damages but it retained the compensatory damages and upheld the verdict.

⁸ *Fontenot v. TASER International, Inc.* The City of Charlotte avoided trial by settling with the plaintiff for over \$600,000.

⁹ These new warnings require a reevaluation of earlier reports and research that may underestimate the dangers associated with Tasers.

respiration; stress hormones or other biochemical neuromodulators (e.g., catecholamines). . . Adverse physiologic or metabolic effects may increase risk of death or serious injury.

Higher Risk Populations. ECD Use on a pregnant, infirm, elderly, small child, or low body-mass index (BMI) person could increase the risk of death or serious injury. ECD Use has not been scientifically tested on these populations. The ECD should not be used on members of these populations unless the situation justifies possible higher risk of death or serious injury.

Physiologically or Metabolically Compromised Persons. Law enforcement personnel are called upon to deal with individuals in crises that are often physiologically or metabolically compromised and may be susceptible to arrest-related death (“ARD”). The factors that may increase susceptibility for an ARD have not been fully characterized but may include: a hypersympathetic state, autonomic dysregulation, capture myopathy, hyperthermia, altered electrolytes, severe acidosis, cardiac arrest, drug or alcohol effects (toxic withdrawal, sensitization to arrhythmias, etc), alterations in brain function (agitated or excited delirium), cardiac disease, pulmonary disease, sickle cell disease, and other pathologic conditions. These risks may exist prior to, during, or after law enforcement intervention or ECD Use, and the subject may already be at risk of death or serious injury as a result of pre-existing conditions, individual susceptibility, or other factors. In a physiologically or metabolically compromised person any physiologic or metabolic change may cause or contribute to death or serious injury. Follow your agency’s Guidance when dealing with physiologically or metabolically compromised persons.

As to people in serious mental health and drug-related distress, i.e., subjects who are “exhibiting symptoms of exhaustion, distress or agitated/excited delirium”, the company stated the following month: “These subjects are at significant risk of arrest-related death.” Also new was the warning: “The primary risk of injury or death during ECD deployment is risk related to falls.” Even these cautions by the company must be taken with a concern for possible underestimation of the dangers of the device, in light of a 2011 scientific study of 50 Taser-related research studies that concluded: “These data demonstrate that studies funded by Taser International or written by authors affiliated with the company are nearly 18 times more likely to conclude that Tasers are safe. Research supported by Taser International may thus be significantly biased in favor of Taser safety.”¹⁰

Earlier in 2009, the American Medical Association had concluded:

Although [Taser] activation in normal volunteers appears to be very safe, these studies do not sufficiently reproduce the risks of Taser exposure among criminal

¹⁰ Azadani, MD, Teng, MD, et al., “Funding Source and Author Affiliation in Taser Research Are Strongly Associated with A Conclusion of Device Safety” (Am Heart J 2011; 162:533.7)

suspects, in whom coexisting medical and psychiatric conditions, alcohol and drug use, and other factors are often present. Human volunteers report that [Taser] exposure is an extremely unpleasant experience, inducing both physiologic and psychological stress. Some experimental studies have begun to address these confounding factors . . . Such studies cannot fully evaluate the responses of individuals who are confrontational, have taken drugs, or are desperate for escape, highly agitated, and combative.¹¹

The previous year, a report by Amnesty International identified approximately 350 Taser-proximate deaths since 2001, noting that “most of the individuals who died were agitated, disturbed and under the influence of drugs, and/or had underlying health problems such as heart disease.”¹² Some reviewers found this an exaggerated figure, others put the correct number at 459. While Amnesty did not claim there was a proven direct causal relationship in each of these cases between Tasers and the deaths that followed deployment (such causal relationship being difficult to determine by a medical examiner), most research reports on Tasers have inferred a causal relationship as to a significant portion of those deaths. In many of these deaths, cardiac arrhythmia is a prime suspect. A 2006 study of people who died following tasings found that 54.1% suffered from cardiovascular disease and 78.4% showed the presence of illegal drugs.¹³ As stated in Canada’s Braidwood Inquiry: “Although there is often a lack of physical evidence on autopsy to determine whether arrhythmia was the cause of death, if a person dies suddenly and from no obvious cause after being subjected to a conducted energy weapon, death is almost certainly due to an arrhythmia”.¹⁴

The Maryland Report took a more nuanced approach to arrive at the same conclusion, saying: “[T]he Task Force did not determine that the medical community has concluded that the ECW’s electrical impulse causes a lethal arrhythmia. However, the Task Force did find sufficient consensus that secondary factors from the restraint and incapacitation caused by an ECW (e.g., a fall or stress caused by being shocked) may cause serious injury or death.”¹⁵ The Braidwood Inquiry goes on to summarize other health hazards from use of Tasers:

The risk of ventricular fibrillation increases significantly in several circumstances – if the subject has cardiovascular disease or in thin subjects who have a smaller skin-to-heart distance. The intense pain, coupled with anxiety and stress, can cause an outpouring of adrenaline that can stimulate the heart and lead to dangerous arrhythmias. Skeletal muscle contractions can lead to acidosis,

¹¹“Use of Tasers by Law Enforcement Agencies”, June, 2009, available at

www.policeone.com/policeone/data/pdfs/Taser_ecd_resolution.pdf (“AMA report”)

¹² “‘Less Than Lethal’? The Use of Stun Weapons in Law Enforcement”, (hereafter, “Amnesty Report”), Dec. 2008, available at <http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf>.

¹³ Strote, J., et al., *Taser Use in Restraint-Related Deaths*, Prehospital Emergency Care, Vol. 10, No.4, pp. 447-450 (2006).

¹⁴ “Executive Summary and Recommendations”, at 6. Available at <http://www.braidwoodinquiry.ca/report/>

¹⁵ Maryland Report at 10-11.

which affects the electrolyte balance, making the heart more susceptible to ventricular fibrillation. Also, an electrical current coinciding with the T-wave peak may induce fibrillation with a threshold 25 or more times lower than at other times in the heartbeat cycle. Finally, there are several risks associated with deployment against a subject who is wearing an implanted pacemaker or defibrillator.

Several researchers have raised concerns that the electrical current from a conducted energy weapon may induce spasm in the muscles of respiration (diaphragm and intercostal muscles), interfering with the subject's ability to breathe. This could, in the case of prolonged deployment, lead to acute respiratory failure or acidosis. The body's natural response to acidosis is to hyperventilate, which can be frustrated if the subject is lying face down, if pressure is applied to the chest or neck area, or the officer's attempt to restrain the subject results in the subject struggling. The weapon's electrical current might also cause muscle damage (rhabdomyolysis), which can lead to cardiac arrest or acute renal (kidney) failure.¹⁶

The above shows the approach of those reports on Tasers that are at the more cautious end of the spectrum. A more permissive approach is that of the National Institute of Justice ("the NIJ Report"), an agency within the U.S. Department of Justice, which states: "There is no conclusive medical evidence in the current body of research literature that indicates a high risk of serious injury or death to humans from the direct or indirect cardiovascular or metabolic effects of short-term CED exposure in **healthy, normal, nonstressed, nonintoxicated persons**" (emphasis added.).¹⁷ What is important about this statement is that its population-restricting qualifiers have the effect of excluding most of the actual individuals and circumstances of the vast majority of police-citizen confrontations. As the IACP notes, these are "the very individuals most likely to come into contact with the police."¹⁸ The NIJ made these population restrictions because it found that Tasers contribute to stress that can exacerbate blood pressure and heart rhythms, and so pose special dangers for the intoxicated, mentally ill and individuals with an underlying medical condition.¹⁹ It also concluded that there is simply too little known about this, because the human studies to date have been small, and only involving healthy subjects, "so of questionable value".²⁰ Notwithstanding the cautions by the NIJ and others against deploying against vulnerable populations, one study, of 1183 tasing cases, found that alcohol and drug intoxication were present in 49.5% of the cases.²¹ Similarly, an October, 2011 report by the New York Civil Liberties Union found that 40% of Taser incidents in that state involved vulnerable

¹⁶ Braidwood Inquiry at 6-7.

¹⁷ "Study of Deaths Following Electro Muscular Disruption", NIJ Special Report, May 2011, at viii.

¹⁸ IACP National Law Enforcement Policy Center, *Electronic Control Weapons: Concepts and Issues Paper*, August, 2005, at 4.

¹⁹ NIJ Report at 18-20.

²⁰ NIJ Report at 20.

²¹ Bozeman, W. et al., Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects, *Ann. Emerg. Med.* (2008), at 4.

populations.²²

Various studies document not only the risks to life from Tasers, but also various injuries due to them, some being complications of pre-existing injuries and conditions, and many others due to the subject collapsing forward onto the embedded probes during the full-body muscle contraction. And there are also indications of Tasers causing cognitive deficits. An Illinois study of tased and non-tased police officers concluded: “Profile analyses compared neuropsychological performances and found significant differences in profiles of Tased and non-Tased participants for the domains of processing speed, attention, memory, and executive function.”²³

Most police encounters, and virtually all that occur in Montpelier, involve (as will be shown below) either intoxicated or mentally distressed persons, both being vulnerable populations. It can be said that Tasers are deemed relatively safe *except* with regard to the individuals on whom they are primarily used. The question of whether to acquire and deploy Tasers in Montpelier raises serious life and health concerns for the subjects in almost all cases that comprise Montpelier’s “typical force scenarios”.

2. The Widely-Recognized Dangers, Cautions and Limitations Pertaining To the Use of Tasers

The IACP policy, *supra*, sets out a further criterion in deciding whether to acquire a weapon: “A critical element of that decision-making process is an assessment of the limitations of each device or technique, and the potential for its abuse or failure.” Every report on the Taser, whether from law enforcement interests or from civil and human rights organizations or from the Taser company itself, recognizes the dangerousness of Tasers, and proscribes its use in certain situations and locations, against certain classes of individuals (“vulnerable populations” or “at risk” individuals), and on certain parts of the body. Barring an emergency where there is not other way to prevent death or serious bodily injury, it is forbidden to use a Taser on these individuals.²⁴

- elderly
- children
- physically frail or infirm
- alcohol- or drug-intoxicated
- serious mental disturbance
- hearing impairment or cognitive disability²⁵

²² “Taking Tasers Seriously”, available at http://www.nyclu.org/files/publications/nyclu_TaserFinal.pdf

²³ See Bagley, A., “The Neurological Effects Associated with Taser Administrations” (2008).

²⁴ This list of limitations is culled from the major studies of Tasers and from the company’s own warnings.

²⁵ The intoxicated and mentally ill are widely recognized among the populations especially vulnerable to death or serious bodily injury from Tasers. Tina Wood, a representative of Disability Rights Vermont, a non-profit designated by the governor of Vermont to assure compliance with the federal disability rights acts, made the important point to the Committee that many of the disabled are similarly vulnerable, due to conditions such as cognitive impairment, deafness, and language processing problems. The Committee agrees with the Coalition, and so includes the disabled among the categories of vulnerable populations.

- cardiac condition, pacemaker, seizures, sickle cell, pulmonary disease, or other significant disease; also osteopenia, osteoporosis, spinal injury, previous muscle, disc, ligament, joint, bone or tendon damage or surgery
- pregnant
- thin physique
- highly agitated (“excited delirium”)²⁶

Forbidden circumstances regarding a subject include:

- flight or running
- operating a motor vehicle or machinery
- near flammable substance
- in water or mud
- standing on a height (ledge, roof, etc.)
- restrained, handcuffed, incapacitated or immobilized

And most of the frontal area of the body is forbidden for targeting, including:

- head
- face
- neck
- chest
- groin and genitals

As a practical matter, these limitations and prohibitions leave only the belly (“lower center mass”) and legs as frontally targetable areas of the body. The back of an individual is considered a much safer target zone than the front. However, in light of the proscription against using a Taser on a running/fleeing person, it is highly unlikely that an officer would have the opportunity to discharge a Taser into the back of a stationary individual. A further limitation is that the device is not effective against a subject wearing heavy clothing.

Nor is this a precise weapon to aim. Unlike a firearm or a pepperball launcher, which fire a single projectile and can be aimed with a fair degree of precision, a normal Taser cartridge, with a 21-foot range, fires two darts that spread vertically at the rate of one foot for every seven feet of travel. Thus, following the universal warning not to aim above “lower body mass” (the belly), firing at a target fifteen feet away would create a two-foot spread of the probes where they hit the body. To expect an officer in the field, under difficult and perceptually challenging

²⁶ The American Medical Association describes “excited delirium” as follows: “Although not a validated diagnostic entity . . . , ‘excited delirium’ is a widely accepted entity in forensic pathology and is cited by medical examiners to explain the sudden in-custody deaths of individuals who are combative and in a highly agitated state. Excited delirium is broadly defined as a state of agitation, excitability, paranoia, aggression, and apparent immunity to pain, often associated with stimulant use and certain psychiatric disorders. The signs and symptoms typically ascribed to ‘excited delirium’ include bizarre or violent behavior, hyperactivity, hyperthermia, confusion, great strength, sweating and removal of clothing, and imperviousness to pain. Speculation about triggering factors includes sudden and intense activation of the sympathetic nervous system, with hyperthermia, and/or acidosis, which could trigger life-threatening arrhythmias in susceptible individuals. . . . The intense pain associated with [Taser] exposure, the psychological distress of incapacitation, and hazards associated with various restraint methods also could contribute.” “Use of Tasers by Law Enforcement Agencies” (2009), pp. 6-7, available at http://www.policeone.com/policeone/data/pdfs/Taser_ecd_resolution.pdf

circumstances, to be able to reliably calculate his/her distance from the subject, as well as the spread of the darts at the point where they will hit the subject's body, all the while avoiding the chest and above while also trying to hit a leg but at the same time avoid the groin and genitals, is to expect too much. The Taser company has, since 2009, recognized as much. In its training alert of October 15, it called attention to "the reality that an arrest situation is fast moving and dynamic, and that exact shot placement in a preferred target zone is not always going to be possible. In addition, it may not even be possible to intentionally aim the ECD, but rather point and shoot."²⁷

Thus, the limitations on targetable body areas, coupled with the imprecision of the aim of the device, will mean that an officer deploying the weapon will do so with the substantial risk of hitting the subject in a proscribed area of the body, with an unacceptable risk of serious injury or death. Even more to the point, the company said, in an October 29, 2009 customer teleconference: "[T]his is not a precision aiming device. There will be many times when people are hit in head, chest, and eye"²⁸ [Emphasis added.]

When all the cautions, prohibitions and limitations are accounted for, it is apparent that a Taser may only be discharged against a healthy, sober, rational and clear-headed adult non-elderly subject who is not pregnant, running, nor in a dangerous environment, and that the device must be able to be reliably aimed at the abdomen ("lower center mass") or the back. The only exception to the limitations as to the subject and the surrounding circumstances occurs when there exists an imminent threat of death or serious bodily harm to someone. Overall, the extensive limitations on and imprecision in the use of the Taser render it a weapon of **extremely limited safe potential applicability**, as well as one that carries with it a **high potential for erroneous deployment** and potentially tragic consequences. That is because **an officer in the field, managing difficult circumstances, simply cannot know enough to know if it is safe to deploy the weapon**. He or she often cannot know, for instance, when someone has a heart condition, or is intoxicated, or mentally ill, or cognitively impaired, or pregnant, or subject to any of the host of other conditions that must be, but often cannot be, known before a deployment. As the Stanford Report notes:

[I]n most circumstances, an officer will find it nearly impossible to anticipate whether a subject suffers from any of the conditions listed. For example, except where pregnancy is fairly advanced, an officer is not likely to know a woman is pregnant. No officer would likely be able to discern that an individual suffers from a pre-existing injury or condition such as osteoporosis, osteopenia, spinal injuries, diverticulitis, or previous muscle, disc, ligament, or tendon damage. An officer is unlikely to know whether a subject suffers from a respiratory impairment such as asthma, or from a pre-existing cardiovascular condition.²⁹

²⁷ Taser Training Bulletin 15.0 Regarding Medical Research Update and Revised Warnings" at 2.

²⁸ Notes of the teleconference hosted by the company, which fielded clients' questions and concerns following the company's release of Training Bulletin 15.0.

²⁹ Stanford Report at 6.

Moreover, with respect to pregnancy, the Taser company warns against use of a Taser on a pregnant woman because of the risk that she would suffer from involuntary muscle contractions, thereby increasing the risk that she will fall and damage the fetus.³⁰

The Maryland Report sets out the unknowable features of a subject's serious mental illness:

Maryland mental health advocates urged in testimony to the Task Force that priority should be placed on integrating crisis intervention and de-escalation techniques into law enforcement use-of-force policies and procedures. Mental health experts noted that police are often called as first responders by family members to deal with emotionally disturbed individuals who display extreme behaviors. In such crisis situations, emotionally disturbed individuals are often at an impaired level of consciousness; they may not know who or where they are; they may be delusional, anxious, or frightened; and they may be unable to process or comply with an officer's commands. When police arrive, such individuals can become even more anxious and appear even more dangerous.

The unanimous position of mental health experts is that the best practice in such situations is to de-escalate the agitated suspect with a crisis intervention approach instead of a typical command-and-control approach. This type of crisis intervention approach is used safely and effectively in numerous police departments nationwide and a few Maryland jurisdictions.³¹

The Maryland Report further notes that this unknowability presents a police officer with a "unique and difficult conundrum":

[T]he challenge for law enforcement in avoiding ECW use against persons at heightened risk of injury is twofold. First, more research is needed to determine which populations are at a heightened risk of death or injury and the extent of that risk. Second, in many situations it may not be readily apparent to a law enforcement officer faced with a rapidly evolving situation whether an individual falls within one of these groups. . . . *[A] use-of-force option that normally is not deadly, may in some instances be lethal even where the officer had no intention of using lethal force, did not believe lethal force was necessary, and used the force tool in a manner that normally would not increase the risk of death.*³² [Emphasis added.]

It is for this reason that the Vermont State Police and Disability Rights Vermont, the organization named by the governor to oversee enforcement of the federal statutes protecting the developmentally disabled and the mentally ill, have just entered into an agreement following the

³⁰ *Id.*

³¹ Maryland Report at 40

³² Maryland Report at 37

tasing of a 23 year-old Vermont man with Downs Syndrome who pulled away from the police when they were trying to escort him to a new placement. The new police policy will recognize a higher deployment standard before a Taser is used against a disabled person, and will require that other reasonable options first be exhausted.³³

3. Studies Indicate That Tasers: 1) Do Not Cause A Reduction in the Use of Lethal Force, 2) Do Cause an Earlier Resort to Higher Levels of Force, and 3) Are Frequently Recklessly Deployed in Violation of Accepted Standards.

It is frequently asserted that the introduction of Tasers reduces the use of firearms by police. This is countered by the assertion that Tasers cause an earlier resort to a higher level of force than is necessary. As to the latter concern for premature deployment, common sense counsels that officers in the field will, on at least some occasions, reach for a Taser when it is on his/her belt in circumstances that would be better, and previously, handled by lower levels of force and by reliance on crisis intervention skills. For example, although all studies of Tasers require that they not be used as a “pain compliance” or general force tool, the Taser company acknowledged in 2003 that over one-third of cases of Taser use were simply for “verbal non-compliance”.³⁴

A June, 2011 study of police use of Tasers by the American Civil Liberties Union of Arizona (“the Arizona Report”), using data collected from twenty law enforcement agencies, showed that, with the introduction of Tasers, there was no reduction in the use of firearms, but there was an earlier resort to a greater level of force.

[T]he data revealed no relationship between the deployment of Tasers and the use of firearms. At the same time, officers began using Tasers as frequently as other non-lethal force techniques, so the deployment of a Taser became as routine as pepper spray and batons. The information provided by departments thus suggests that Tasers have been deployed in situations where lethal force would not be allowed, and where less severe uses of force are available.³⁵

In accord with this Arizona study is an analysis conducted by the Houston Chronicle of Taser use by that police force and reported January 14, 2007:

Since the Houston Police Department armed itself with Tasers, touted as a way to reduce deadly police shootings, officers have shot, wounded and killed as many people as before the widespread use of the stun guns . . . Officers have used their Tasers more than 1,000 times in the past two years, but in 95 percent of those cases they were not used to defuse situations in which suspects wielded weapons

³³ See “Vermont State Police to make revisions to Taser policy”, Burlington Free Press, October 22, 2011.

³⁴ Cited in Silverstein, “Tasers: evaluating claims of excessive force”, presented at the National Police Accountability Project Skills Seminar, October 19, 2006, at 4.

³⁵ “A Force to be Reckoned With”, American Civil Liberties Union of Arizona, at 17.

and deadly force clearly would have been justified. Instead, more than half of the Taser incidents escalated from relatively common police calls, such as traffic stops, disturbance and nuisance complaints, and reports of suspicious people. In more than 350 [of the 1000] cases, no crime was committed. No person was charged or the case was dropped by prosecutors or dismissed by judges and juries, according to the Houston Chronicle's analysis of the first 900 police Taser incidents, which occurred between December 2004 and August 2006. Of those people who were charged with crimes, most were accused of misdemeanors or nonviolent felonies.

Confirming the trend of this data is the just-released study of Tasers across New York State by the New York Civil Liberties Union, which found that nearly 60 percent of reported Taser incidents in that state did not meet expert-recommended criteria that limit the weapon's use to situations of the middle-range deployment standard.³⁶ The study also found:

- More than one-third of Taser incidents involved multiple or prolonged shocks, which experts link to an increased risk of injury and death.
- More than a quarter of Taser incidents involved shocks directly to subjects' chest area, despite explicit warnings by the weapon's manufacturer that targeting the chest can cause cardiac arrest.
- In 75 percent of incidents, no verbal warnings were reported, despite expert recommendations that verbal warnings precede Taser firings.
- 85 percent of documented Taser incidents involved people who were not armed or believed to be armed.

Thus, the available data indicate that Tasers do not result in a reduced resort to lethal force, but that they do cause an earlier resort to higher levels of force where less severe force would suffice, thereby exposing the citizenry to higher overall levels of force and attendant life and health dangers. The data also indicates an alarming lack of compliance with accepted standards governing the weapon's deployment. These data bear out the concern expressed in many studies, and in the testimony of numerous witnesses before the Committee, for the likelihood of "mission creep". As the New York report summarized its finding:

The pattern of misuse and overuse of Tasers fall into seven distinct categories: the use of Tasers where the suspect poses no demonstrated danger or risk of injury to any person; the administration of excessive numbers of or excessively long shocks; dangerous targeting of vulnerable areas of the body, such as the chest, neck or genitals; the failure to warn a subject prior to using a Taser; the over-reliance on drive-stun as opposed to probe mode; the use of Tasers on vulnerable populations or in dangerous situations; and the

³⁶ The broad range of threshold deployment standards among Taser studies and among jurisdictions is discussed *infra*, Section III(C).

disproportionate use of Tasers on people of color.³⁷

4. The Montpelier Use-of-Force Reports and Their Meaning

The Committee requested and received from Chief Facos documentation of police incidents in which force was used, from the latter part of 2008 through June of 2011.³⁸ These fifteen reports document any use of force on the police force continuum, which can range from as little as physical control or restraints at one end of the spectrum, to firearms at the other. What the reports reveal is that **no party – neither an officer nor a suspect – received a single serious injury in any of these incidents.** (See “Use-of-Force Reports, Summary”, separately submitted.) All fifteen incidents were well-handled by the police with the current force continuum at their disposal, which in these incidents included handcuffs, physical tactics such as armbars and pull-downs and bear hug, leg irons, pepperballs, pepper spray, a helmet, and the display of a firearm. There is no indication that a Taser would have been appropriate, prudent or necessary in any one of the incidents, especially since nearly all of the incidents involved intoxicated or mentally ill people, i.e., members of **vulnerable populations**. To the extent there were any injuries to officer or suspect in any of these Montpelier incidents, they were limited to superficial cuts and abrasions, a kick to an officer’s groin, along with one suspect sustaining a swollen eye. None of these incidents resulted in an officer injury causing lost work time, as shown in the workers compensation discussion *infra*. Digesting the use-of-force summary, we see:

- one incident involved a child at school showing indications of mental disturbance, who needed to be held and carried (5/26/10);
- five cases of fleeing subjects (11/01/08, 07/27/09, 11/17/09, 12/11/09, 03/20/10,);
- a case of a non-compliant female with an unknown medical condition (1/25/09) and a case of an elderly man with a heart condition and mechanical heart valve (10/29/10);
- at least five cases of intoxication (12/11/09, 03/05/10, 09/05/10, 05/23/11, 06/18/11);
- five cases where the subject evidenced serious mental disturbance requiring mental health screening (03/05/10, 03/20/10, 05/26/10, 07/20/10, 10/29/10), one of which (10/29/10) involved an elderly man with known schizoaffective disorder who was being served with an involuntary mental examination warrant.

What these reports show is that, of the fifteen reported cases over a three-year period in which some degree of force was used, twelve involved vulnerable populations or flight, in which use of a Taser would have been inappropriate except in the most extreme circumstances when no other force means could not have provided protection. Of the remaining three, one case involved the successful officer employment of an arm bar and handcuffs (11/01/09), and another, which

³⁷ New York Report at 17.

³⁸ These individual incident reports are submitted with this report.

involved a stolen vehicle, was managed successfully by the officer's display of a gun, use of an arm bar, and handcuffs (06/19/11). There was no officer injury in any of these three cases. There were minor cuts to the subjects in two of the three cases.

These police reports indicate that Montpelier does not have what the International Association of Chiefs of Police notes as being a critical criterion in assessing whether to acquire a non-deadly weapon, i.e., whether the "typical force scenarios faced by its police personnel" warrant the addition of the weapon. By all indications, the Montpelier police have been able to fully, competently and effectively manage its typical force scenarios with the array of skills and weaponry at hand. In fact, the police have effectively managed *all* its force scenarios with the skills and weaponry at hand.

5. The Montpelier Assault-on-Officer Reports and Their Implication

The Committee was initially informed by Chief Facos, as he had also informed the City Council, that Montpelier incurred the highest frequency of assaults on officers of any Vermont city or town that report this statistic. He represented that Montpelier sustained eight of the 64 such cases reported by Vermont cities and town for the year 2008. During Committee hearings he corrected that number to five. The Committee then requested and received from him the actual incident reports from 2008 to date.

It bears emphasizing that the Committee's perspective on what these incident reports reveal in no way indicates a lack of awareness on the Committee's part of the dangerousness of police work and the courage of officers who have to take risks in dealing with the public. Being a police officer is challenging, both from the potential and inherent dangers involved in contact with subjects, as well as from the spectrum of emotions that the public harbors toward the exercise of police authority, from praise and appreciation on the one hand, to suspicion and hostility on the other. The Committee's comments here and elsewhere in this report in no way diminish the members' deep appreciation for the difficult task that all police officers face on an almost daily basis in their effort to keep the public safe and secure. Rather, the Committee's analysis is aimed at casting an accurate light on the true officer safety record here in encounters with citizens.

Under Vermont law, "assault" has two forms, simple and aggravated. All of the reported incidents of assault on officers provided to the Committee were logged in as simple assaults, none as aggravated. Simple assault is statutorily defined as the intentional causing of "physical pain, illness or any impairment of physical condition". 13 V.S.A. §1023.

Of the 15 reports from 2009 to date that were submitted to the Committee as indicating assaults or attempted assaults on officers, four of the incidents involved no contact or injury whatsoever. Of the remaining 11, they included a possible thumb sprain, an incident of "sore testicles", a minor skin tear, and several instances of a kick, a scratch, or a punch. Here, as with the use-of-force reports previously discussed, the data strongly indicates that our typical scenarios involving aggression toward officers are in the nature of simple assaults causing pain and, in several instances, minor injuries. Many of these cases, as would be expected, are repeats

of the use-of-force incidents, set out above. *Every one* of these assault-on-officer cases involved individuals who were highly intoxicated, or mentally ill, or evidencing a serious medical condition, or known to have developmental disabilities, or a child – all being precisely the conditions and circumstances when a Taser should not be used unless lethal force would be justified. Furthermore, in virtually all of these cases the officer was in close proximity to a subject who exhibited a sudden aggressive movement – situations in which use of a Taser generally is not feasible. Finally, the officers were universally able to control the situations competently and adequately with the force options at hand, without serious injury to any party. Had Tasers been available, one would not have wanted their deployment in these cases. Rather, traditional law enforcement skills and devices were what were used, and what should have been used, resulting in no more than superficial injuries to both officer and arrestee, generally in the nature of abrasions and bruises.

6. Putting Our “Typical Force Scenarios” in a Taser Context

a) A Montpelier Case Example

To make further sense of these statistics for purposes of this “typical force scenarios” analysis, it is helpful to determine whether the use of a Taser would have been prudent in any or many of these reported incidents. (To some extent, this analysis depends on what are the generally recognized limitations on the allowable use of the weapon, as will be more fully discussed in other sections of this report.) Like the Use-of-Force summary document, the Assault-on-Officers summary document (separately submitted) shows that nearly all of these incidents involve precisely the types of scenarios in which Tasers are forbidden, i.e., situations involving “vulnerable populations”: youth, elderly, frail, drug or alcohol intoxicated, suffering from a heart condition, fleeing, evidencing mental disturbance, highly agitated, as well as situations where the officer and subject are in close range (and thus Taser deployment is not practical). There were but a couple of incidents among the fifteen provided the Committee in which the subject was not in one of these vulnerable populations, and these confrontations were not of an aggravated nature. The police handled each of them effectively and without injury with the currently available force continuum. These were not “Taser situations” by any stretch of the imagination.

An incident among the 15 reported helps illustrate the difference in view around the assessment of whether Montpelier needs Tasers. In our Committee hearings, Chief Facos frequently referred to one of these incidents as particularly exemplary of when the use of a Taser would have been beneficial and warranted. The incident in question occurred on 10/29/10, when Washington County Mental Health called for police assistance to serve a mental health examination warrant on an elderly patient living at home. The individual suffered from schizoaffective disorder, a serious cardiac condition and reliance on a mechanical heart valve. The patient was also non-compliant as to his medications, causing his psychiatrist enough concern to take out the involuntary mental examination warrant. The officers, aware of these facts, indicated in their incident report that they knew the subject was susceptible to a stress-related cardiac arrest, that his medical non-compliance was potentially life-threatening, and that he was “extremely agitated and appeared to be paranoid”. Upon entering his home without the

subject's permission to serve the warrant, the police found the man swinging a board "wildly" at them and running toward them.

If anyone would qualify as a member of a "vulnerable population" against whom Taser use is forbidden except in the most exigent circumstances when there is no alternative and lethal force is warranted, it was this man, being elderly, suffering from a serious mental disorder, and a patient with a life-threatening cardiac condition. For any one of these three health conditions, the research on Tasers, and the Taser company's own 2009 (and since) training alerts, caution the police not to use the device. Had the police at the scene had access to a Taser and used it as Chief Facos would have supported, there is a reasonable possibility that the incident could have ended in tragedy. Instead, the police used their skills and their current force options exactly as they should have – they partially retreated, they then subdued the individual with multiple rounds of pepperballs, they restrained him, and they safely transported him to the hospital.

Ironically, Chief Facos's own proposed Response to Resistance policy mandates that a Taser not be deployed under the circumstances of the above-discussed incident. Section (IV)(F)(b)(xxiv) mandates: "**Alternative tactics shall be utilized** where the officer has prior information that **the subject suffers from a disability** which would increase the danger to that person by using the Electronic Restraint Device, i.e., a person at the scene tells an officer that the subject has a heart condition." Here, the officers knew the subject suffered from not one, but three, such disabilities. Use of a Taser under these circumstances would have violated the mandatory language in the Chief's own proposed policy.

Chief Facos regarded this incident, as well as the incidents of December 11 and 12, 2009 (see incident reports), as ones in which Tasers could have been deployed. The Committee disagreed with him as to how to regard these three incidents. First, all three incidents (over a three and a half year period) involved subjects who were either elderly, intoxicated, mentally ill, or a combination of these – all at-risk subjects. Second, whether a potentially lethal weapon legitimately could have been deployed in a situation depends, of course, on whether a permissive or restrictive deployment standard controls as a matter of policy. If the Chief's proposed standard of "active resistance" – the lowest standard used anywhere – controls, then it follows that it will be quite easy to rationalize after the fact that use of a Taser was permitted in many instances where they were not necessary or prudent, i.e., where lower levels of force were sufficient. Third, and most important, the difference in perspective on that part of the Committee and the Chief highlights how he and the Committee were differently focused when finding the *meaning* of Montpelier's documented "typical force scenarios". The Chief framed his view with the question of whether an incident would have *allowed* the use of a Taser. The Committee was more concerned with whether a Taser was *necessary* to control a situation, or, put differently, *whether the police were able to gain control with the weaponry currently in their arsenal – which in all cases they were able to do, and without any significant injury to any party*. The Committee believes its framework, looking to the issue of *necessity*, is closer to the Council's charge that the Committee make an "assessment of need" for this additional weapon.

b) Comparing Montpelier to Some Other Vermont Communities

There is no rule of thumb regarding which cities and towns tend to adopt Tasers and which tend to decline them. But it is instructive to look at Vermont examples of each. For towns or cities that have declined to adopt Tasers, we looked to Bennington and Middlebury. For ones that have adopted them, we looked to Burlington and South Burlington.

From the standpoint of size and typical force scenarios, Middlebury and Bennington are, like Montpelier, medium-size communities by Vermont standards. Paul Doucette is the Chief of the Bennington Police Department, the fifth largest in the state. He was interviewed for the Committee by telephone. Doucette considered acquiring Tasers and underwent Taser training with the State Police. He believes the weapon has definite utility, but opted not to acquire it. Among his reasons were that Tasers are expensive, that they do not work all the time, and that the Bennington force has found that its use of pepper spray and pepperball launchers have been sufficient to cause people to comply with police demands. In considering Tasers, he said, "it's a lot more than just buying the Taser itself".

Thomas Hanley has been Chief of Police in Middlebury for the past twenty years, and related to the Committee the following, also by telephone interview. Middlebury crime statistics are "in the middle of Vermont communities". The town experiences mostly property crime, "not a lot of violent crime", and has a high number of cases involving mental health issues and substance abuse. It has not had a high level of officer workers compensation claims from violent encounters. To the extent there are such injuries, they are mostly in the nature of bites, lacerations, abrasions, punches, one broken hand bone. Officer injuries have thus been from close contact, and not requiring hospitalization. Chief Hanley posed the question to himself, in considering Tasers: "Is this a tool we need, or a gadget sitting on an officer's belt. You're not going to go into a high risk situation with Taser drawn, you'll have your gun drawn. A Taser can give a false sense of security."

In addition to that view and those crime and officer injury statistics, Chief Hanley added the concern that Tasers are expensive when one factors in not just the purchase price but also the attendant costs such as continual training, recurring costs for maintenance, and replacement costs. Instead, the Middlebury force has emphasized physical fitness, training, officer skills and pepper spray for handling difficult situations non-lethally. Based on these factors, Chief Hanley concluded: "We're not seeing, day-to-day or historically, the need for Tasers. If I were in a more combative environment I might think twice about it."

That "more combative environment" is better exemplified by Burlington and South Burlington, both of which have Tasers. Chief Facos highly recommended that the Committee hear from representatives from both of those forces. Deputy Chief Walter Decker of the Burlington force testified that he worked Tasers into their arsenal over a six-year period, to where there are now sixty units deployed. He appreciates them for being fast and immobilizing, and for decreasing officer injuries and time away from work, but also recognizes their potential for incorrect or malicious use. The Burlington force uses Tasers in conjunction with body cameras on the officers, because those are more effective at recording the entire incident than the Taser-mounted camera, which only records "the last part of the story", i.e., the actual

deployment against an individual. He stated that for their written policy standard for Taser use, Burlington chose a “middle-range” standard, requiring that there be both “active aggression” on the part of the subject plus a “risk of harm”. He stated that Tasers have on occasion been used instead of a firearm, in surprising contrast to Chief Facos’s adamant opposition to using the device as a substitute for lethal force. Burlington’s incidents of use of force number 400-500 a year, dwarfing Montpelier’s statistics in this regard. And unlike Montpelier, he noted that there was no apparent community opposition to the introduction of Tasers in Burlington. Finally, Decker noted that Burlington has, unique among Vermont cities and towns, a Police Commission which stands ready to review use-of-force incidents.

Trevor Whipple, Chief of the South Burlington force and formerly chief of the Barre force, noted that Tasers were already present when he took over the force in 2006, but that he has heard there was no public opposition to them at the time they were acquired. They do not use cameras with Tasers. His officers receive a training in Taser use based on the Taser company’s curriculum, of six hours or less, with a yearly update. An officer warns a subject three times before deploying. Like Burlington, the South Burlington force does not use the model Response to Resistance policy which Chief Facos is proposing for Montpelier, and which was supplied by Montpelier’s insurer (see *infra*). Whipple recognizes the potential danger of the weapon, and relies on accountability, use of force reviews, and checks and balances to offset the danger, noting that, unlike Burlington, South Burlington requires a use of force report for *every* force incident. He guessed there were 50-60 use of force incidents in South Burlington yearly, and said while the brandishing of Tasers has gone down since 2008, actual deployments per year have remained steady at between four and six. He agrees that their deployment standard, in not requiring a risk of harm from the subject’s conduct, “sounds lower than Burlington’s”. Like Decker, Whipple was not able to compare his city’s typical force scenarios or data to Montpelier’s.

One sees, from the above, examples of two distinctly different views of Tasers in Vermont law enforcement. The larger cities of Burlington and South Burlington, with higher crime statistics and more aggravated law enforcement circumstances, favor the device. Middlebury, a smaller town with less violent crime and a low officer injury rate (like Montpelier), does not, and prefers to rely on traditional weaponry and crisis intervention skills, as does Bennington. The Committee saw more similarity between Montpelier and the Bennington-Middlebury profile, than that of our larger (and only) metropolitan area. Our use-of-force incidents are relatively few and effectively handled by the weapons and skills at hand. Our officer injury rate is small, and officer workers compensation claims from violent encounters virtually non-existent (see *infra*). Our community is, unlike those of Burlington and South Burlington, quite divided over the issue of Taser acquisition,

In summary, the data supplied the Committee by the Police Department reveals that Montpelier does not have the “typical force scenarios” that reasonably would justify the acquisition of this weapon. Neither the nature nor the frequency of our police-citizen confrontations calls for this additional force option. Our rate and degree of suspect and officer injury is low and minor. It is difficult not to believe that almost any city or town of Montpelier’s

size or larger would be happy to trade statistics and “typical force scenarios” with those of Montpelier.

7. The Community Views and the Police-Community Relationship

The IACP framework for the consideration of an additional non-deadly weapon, set out *supra*, also recommends cognizance of “the community in which it [the police force] operates”. While a scientific poll has not been conducted here on the issue of Tasers, a reasonably large sampling took place when the question appeared on the 2011 Town Meeting Day Poll, known as the Doyle Poll. Seven hundred residents responded to the question whether Tasers should be acquired here. The result was that 42% were opposed and 40% in favor.³⁹ Adding to that sense of the community is the fact that the large majority of speakers at both the City Council’s and the Committee’s public comment hearings spoke in opposition to acquiring the weapon.

The Committee believes the City Council should be especially cautious about authorizing this weapon in a community that appears deeply divided over it. Unquestionably, the police need adequate force options, including lethal force, in order to do their job effectively. But the heart of community safety lies not in weaponry beyond what has been shown to be sufficient for our local force scenarios, but rather in the police-community compact. Introducing a weapon so controversial and so opposed by a substantial proportion of the residents poses a prospect of weakening that compact. “The application of physical force may potentially have devastating consequences, not only for the suspect and the officer but also for the law-enforcement agency, the community, and police–community relations.”⁴⁰ In light of the highly questionable utility of the weapon here, the Montpelier police-community rapport is the far more important public safety element to preserve and protect.

8. The Workers Compensation Argument

The argument is made that Tasers lowers workers compensation claims, and it is an argument that Chief Facos raised in the Council and the Committee. To investigate that possibility, the Committee requested from him all statistics and documentation regarding workers compensation claims by department employees from 2008 to the present, and that he link any such claims to specific police-citizen confrontations, so that the Committee could also evaluate whether such incidents were ones in which a Taser, had it been present, would have been the preferred weapon to use. Chief Facos responded with his own summary (separately submitted) of five workers compensation claims since 2006 but declined to give the original workers compensation documentation, claiming they were statutorily protected.

Without the actual documented linkage of these incidents to specific events, the Committee was unable to do its own investigation of the relevance of these workers compensation claims to the issue of whether Tasers would have made a difference. It was clear, just on the face of Chief Facos’s summary, that Tasers would not have made a difference in at

³⁹ This result was in contrast to the poll results from most other Vermont towns, where majorities favored Tasers.

⁴⁰ White, M. and Ready, J., “Examining fatal and nonfatal incidents involving the Taser”, *Criminology and Public Policy*, Vol. 8, Issue 4, at 866.

least four of these five incidents. One incident entailed a foot injury during a foot pursuit, a situation that use of a Taser is strictly proscribed. Another incident involved a subject head-butting an officer, causing him a swollen lip, a situation of close proximity and unpredictable behavior that a Taser could not have prevented. Another involved restraining an intoxicated person – another circumstance where Taser use is proscribed. Another involved exposure to blood while arresting two subjects who had been cutting themselves and each other, i.e., a circumstance of likely mental impairment. (At any rate, exposure to blood is the inevitable circumstance for officers arriving at a scene where individuals have been engaged in cutting themselves.)

The Committee reiterated its request for the original documents, citing 1 VSA §318, upon which it received from the City Manager eighteen “First Report of Injury” documents pertaining to police incidents.⁴¹ (separately submitted). These reports show only minor injuries, and that in only one incident, occurring on 5/28/09, was there any loss of work time. That officer lost several days’ work due to stubbing a toe while walking from a roadway to a sidewalk. Chief Facos’s summary, and the subsequently-received “First Report of Injury” documents, show there is no significant, bona fide workers compensation factor to be weighed in favor of acquiring Tasers in Montpelier.

9. The Expansion of Municipal Liability Exposure

Since the 2008 and 2011 verdicts against the Taser company, it has embarked on a different, and more self-protective, course. As shown above, its 2009 and 2010 training alerts publicly acknowledged the more obvious dangers of the device and cautioned against using the device in certain circumstances and against certain populations, among them intoxicated persons and mentally ill persons, as well as against using it across a subject’s chest area and using it for too long a duration. The effect of this shift on the part of the Taser company is that municipalities are becoming the primary target of Taser-related lawsuits, which are being filed at the rate of about one per week nationally.⁴² This shift by the company is seen in language such as contained in its September 30, 2009 alert: “These warnings do not create a standard of care . . . Law enforcement agencies are force and force tool experts and are solely responsible for their own Guidance.” Buried in footnote 6 of the 2010 training alert is the note: “Law enforcement agencies, government entities, and Users are sophisticated purchasers, sophisticated users and learned intermediaries with respect to law enforcement weapons (including ECDs), force, force use, legality of force use, and reporting.” In an effort to remove potential for liability for its training of police in use of the weapon, the company states in footnote 5: “Law enforcement agencies are force and force tools experts and are solely responsible for their own Guidance. ‘Guidance’ includes but is not limited to policy, procedure, rule, order, directive, training, continuum, and standard. Taser has no power or authority to . . . establish standards of care or conduct.” Perhaps ludicrously, the company attempts a reassuring tone when it states that it is the subject, not officers and municipalities, who bears all the risks: “Resistance to law

⁴¹ These reports do not represent 18 separate incidents; some of the reports are from several officers at a single event.

⁴² Teleconference with John Burton, Pasadena, California, referenced *supra*.

enforcement action incurs substantial risk of death or serious injury and subjects who resist law enforcement assume all such risks of death or serious injury.”

Municipalities have always had liability exposure for Taser use alongside the manufacturer itself. But as the Taser company has taken measures to insulate itself from liability, it is city governments which now bear the increased exposure, both directly and through their insurance carriers, for allegations of injury and death from excessive force, negligent operation, and substandard training. “An officer may be liable for an unreasonable Taser use and municipalities may be liable for policies that promote Taser overuse or misuse, and for the failure to adequately supervise and train their officers.”⁴³ Municipalities will no longer, as in *Heston* and other cases, be able to settle as easily with plaintiffs who allege excessive force on the part of police, because the Taser company is no longer a “deep pocket” co-defendant who is vulnerable to the charge of negligent warnings. This isolation of municipalities as the sole litigation target for improper Taser deployment is a factor that weighs against whether to acquire the weapon, and all the more so in a community where the need for the weapon is not otherwise clearly shown.

10. A Realistic Appraisal of the True Total Costs

Chief Facos, in his application to the City Council for a budget line to purchase Tasers, represented that the cost to the City would be \$11,400. This is an accurate representation of the purchase price of fourteen units. The Committee was told that the Council raised a question of other, accompanying costs but did not receive a fuller estimate from the Chief. The Committee raised this issue on its own, asking Chief Facos to also calculate the costs of other items and measures (see below) that both the Committee and the Chief agreed were prudent should Tasers be introduced here. The Chief said he would produce a five-year estimate of all such costs, but did not do so. It is the Committee’s view that, should Tasers be acquired here, certain protective prerequisites would have to be implemented by the City, which would significantly raise costs above the purchase price of the Taser itself. The following are the additional costs that both the Chief and the Committee agreed were either necessary or prudent:

- Crisis Intervention Team (CIT) training
- Hiring of or certification of a Taser-approved trainer
- Replacement of the device (amortization of the cost)
- Maintenance of the device
- Replacement of the spent cartridges
- Body Cameras
- Data Storage
- Defibrillators in cruisers

The Committee was able to approximate some of these additional costs.

1. Training: Training should include Crisis Intervention Team training, described below in this report. Such training would have to take place in a nearby state, since Vermont does not

⁴³ New York Report at 12

conduct it in-state, and would require each officer to be away for the five-day course. The Committee on its own was not in a position to accurately assess the exact cost of such absence, but it estimates that each Montpelier officer's absence for a week would have to cost at least \$2000 (wages, overtime substitute coverage, transportation, room, board) plus the cost of the training itself. The Committee is uninformed as to the likely cost of CIT tuition.

2. Defibrillators: Chief Facos agreed that with an introduction of Tasers here, a defibrillator in each cruiser would be prudent, in light of the proven dangers of the device when deployed against vulnerable populations such as individuals with heart conditions or in high states of agitation.⁴⁴ The cost of a defibrillator is approximately \$1200-2400.

3. Body cameras: The Committee and Chief Facos agreed that cameras provide a video record of police-citizen confrontations for the legal protection of all parties involved and of the city itself. There are two types of police video cameras for Taser use, one that attaches to the camera itself, and one that the officer wears on his/her body. The body camera is far superior, in both the Chief's⁴⁵ and Committee's view, in that it records everything related to an incident, including the precursors to any Taser deployment. The Taser-mounted camera is inadequate in that it records only the event from the moment the safety on the device is taken off. The Taser-mounted camera is thus not able to preserve the most critical information pertaining to the justification for deployment. The Taser company body camera costs approximately \$3000 per unit. Less expensive brands include one manufactured by Viewue Corp., which costs \$899. The likely life of a body camera is unknown to the Committee.

4. Data storage: Storage of Taser's body camera data costs \$1200 per year. Chief Facos was not sure whether that cost was per camera or per department.

It is apparent that to acquire Tasers along with the recommended equipment and training would far exceed Chief Facos's submitted estimate for just the initial hardware. The Committee believes that if this device should be approved by City Council, that should only happen after a full and accurate calculation of all related costs, which would not only give both Council members and taxpayers a clear-eyed understanding of the proposal, but also put them in a better position to make an informed decision of whether Tasers are needed here in light of competing City needs and priorities.

III. The Police Department Has Not Proposed a Prudent and Protective Policy Regarding Tasers, Raising the Prospect of the Introduction into the

⁴⁴ In agreeing with the Committee's preference for defibrillators in cruisers, Chief Facos noted that they can be less effective when exposed to the coldest winter temperatures.

⁴⁵ While agreeing with the view that body cameras are valuable for their ability to record an event, the Chief expressed an uncertainty as to whether this community would accept them.

Community of a Poorly-Regulated New Weapon.

Chief Facos has the city's best interests in mind in recommending the acquisition of Tasers. The Committee does not doubt the sincerity of his dual motivations of protecting officers and subjects from potential injury. The Committee agrees with and supports those goals. The disagreement is over whether acquiring Tasers is the best, a safe-enough, and a necessary way to accomplish those goals.

Essential to the operation of a good police force is the adoption of thorough, deeply considered written policies that are tailored for the particular community – written policies which, while they can never entirely remove the element of discretion on the part of officers in the field, are nevertheless specific and binding in a manner that fully informs officers about specific requirements governing their conduct. Such policy-making inevitably entails a tension between a wish for vague and non-binding policy that allows the police to exercise maximum discretion with a minimum of interference, and on the other hand the more legitimate interest that the police, in whom tremendous, lethal and potentially oppressive power has been invested, be held accountable to specific standards of conduct. Ultimately, a clear and precise use-of-force policy is in everyone's interest. As stated by the International Association of Chiefs of Police:

Police administrators should not be hesitant to develop comprehensive, strong, and definitive policies and procedures for fear that they may prove prejudicial to a future court assessment of an officer's conduct. In fact, failure to adopt a use- of-force policy in clear and unequivocal terms will almost certainly have more serious consequences for the officer's agency and employing jurisdiction.⁴⁶

The need for clear, specific, binding and community-tailored policies is especially the case in Montpelier, where the police chief has, by law, nearly absolute autonomy in adopting policies and spending his budget, exercising his powers over law enforcement free of any advise and consent by another branch of government, i.e., free of the checks and balances that normally characterize our system of government. *See* 24 V.S.A. §1931(b). The unique exception to this in Vermont is the City of Burlington, which has by charter created a Police Commission which may subject actions of the police chief to concurrence or modification. Given the gravity of the decision whether to acquire Tasers, and the importance of well-considered and prudent written policies – especially regarding the use of weapons against members of the public – the Committee spent considerable time assessing both the current “Use of Force Policy” (separately submitted) of the Montpelier Police Department, as well as the one proposed by Chief Facos to replace it and to accompany the acquisition of Tasers, titled “Response to Resistance” (separately submitted). For the reasons set out below, this proposed policy is grossly inadequate to assure the safety of both police officers and the community.

The proposed policy, titled Resistance to Force, which Chief Facos submitted to City

⁴⁶ IACP National Law Enforcement Policy Center, “Use of Force”, February, 2006.

Council, is the exact policy given to him by the Vermont League of Cities and Towns (VLCT) – the document even bore the VLCT logo as well as that of the Legal and Risk Management Institute (LRMI) on its first page.⁴⁷ The VLCT, despite its organizational-sounding name, is a private insurance company that insures most Vermont cities and towns, including Montpelier. The company can be expected to operate with an understandable bias toward minimizing its own pecuniary exposure. The LRMI is also a private entity, owned by a former police chief. It contracts with various insurance companies, including the VLCT, to provide “model” written policies. The LRMI does this by way of working groups who prepare these suggested policies. Its police policy-making panel is composed solely of current and retired police chiefs and officers.

Given the interests of their creators, these model policies must be taken with a more than a pinch of salt. The VLCT’s own employee-underwriter, Joe Damiata, acknowledged that the vague, non-specific language of the Response to Resistance policy has a “c.y.a.” purpose, and that insurers and police organizations sometimes favor such vagueness in policy for that reason.⁴⁸ “Our ultimate goal is to reduce the exposure and liability of municipalities”. Mr. Damiata further acknowledged that he can understand how a committee such as this one might be concerned that the Response to Resistance policy, aimed at risk management for the insurer and municipality, might not weigh all the countervailing interests, such as citizen protection from low policy standards, or the interest that there not be too early a resort to a particular level of force due to a low deployment standard.

Perhaps most important was Mr. Damiata’s comment that, as to a model police policy such as Response to Resistance, “police departments should go through it and customize it, make sure it fits their department. We don’t tell them to take these and put them [directly] on the shelf.” Disturbingly, putting this insurance company-generated use-of-force policy directly on the shelf, unconsidered and untailored to this community, is precisely what happened here, which raises serious concerns about it, including the following.

A. The Introductory Language of the Proposed Policy Seeks to Make Its Provisions Legally Unenforceable By A Citizen Aggrieved By Police Use of Force.

The proposed Response to Resistance policy begins with the following disclaimer:

This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance

⁴⁷ The only amendment to the proposed Response to Resistance policy by Chief Facos occurred when the Committee pointed out to him that his proposed policy does not provide for Tasers. He then added a single entry regarding Tasers and removed the two aforementioned logos.

⁴⁸ Interview with Joe Damiata, VLCT employee-underwriter, in VLCT office, Montpelier, July 28, 2011.

with the laws governing employee discipline.

The Chief told the Committee he “can’t say why” that paragraph introduces his proposed policy. Mr. Damata conceded that this language purports to give no legal rights to citizens based on violations of the policy, and would have the effect of discouraging a citizen from believing he/she possessed any such rights under the policy. This attempt to insulate the insurer from liability does not serve the larger interests of the City – public safety and police accountability. If precise, protective and transparent policies are prudent and necessary, those policies are largely meaningless unless citizens are able to compel adherence to them and to seek legal redress if they are violated. A legally unenforceable policy would gravely undermine citizens’ security and the police-community relationship. It is for this reason that many cities and towns in Vermont, including Burlington, have no such disclaiming language in their policies. To adopt such a disclaimer here would ultimately make this a more dangerous environment for law enforcement and for the citizens.

B. The Proposed Policy Locates Tasers Dangerously Low on the Use of Force Continuum, Encouraging Early and Premature Resort to a Potentially Lethal Weapon.

Pages two⁴⁹ and four of the VLCT policy would place Tasers on “the same level of force as chemical spray”.⁵⁰ The Committee views this as a misguided and dangerous placement on the continuum, given that the Taser is a potentially lethal weapon, whereas pepper spray, though it comes with its own dangers to the subject, is not regarded as potentially as lethal as a Taser. To locate them as equivalents on the use of force continuum would have the effect of causing officers to resort to Tasers earlier than they otherwise would, and not necessarily resort to chemical spray even if it would be effective in gaining safety and control. This feature of the VLCT policy may serve insurance companies who have an eye on possible litigation, but does not serve the interest of the City in making sure this weapon would not be an early weapon of choice in the field. Such an outcome would only confirm the expressed fears by those opposed to Tasers regarding how they would be used, and confirm the findings of the Arizona Report that the introduction of Tasers cause an earlier use of a higher level of force. It should be noted that the current Use of Force policy, at page two, calls for resort to pepper spray before resorting to other less-lethal weapons on the continuum. The Chief’s proposed VLCT-sponsored policy

⁴⁹ The pages are not correctly and sequentially numbered. References are to the actual page rather than the number indicated at the bottom of each page.

⁵⁰ The proposed policy seeks to replace the traditional and still widely-used term “use of force continuum” with the new term “force options”. This is an obvious attempt by the VLCT to try to substitute a “tool kit” approach for the more protective “continuum” approach. The “tool kit” approach only vaguely lays out the force options, telling the officer to select what he/she believes appropriate under the circumstances. The “force continuum” approach gives the officer more precise guidance regarding the stepped increase in force. That the VLCT model policy still implicitly recognizes the escalation of the forms of force, but is attempting to make this less important by a change in nomenclature, is shown by the actual placement of the different force forms on pages two and three, beginning with “command presence” and “verbal commands”, moving through pepper spray and Tasers, and finally ending at the level of deadly force.

would eliminate that requirement and **effectively lower the standard for the use of potentially lethal force.**

C. The Proposed Policy Chooses A Vague and Dangerously Permissive Standard to Govern When Tasers May Be Used on Subjects.

In addition to where Tasers would fall on the use of force continuum, another critical issue is the standard for when it can be deployed. There is a range of such standards among research recommendations and among police forces themselves. This range includes:

1) The Maryland Attorney General Report:

“only when an individual poses an imminent threat of physical injury to themselves or others”, also called “significant injury”, with “physical injury” defined as “any impairment of physical condition excluding minor injuries”.

2) The Braidwood Inquiry (Canada):

causing or will imminently cause bodily harm AND no lesser force option has been or will be effective AND de-escalation and/or crisis intervention have not been/will not be effective in eliminating risk of imminent bodily harm. De-escalation and/or crisis intervention is required re: emotionally disturbed persons unless it will not be effective in eliminating risk.

3) The National Institute of Justice:

(makes no recommendation on a preferred deployment standard)

4) The ACLU of Northern California:

only where there is an imminent threat of serious physical harm to the officer or another individual”, and “[never] to simply gain compliance, even if the subject is being physically evasive or uncooperative”. “Passive resistance or non-threatening acts such as ‘tensing’ one’s arm to avoid being handcuffed, without more, should not justify CED [Taser] use.” Use only in “life-threatening situations”. The drive-stun mode should only be used in “exigent circumstances”. Warn before use, and brandish only when use is justified.

5) Amnesty International:

“imminent threat of death or serious (potentially life-threatening) injury which cannot be contained by less extreme options.” Tasers should only be deployed by “specialist officers”, and “never used as a general force tool”, but rather to “avoid the resort to lethal force or firearms”.

6) The Stanford Report:

“Tasers should be considered as a lethal force option on the use of force continuum . . . Tasers should be the preferred method of use of force in life-threatening situations, and should not be used otherwise.”

7) Police Executive Research Forum (PERF) Model Policy (2005):

where subject is “actively resisting or exhibiting active aggression, or to prevent

individuals from harming themselves or others”. “Active resistance” is defined as “physically evasive movements to defeat an officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody”. “Active aggression” is defined as “a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent”. “Aggravated active aggression” is a “deadly force encounter”.

8) **The International Association of Chiefs of Police (IACP) guidelines:**
to subdue “violent or potentially violent individuals”

9) **Barre, Vermont:**

“The suspect must be actively aggressive and/or resisting and presenting a risk of injury to the officer(s), him/herself or others.”

10) **Burlington, Vermont:**

“individuals who are posing a risk of injury to themselves or others”

11) **Montpelier:**

a) Current: The City’s **current Use of Force policy** does not state an actual deployment standard for any weapons, including Tasers. The policy does say, as a general matter, that officers should use “progressive” and “escalating” force along the continuum “to the extent possible”; that pepper spray is first of the less lethal weapons; and that less lethal weapons are in the family of “compliance techniques” which are meant “to counter the subject’s enhanced degree of resistance”, but no definition is provided. (pp 1-2)

b) Proposed: The **VLCT’s Response to Resistance policy proposed by Chief Facos** allows Tasers to be discharged where there is “[a]ctive resistance/active aggression”. (p. 4)

It is apparent, from the above, that there is a range of Taser deployment standards, from the permissive to the restrictive, as follows:

- active resistance
- active aggression
- imminent threat of harm
- imminent threat of physical injury, excluding superficial injury
- imminent threat of serious physical injury or death

In coining the standard of “active resistance/active aggression”, the proposed VLCT policy 1) confusingly merges two distinctly different use-of-force standards (“active resistance” and “active aggression”), having the practical effect of allowing deployment based on the lower of

those two (“active resistance”) while giving misleading reassurance that “active aggression” may be required; and 2) in so doing, would allow Taser use based on **the lowest standard found anywhere** in the research and literature on Tasers.

The PERF Model Policy referenced above defines the key terms. “Active resistance” is shown by “physically evasive movements to defeat an officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody”. This lowest of all standards can be satisfied by as little as a subject “stiffening” his/her arms, “hunching” or even “tensing”. It is a standard that requires virtually nothing to satisfy, and exceeds only the standard of “passive resistance”, which is found nowhere in the literature as sufficient for Taser deployment. “Active aggression” requires more. As defined by PERF, it is “a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent”. However, even this next-higher standard does not rule out simple assault causing no more than pain or superficial injury like a scratch or abrasion, which has been found inadequate by many of the studies and recommendations, such as the Maryland Report, which requires a threat of imminent harm greater than that of superficial injury.

The proposed VLCT policy tries to combine two distinctly different standards and thereby blur the distinction between them, with the result that Taser deployment would always be justified by the lower “active resistance” (“tensing”, “hunching”, “stiffening”) one. Chief Facos agreed in discussions with the Committee (August 2, 2011) that it is a “valid concern” that active resistance and active aggression are not defined in the proposed policy, and he agreed that he would want a higher standard than just, for example, the subject simply “stiffening” his/her body. He further stated he “likes” the Burlington policy requiring “a risk of injury to themselves or others”, but that he would not agree to the higher standard of “imminent threat of serious bodily injury”.⁵¹ Confusingly, the Chief’s written request to the City Council for Tasers was proposed as a helpful tool for “violent” encounters. This purpose is at odds with his proposed policy’s deployment standard at the lowest end of the spectrum. This contradiction, between how it was asked for and how it would be used added to the Committee’s concerns regarding whether this request by the Chief had been researched and proposed with the care and caution it deserves.

The Committee believes both the active resistance and active aggression standards are inadequate for this community. If Tasers are permitted here, their use should be governed by a **threat of imminent serious bodily injury or death** standard, otherwise known as a **lethal force standard**, such as is recommended by the Stanford Report, the Amnesty International Report,

⁵¹ Chief Facos further stated that if the Committee was unsatisfied with the proposed policy’s “active resistance/active aggression” standard, the Committee could propose it’s own standard. The Committee was perplexed, as to this matter and other policy matters that are mentioned in this report, why the Chief was proposing a policy that did not reflect his better judgment, and why he was not amending it to do so, rather than suggesting the Committee rewrite it. Here, as elsewhere, it appears the Chief had not adequately studied the VLCT policy and rewritten it to suit the needs of this particular community.

and the ACLU of Northern California.⁵² It is also the standard recommended by the several human rights-oriented attorney-witnesses who spoke to the Committee, including Allen Gilbert, Executive Director of the American Civil Liberties of Vermont; Dan Barrett, Staff Counsel of the same organization; Robert Appel, Executive Director of the Vermont Human Rights Commission; and Jack McCullough, Director of the Mental Health Law Project of Vermont Legal Aid.

One might argue for a deployment standard that only requires a simple “risk of harm” rather than a “threat of imminent serious bodily injury” standard, in order to give the police some “leeway”. The Committee sees a simple “risk of harm” standard as lax and unenforceable. It could be justified by almost any aggressive words or uncooperativeness reported by the officer. And, given the great deference afforded police officers’ assessments of situations in the field, it would be virtually impossible to question an officer’s claim of a simple “risk of harm”. It is a standard that would be an invitation to the very abusive deployment of the weapon that the public most fears, and would likely undermine the police-public relationship. Tasers are weapons which should be used only in the most exigent circumstances.

It is true that a “risk of serious injury” standard does not allow deployment in all situations in which an officer might find Tasers useful. But a “threat of imminent serious bodily injury” standard helps prevent a premature and abusive resort to the weapon; requires deployment of lower levels of force when they would be adequate for the situation; avoids Taser deployment in the relatively routine push or kick encounters; encourages greater reliance on an officer’s crisis intervention skills; pays heed to the unknowability of whether a subject is a member of a vulnerable population and in so doing prevents unnecessary serious injury or death from Tasers; and is mindful of the reluctance of a substantial portion of this community to add Tasers to the police arsenal.

D. A High Policy Standard Regarding the Deployment of Tasers is Especially Important for Public Protection, in Light of the Low Standard Used by the Federal Court Regarding Allegations of Excessive Force.

As the Committee learned from lawyers who testified before it, a state or municipality is always capable of creating a policy that is more protective than one found in the federal Constitution, so long as a local standard does not undermine the federal one. This ability to create a higher local excessive force standard underlies the national debate about a prudent standard for Taser deployment.

The federal Constitutional right not to be subject to excessive force derives from the Fourth Amendment protection against unreasonable searches and seizures, which has been

⁵² During discussions between the Committee and Chief Facos, it was proposed to him that an acceptable deployment standard for Montpelier, should Tasers be approved, could be, “where the subject has the means and intent to cause imminent serious bodily harm”. Chief Facos said he would consider and report back to the Committee about the acceptability of this proposed standard, but did not do so.

interpreted by the United States Supreme Court in the case of *Tennessee v. Garner* (1985) to require that government employ “objectively reasonable” force in light of the circumstances. In that case, deadly force was prohibited “unless it is necessary to prevent the escape and the officer has probably cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others”. In 1989, the Court revisited the issue of excessive force in *Graham v. Garner*, where it said the assessment of objective reasonableness “is not capable of precise definition or mechanical application”, but that the analysis should include consideration of the severity of the crime, whether the suspect posed an immediate threat to the safety of the officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight.

The broad principles mentioned in *Graham* are, like many constitutional standards, left to the lower courts to apply and further define, and it is left up to states and local government to create standards that more fully reflect local conditions and values. “Reasonable force” is only a litigation standard to assess when the police exceeded their authority. **It is not a standard for how a community wishes its police to use force and weaponry on a daily basis.** That is why virtually all research and recommendations regarding Tasers, and virtually all local police policies, are more explicit and descriptive of when lethal and potentially lethal force can be used.

All cases originating in Vermont that raise a federal excessive force issue are reviewed by the Second Circuit Court of Appeals, sitting in New York City. That Court has shown a disturbingly unprotective view of citizens who have been subject to tasings, exemplified in the recent Vermont case of *Crowell v. Kirkpatrick* (2010).⁵³ There, two entirely non-violent protestors at a commercial development site in Brattleboro were directed to leave by the police, and refused to do so. The police then sought to arrest them for the misdemeanors of trespass and resisting arrest. The two protestors had devised a method to make their removal more difficult – they chained themselves to a weighted barrel drum, and, though they had the means to unchain themselves from it, refused to do so. The chief of police, who was not present at the scene, instructed the police not to take extraordinary action. Nevertheless, the police on the scene warned the two protestors that they would be tased if they did not leave. Upon the protestors’ continued refusal to unchain themselves, the police tased them, using the device’s painful “drive stun” mode, upon which the two relented and were arrested.

The Vermont federal court found this use of force by the police to be reasonable. A unanimous panel of the Second Circuit Court of Appeals affirmed that decision, finding that the use of a Taser by the police was necessary to overcome the protestors’ “active resistance” and distinguishing it from “purely passive” resistance. It is important to note that this is the same “active resistance” standard found in Chief Facos’s proposed use-of-force policy. It is also significant that the City of Brattleboro retained an outside person to review the case, who concluded that the city had used excessive force in the incident.

⁵³ http://www.ca2.uscourts.gov/decisions/isysquery/b62220bf-a646-414a-abcd-b00b6ddab834/1/doc/09-4100-cv_so.pdf

Chief Facos, like the representatives of the Burlington and South Burlington forces who spoke to the Committee, and like the Vermont Attorney General, states that he disagreed with the decisions of the district and appellate courts in *Crowell*, and agreed that Tasers should not have been used under those circumstances. But it was also Chief Facos who answered the City Council's inquiries, at its Taser hearings last January, that his proposed "active resistance" use-of-force deployment standard posed no problem, because the legal issue of excessive force is easily and reassuringly handled by *Graham*'s nostrum that all force must be "objectively reasonable". In taking that position, the Chief confused, and continued in the Committee's hearings to confuse, a court-created legal standard to look back at a concluded event to decide whether a minimal federal Constitutional standard has been met, with a positive and locally-attuned standard – representing local scenarios and local values – for when potentially lethal force may be used. If *Graham* solved all use-of-force issues for local communities, as Chief Facos assured the Council and the Committee, we would not see the intense debate and the profusion of standards around the country for when lethal and potentially lethal weapons may be used.

The disheartening lesson of *Crowell* is that the federal appellate court that reviews Vermont cases will uphold the use of Tasers in all fact situations that involve conduct that is anything more than "going limp". This permissive and unprotective attitude by the court toward the use of Tasers makes it crucial that local community standards for Taser deployment be high, strict, and clear, so that the public has a greater margin of safety against improper Taser deployment, and that the public anxiety over the use of this weapon might be at least partially assuaged. Neither the paltry "active resistance" nor the unenforceable "risk of harm" standard meet that need. Only a standard requiring a "threat of imminent serious bodily injury" does that.

IV. In Light of the Lack of Objective Showing That Tasers Are Necessary Here, There are Better, More Productive Ways to Spend the Money To Advance Public Safety.

The Committee is aware of the difficult economic decisions facing the city and the City Council. The disrepair of city infrastructure, the deterioration of our tax base, and the budget constraints of our schools are causing the city to have to prioritize in new ways. Given that the evidence demonstrates a wish for Tasers based largely on hypothetical scenarios but not a real and present need for the device, the Committee believes any further expenditure for law enforcement should be directed toward more effective remedies. Two of those alternatives are described below

1. **Crisis Intervention Team training:** Thanks to Chief Facos's wisdom in the matter, all Montpelier police officers receive the six-hour elective "Act 80" training in mental health matters at the Vermont Police Academy. This is commendable, since not all Vermont departments make this course mandatory. But the attendance of police officers at this course is far from sufficient to reassure that they are trained well enough given the lethal and potentially lethal weapons they carry, and the given the difficult street encounters with which they have to deal. This is not just the Committee's view. Cindy Taylor-Patch, an Act 80 Task Force member

and the Police Academy trainer and curriculum developer for the mental health course, informed the Committee that the course “only scratches the surface” of the mental health issues relevant to police knowledge and conduct in the field. Chief Facos, in comments before the Committee, agreed with this appraisal of the training. Ms. Taylor-Patch further stated that the Police Academy course involves no testing or appraisal of an attendee’s knowledge of the course content, just the acknowledgment that an officer attended. In the words of Laurie Pontbriand of Washington County Mental Health and also an Act 80 Task Force member, with reference to the Police Academy course, some officers “get it”, others do not; and the Police Academy course does not deal extensively in crisis intervention. The Committee heard from many members of the mental health patient and advocacy communities with regard to both Tasers and CIT training:

- **Cindy Taylor-Patch**, with backgrounds in both mental health and law enforcement, is “ambivalent” about Tasers.

- **Mary Moulton**, Director of Intensive Care for Washington County Mental Health (WCMH), oversees the agency’s “screeners” who perform emergency mental health interventions, sometimes in conjunction with the police, with a typically twenty-minute lag time before WCMH screeners are able to respond to a police call. Moulton also expresses “ambivalence”. She believes the Montpelier police have handled these difficult situations well. Her ambivalence about Tasers stems from her belief that in a few situations there could have been police resort to a firearm, but she also recognizes that the major studies have recommended Tasers not be used on this population. If the proposed Taser money came to her agency instead, she would hire crisis intervention trainers to do cross-training with WCMH and the police in suicide risk assessment, hostage negotiation, better training about how people react to substances, stress reaction, and trauma. WCMH has applied for a grant for a Street Outreach Interventionist, who would be able to give a more immediate response to police calls than screeners are able to do, but such funding has not been approved. Burlington has such a position, funded through the Howard Center for Mental Health.

- **Gary Gordon**, the leader of a mobile crisis team for Washington County Mental Health, was the sole Committee witness in this field who appeared to clearly favor Tasers. He feels the Montpelier police do a good job de-escalating situations.

- **Jack McCullough**, Director of the Mental Health Law Project of Vermont Legal Aid, believes Tasers would be a “serious mistake”, in that police often cannot know if someone has an underlying mental or physical condition. He believes Tasers will lower the threshold for the use of force, and too often be used against uncooperative or “nuisance” subjects who pose no threat.

- **Mike Sabourin**, a patient advocate at the State Hospital and board member of Disabilities Vermont, finds no need for the device here given the other weapons in the police arsenal.

- **Steven Morgan**, the Director of Another Way, an organization serving psychiatric survivors and at-risk individuals here, opposes Tasers and supports the police using de-escalation techniques, much as the State Hospital uses “least restrictive means” to control difficult individuals. In his experience, outcomes are different if individuals expect aggression.

- **David Callahan** helped establish Another Way. He says Tasers would be a wrong step to take here, being, in his opinion, a tool of fear and subject to being easily abused. He believes that what the police need instead of Tasers is mediation skills, and that their ability to negotiate

will be worse if they have Tasers.

– **Laura Ziegler** is an Act 80 Task Force member who opposes Tasers here. She noted that the mentally ill cannot always understand or communicate with officers, and that they are especially prone to lack of impulse control. She also believes “when something is expedient, you resort to it, especially when it is billed as safe . . . People need to be subdued, it’s true, but not this way.” She also noted the combination of psychiatric or cognitive disabilities with intoxication can dangerously affect the heart and seizure activity.

– **Deb Sargent**, a local psychotherapist, would allow “a few” Tasers here, based on her experience of once having been stalked by a client.

Although there was not unanimity among these witnesses with expertise in the field about the wisdom of introducing Tasers, most found an insufficient showing of need for them in Montpelier. Beyond that question, every one of these witnesses who expressed an opinion about it – which was most of them – agreed that Crisis Intervention Team (CIT) training is what is critically missing in our police training, whether or not Tasers are adopted here. Unlike Vermont’s six-hour course in mental health matters, CIT training is an in-depth, 40-hour training that takes place in various places around the country (including Maine, Connecticut and New York), although not in Vermont.⁵⁴ Some in Vermont, like Taylor-Patch, have taken the training in Maine, and she, along with Mary Moulton and Laurie Pontbriand, have sought to find the funding to establish the training here. Other cities have implemented the training, and Memphis, Tennessee has created the highly-respected “Memphis Model” based on it, as an alternative to Tasers. This Model was created in 1988 when

. . . the Memphis Police Department joined in partnership with the Memphis Chapter of the National Alliance on Mental Illness (NAMI), mental health providers, and two local universities (the University of Memphis and the University of Tennessee) in organizing, training, and implementing a specialized [volunteer] unit. This unique and creative alliance was established for the purpose of developing a more intelligent, understandable, and safe approach to mental crisis events.⁵⁵

It is a model which the Federal Bureau of Investigations has endorsed: “Overall, research supports the use of a specialized law enforcement response to address the needs of persons with mental illness. In particular, the Memphis CIT model is functional, generally accepted by police departments, and, most important, effective.”⁵⁶

Chief Facos voiced support for CIT training (although he questioned whether the City

⁵⁴ A major national CIT training organization is Non Abusive Psychological and Physical Intervention (NAPPI) available at <http://www.nappi-training.com/index.cfm>.

⁵⁵ See Memphis Police Department’s website for this program, <http://www.memphispolice.org/Crisis%20Intervention.htm>.

⁵⁶ FBI Law Enforcement Bulletin, October, 2011, available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/october-2011/responding-to-persons-with-mental-illness>

Council would be willing to allocate money for his officers to receive it). As Laura Usher, a former Vermonter and the CIT Coordinator for the National Alliance on Mental Illness, informed the Committee, CIT training is, ideally and by design, a regional and multi-agency approach, but she and Taylor-Patch and others shared the opinion that even if funding for that kind of expansive regional program cannot yet be found here, individual officer CIT training is far superior to the Act 80 course at the Academy in educating officers to identify and deal with citizens' mental health conditions and crises.

As the police use-of-force reports clearly demonstrate, many of the difficult police-citizen encounters here involve subjects with serious mental health disturbances. The police cannot be expected to identify and non-violently intervene in such situations, nor to know when a potentially lethal weapon is warranted against these individuals, without having an in-depth understanding of mental health issues and an in-depth skill-set for de-escalating those encounters.

2. Police social worker: A different approach adopted by some cities has been the creation of a police force staff position of "police social worker". This position, especially relevant to law enforcement during nights and weekends, keeps at the ready a social worker highly trained in crisis intervention techniques, who could accompany officers to or be quickly called to the scene of a disturbance, and who could engage subjects in ways that could de-escalate a confrontational situation, making a violent outcome on either side less likely.

Both of the above alternatives are endorsed by the mental health professional community. Either of them would be a better choice than Tasers for enhancing public safety.

V. Should City Council Approve the Purchase of Tasers, The Following Preconditions To Their Purchase and Use Should Be Adopted.

Should the Council approve the purchase of Tasers notwithstanding the Committee's recommendation, it is critical that high standards, strict safety measures, extensive training, and vehicles for heightened police accountability be implemented before such purchase and deployment. The Committee believes the following, culled from the major studies of Tasers, are essential preconditions to Taser acquisition by the Montpelier Police Department.

1. Require Crisis Intervention Team training: No officer should be allowed to possess or use a Taser until he/she has successfully completed a 40-hour CIT training course. The Committee further recommends this training for our officers even if Tasers are not added to the police arsenal.

2. Create a police social worker position in the police force: A police social worker is not a substitute for CIT training, but in the absence of such training for the police force at large, a police social worker would provide the next-best level of crisis intervention and de-escalation skills in confrontational situations involving the police.

3. Require and develop in-depth police training in the use and dangers of Tasers:

When one reads the major research regarding Tasers, there is virtually universal skepticism regarding the company's assurances of its safety.⁵⁷ There is likewise a universal recommendation that local police forces not rely solely on the company's in-house training in the device, but rather supplement it with more in-depth and objectively arrived-at training standards. This is because the Taser company's materials "focus primarily on technical proficiency, but they do not provide use-of-force training. In addition, Taser International's materials have downplayed the risks of injury and death resulting from Taser use."⁵⁸

When presented with this fact, Chief Facos – who has not been trained in the use of the weapon and acknowledged only "scanning" the training materials – took the position that supplemental training would be no problem, in light of the training that Montpelier officers already undergo. This indicates a misunderstanding of the concept of "supplemental training" regarding Tasers, by which is meant training in the device itself, not just, more broadly, in the police practices in which our officers are already trained. Any presence of Tasers in this community must be in conjunction with in-depth training in the device that does not solely or primarily rely on the company's materials – and must be training that requires the officer not just to attend, but to be tested and evaluated, on a yearly basis, as to his/her competency with regard to the device. Officer certification in Taser use should include personal exposure to a full-force and full-duration (five-second) discharge.

4. Adopt an "imminent threat of serious bodily injury" deployment standard:

Should the City Council decide to purchase Tasers, it should do so only conditioned on a "threat of imminent serious bodily injury" deployment standard, putting Tasers on a par with firearms. This standard is endorsed by the Stanford Report, Amnesty International Report and the American Civil Liberties of Northern California Report, and is appropriate for this community. By Chief Facos's own admission, the "active resistance" standard is insufficient to the extent it requires only, for example, "stiffening" or "hunching" on the part of the subject. Some reports, such as the Braidwood Inquiry and the Burlington use of force policy (which Chief Facos approves of), purport to go further than "active resistance" by vaguely requiring there be a "risk of bodily injury" or "risk of harm" posed by the subject. The Maryland Report goes a step further by requiring a "risk of physical injury . . . excluding minor injuries". These standards, in the Committee's view, offer an illusory restraint on the use of the weapon, for what difficult encounter could not be rationalized afterwards as containing a "risk of harm"? The simple "risk of harm" standard is more atmospheric than substantive, and insufficiently protective of the public. Only a "threat of imminent serious bodily injury", akin to the lethal force standard for

⁵⁷ See Silverstein, *supra*, at 3-4, who reports that the Securities and Exchange Commission investigated allegedly deceptive statements by the company following reports in the Arizona Republic and the New York Times questioning its safety claims, company reliability studies, and marketing practices. The Taser company agreed to modify its "nonlethal" claims about the weapon, and in 2006 settled a stockholder lawsuit for \$20 million.

⁵⁸ "Conducted Energy Devices Guidelines and Limitations", American Civil Liberties Union of Northern California, at 2. Available at http://www.aclunc.org/docs/criminal_justice/police_practices/aclu_of_northern_california_conducted_energy_devices_guidelines_and_limitations.pdf.

In agreeing with this proposal, Chief Facos stated he believed

firearms, is meaningfully restrictive as to when this weapon may be used, and provides an enforceable restraint against abusive or premature deployment. It would prevent unfortunate Taser incidents that have occurred in Vermont, such as the groundless tasing of a homeless woman outside a convenience store in Barre, the tasing of a 23 year-old man with Downs Syndrome by the State Police for pulling away from an officer during an effort to escort him to a new placement, the tasing of the protesters in Brattleboro, and the tasing of a Fairlee man who was experiencing a seizure. None of these, and other incidents, should have happened, and they are far less likely to happen with a “serious bodily injury” standard of deployment.

5. Position Tasers immediately below firearms on the force continuum: The VLCT model policy that Chief Facos has proposed would place Tasers far down the use of force continuum, akin to pepper spray, and below canines, batons and physical measures. Such a placement on the continuum does not appreciate that this device is termed “less lethal” by its manufacturer because it can be lethal. Low placement on the continuum will only encourage the premature resort to the weapon when other, non-lethal weapons and methods would suffice to control a situation. For these reasons, Tasers should be placed immediately below firearms on the use of force continuum.

6. Equip officers with body cameras: Tasers should not be adopted without the concurrent adoption of body cameras, such as are used by many police forces, for the protection they offer to everyone involved in police-citizen encounters and to the City itself. Chief Facos told the Committee he had no objection to body cameras. And he agreed that, since body cameras make full recordings of such encounters, they were superior to Taser-mounted cameras, which only begin recording when the weapon’s safety is taken off, thereby offering no record that demonstrates the justification of a deployment. The deployment of body cameras must be with policy rules including that the cameras “on” at the beginning of all “street” encounters.

7. Carry defibrillators in cruisers and require officer training and competency in their use: Tasers are especially dangerous for individuals with heart conditions or who are highly agitated. Such agitation is often seen in incidents involving an intoxicated or mentally unbalanced individual. Heart complications, such as ventricular defibrillation, are a serious concern and a prominent suspect in Taser-related deaths. The Committee and Chief Facos agree with the wisdom of placing a defibrillator in every cruiser. Officers must be trained and shown competent in their use.

8. Collect and preserve data indefinitely: The VLCT-proposed policy would have Taser-related data kept for no more than 30 days unless an unnamed records employee in the police department determines, for unstated reasons, that some particular data should be kept longer. It is imperative that Taser data be preserved indefinitely. Chief Facos agrees with this.

9. Add pepper foam to the police arsenal, and consider other non- and less-lethal alternatives to Tasers: The Montpelier Police arsenal should include pepper foam. This weapon was specifically developed to offset one of the limitations of pepper spray, that it can give off gas that can be drawn into a ventilation system. While not a perfect answer to all pepper

spray concerns since even foam gives off some amount of gas, it nevertheless goes a long way to enlarge the capability of oleoresin capsicum to handle difficult encounters and prevent recourse to Tasers. The Committee believes pepper foam would be a wise addition to the police arsenal regardless of whether Tasers are acquired. It also recommends the police department investigate other less lethal and non lethal weapons such as projected bean bags, foam batons, and the newly-developed police devices that immobilize by means of intense light.

10. Create a Citizen Review Board: The Committee strongly recommends the creation of a Citizen Review Board to review use-of-force incidents, and Chief Facos agrees such a board could be beneficial.⁵⁹ Such a board would not only be a helpful investigatory tool for the city, but would also help maintain police-community relations, especially in light of the deep division of public opinion regarding Tasers. The Committee recommends a review board regardless of whether Tasers are acquired. Such a board would need sufficient resources, unrestricted access to information, and meaningful powers, for it to have credibility in the community.⁶⁰

11. Prohibit drive stun mode: Some reports on Tasers would recommend allowing the drive stun mode in exigent circumstances to prevent death or serious bodily injury. Other studies recommend this mode never be permitted, because in that mode the device does not immobilize, but only causes excruciating pain, which some subjects can “fight through”, with the result of the aggravation of the already-tense encounter. The Committee recommends the prohibition of the device in drive stun mode, to prevent both the aggravation of an encounter and to make less likely the potential for abusive deployment of the device.

12. Prohibit tasing a fleeing or running subject: All major studies prohibit deploying Tasers on fleeing or running subjects, due to the increased risk of injury or death.

13. Use specific, descriptive and mandatory language in written policy: The proposed VLCT policy is replete with suggestive, non-mandatory language that may suit the insurance company but does not protect the officer or the public. The policy makes continual use of “should”, “it is recommended”, “should consider”, and similar vague and non-mandatory language. Police officers must, by necessity, use their discretion in the field. But that discretion must be guided by policy that cabins discretion with mandates (“must”, “shall”) to the extent prudent and possible. The lack of such policy language is an invitation to municipal liability.

14. Include in any policy the current policy’s humane and cautious principles regarding an escalating use of force: Our current Use of Force policy, on page one, contains common-sense, humane and cautious principles that the proposed VLCT policy omits. They include:

- “[T]he degree of force employed should generally be in direct relationship to the amount of resistance employed by the person or the immediate threat the person poses to the officer or

⁵⁹ In agreeing with this proposal, Chief Facos stated he believed the members of a review board should be educated with regard to use-of-force matters. He also said he would need to consult with legal counsel about this proposal.

⁶⁰ A leading resource for understanding and creating citizen review boards is the National Association for Civilian Oversight of Law Enforcement (NACOLE), found at www.nacole.org.

others.

- “The use of force by officers of the department will generally be progressive in nature.”
- “Officers must weight the circumstances of each case and employ only that amount of force which is objectively reasonable to control the situation or persons.”
- “[T]hey shall, to the extent possible, utilize an escalating level of force”

These concepts are either missing or severely diluted in the proposed VLCT policy, and in so doing the proposed policy backs away from the injunctions that police use only the force necessary, and only in an escalating fashion to the extent possible. The omission of these principles increases danger to the public and liability to the city. Any Montpelier policy must embrace the principle that “[n]on-force options should be tried where feasible before using an ECW or other force options.”⁶¹

15. Fully specify all populations and circumstances relevant to limitations on Taser deployment: The proposed VLCT policy states: “Officers should consider the particular subject and any vulnerabilities they may have, such as: juveniles, pregnant women, persons who are small in stature, and the elderly. Alternative tactics shall be utilized where the officer has prior information that the subject suffers from a disability which would increase the danger to that person by using the Electronic Restraint Device, i.e., a person at the scene tells an officer that the subject has a heart condition.” (IV)(F)(b)(xxiii and xxiv). In light of the extensive prohibitions that have developed from the research, any written policy must **specify** the precise vulnerable population categories, as set out *supra*, and reiterate that Tasers may only be deployed against them in the extreme circumstance of a **threat of imminent serious bodily injury or death**.

As alarming as the policy’s lack of specification and guidance regarding vulnerable populations, is its treatment of a recognized one. Section (IV)(F)(b)(vi) states: “Multiple Electronic Control Device deployments against an individual may increase the likelihood of serious injury where the individual is suffering from other *[which?]* symptoms such as cocaine intoxication.” It leaves up to the officer to guess what other symptoms may fall under this section. But then it goes on: “Policy and training should encourage officers to minimize the successive number of discharges against an individual where possible.” In other words, officers are not instructed to refrain from deploying against these unspecified populations unless lethal force would be justified – rather, they are only told not to deploy *successive* discharges. This is at least negligence, if not recklessness, in policy development.

Many other situations and vulnerable populations and prohibited circumstances are unspecified in this policy, too numerous, and perhaps unnecessary, to point out. Suffice to say the itemization of these prohibitions, as set forth earlier in this report, *and including the cognitively disabled*, should be set out with specificity in any Montpelier use-of-force policy.

16. Require warnings when possible before deployment: The proposed VLCT policy states: “A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable.” (IV)(F)(b)(xvii)). This is insufficient guidance to the officer in the

⁶¹ Maryland Report at 69.

field, causes unnecessary danger, and invites liability. While pre-tasing warnings are not always possible in exigent circumstances, such warnings should be mandatory when they would not clearly jeopardize the law enforcement objective, and written policy should make this clear. (*Accord*: Maryland Report at 71)

17. Prohibit use of a Taser as a pain compliance weapon or general force tool. The proposed VLCT policy states: “Officers are prohibited from using the device as a punitive measure.” (IV)(F)(b)(xv). This is insufficient, in light of the view of the major reports on Tasers that go beyond punitive use, to also prohibiting use for compliance and as a general force tool.

18. Prohibit multiple shots and continuous or prolonged exposure except where lethal force would be justified: Taser shocks should be as brief as possible. Multiple shots against a subject are significantly associated with Taser-proximate fatalities, particularly if the subject was emotionally disturbed, drug intoxicated or showed continued resistance.⁶²

“An officer should only administer an additional ECW discharge after the initial discharge if the officer has reevaluated and concluded that the subject still poses an imminent threat of significant physical harm and other options are not appropriate. Repeated or prolonged (*i.e.*, beyond the 5-second standard cycle) discharges should be avoided whenever possible.” (Maryland Report at 71)

19. Prohibit Taser use on subjects in restraints except where lethal force would be justified. (*Accord*: ACLU of Northern California report at 4). The ability of a subject to cause a threat of harm while in restraints is not eliminated but is greatly reduced. Other forms of control must be used in this circumstance unless the subject poses an ongoing threat of causing imminent serious bodily injury.

20. Avoid impairment of respiration: Given the respiratory complications that are associated with Taser use, an officer must, following use of a Taser, not employ a restraint method that could impair a subject’s respiration.

21. Provide emergency medical care immediately after all Taser use: Emergency care should be provided immediately after all Taser deployments. The subject, who may be intoxicated or mentally ill, cannot be relied on to request or agree to such care. Medical care should be called in advance and on the scene if an officer believes use of a Taser is reasonably possible.

22. Monitor tased subject’s health closely while in custody: Studies indicate that the in-custody death rate rises after the introduction of Tasers. All tased people must be closely monitored while in custody, even after receiving medical care.

⁶² White and Ready, *supra*, at 863.

23. Reporting, supervision and monitoring: All Taser incidents must be reported on a use-of-force form detailing events leading up to and following the discharge. Data to be reported include but are not limited to: a detailed description of the subject's behavior, the facts and level of aggression presented by the subject, the officer's reasons for concluding there was a likelihood of imminent harm by the subject, the number of cycles and the duration of shock, the duration between shocks, all witnesses, the range, the mode used, the distance fired, the point of impact on the body, whether there was any indication that the subject was a member of any vulnerable population as described earlier in this report, the time and type of medical care provided, and any injuries suffered by any person.

24. Supervisors should respond to the scene of any Taser deployment as soon as possible: The quick presence at the scene of a deployment by a supervisor would both ensure to officer and the public the seriousness with which the police force and the city regard Taser deployment, and also assure an immediate assessment of the appropriateness of the deployment.

25. Conduct rigorous investigation following each deployment: A supervisory-level or higher inquiry must be conducted to determine the appropriateness of every deployment and whether there was strict adherence to policy and training. Such investigations should include interview of witnesses; review of video, photographic and data evidence, test results on the weapon; and other relevant information. Such investigation must also be conducted externally, by Citizen Review Board or otherwise, when a subject dies or is seriously injured, when there has been a substantial deviation from policy or training, and when the subject is a restrained or a vulnerable person as defined in this report.

26. Monitor Taser use by the agency: The police force should use a tracking database that is capable of maintaining detailed information as to each device and each deployment, can reveal the circumstances of every Taser deployment, and shows the extent to which officers are relying on the device compared to other forms and methods of control. This information and data must be available to the public.

Bibliography of materials

First author only is cited.

American Civil Liberties Union of Arizona. *ACLU of Arizona Report Shows TASERS Have Not Reduced Police Use of Lethal Force*. Press release June 28, 2011.

American Civil Liberties Union of Arizona. *A Force to be Reckoned With; Taser use and policies in 20 Arizona law enforcement agencies*. June 2011.

[www.acluaz.org/resources/publications]

American Civil Liberties Union of Massachusetts. *Less Lethal Force; Proposed Standards for Massachusetts Law Enforcement Agencies*. Post-2005.

American Civil Liberties Union of Northern California. *Conducted Energy Devices; Guidelines and Limitations*. About 2010. Available at

http://www.aclunc.org/docs/criminal_justice/police_practices/aclu_of_northern_california_conducted_energy_devices_guidelines_and_limitations.pdf.

American Civil Liberties Union of Northern California. *Stun Gun Fallacy; how the lack of Taser regulation endangers lives*. 2005.

Amnesty International. *Less Than Lethal? the use of stun guns in US law enforcement*. 2008.

[amnesty.org]

Azadani, P. et al. Research abstract presented at the 32nd annual Scientific Sessions of the Heart Rhythm Society. 2011.

Azadani, P. et al. *Funding source and author affiliation in TASER research are strongly associated with a conclusion of device safety*. American Heart Journal, September 2011.

Bagley, A. *The neuropsychological effects associated with Taser administrations*. Presented to satisfy in part the requirements for the degree of Doctor of Philosophy in Clinical Psychology at the Rosalind Franklin University of Medicine and Science, 2008.

" The current study was the first of its kind to examine the neuropsychological effects associated with Taser administrations. Profile analyses compared neuropsychological performances and found significant differences in profiles of Tased and non-Tased participants for the domains of processing speed, attention, memory, and executive function."

Baldwin, D. et al. *Myocardial infarction after Taser Exposure*. J La State Med Soc 162 Sept/Oct 2010.

Benedict, Claire. Email to Marilyn Mode. July 5, 2011.

She doesn't want Tasers because the potential for abuse is too high.

Bozeman, W. et al. *Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects*. Ann Emerg Med. vol 53; pp. 480-489; 2009.

Tasers can be used safely against healthy male adults.

Braidwood Inquiry 2010.

An inquiry into a case of the RMCP in Canada tasing a man who died within minutes, and the subsequent attempted coverup by the RMCP, with recommendations for policies on use of Tasers. [www.braidwoodinquiry.ca].

Bui, E. et al. *Generalized tonic-clonic seizure after a taser shot to the head*. CMAJ, 180(6) March 17, 2009.

Bulman, P. *Police Use of Force: The Impact of Less-Lethal Weapons and Tactics*. NIJ Journal, issue no. 267. 2011.

Bunker, Robert. *Should police departments develop specific training and policies governing the use of multiple TASER shocks against individuals who might be in vulnerable physiological states?* Criminology and Public Policy, 2009, 8(4), pp 893-901.

Burlington Free Press Staff. *Vermont State Police to make revisions to Taser policy.* Burlington Free Press, October 22, 2011.

Burlington Police Department. Press Release. *Regarding the Use of Taser Electronic Control Device.* Updated – November 16, 2009.

Burton, John. *Representing Clients Injured by TASER International Electrical Control Devices.* Civil Rights Litigation Handbook, chapter 3, pp 27-51. 2010.

Burton, John. Teleconference with him via Skype. Minutes of the Taser Committee on Sept 13, 2011.

Cao, M. et al. *Taser-Induced Rapid Ventricular Myocardial Capture Demonstrated by Pacemaker Intracardiac Electrograms.* J Cardiovasc Electrophysiol, 2007, 18, pp. 876-879.

This report describes the first human case of ventricular myocardial capture at a rapid rate resulting from a Taser application.

Chen, S. et al. *Perforating ocular injury by Taser.* Royal Australian and New Zealand College of Ophthalmologists, 2006, pp 378-380.

What happens when a Taser dart gets in the eye.

Chermak, Steven. *Conducted Energy Devices and Criminal Justice Policy.* Criminology and Public Policy, 2009, 8(4), pp 863-889.

Chicago Police Dept. Chicago Police Crisis Intervention Team.

Cochran, Sgt. Wade [MPD] *Taser Research, a survey of Vermont police agencies*.

http://montpelier.vt.granicus.com/MediaPlayer.php?view_id=2&clip_id=257&meta_id=10116

Connor, G. *Essential Elements in TASER Policy and Procedure Law and Order*. 2006.

<http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=236843>.

Council on Science and Public Health. *Use of Tasers by Law Enforcement Agencies*. June 2009.

[www.policeone.com/policeone/data/pdfs/Taser_ecd_resolution.pdf] (“AMA report”)

Crowell vs Kirkpatrick. Summary order from the US Court of Appeals for the Second Circuit.

www.ca2.uscourts.gov/decisions; docket number 09-4100-cv.

http://www.ca2.uscourts.gov/decisions/isysquery/b62220bf-a646-414a-abcd-b00b6ddab834/1/doc/09-4100-cv_so.pdf.

Curran, P. *Guns vs. Tasers debate reignites*. The Gazette June 9, 2011 [Montreal].

"[Montreal] Police even went so far as to describe the type of individual on whom Tasers were most likely to be used, particularly people under the influence of drugs or suffering from mental illness."

Donahue, Anne. Bill as introduced by Representative Donahue of Northfield. H31.

Any law enforcement officer who carries a Taser must have the Act 80 training.

Dworkin, Jeff. Summary of assaults on officers.

Dworkin, Jeff. Summary of a telephone interview with Cindy Taylor-Patch, Director of Training at the Vermont Police Academy. August 4, 2011.

She leads the mental health training at the academy.

Dworkin, Jeff. Summary of a telephone interview with Joe Damiata, Vermont League of Cities and Towns. July 28, 2011.

Joe is the manager of the League's safety and health programs, is an underwriter, and was familiar with the various VLCT model policies, including the one Tony Facos wants to adopt.

Dworkin, Jeff. Summary of a telephone interview with Thomas Hanley, Chief, Middlebury Police Department. August 9, 2011.

Middlebury decided they didn't need them.

Dworkin, Jeff. Summary of a telephone interview with Sam Hill, Sheriff, Washington County. August 2011.

"Sheriff Hill thinks stun guns are an excellent tool but that "we don't need them here.""

Dworkin, Jeff. Summary of use of force over four years of incident report data from the Montpelier Police Dept.

Eastman, A et al. *Conductive Electrical Devices: A Prospective, Population-Based Study of the Medical Safety of Law Enforcement Use*. J Trauma, 2008, 64, pp 1567–1572.

Ellerbe, Polly. *Safety of Tasers: an academic and review article summary; examples of negative effects*.

Dr Ellerbe went through all the articles [a couple of thousand plus] in the databases *Academic Onefile*, *Academic Search Premier*, and *Google Scholar* generated by using the search term "Taser," and limiting it to studies published after 2005. Tasers are probably non-lethal when used on healthy young men, but we know very much less on how they affect the populations they are most likely to be used on, or actually have been used on.

Facos, Anthony. First notes on worker's comp cases.

Facos, Anthony. LEOKA Report for 2010.

Facos, Anthony. Memorandum to William Fraser concerning the TASER request. Jan 7, 2011.

FBI Law Enforcement Bulletin. October, 2011. Available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/october-2011/responding-to-persons-with-mental-illness>.

Feeney, C. et al. *Acute Agitated Delirious State Associated With Taser Exposure*. Journal of The National Medical Association, 2010, 102(12).

" The occurrence of acute agitation and delirium in this patient without any prior psychiatric history or significant substance use suggests an association with Taser exposure. This case report is thought to be the first report demonstrating a temporal association between Taser exposure and an acute or delirious state."

Fernandez, Elizabeth. *Researchers Shocked: Tasers Cause Dramatic Rise of In-Custody Sudden Deaths*. Jan 24, 2009. San Francisco Chronicle.

Newspaper report of an article published in the American Journal of Cardiology.

Ferrell, Craig Jr. *What Every Police Chief Should Know About Electronic Control Devices* 1/3/2011. www.iacpnet.com.

Fisk, M. et al. *Taser Settled 10 of 52 Cases It Said Were Dismissed*. Bloomberg, Aug 2, 2007.

Fontenot v. TASER International, Inc., United States District Court for the Western District of North Carolina, Charlotte Division, Case No. 3:10-CV-125.

Fraser, W. Worker's comp data.

Hall, C. *Public Risk from tasers; unacceptably high or low enough to accept?* CJEM, 2009, pp 83-86.

Han, J. et al. *Ophthalmic injuries from a TASER*. CJEM, 2009, 11(1), pp 90-3.

"We describe a case in which ocular injuries were sustained by impalement with a TASER dart. Emergency physicians should be aware of the potential for serious ophthalmic injuries from TASERs and how such injuries should be managed."

Harris, D. *Taser use by law enforcement: report of the use of force working group of Allegheny County, Pennsylvania*. The University of Pittsburgh Law Review. Summer 2010.

" Tasers can be useful and safe weapons for police, as compared to other weapons, but only if they are used within the context of proper and well-developed policy, training, and supervision, and with accountability. The Working Group concludes that without any of these four important ingredients, the use of any weapon or tactic can do unnecessary damage and compromise the safety of the public and police officers."

Heightman, A.J. *Don't Be Shocked*. Editorial. JEMS | MAY 2005 p. 12 et al.

Taser death.

Heston v. Taser International, Inc. *Memorandum*. www.ca9.uscourts.gov/datastore/memoranda/2011/.../09-15327.pdf.

Ho, Jeffrey D. et al. *Echocardiographic Evaluation of a TASER-X26 Application in the Ideal Human Cardiac Axis* Academic Emerg. Med., 2008, 15, pp 838–844.

Ho is a Taser consultant, which he does not acknowledge in this article.

Ho, Jeffrey D. et al. Re: *Myocardial infarction after Taser Exposure*. J La State Med Soc, 2011, 163 March/April.

Ho is a Taser consultant, which he does not acknowledge in this letter.

International Association of Chiefs of Police (IACP). National Law Enforcement Policy Center *Use of Force Concepts and Issues Paper*. Originally Published: February 1989 Revised: December 1995; October 1998; April 1999; August 2001, February 2005, February 2006.

International Association of Chiefs of Police (IACP). *Electro-Muscular Disruption Technology*. 2008.

Jauchem, James R. et al. *Acidosis, lactate, electrolytes, muscle enzymes, and other factors in the blood of Sus scrofa following repeated TASER[R] exposures*. Forensic Science International, 2006, 20(11).

Jonsson, P. *Three deaths in one weekend puts Taser use by cops in crosshairs*. Christian Science Monitor. August 8, 2011.

Kaminski, Robert. *Research on Conducted Energy Devices; Findings, methods, and a possible alternative*. Criminology and Public Policy, 2009, 8(4), pp 903-913.

Kedir, S. *Stunning trends in shocking crimes*. J of Law and Health, 2006, 20, pp 357-384.

Tasers can prevent officer injuries, but can also get ahead of training, policies and regulations.

Khanna, Roma. *The Taser Effect*. Houston Chronicle, Jan 14, 2007.

" Since the Houston Police Department armed itself with Tasers, touted as a way to reduce deadly police shootings, officers have shot, wounded and killed as many people as before the widespread use of the stun guns, a Houston Chronicle analysis shows."

Kondro, W. *The 15% ruling*. Canadian Medical Association Journal, 2008, p 128.

Lee, B. *Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths*. Am J Cardiol, 2009, 103, pp 877–880.

" Taser deployment was associated with a substantial increase in in-custody sudden deaths in the early deployment period, with no decrease in firearm deaths or serious OIs [officer injuries]."

Li, J. *Catastrophic Globe Disruption As A Result Of A Taser Injury*. The Journal of Emergency Medicine, pp. 1–3, 2011.

They report a "case of a severe TASER-related ocular injury resulting in significant vision loss."

Lundquist, M. *A safe Taser dose: Evaluation of Taser-related in- custody deaths, with implications for law enforcement policy and training*. Mar 2007 APS abstract.

" The data on Taser-related in-custody human deaths collectively support a single-shock policy for LEAs (ideally, Taser use on people exhibiting physical exhaustion or any type of delirium, or who are taking drugs for mental health reasons, or are pregnant, is prohibited unless deadly force is justified), with a second shock permitted in emergencies only for people not in the foregoing "prohibited" category."

Mangus, B. *Taser and Taser Associated Injuries: a Case Series*. American Surgeon, 2008, 74(9), pp. pp 862-865.

Maryland Attorney General. *Report: Task Force On Electronic Weapons*. December 2009.
www.oag.state.md.us/Reports/ECWReport.pdf

McCullough, John. Statement Regarding Tasers for the Montpelier Police Department. August 16, 2011.

His statement at that committee meeting.

McCullough, John. Statement on the city charter. Prepared Sept 18, 2011.

McDonald, Elizabeth. *A Shocking Defense*. Forbes.com, 10/31/2005.

Current and former cops got stock options in Taser in exchange for essentially endorsing its line of guns.

Means, R. et al. *TASER and the Ninth Circuit Decision*. April 2010.
www.ncjrs.gov/App/Publications/abstract.aspx?ID=252791.

Memphis Police Department. Information about the Crisis Intervention Team model Memphis uses instead of Tasers. The police department's website for this program is <http://www.memphispolice.org/Crisis%20Intervention.htm>. 2011.

Mode, Marilyn. Summary of a telephone interview with Laura Usher, CIT Coordinator, National Alliance on Mental Illness (NAMI), Arlington, VA. August 16, 2011.

Montpelier, City of. Data on worker's compensation claims.

Montpelier Police Department General Order: Use of Force. Date reviewed: October 7, 2009. Includes copies of the necessary paperwork.

Montpelier Police Dept. Log. Search results from the log for all officer assaults; 2008-6/24/2011.

Montpelier Police Dept. Use of force reports.

Morrison, G. *Conducted Energy weapons; Learning from operational discretion and encounter outcomes*. *Criminology and Public Policy*, 2009, 8(4), pp 915-925.

NAPPI. Non Abusive Psychological and Physical Intervention (NAPPI). The website is at <http://www.nappi-training.com/index.cfm>.

National Alliance on Mental Illness [www.nami.org]. These materials were given to the committee by Roberta Downey.

NAMI Board Adopts Policy on Less Lethal Weapons by Ron Honberg

NAMI policy platform section 8.9

Self-help manual: starting a CIT program

CIT toolkit by Michael Woody

CIT toolkit FAQ

National Association for Civilian Oversight of Law Enforcement (NACOLE). www.nacole.org.

National Council for Community Behavioral Healthcare. *Mental Health First Aid*. unknown date.

National Institute of Justice. Police Use of Force, Tasers and Other Less-Lethal Weapons. May 2011. www.nij.gov.

National Institute of Justice. *Study of Deaths Following Electro Muscular Disruption: Interim Report*. June 2008. www.ojp.usdoj.gov/nij

National Institute of Justice. *Study of Deaths Following Electro Muscular Disruption*. May 2011. www.ojp.usdoj.gov/nij

Naunheim, R. et al. *Ventricular fibrillation in a man shot with a Taser*. Emerg Med J, 2010, 27, pp 645-646.

The case history is presented of a young man who was shot in the chest by a Taser and presented to the emergency department in ventricular fibrillation.

New York Civil Liberties Union. *Taking Tasers Seriously*. October, 2011.

O'Brien, A. *Use of Tasers on people with mental illness: A New Zealand database study*. International Journal of Law and Psychiatry (2010).

"Introduction of Tasers into policing in New Zealand will disproportionately impact on people with mental illness. Guidelines are needed to manage the future use of Tasers in mental health emergencies."

Pasquier, M. et al. *Electronic Control Device Exposure: A Review of Morbidity and Mortality*. [Annals of Emergency Medicine](#) May 2011.

"A single exposure of an electronic control device on healthy individuals can be assumed to be generally safe, according to 23 prospective human experimental studies and numerous volunteer exposures. In case series, however, electronic control devices could have deleterious effects when used in the field, in particular if persons receive multiple exposures, are intoxicated, show signs of "excited delirium," or present with medical comorbidities."

Police Executive Research Forum [PERF]. *Electronic Control Weapon Guidelines*. 2011. San Francisco Police Commission. Hearing. Available at http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=21.

Summary of part of the San Francisco Police commission hearing, prepared by Polly Ellerbe

Silverstein, Mark. National Police Accountability Project Skills Seminar, October 19, 2006. Tasers: evaluating claims of excessive force.

Sleigh, David. Clarification of his statement at a Taser committee meeting.

A state or local government is always free, by law or ordinance or policy, to create a more protective standard than the minimal federal one, and when state or local government does that it need not justify it.

Sloane, C. *Thoracic Spine Compression Fracture After Taser Activation*. The Journal of Emergency Medicine, 2008, 34(3), pp. 283–285.

They saw a Tasered police officer with an acute thoracic vertebral compression fracture occurring after being tased in a training exercise.

Smith, M. *A Multi-Method Evaluation of Police Use of Force Outcomes, Executive Summary*. NIJ 231177. July 2010.

Sorrell, W. et al. *A study and report concerning the use of tasers and other less lethal means of force by Vermont law enforcement*. April 7, 2008.

South Burlington Police Department. General Order: PR 302. Use of Force.

Stanbrook, M. *Tasers in Medicine: an irreverent call for proposals*. May 1, 2008. Online at www.cmaj.ca.

Stanford Criminal Justice Center. *Use Of Tasers By Law Enforcement Agencies: Guidelines And Recommendations Prepared For The City Of Mountain View Human Relations Commission*.

"The use of Tasers by law enforcement officers is almost entirely unregulated." They provide recommendations. "The clear consensus of the research is that a one-time five-second shock does not seriously or permanently injure a healthy and sober young adult who is not pregnant. However, the few studies that have been conducted, as well as the anecdotal evidence, suggest that there are some serious health risks involved when individuals not falling within that category are tasered." www.Law.Stanford.Edu/Academic/Programs/Criminaljustice

Strote, J. et al. *Taser Use in Restraint-Related Deaths*. Prehospital Emergency Care, 2006, 10(4), pp 447-450.

"The findings are consistent with prior studies, suggesting a high frequency of restraint-related and excited delirium-related fatalities."

Strote J. et al. *Taser Safety Remains Unclear*. Annals of Emergency Medicine, 2008, 52(1) p. 84.

" Even if the relatively small physiologic changes seen in this study are tolerable, swine model studies have begun to suggest that multiple exposures could lead to much more impressive changes than those seen from a single discharge."

Strote J. et al. *Conducted Electrical Weapon Use by Law Enforcement: An Evaluation of Safety and Injury*. The Journal of Trauma, 2010, 68(5), p. 1239.

Sun, H. et al. *Estimating the probability that the TaserI directly causes human ventricular fibrillation*. Journal of Medical Engineering & Technology, 2010, 34(3), pp 178–191.

Taser International. New warnings September 2009 and October 2010.
cardiac, acidosis, ventricular fibrillation, etc

Taser International. New training bulletin and FAQ October 2010.

Taser International. Risk management statistics. Prepared by Steve Tuttle, VP of Communications at Taser International.

Taser International. Summary of Taser International's phone call on the new warnings. October 23, 2009.

Taser International. Statistics showing number of Tasers bought by the general public and by police. Prepared by Steve Tuttle, VP of Communications at Taser International.

Taser International. TASER Device Liability and Litigation Risk. 2007.

Taser International. User courses.

Thomas, K. et al. *Conducted Energy Device Use in Municipal Policing*. Police Quarterly, 2010, 13, p 290. Online at <http://pqx.sagepub.com/content/13/3/290>.

Tucker, A.S. et al. *Responding to Persons with Mental Illness*. www.fbi.gov/stats-services/publications/law-enforcement-bulletin/october-2011/responding-to-persons-with-mental-illness.

Valentino, D. et al. *Taser X26 Discharges in Swine: Ventricular Rhythm Capture is Dependent on Discharge Vector*. The Journal of Trauma, 2008, December.

"For most transcardiac vectors, Taser X26 caused immediate ventricular rhythm capture. This usually reverted spontaneously to sinus rhythm but potentially fatal VF was seen with two vectors. "

Vermont League of Cities and Towns. *Response to Resistance*. 2010 [www.llrmi.com]

Vermont State Police. Rules and regulations/operational policies and procedures, section IV, chapter 1, Article IV. *Non-Lethal Use of Force*. Updated April 1, 1999.

Vermont State Police. Rules and regulations/operational policies and procedures, section V, chapter 9, Article XIV. *X26 Taser*.

Walter , R. et al. *TASER X26 Discharges in Swine Produce Potentially Fatal Ventricular Arrhythmias*. 2008 by the Society for Academic Emergency Medicine.

White, A. *Study Shows Tasers Pose Potential Risks for Pacemaker Patients*. Heart Rhythm Society 28th Annual Scientific Sessions.

" The study was the first human case to demonstrate how voltage in the weapon may be captured by the heart and speed up heart rates in pacemaker patients."

White, M. et al. *Examining fatal and nonfatal incidents involving the TASER*. Criminology and Public Policy, 2009, 8(4), pp 863-889.

White, M. *The Impact of the Taser on Suspect Resistance: Identifying Predictors of Effectiveness*. Crime and Delinquency, February 26, 2008.

Whitehead, S. *A rational response to Taser strikes*. JEMS | MAY 200

Wright, G., *17-year-old's family wins \$10 million in Taser verdict*. Charlotte Observer, Jul. 21, 2011.

Minority report for City Manager William Frasier and the City Council regarding the purchase and use of tasers by the Montpelier Police Department.

In April 2011 City Manager Frasier sent a memorandum to Mayor Hooper and the City Council regarding the appointment of a six person citizen committee to consider the following question: Under what circumstances would the use of tasers by the Montpelier Police Department be acceptable?

At the same time the manager's charge also asked the committee to consider and make recommendations concerning need, policy and standards, training requirements, and public accountability for use or display.

This was a lengthy, difficult process. In short, the majority of the committee is opposed to the purchase of tasers by the Montpelier Police Department, doesn't believe there is a need for tasers, and would prefer the city implement a Crisis Intervention Team approach to dealing with/de-escalate serious use of force situations.

A lot of time, effort and hard work went into the Majority Report and it's authors should be thanked for the research and detail that went into the document. I am not going to comment at length on a document that should speak for itself other than to say I disagree with several sections of the draft report and that the differences are such that I chose to write a minority report.

Some background: Beginning in the spring the committee held 17 meetings and two public hearings. We heard from a wide assortment of people who voiced a variety of opinions on tasers in general, their use and abuse by law enforcement professionals, and whether or not they should be used in Montpelier.

The committee reviewed hundreds of pages of documents and reports from a wide assortment of law enforcement, civil rights and advocacy organizations, including the Vermont Attorney General, the American Civil Liberties Union, Amnesty International, U.S. Department of Justice and the Maryland Attorney General's Task Force on Electronic Weapons.

Simply put there are no easy answers or magic solutions here. Advocates make strong arguments for taser use by law enforcement officials. Opponents make equally strong arguments against them. Ultimately the issue that the City Council must decide is are there any circumstances where the use of tasers in Montpelier are acceptable. In my judgement the answer is yes. I believe taser use should be acceptable in cases where police are dealing with situations where there is a threat of bodily harm to the general public, rescue personnel, or the police officer.

That said, the next issue is determining whether there is a need for tasers.

Reports by the Vermont Attorney General's report, the U.S. Justice Department, and the Maryland Attorney General's Task Force on Electronic Weapons all make arguments that can be

used to advocate for taser use. Since the arguments are similar I will only cite the Vermont attorney general who said, "less lethal means of force are and can be effective and efficient weapons available to Vermont law enforcement personnel in a use of force continuum. When used appropriately, they can save lives and greatly reduce injuries to law enforcement and rescue personnel, the general public, and to individuals who are subjects of police interventions."

Over the past five months the committee heard from a wide assortment of well meaning people on the taser issue. Opposition has been voiced largely by lawyers and representatives of civil and human rights organizations and a number of young people whose concerns range from the appropriateness of the devices in Montpelier to the potential for their abuse. Support has come from law enforcement officials who argue they are an effective tool in de-escalating dangerous situations where there is a threat of injury to the general public, rescue personnel and police officers. Burlington and South Burlington police officials who testified before the committee reported a reduction in the number of injuries to officers and zero lost time when tasers are on the scene in combative situations. Montpelier Chief Facos cited three separate cases in recent years in Montpelier where taser use would have been appropriate.

The majority of the committee believes Chief Facos failed to adequately demonstrate a need for tasers arguing that the cases referenced by the chief were all handled with available tools and therefore tasers were not needed. The majority report questions the seriousness of injuries to Montpelier police officers based on the committee's review of incident reports and workmen compensation claims, and uses those reports to argue against a need for tasers. The majority also argues that Montpelier doesn't see the types of crime that occur in Burlington and South Burlington and use that argument to support their opposition to tasers.

I disagree with those arguments. In my judgement any time an officer is injured in the line of duty it is a serious matter regardless of the degree of injury. The city has a responsibility to protect its employees and to provide its employees with the tools necessary to do their jobs in a safe and efficient manner possible. I fully understand that being a police officer is a dangerous job with many hazards and high expectations from the public they protect and serve. But there is nothing in a Montpelier police officer's job description that says they have to be a punching bag for some out of control individual.

I also disagree with the notion that Montpelier is immune from the types of crime that occur in Burlington and South Burlington. Vermont has become a mobile society and one has to be naive to ignore the fact that people from Chittenden County have been involved in a wide assortment of criminal activities in Montpelier and Washington County.

As I said earlier the committee heard powerful arguments for and against tasers. For me the difference was testimony presented by Mary Moulton and Gary Gordon, employees of Washington County Mental Health who have worked closely over the years with Montpelier police in a wide assortment of cases. While they did not directly advocate for tasers, they pointed out that they have both witnessed a number of situations that became violent because de-escalation efforts were not effective. "We have witnessed violent, physical take downs," Gordon said. "Batons can break bones, that's violent. Pepper spray can get into ventilation systems. Tasers may do a couple of things to ease a situation, they may not. If they (the police) have a taser and a gun, they might not use the gun. I would hate to see people shot." Gordon added that while Montpelier police have been able to handle situations without tasers, there have been a couple of real close calls...a hair's breath away from the use of a gun...within the past year.

I gave added weight to Moulton's and Gordon's testimony because of all the non law enforcement people who appeared before the committee they were the only two who have had actual in-field experience working with police in situations where there was a threat of bodily harm to the public, rescue personnel, or the police.

Law enforcement professionals follow a use of force continuum that includes several steps ranging from the visual appearance of a police officer to use of deadly force. The majority report would place tasers near the top of the use of force continuum, right below the use of a firearm. I disagree. In my judgement, when used properly, tasers should be more towards the center of the list, between chemical sprays and impact weapons such as pepper ball launchers and expandable batons.

The majority of the committee argues that tasers are potentially lethal and point to a number of cases where people have died after being tased. That, majority argues, is reason enough to place them near the top of the list of force options.

I would argue there are potential lethal issues with many of the less means of force options. Pepper spray is dangerous to people with asthma and other respiratory illnesses, gets into ventilation systems, and impacts anyone in the vicinity of the person being subdued. People have been killed when struck by pepper ball launchers. Batons have broken bones, caused serious head injuries and death.

Earlier I used the phrase "when used properly" to describe where I would place tasers in the use of force continuum. In my judgement it is important for the City Council to understand that tasers are a tool -- no more no less. Like with any tool, it is important for the city to provide the necessary training and to have in place the necessary policies and standards that clearly describe how and when the tool (tasers) are to be used.

State statute gives broad responsibilities and powers to police chiefs, particularly in the development of department policy. Clearly, by law, the responsibility to develop departmental policies regarding taser use reside with Chief Facos. The majority of the committee has expressed reservations about the proposed policy draft "Response to Resistance" submitted by Chief Facos and has outlined those concerns in detail. While I disagree with the majority report I have some concerns with the draft policy presented by Chief Facos.

In my judgement the City Council should work with the chief to include some common sense rules of thumb in what ever taser policy is implemented. They include:

- - Tasers should only be used in situations where someone is actively aggressive and there is a risk of bodily harm.
- - Tasers should NOT be used against passively resistant individuals who pose no danger to themselves or others.
- - Tasers should NEVER be used for pain compliance.
- - If a taser is used a use of force report must be filed and reviewed by senior staff other than the shift supervisor.
- - Records of taser use shall be maintained (for how long, I don't know).
- - All officers issued tasers must undergo training. Montpelier police should work with the Vermont State Police to develop training standards and continuing education programs regarding taser use.
- - An annual report should be made available to the public each year showing the number

of arrests, use of force incidents, the number of times tasers were shown, and the number of times tasers were used.

One of the main arguments used by the majority in their opposition to tasers is the notion of “vulnerable populations” - a list that includes the elderly, pregnant women, individuals who are intoxicated or high on drugs, person with mental illness, children and highly agitated individuals who are at “higher risk” of serious injury or death from the effects of a taser. As near as I can tell the “vulnerable population” list evolved in recent months through warnings from the manufacturer in the wake of law suits brought in cases where tasers were mis-used or abused.

A report by the US Department of Justice concludes. “There is no conclusive medical evidence in the current body of research literature that indicates a high risk of serious injury or death to humans from the direct or indirect cardiovascular or metabolic effect of short term CED (controlled electronic devices) exposure in healthy, normal, non-stressed, non-intoxicated persons.” The problem with the above statement is that history tells us this is not the population that tasers are most often used on. That is a concern.

The majority report uses the “vulnerable population” argument to counter many of the points made by taser proponents. That too is a concern because at the end of the day if a police officer finds themselves in a combative situation with a person brandishing a knife or swinging a two by four they have to use the tools available to resolve the problem regardless of whether the person involved in the incident is part of a “vulnerable population.” In my judgement a taser is a better option than a Glock 9 mm.

There was much discussion within the committee regarding investing in Crisis Intervention Training (CIT) as an alternative to purchasing tasers. CIT involves an intensive program that emphasizes human interaction techniques to de-escalate combative situations that police often find themselves in. To be effective it requires officers to be available 24/7 365 days a year. A key component behind the CIT philosophy is having officers volunteer for the program. The poster child for CIT advocates is the Memphis Police Department, and, in my judgement, therein lies the problem for CIT advocates in Montpelier and Vermont.

That’s because Memphis has more than 2,000 full time police officers of which 270 have volunteered to participate in its CIT program. Montpelier has a total of 17 officers to cover the three shifts utilized to provide 24/7 protection for the city. Simply put the numbers just don’t work.

Cindy Taylor-Patch, the director of training at the Vermont Police Academy, is a CIT advocate who has tried to get some form of a week long training program adopted by Vermont without success thus far. She noted that most Vermont police departments are not big enough to create or sustain a CIT team that enables them to have a CIT officer on 24/7. She has proposed creating regional CIT teams using officers from multiple small departments.

Personally I think training and staff development are good and should be ongoing in every workplace. On the surface CIT training sounds good and may be a solution IF the numbers could be made to work. But I believe setting up regional CIT teams would require some seed money from either the state or federal governments, and that would be an effort that extends well beyond the City Council.

Drafts of the majority report discussed the ethics of Taser International in selling and promoting

their products. That is not a path I chose to descend.

Recommendation:

In my judgement tasers are a tool that, when used properly, will assist police with a less than lethal option in resolving combative situations where there is a risk of harm to the general public, rescue personnel, and the officers themselves. Like any tool, tasers are subject to misuse and abuse, but at some point you have to have trust and faith that police officers will use the tools they are provided with properly.

In recent months Taser International has issued a series of warnings about the use of their products that are, in my judgement, designed to shift the liability for misuse and abuse of their products onto the municipalities and state departments that use tasers. That is a concern. As with any tool that is abused or misused there are liability issues that require attention and the City Council would be wise to look closely at potential changes in the costs associated with adding tasers to the city's tool box.

We are fortunate to have a very good police department in Montpelier with solid leadership and I am confident that the Council and Chief Facos can develop strong policies and training programs for taser use.

I would urge the City Council to take a close look at policies regarding taser use developed by Burlington, South Burlington, and the Vermont State Police and work closely with Chief Facos to develop a strong policy and training program for Montpelier. Until those policies and training programs are in place, I would recommend against authorizing the purchase of tasers.

Nick Marro
Montpelier

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: K. Mullen Date: 1/25/04 Case #: 12-11-04-355911

Supervisor's Name: E. Norderman Date of Incident: 1/25/04

Time of incident: 1545 Status: On duty / ☒ off duty / ☐

Indoors: ☒ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: N/A - Cold and dark outside

Location of Incident: CVH - Sign

Information received prior to initial contact:

Had to go to CVH to PC [REDACTED]
MONTPELIER AMBULANCE HAD TRANSPORTED SUBJECT TO CVH EARLIER
IN DAY FOR UNKNOWN MEDICAL ISSUE.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☒ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐)

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age 42 Sex F

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age _____ Sex _____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

MEDICALLY CLEARED CP CVH PRIOR TO CONTACT

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

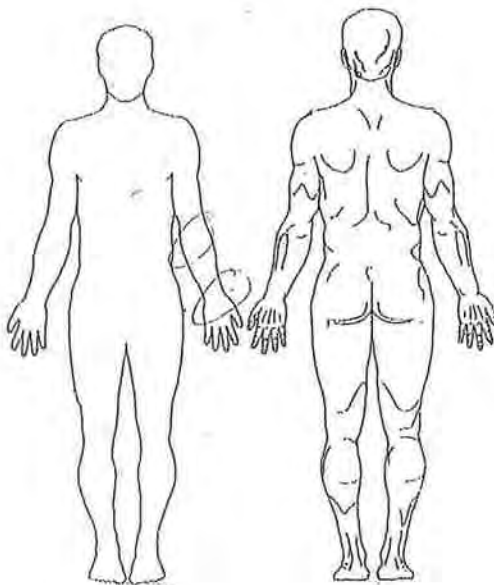
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: left wrist and Elbow

Number of impact techniques used? 0 Which technique utilized? Left wrist lock

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Went to cell to transport subject to BPP for PC. Subject was very combative and non-compliant. She tried to leave hospital and stated she was not going with us that to restrain her to handcuffs. I utilized the rear waist lock technique until she was handcuffed. I then held her by the handcuffs as she was non-compliant. When we got to the int she fell on the right leg and refused to get up. She had to be forced into the car. At BPP she would not get out and had to be forced out and dragged into BPP.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Kevin Mowden Date: 3/20/16 Case #: 12-11-10-379331
Supervisor's Name: Cpl. William Jennings Date of Incident: 3/20/16
Time of incident: 2307 hours Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Cloudy & Cold
Location of Incident: Parking lot of Main Street Middle School

Information received prior to initial contact:

Dispatched to [redacted] street for [redacted] punching holes
in the wall. Parents wanted him removed

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☒

Baton: ☐ for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒ for: control & restraint ☒ impact ☒ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: displayed OC

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age 25 Sex M

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☐ No ☒

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Suspect had some scrapes on his knuckles, not sure if caused
by punching the walls or the struggle on the pavement

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☒ N ☐

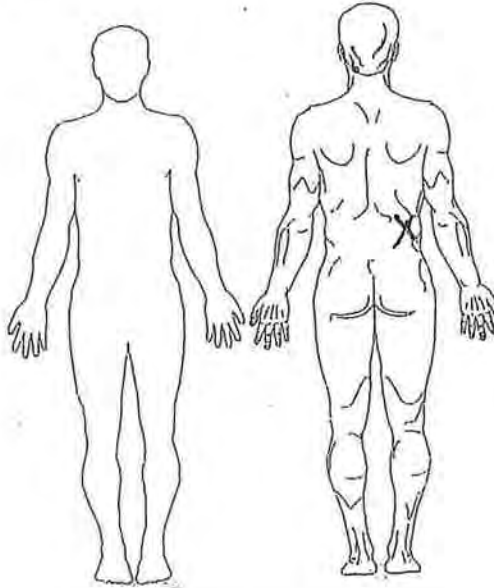
Control technique Y ☒ N ☐

Both Y ☒ N ☐

Targeted Area: Back of Neck & Right lower back

Number of impact techniques used? 2 Which technique utilized? Neck pull down & knee strikes

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Open armed I witnessed [redacted] on my right, came out of the house with a kitchen chair. Then began smashing the chair and then ran out. I began a foot pursuit and caught up with him as he fell over a fence. I told him to get on the ground or he would be sprayed with OC. He ran away and I caught him as he stopped and sprayed it with me. I used the chair to pull him to the ground and 3 knee strikes to back as he was resisting.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief Policy Compliance Yes ☒ No ☐



Montpelier Police Department
 Chief Anthony Facos
 1 Pitkin Ct. Montpelier VT 05602
 phone 802-223-3445 fax 802-223-9518

OFFICERS FORMAL REPORT

Case#: 379331
 rpt date: 03/20/10 23:43 reported: SATURDAY 03/20/10 23:07
 ucr: 90C DISORDERLY CONDUCT *
 location: [REDACTED]
 follow up by: (N)ONE NEEDED case status: CLEARED/CLOSED NORMAL
 officer: rpt status: PRELIMINARY
 review officer:
 comp/vict notify: No sup review officer:
 cir/involve type:

complaint: SON PUNCHING HOLES IN WALL/WANT REMOVED

reporting officer: 52 P.O. MOULTON assignment: C car: 813
 second officer: 58 P.O. TRUHAN sup/back-up: 55 P.O. JENNINGS

*** NAMES ***						
type	mast#	name/add	phone	dob	ss#	
DEFENDANT	004633	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

obtn: TMON037933101
 VICTIM 023103 SOCIETY,

COMPLAINT 008152 [REDACTED]

*** NARRATIVE ***

ON MARCH 20, 2010 AT APPROXIMATELY 2307 HOURS I WAS ON DUTY FOR THE MONTPELIER POLICE DEPARTMENT. AT THAT TIME I WAS DISPATCHED TO [REDACTED] STREET AS [REDACTED] WAS OUT OF CONTROL AND WAS PUNCHING HOLES IN THE WALL. DISPATCH ADVISED ME THE PARENTS WANTED HIM REMOVED FROM THE RESIDENCE.

UPON ARRIVAL TO THE SCENE I OBSERVED [REDACTED] EXIT THE REAR OF THE HOUSE WITH A KITCHEN CHAIR ABOVE HIS HEAD. [REDACTED] BEGAN SMASHING THE CHAIR ON THE GROUND AND THE STEPS. I APPROACHED AND ORDERED [REDACTED] TO STOP AND HE FLED ON FOOT. I PURSUED ALONG WITH OFFICER TRUHAN. [REDACTED] CAME TO A FENCE AND TRIED TO JUMP OVER AND FELL. AS I APPROACHED THE FENCE I PULLED OUT MY OC AND ORDERED MAX TO THE GROUND. [REDACTED] THEN RAN AWAY AGAIN. I JUMPED THE FENCE AND CAUGHT UP WITH MAX IN FRONT OF THE MAIN STREET MIDDLE SCHOOL. AS I NEARED HIM, [REDACTED] TURNED AND SQUARED OFF WITH ME. I BROUGHT [REDACTED] TO THE GROUND WITH THE NECK PULL DOWN. WHILE ON THE GROUND, [REDACTED] WAS RESISTANT AND WOULD NOT SURRENDER HIS ARMS. I STRUCK [REDACTED] WITH 3 KNEE STRIKES TO THE LOWER BACK AREA TO GAIN COMPLIANCE AND SECURE HIS ARMS WITH HANDCUFFS. OFFICER TRUHAN AND I WERE ABLE TO GAIN CONTROL AND CUFF MAX.

[REDACTED] WAS TRANSPORTED TO MPD FOR PROCESSING AND LATER BROUGHT TO CVMC FOR AN EVALUATION OF HIS MENTAL HEALTH. [REDACTED] WAS CITED AND RELEASED AT CVMC AND WCMH WAS PLACING HIM IN HOME INTERVENTION.

=====
 chief [] capt/oic [] cid [] traffic [] fire [] other []
 =====

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

2010

Officer's Name: *Off. Mark L. Noyes* Appendix A Date: *05/26/10* Case #: *383123*
Supervisor's Name: *Sgt. Eric Nordstrom* Date of Incident: *05-26-10*
Time of incident: *1501* Status: On duty / ☒ off duty / ☐

Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☒ Artificial: ☐

Weather Conditions: *Sunny & Hot & Humid*

Location of Incident: *170 Main St., Main St. Middle School, Montpelier, VT 0560*

Information received prior to initial contact:

MO #
035521

juvenile female subject 10 years of age ran away from Union Elementary School to the middle school, very upset and refused calm down or stop running. Subject stated would commit suicide. I'll feel myself if you bring me home or back to school.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐

Necessary for Protective Custody: ☒ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Hand Restraints Body: ☒for: control & restraint ☒ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: *Hand Restraints only (3 officers held limbs & supported Baby while child screamed and tried to kick, knee)*

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age *10* Sex *F* *PINCH & BITE*

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age _____ Sex _____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☒ No ☐

Describe injuries to suspect, officer or third party: *NA*

Subject was transported to Police holding area. Mental Health Screener was called and responded. After screening, mother reported. Subject calmed down. Apologized. Access program through Mental Health plugged in to family. Ref. Released through Mental Health Screening.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

Control technique Y ☒ N ☐

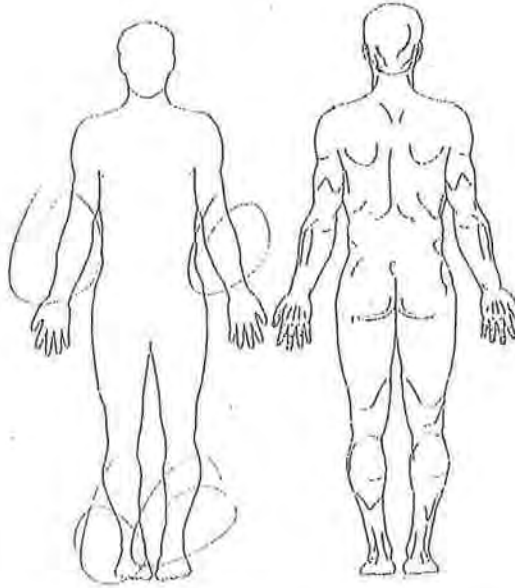
Both Y ☐ N ☐

Targeted Area: Arms, Legs, Body

Number of impact techniques used?

Which technique utilized?

Location of impact techniques:



Other: I held subject against wall + water cooler by both wrists + Body lean until back up Arrived 804, 811, 817 and until Main street school children who were in an assembly left the area.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Back up Officer 804-811-817 arrived on scene. 804 (Nordstrom) 811 (Patterson) assisted carrying female subject out of gym area of the school. 811 had left arm + supported her back. She was facing up. 804 had right arm + right leg. 811 had both feet and legs. We carried her struggling the entire way from the gym to 817 and her cruiser just outside the gym door. 817 and 811 transported her to Montpelier Police Station where she was later seen by Mental Health Services and for nothing. Paddy Dunsby.

Michael R. Dunsby
Involved Officer's Signature

Policy Compliance Yes ☐ No ☐

Supervisor's Signature

Chief

Policy Compliance Yes ☒ No ☐

06/02/10 12:13
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

78 353
F773

Shift: B

date: 05/26/10 WEDNESDAY

***** Q 590 JUVENILE MATTER-OTHER

15:01 * 170 MAIN ST MON

883123 * COMBATIVE FEMALE AT MSMS

* ID #: 2590 ALARM #: 326

: 806,

call-back# 225-8601

*** UNIT(S) ***

804 MON P SGT. NORDENSON

r> 15:01 d> 15:01 a> 15:04 c> 15:12 k>

806 * MON P CPL. MOODY

r> 15:01 d> 15:01 a> 15:01 c> 16:51 k>

811 MON P P.O. PONTBRIAND

r> 15:01 d> 15:01 a> 15:05 c> 15:18 k>

817 MON P P.O. TRUHAN

r> 15:01 d> 15:01 a> 15:07 c> 15:18 k>

*** COMMENTS ***

806 MON 15:01:00 CD-590-COMBATIVE FEMALE AT MSMS

811 MON 15:01:00 811, 804, 817 -76 TO MSMS

804 MON 15:04:00 804 -23

811 MON 15:05:00 811 -23

817 MON 15:07:00 817 -23

817 MON 15:17:00 AT 19/ EM/ 60113

806 MON 15:10:00 -21 TO WCMH SCREENERS

811 MON 15:11:00 -76 -19 SM-60112

804 MON 15:12:00 804 -8

817 MON 15:18:00 TALIA/WCMH SCREENERS/GVN 806

817 MON 15:18:00 -8 EM-60113

817 MON [REDACTED]

806 MON 15:39:21 DARLENE/WCMH SCREENERS -76 SHORTLY

806 MON 16:17:26 SCREENER NOW AT -19

806 MON 16:51:19 -42

806 MON

806 MON 806 ADVISED THAT THE WCMH WORKER MADE A REFERRAL TO THE

806 MON ACCESS PROGRAM FOR THE SANTAMOKES

806 MON

subject was [REDACTED]

officer's signature

date

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: CHAD BEAN Date: 06/19/11 Case #: 405233
Supervisor's Name: DAVID KACHASTAN Date of Incident: 06/19/11
Time of incident: 0015 Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: CLEAR

Location of Incident: 89 Elm St. MONTPELIER, VT

Information received prior to initial contact:

STOLEN VEHICLE, VT REG FBH449, STOLEN FROM MONTPELIER
06/18/11

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☒ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☒ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☒ Displayed for compliance ☒ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐ Age Sex
Subject complied after force was enacted. Yes ☐ No ☒
Subject resisted during the entire encounter. Yes ☐ No ☒
Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

CUT ON FOREHEAD, SCRATCHES ON ARMS

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

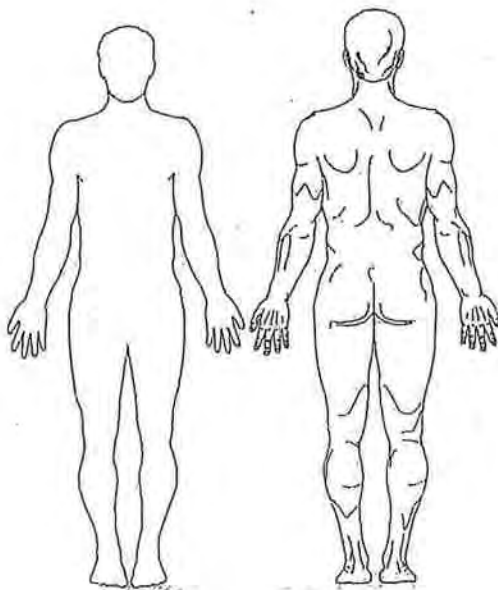
Control technique Y ☒ N ☐

Both Y ☐ N ☐

Targeted Area: ARM BAR

Number of impact techniques used? 1 Which technique utilized? ARM BAR TAKE DOWN

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

SUBJECT WAS LOCATED IN A REPORTED STOLEN VEHICLE. SUBJECT WAS ORDERED OUT OF VEHICLE WITH FIREARM DISPLAYED. AND AT HIS HANDS UP SUBJECT TRIED TO REACH IN HIS POCKETS. SUBJECT TAKEN TO GROUND WITH ARM BAR TAKE DOWN. AND ORDERED TO PUT HANDS BEHIND HIS BACK. SUBJECT ROLLED AROUND ON GROUND. I WAS ABLE TO SECURE A HAND PLACE IN HANDCUFF. AND ORDERED SUBJECT FOR OTHER HAND SUBJECT PULSED AWAY. I WAS ABLE TO SECURE OTHER HAND AFTER SUBJECT PULSED AWAY AND HAND CUFF.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: W. JENNINGS Date: 6/20/11 Case #: _____

Supervisor's Name: SGT. W. COLEMAN Date of Incident: 6/18/11

Time of incident: 12/5 AM Status: On duty ☒ off duty ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: CLEAR

Location of Incident: RESIDENTIAL - 52 PERSPECT ST.

Information received prior to initial contact:

LOUD NOISE COMING FROM AN APT. - NEIGHBORHOOD DIST.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☐ Necessary to defend another: ☒

Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☐

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☐ No ☒

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

NO INJURIES

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

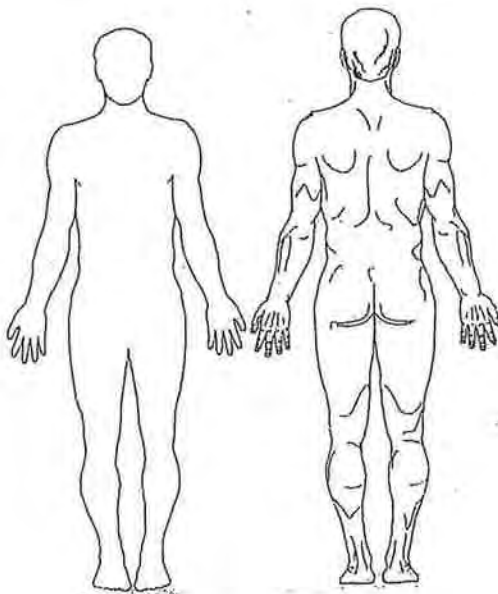
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: ARM - SHOULDER CONTROL

Number of impact techniques used? N/A Which technique utilized? _____

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

SEE AFFIDAVIT + INCIDENT REPORT

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: Kevin Moulton Date: 12/11/09 Case #: 1211-09-373677
Supervisor's Name: Sgt Eric Anderson Date of Incident: 12/11/09
Time of incident: 2315 Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Cloudy + Cold

Location of Incident: In front of Kendall Book 100 Main St. Montpelier, VT

Information received prior to initial contact:

- respond to a report of a male who had put his head
through a window @ Three Penny Tavern @ 108 Main Street
in Montpelier, VT

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☒ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 22 Sex M

Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age Sex

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

- Suspect had lacerations on hand and head from injury sustained from
breaking the glass

- officer - sustained exposure to large amounts of suspect's blood, including blood sprayed
into mouth and eyes. Injured left thumb and left cheek from strikes
from suspect

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☒ N ☐

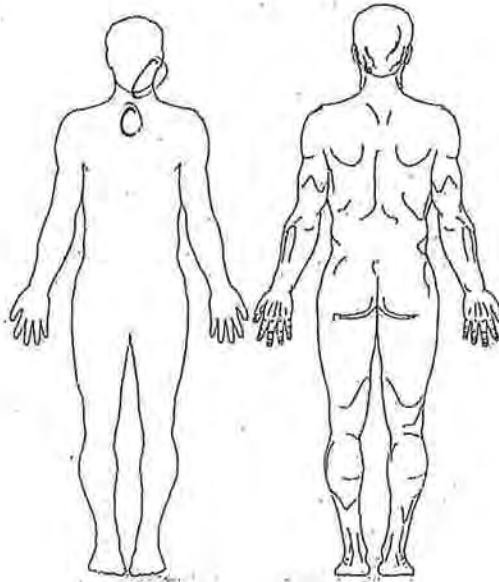
Control technique Y ☒ N ☐

Both Y ☒ N ☐

Targeted Area: Neck, Hand, and chest

Number of impact techniques used? 1 Which technique utilized? Forward punch

Location of impact techniques:



Other: used neck pull down to try and gain control of
holligent suspect who became combative

Summary of Events:

(Note: summarize only attach officer report for complete details.)

responded to a call @ Three Penny Tavern for a male that put
his hand through a window. I located suspect who was belligerent
and disorderly. I offered assistance to suspect to get him
to the ambulance. suspect became combative and physically assaultive.
I attempted bring suspect to the ground with neck pull down. suspect
tackled me into a parked car and began striking me. I responded w/
3 forward punches to gain control myself and gain control of suspect

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Officer's Name: Christopher M. Tuten Date: 12-12-09 Case #: 1211-09-373677
Supervisor's Name: Sgt. Eric Nordenson Date of Incident: 12-11-09
Time of incident: 2:35 hrs Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☒

Weather Conditions: _____

Location of Incident: Main St by Langdon St

Information received prior to initial contact:

ambulance responding to a subject who fell through
a window at the Three Penny Tap Room

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☒
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐ for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒ for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☒ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐ not checked for fit
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☒ No ☐ Age _____ Sex M
Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐
Was a Third Party Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age _____ Sex MX2 Fireman
Subject complied after force was enacted. Yes ☒ No ☐ EON/804
Subject resisted during the entire encounter. Yes ☒ No ☐ EON/804
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

subject had a head injury which was the cause of our response.
Fire man officers were exposed to the subjects blood, P.C. Mullen
sustained an injury to a finger.

1. 50
2. 32
3. 37
4. 53
5. 33

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☒ No ☐ Pepperball Launcher: Yes ☐ No ☐ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☒ Area: ☐ Both ☐

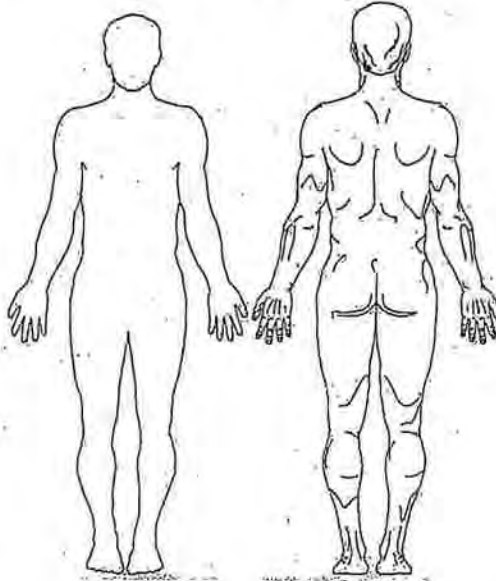
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☐ No ☐ if no *unknown*

explain: *taken away by fire department & brought to CUM.*

OC administrative warning read to suspect: Yes ☐ No ☒ *taken away by fire department*

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

I responded to the Three Penny Tap Room for the report of a subject who fell through a window. Upon my arrival, Officer Kevin Martin began to struggle with a subject. I assisted Officer Martin in struggling to control the subject by grabbing onto him. I then backed off & sprayed the subject in the face with my OC. I grabbed onto the subject again, helped to pull him to the ground & told him to stop resisting. We got the subject to the ground at which time I knelt on him & applied handcuffs on him with the assistance of others.

Involved Officer's Signature

[Signature]

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

[Signature]

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Corporal David Kachujian Date: 10/29/10 Case #: 392471

Supervisor's Name: Sgt. Eric Needham Date of Incident: 10/29/10

Time of incident: 21:30 Status: On duty / ☒ off duty / ☐

Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Cloudy

Location of Incident: 8 Wilder Street Apt. 2 Montpelier, VT. 05602

Information received prior to initial contact:

Washington County Mental Health requested our assistance in serving a
mental health examination warrant on a subject by the name of Carlos A. Shaw,
Jr. A search warrant was later sought and granted to gain entry into the residence.

SUBJECT REFUSE
TO COME TO
DOOR &
THREATENED
RESPONDERS
ON INITIAL
ATTEMPT.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☒ Necessary to defend another: ☒

Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball Launcher: ☒ (type of projectile: water: ☐ O.C.: ☒ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 64 Sex M

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

The suspect may have sustained bruising from being hit with pepperballs from the
pepperball launcher.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☒ No ☐ Pepperball Launcher: Yes ☒ No ☐ Both: Yes ☒ No ☐

Type of contamination used: Individual: ☐ Area: ☐ Both ☒

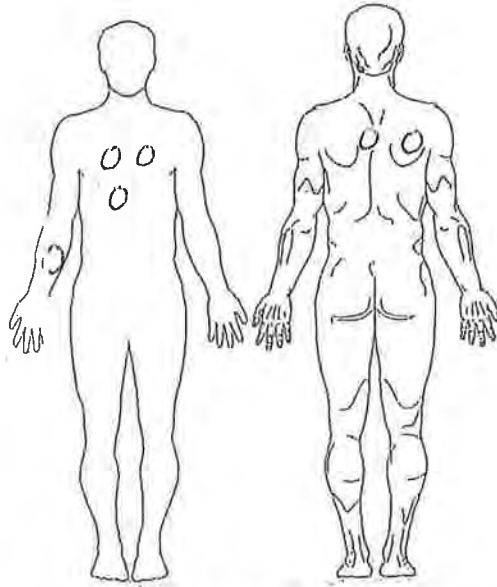
Number of pepperballs fired: Water: _____ OC: 11 Glassbreaker: _____ Total: 11

Suspect Decontaminated: Yes ☒ No ☐ if no

explain: Suspect was decontaminated at the hospital.

OC administrative warning read to suspect: Yes ☒ No ☐

Location of pepperball hits on suspect:



Other: Five pepperball rounds struck the frame of the door of the apartment while the suspect was attempting to exit with the brand in his hand.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

During the service of a search warrant on a subject that was arrested on a mental health warrant, the suspect armed himself with a three foot wooden board and attempted to assault Officer Medson and I with it. I ordered the suspect to drop the weapon to which he refused to do so. Both pepper spray and pepper balls (11) were used to stop the suspect from striking us with the board. The O.C. Administrative Warning was later issued to the suspect at the Central Vermont Medical Center by Officer Medson. The suspect was decontaminated at the hospital as well and didn't sustain any major injuries at this time except for some bruising.

Involved Officer's Signature [Signature]

Policy Compliance Yes ☒ No ☐

Supervisor's Signature [Signature]

Chief

Policy Compliance Yes ☒ No ☐

11/01/2010

Use of Force Report (Case #: 392471):

On October 29, 2010 at approximately 4:03 p.m. the Montpelier Police Department was contacted by Washington County Mental Health (WCMH) Case Worker Darlene Duff (DOB: 7/5/46) requesting that we assist her with serving an Emergency Psychiatric Examination Order on a subject by the name of Carlos A. Shaw, Jr. (DOB: 5/7/59) who resides at 8 Wilder Street/Apt. #2 in the City of Montpelier.

Ms. Duff advised me that Mr. Shaw is a client of WCMH and has not been taking his required prescription medication, Coumadin (also known as Warfarin, an anti-coagulant), which could pose a potentially life threatening incident for him if not taken as prescribed. Ms. Duff went on to tell me that she had obtained an Emergency Psychiatric Examination Order and currently had it in her possession. At this time I arranged to meet her at Mr. Shaw's residence in an attempt to have him voluntarily go to the hospital for treatment and/or an examination.

Upon arrival at 8 Wilder Street, I met with Ms. Duff, WCMH Case Worker Gary Gordon (DOB: 6/13/52), and Dr. Stuart Graves (M.D.) of WCHM. At this time I looked at the order that had been issued by Dr. Graves and read the statement given by Ms. Duff in the application of the order itself. According to Ms. Duff's statement on the order:

"Carlos Shaw is a 64 year old male who resides in an independent living situation in Montpelier. He is a CRT client of Washington County Mental Services-Diagnosed with Schizoaffective D/O. Carlos has a aggressive behavior and medication non-compliance. Today I received a call from Heather Griffin CRT Assit Supervisor) indicating concern that Carlos had not taken his medication (Warfarin) which presents a significant medical health risk. This clinician followed up w/Dr. Graves and Julie Sullivan who contacted Dr. Curchin (clients PCP). According to Julie Sullivan, "Dr. Curchin reported that Carlos needs his Coumadin (Warfarin) for his mechanical heart valve and therefore recommends this emergency exam due to the potential health risk this poses". Dr. Graves, Gary Gordon and this writer went to Carlos apartment to convey the importance/medical risk of refusing his heart medication. Client refused to open his door

to speak w/us and refused to take medication. As mentioned above client presents with serious medical [unknown word] and is refusing to engage in treatment. For these reasons, it is the opinion of Dr. Graves, Dr. Graves, Dr. Curchin, and this clinician that client meets the criteria for this order of treatment".

After looking over the order, I entered the apartment building and went to the door of apartment # 2, where Mr. Shaw resides. I knocked on the door and heard someone yell "Who is it" from inside. I advised Mr. Shaw why I was there and tried to explain to him that the workers from WCMH and I were concerned about his wellbeing. When I asked Mr. Shaw if either I could come in or if he would come out so that we could speak with him, he refused. Mr. Shaw was extremely agitated and appeared to be paranoid from the statements he was making. After pleading for over fifteen minutes with Mr. Shaw to come out of his apartment, I asked him one more time to meet with us to which he replied, "If you come in your violating my rights and I'll defend myself with force".

At this time I went back downstairs and met with Ms. Duff, Mr. Gordon, and Dr. Graves. Officer Moulton of the Montpelier Police Department had arrived at this point to assist me and we discussed our options. It was agreed that we would apply for a search warrant for Mr. Shaw's apartment so that we could enter and take custody of him so that he could be treated.

Upon arrival back at the Montpelier Police Department, Officer Moulton completed an affidavit of probable cause and submitted an application for a search warrant to the honorable Judge Thomas Devine for Mr. Shaw's premises. Judge Devine subsequently issued the search warrant to Officer Moulton for 8 Wilder Street/Apt. # 2. Prior to serving the search warrant at the residence of Mr. Shaw, Officer Moulton and I discussed the incident with our shift supervisor, Sgt. Eric Nordenson. Sgt. Nordenson advised us that Mr. Shaw could be violent and had assaulted people in the past. Sgt. Nordenson also told us that Mr. Shaw had threatened to shoot police officers in the past as well when they had gone to his residence on prior incidents. When I asked WCMH if they had any knowledge of Mr. Shaw having any weapons in his possession, they indicated that they did not know.

At approximately 9:18 p.m. Sgt. Nordenson, Officer Dion, Officer Bean, Officer Moulton, and I arrived at 81 Wilder Street to serve the search warrant on Mr. Shaw's apartment. At 9:20 p.m. we entered the apartment building and went to the second floor where Mr. Shaw's apartment was located. At this time Officer Moulton knocked on the door and asked Mr. Shaw to come out to speak with us. Officer Moulton told Mr. Shaw that we wanted to make sure that he was taking his medications and that we wanted to make sure he was alright. Mr. Shaw yelled through the door to us that he wasn't coming out and that we only wanted to "Give him psychotropic drugs". We then heard Mr. Shaw say that he would defend himself with force if we tried to come into his apartment to get him. At this point Officer Moulton asked him if he had any weapons to which Mr. Shaw said, "I'm not telling you".

Due to the fact that Mr. Shaw may have been arming himself while inside of the apartment and due to the fact that we were worried that a prolonged standoff with him might cause the stress of the situation to cause him to have a cardiac arrest because of his not having taken his medications, we decided to enter the apartment. At this point, Sgt. Nordenson started to knock on the door to mask the sound of Officer Moulton trying to turn the key, which we received from WCMH, in the door lock. Once the door was unlocked, Officer Moulton pushed the door open, only to find that it was chained from inside. Officer Moulton immediately forced the door open with a ram and I went around him on his right side to enter the apartment.

As I entered the apartment, I immediately observed Mr. Shaw standing approximately six feet away from me holding a three foot wooden board over his head. When he saw me enter, he immediately began swinging the board at me wildly. I immediately backed out of the apartment as he was running towards me trying to hit me in the head with the board. As I was backing out, I was yelling to him to "Drop the weapon". When I reached the threshold of the door, I moved to the right and stepped down onto the narrow flight of stairs that led up to the second floor. At this point I observed the end of the board coming towards Officer Moulton, who had been standing just outside of the doorway behind me. Upon seeing the board being swung at Officer Moulton, I raised my department issued pepper ball launcher and shot five pepper ball

rounds at the doorway threshold in an attempt to stop Mr. Shaw from advancing any further towards Officer Moulton.

Even after I shot the five rounds, dispersing a cloud of pepper spray in front of Mr. Shaw, he continued to swing the board at Officer Moulton. At this time I moved slightly forward and shot two more pepper ball rounds at Mr. Shaw, who was now partially visible in the doorway. The rounds struck Mr. Shaw in the area of his shoulder/upper chest, but did not stop him. It was at this point that Officer Moulton took out his canister of pepper spray and sprayed it towards Mr. Shaw's face. After Mr. Shaw was sprayed in the face, he moved back into the apartment, but was still brandishing the board and swinging it violently towards us. After I rounded the corner from the stairs and into the apartment, I shot four more pepper balls at Mr. Shaw, hitting him twice in the chest and then twice in the shoulder as he turned. After getting hit with the last pepper ball, Mr. Shaw finally dropped the board and fell down onto the floor. After falling down to the floor, Mr. Shaw was handcuffed by Officer Dion (handcuffs double-locked and checked for tightness) and immediately removed from the apartment to an awaiting ambulance outside of the apartment building. Once on the ambulance stretcher, Mr. Shaw became compliant with our orders and/or commands. We continued to advise him that we only wanted to help him and were concerned for his mental and physical health.

Mr. Shaw was later transported to the Central Vermont Medical Center for a medical and/or psychiatric evaluation per the Emergency Examination Order we served on him. I was later advised by Sgt. Nordenson that Mr. Shaw told him at the hospital that the next time he deals with us he will, "Get us with a machine gun". Mr. Shaw was later transported to the State Hospital in Waterbury, Vermont for a psychiatric evaluation.

As a result of this incident, Mr. Shaw was served at the hospital by Sgt. Nordenson with a citation to appear in the Washington County District Court on December 2, 2010 at 12:30 p.m. to be arraigned on the charge of Attempted Aggravated Assault on a Law Enforcement Officer [Two Counts].

ARRESTEE NAME: Carlus Shaw DATE: 10/24/10 TIME: 2245

INTERVIEWING OFFICER: K. Mottin Initials: MM

O.C. ADMINISTRATIVE WARNING

TO BE GIVEN TO ANY PERSON EXPOSED TO O.C.

1. You have been contaminated with Oleoresin Capsicum (OC), a natural product derived from Cayenne Peppers. I am going to treat you to reduce the discomfort you are feeling, as long as you cooperate.

2. OC is non-toxic and the effects will dissipate in a short time. The effects of OC may however, mask or cover other medical conditions, including overdoses or toxic levels of drugs like Cocaine, Amphetamines, Barbiturates, PCP, Opiates, Heroin or Alcohol.

3. I am going to ask you 5 Questions for your own safety. Not answering my questions, withholding information or giving false or misleading answers could delay medical treatment and may seriously jeopardize your health and safety.

DO YOU UNDERSTAND EVERYTHING I HAVE TOLD YOU ?

QUESTION 1. Are you currently under the influence of Cocaine, Amphetamines, Barbiturates, PCP, Opiates, Heroin, or Alcohol?

- Answer -

Yes ☐ No ☒ Which One(s) _____ Date _____ Time _____ Initials _____
Refused to Answer ☐

*could not sign as he was restrained in
hospital*

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Kevin Mcullen Date: 10/29/10 Case #: 1211-10-392471
Supervisor's Name: Sgt. Eric Nordenson Date of Incident: 10/29/10
Time of incident: 2:20 hours Status: On duty / ☒ of duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: Cloudy + Cool
Location of Incident: 8' Wilbur Street Apartment 2

Information received prior to initial contact:

Mental Health advised of a subject not taking medication. WCMH
had Emergency Exam order. I had to get search warrant for
Mike as he refused access

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☒ Necessary to defend another: ☒
Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☐for: control & restraint ☐ impact ☐ displayed ☐
O.C. Spray: ☒ Pepperball Launcher: ☒ (type of projectile: water: ☐ O.C.: ☒ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐ DONE BY RON DION
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☒ Displayed for compliance ☒ Discharged for compliance ☐ FIRE ARM DISPLAYED
Other: _____ BY ERIC NORDENSON + RON DION.

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 64 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☐ No ☒
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

INJURIES FROM BEING STRUCK BY PEPPER BALLS
INJURIES LIMITED TO BRUISING. ERN/804

BODY PHOTOGRAPHED @ CCH

Appendix A

OC Spray: Yes ☒ No ☐ Pepperball Launcher: Yes ☒ No ☐ Both: Yes ☒ No ☐

Type of contamination used: Individual: ☒ Area: ☒ Both ☒

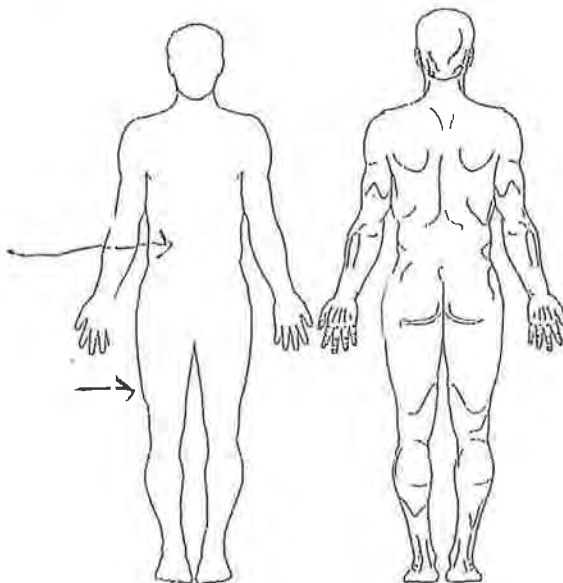
Suspect Decontaminated: Yes ☒ No ☐ if no

explain: Brought to CPMC AND DECONTAMINATED UPON ARRIVAL.

OC administrative warning read to suspect: Yes ☒ No ☒ *suspect brought to hospital, read*

Location of pepperball hits or suspect:

Warning at Hospital



Other: _____

(Note: summarize only attach officer report for complete details.)

- Went to residence to execute search warrant on suspect who has not been taking his medication. Suspect is client of mental health services. Suspect would not leave his residence nor allow us in. I knocked several times and spoke to suspect. He would not tell me if he had a weapon. Subject entry by force and suspect began swinging a wood board at us. Suspect was struck with pepper balls and then OC.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Ch:ef

Policy Compliance Yes ☒ No ☐

11/01/2010

11/01/10 11:47
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY9 -17

shift: C

date: 10/29/10 FRIDAY

org/lst

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
16:03 * 8 WILDER ST MON
*ibr: 1: 917
392471 * REQ. ASSIST TAKING CLIENT INTO CUSTODY AS HE
*

**rcv*clr*
917 13P

052110
707-17

: WCMH SCREENER, DARLENE
Def: SHAW JR, CARLOS A
8 WILDER ST MONTPELIER, VT 05602
call-back# 839-0333

07/05/46

*** UNIT(S) ***

804 MON P SGT. NORDENSON

722-722

r> 21:20 d> 21:20 a> 21:20 c> 23:52 k> h>

810 * MON P P.O.KACHAJIAN

707-722

r> 16:03 d> 16:03 a> 16:55 c> 21:39 k> h>

812 MON P P.O.KACHAJIAN

707-707

r> 17:09 d> 17:09 a> 17:09 c> 21:36 k> h>

813 MON P P.O. MOULTON

722-722

r> 16:58 d> 16:58 a> 16:58 c> 21:38 k> h>

MAS1 MON A

707-707

r> 21:18 d> 21:18 a> 21:20 c> 22:16 k> h>

*** COMMENTS ***

810 MON 16:03:00 CD-917-REQ. ASSIST TAKING CLIENT INTO CUSTODY AS HE 707-

810 MON IS REFUSING TO TAKE HIS HEART MEDICATIONS. 810 HAD SOME 707-

810 MON ADDITIONAL QUESTIONS ABOUT THIS CALL AND WILL CALL 707-

810 MON DARLENE ON HER CELL 839-0333. 707-

810 MON 16:11:53 -21 FROM DARLENE, THE ADDRESS IS # 8 WILDER 707-

810 MON 16:55:02 -23 8 WILDER ST. 707-

813 MON 16:58:08 -23 722-

813 MON 17:09:15 -8 HE IS REFUSING TO COME OUT/ -76 BACK TO 707-

813 MON 17:09:30 WRITE UP A SEARCH WARRANT. 707-

810 MON 17:11:32 -8 FOR NOW. WILL RETURN ONCE WARRANT IS 707-

813 MON 17:12:27 SIGNED. 707-

813 MON 19:04:47 -76 TO JUDGE DEVINES RES. 707-

MAS1 MON 21:18:18 12A1 STAGING ON WILDER. 707-

MAS1 MON 21:20:00 A1 O/S 722-

804 MON 21:20:00 -23 722-

804 MON 21:24:09 HAVE THAT MALE IN CUSTODY 722-

MAS1 MON 21:28:23 HE IS ON THE AMBULANCE NOW. 707-

MAS1 MON 21:28:58 12A1 ENROUTE TO CVH. 707-

MAS1 MON 21:35:48 12A1 ARRIVED CVH 707-

804 MON 21:36:08 804 -23 AT CVH 707-

812 MON 21:36:34 812 -8 707-

813 MON 21:38:08 -8 COPY OF WARRANT LEFT INSIDE THE RES. 722-

810 MON 21:38:52 -21 FROM NICOLE GOKEY 279-5419 707-

810 MON SHE HAS CONCERNS FOR HER ANIMALS THAT ARE IN HER APT. 707-

810 MON (APT 5) AS HER NEIGHBOR TOLD HER THE POLICE SPRAYED SOME 707-

810 MON TYPE OF CHEMICAL. 707-

MAS1 MON 22:09:58 12A1 R/Q 707-

MAS1 MON 22:16:57 12A1 BIQ. 707-

MAS1 MON 722-

810 MON CASE MADE 722-

810 MON INVESTIGATING OFFICER CPL KACHAJIAN 722-

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

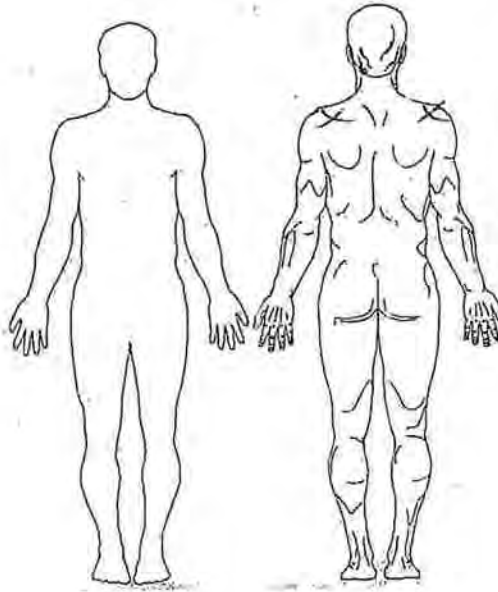
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: shoulders

Number of impact techniques used? 1 Which technique utilized? I just pulled him to the ground

Location of impact techniques:



Other: once on the ground I secured his left arm behind his back.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

off. Maitlen and I brought Brian Maynard to MPD for detox.
While in the cell with him, etc. Maitlen began removing
his handcuffs. When Maynard had only one hand cuffed on
etc. Maitlen tried to remove it, but Maynard raised his hand and
gave a mark on his etc. Maitlen told him to settle down and
I told him to put his hand down. He refused and I pulled him
down to the ground. I then secured his left arm behind his
back & etc. Maitlen reappplied the handcuffs.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: Christopher McTear Date: 03-05-10 Case #: 1211-10-378473
Supervisor's Name: William Jarrings Date of Incident: 03-05-10
Time of incident: _____ Status: On duty / ☒ off duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: N/A
Location of Incident: cell # 1

Information received prior to initial contact:

Subject Brian T. Maynard was brought to MPD by OTC Muller
and J. Par detox.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☐ Necessary to defend another: ☒
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☒
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-
N/A

11/01/10 11:47
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTYP9 -17

shift: C

date: 10/29/10 FRIDAY

org/1st

*** COMMENTS ***

810	MON	SUPERVISOR SGT NORDENSON	722-
810	MON	SUSPECT: CARLOS SHAW	722-
810	MON	CHARGE: ATTEMPTED AGRAVATED ASSAULT	722-722
810	MON	CITED TO APPEAR IN COURT ON 12/2/10 @ 12:30 HOURS/WCDC	722-49
810	MON		722-
813	MON	22:55:00 -7 -8 WENT OVER THE OC WARNINGS W/MR SHAW	722-
813	MON		49 -
813	MON	SEE CASE FOLDER.	49 -

officer's signature

date

03/06/10 23:12
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP9 -58

shift: C date: 03/05/10 FRIDAY org/1st

***** Q 314 PUBLIC DRUNKENNESS **rcv*clr*
23:25 * 62 BARRE ST MON 145 314
*ibr: 1: 145
378473 * CAN HEAR YELLING / SCREAMING NEXT DOOR 053100
* 707-58

: AGNT 240, (TIKI)
Invo: MAYNARD, BRIAN T 02/18/66 008-50-7668

70 BARRE ST MONTPELIER, VT 05602

call-back# 229-4109

*** UNIT(S) ***

813 * MON P P.O. MOULTON 707-707
r> 23:25 d> 23:25 a> 23:26 c> 23:59 k> h>
814 MON P P.O. JENNINGS 707-707
r> 23:28 d> 23:28 a> 23:28 c> 23:40 k> h>
818 MON P P.O. TRUHAN 707-707
r> 23:25 d> 23:25 a> 23:26 c> 23:59 k> h>
MAS2 MON A 707-707
r> 23:49 d> 23:49 a> 23:53 c> 23:59 k> h>

*** COMMENTS ***

813 MON 23:25:18 CD-145-CAN HEAR YELLING / SCREAMING NEXT DOOR 707-
813 MON 23:26:11 -23 707-
818 MON 23:27:04 OUT WITH AN INTOXICATED MALE ON THE PORCH. 707-
814 MON 23:28:18 -23 707-
818 MON 23:30:57 -99 61022236 707-
818 MON 23:33:45 -95 FOR PROTECTIVE CUSTODY. 707-
813 MON 23:39:51 76 TO 19/ CAR 6/ SM/ 26594/ 21 WCMH/SCREENER 9 -
818 MON 23:43:20 -21 FROM WCMH SCREENER/ -76 707-
MAS2 MON 23:49:31 REQ MAS RESPOND/ TONE GVN. 707-
MAS2 MON 23:53:31 12A2 ON SCENE. @ THE PD. 707-
MAS2 MON 00:12:00 10-81 .273 726-
MAS2 MON 00:25:00 MAS2 CLEAR RETURNING AND BIQ 726-
MAS2 MON 00:46:00 -76 TO BCPD WITH THAT MALE CAR 6 SM 26594 726-
818 MON A COMPLAINANT FROM 62 BARRE STREET REPORTED YELLING AND 58 -
818 MON SCREAMING FROM THE RESIDENCE NEXT DOOR. OFC. MOULTON AND I 58 -
818 MON RESPONDED AND I COULD HEAR A VOICE AS WE LOOKED FOR THE 58 -
818 MON RESIDENCE. WE FOUND THE SOURCE TO BE BRIAN MAYNARD, WHO WAS 58 -
818 MON ON HIS PORCH. HE WAS LOUD, VULGAR AND UNSTABLE ON HIS FEET. 58 -
818 MON HE HAD NO ONE TO WATCH HIM FOR THE NIGHT. WE TOOK HIM INTO 58 -
818 MON PROTECTIVE CUSTODY WITHOUT INCIDENT. I CHECKED THE HANDCUFFS 58 -58
818 MON FOR FIT AND DOUBLE LOCKED THEM. ONCE IN A CELL AT MPD, 58 -58
818 MON MAYNARD SPIT ON THE WALL. OFC. MOULTON WAS IN THE PROCESS 58 -58
818 MON OF REMOVING THE HANDCUFFS FROM MAYNARD AND GOT ONE OF THEM 58 -58
818 MON OFF. MAYNARD RAISED HIS HANDCUFFED ARM AND MADE A FIST. 58 -58
818 MON OFC. MOULTON TOLD HIM TO SETTLE DOWN AND I TOLD HIM TO PUT 58 -58
818 MON HIS HAND DOWN. HE REFUSED AND I PULLED HIM TO THE GROUND 58 -58
818 MON BY PULLING ON THE AREA ON THE BACK OF HIS SHOULDERS. 58 -58
818 MON ONCE ON THE I SECURED HIS LEFT ARM BEHIND HIS BACK AND 58 -58
818 MON OFC. MOULTON REAPPLIED THE HANDCUFFS. AFTERWARDS, 58 -58
818 MON WHILE MAYNARD WAS ALONE IN THE CELL, HE FELL AND INJURED 58 -58
818 MON HIS NOSE. HE WAS TREATED BY OFC. MOULTON AND MFD. 58 -
818 MON I ENDED UP PUTTING A HELMET ON MAYNARD. OFC. MOULTON GAVE 58 -58
818 MON MAYNARD A PBT, WHICH RESULTED IN A BAC OF .273%. HE WAS 58 -58

03/06/10 23:12
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTYP9 -58

shift: C

date: 03/05/10 FRIDAY

org/1st

*** COMMENTS ***

818 MON SCREENED BY WCMH AND LODGED AT BCPD FOR PROTECTIVE CUSTODY. 58 -

officer's signature

date

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: David Kachajian Date: 9/5/10 Case #: 382341
Supervisor's Name: Cpl. David Kachajian / Cpl. Matt Kachajian Date of Incident: 9/5/10
Time of incident: 16:43 Status: On duty / ☒ off duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: N/A

Location of Incident: Montpelier Police Department - Cell Block

Information received prior to initial contact:

Dispatch received a radio call from the Washington County Sheriff's Office (word) that there were three intoxicated males across from the DPW Complex on City River Road. One male (very small) was taken into protective custody (RAC-32464)

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☐ Ordered: ☐
Baton: ☐ for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒ for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐ (Leg Irons)
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 42 Sex M
Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐ Age Sex N/A
Subject complied after force was enacted. Yes ☐ No ☒
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

The suspect sustained a contusion to his left eye area from falling against the edge of the cell block door. The officer received lacerations and/or bruising/swelling to the back of the right hand.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

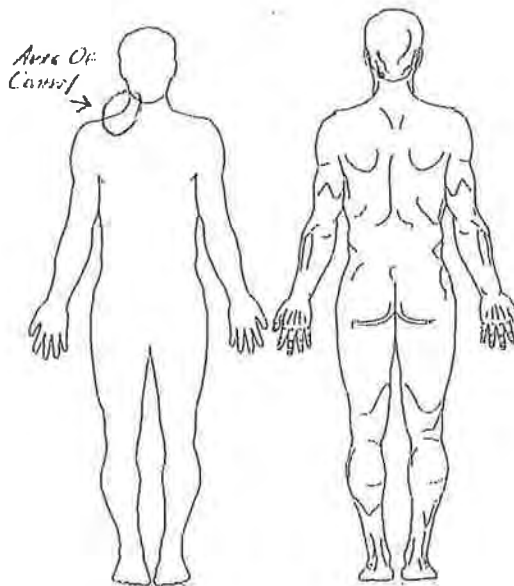
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: Shoulder/Left neck area

Number of impact techniques used? 0 Which technique utilized? nil

Location of impact techniques:



Other: Leg restraints were later used to keep the suspect from reaching over the windows on my cruiser. The subject was also leg tied to prevent him from reaching the window windows over while being transported to the hospital for treatment.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

See Attached narrative.

[Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

[Signature]
Chief

Policy Compliance Yes ☒ No ☐

Use of Force Report (Case #: 389341):

On September 5, 2010 at approximately 3:34 p.m. the Montpelier Police Department Dispatch Center was contacted by a deputy sheriff (W-14) from the Washington County Sheriff's Office advising that there were three intoxicated males lying in the grass across from the City of Montpelier Department of Public Works on Dog River Road.

At this time Corporal Knisley, Officer Jennings and I responded to the area to assist the deputy with the three parties. Upon arrival on scene we located the three males lying down on the ground in the woods across from the City of Montpelier Sewerage Treatment Plant. One of the males that we encountered, later identified as a party by the name of Joey Smith (DOB: 2/19/63), was extremely impaired and was so intoxicated that he defecated in his pants while we were speaking with him. A subsequent PBT test administered to Mr. Smith showed him to have a BAC of .324%.

Due to the fact that Mr. Smith was too intoxicated to take care of himself, we placed him into protective custody. Mr. Smith initially resisted being placed into custody and tried to prevent us from getting his hands/arms behind his back to handcuff him. After a very brief struggle; Officer Jennings and I were able to handcuff him behind his back (handcuffs double-locked and checked for tightness). Mr. Smith was transported back to the Montpelier Police Department by Officer Jennings and placed into a holding cell to await the arrival of a screener from Washington County Mental Health.

After Mr. Smith met with the screener and was advised that he would be taken to the Barre City Police Department lock up for detoxification, he started to become increasingly agitated. Mr. Smith began to scream and yell and then started to bang his head on the glass of the holding cell door (Note: Mr. Smith had been left handcuffed while in the holding cell because of his initial resistance to being handcuffed and because he kept threatening to assault us if we were to take the handcuffs off of him).

A short time later, Corporal Knisley, Officer Jennings and I entered the cell block and prepared to remove Mr. Smith from the cell so as to be transported to the Barre City Police Department. When we opened the cell door, both Officer Jennings and I asked Mr. Smith to please step out for us. Mr. Smith refused and

stated that we would need to come in to get him if we wanted him. I stated to Mr. Smith that we just wanted to take him over to the Barre Police Department so that he could detox and then asked him to not make this situation any more difficult than necessary. Mr. Smith began to yell and scream and was spitting as he spoke. He then suddenly lowered his body posture and charged out of the holding cell towards me with his head partially lowered.

Fearing that Mr. Smith was going to either strike me with a head butt and/or shoulder strike, I instinctively put my left hand up in front of me in an attempt to block him from hitting me. At this point, I was able to block his charge at me by placing my left hand on the right side of his neck in the area of his Trapezius Muscle and lower neck. I then stepped back and tried to push him away to my right side by grabbing his right arm with my right hand. As I pushed him away, I also attempted to direct him to the ground to prevent him from being able to continue to fight. As I tried to guide him down to the cell block floor, Mr. Smith struck the left edge of his head on the door jamb of the cell block door. At this time both Mr. Smith and I went down to the ground and in the process, my right hand was crushed between him and the cement floor. As a result, the back of my right hand was lacerated and began to swell. As a result of Mr. Smith's head hitting the edge of the door, he sustained a large bump to the area around his left eye. Mr. Smith's eye immediately began to swell and a small spot of blood was visible towards the top of the area that was swelling.

After we were able to get Mr. Smith somewhat under control, we were forced to pick him up off of the ground because he was still thrashing and kicking. After carrying him into the sally port area of the police department where our cruiser was located, we attempted to place Mr. Smith into the back seat for transport. Mr. Smith continued to actively resist us and attempted to kick both Officer Jennings and I several times while we were standing next to the right door jamb of the cruiser. To protect both us and Mr. Smith from injury, Officer Jennings placed leg irons on Mr. Smith. Mr. Smith continued yelling at me and made numerous threats towards me while we were placing him into the back of the cruiser. On several occasions he demanded that we take the handcuffs off of him and would as well threaten that he would "Take care of me" if we let him out of them. Once we were able to get him into the cruiser and shut the doors, Mr. Smith proceeded to try and kick the back windows of the car out. Because of this, we were forced to hobble/hogtie him using a nylon restraining lanyard.

Due to the injury he sustained to his head/eye orbit from hitting the edge of the door when he charged me, Officer Jennings and I transported him to the Central Vermont Medical Center for treatment. While at the hospital, Mr. Smith continued to threaten me and indicated on numerous occasions that he would "Take care of me" and "Get me" when he was released from custody. While Mr. Smith was being treated at the hospital, I also received treatment for my right hand injury. I was also advised by the attending physician that I would need to have my blood tested every four to six weeks for six months for the possible exposure to the suspect's blood due to the fact that Mr. Smith may be infected with blood borne diseases to include Hepatitis B (Note: Mr. Smith refused to have his blood tested at the hospital to confirm and/or deny this possibility).

After we were both treated and cleared from the hospital, with the assistance of Detective Corporal Nolan, I transported Mr. Smith to the St. Johnsbury Correctional Center for detox. Upon arrival at the correctional center, Mr. Smith was issued a citation to appear in the Washington County District Court on October 14, 2010 at 12:30 p.m. to be arraigned on the charge of Simple Assault on a Police Officer. Mr. Smith refused to sign the citation.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

386474

Officer's Name: Kevin Moulton Appendix A Date: 7/20/10 Case #: 1211-10-386474
Supervisor's Name: Sgt Eric Anderson Date of Incident: 7/20/10
Time of incident: 2020 hours Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☐
Weather Conditions: Warm + Clear
Location of Incident: Between 285 + 301 River Street
Information received prior to initial contact:
2 car 10-50 with Good Chuck involved

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☒ Necessary to defend self: ☒
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☐for: control & restraint ☐ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age 37 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☒
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

N/A

SUBJECT WENT TO CIVIL AND S.W.D.
TO BE SCREENED BY WCMH

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

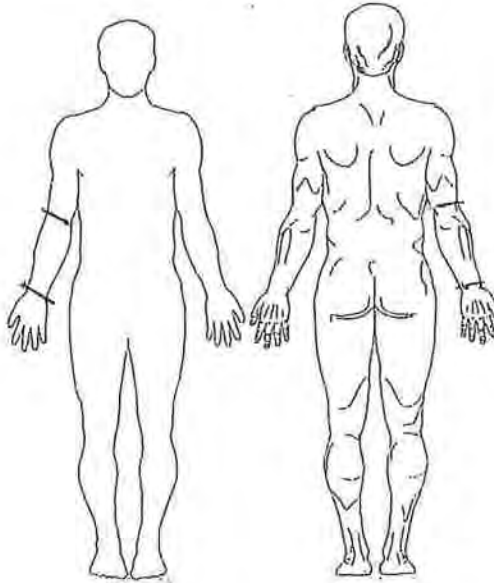
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: Right Wrist + Elbow

Number of impact techniques used? 0 Which technique utilized? Arm bar take down

Location of impact techniques:



Other:

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Upon arrival to scene I saw Brad Clark in an agitated state while speaking to Firefighter Bressette. Clark was in FF Bressette's face flailing his arms and appeared to be very aggressive. I ordered Clark to sit in his vehicle after several attempts to get him. Clark got in and slammed the door. Clark then began beating the dashboard and started yelling. Clark then jumped out and ran to the passenger side. I went to Clark and again ordered him back into the vehicle. Clark did not comply and tried to reach into the vehicle. At that time I ambushed Clark to the ground and placed him in handcuffs. Clark was released after investigating the -SC. Clark was in a highly agitated state throughout the encounter.

Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

07/23/2010

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: Cpl. David Kachajian Date: 12/18/08 Case #: 373992
Supervisor's Name: Cpl. David Kachajian Date of Incident: 12/18/08
Time of incident: 02:38 Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Cold and clear

Location of Incident: 235 Elm Street / Vine Street

Information received prior to initial contact:

Responded to 235 Elm Street for a report of an underage drinking party / loud noise complaint.

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☒ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age 19 Sex M
Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age Sex
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Officer (Cpl. Kachajian) sustained injury to his feet that (abrasion and scratches).
Suspect (Charles O'Regan) sustained a contusion and minor scratches from rolling to the ice on his left cheek.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

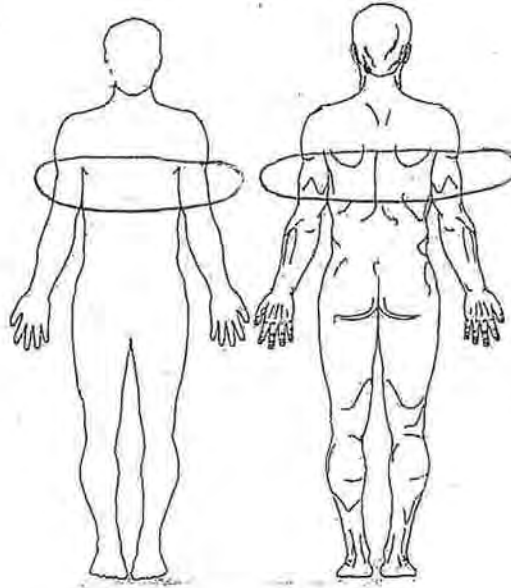
Impact technique Y ☐ N ☒ Control technique Y ☒ N ☐ Both Y ☐ N ☐

Targeted Area: Upper body and arms.

Number of impact techniques used? 0 Which technique utilized? Bear hug / Tackle around upper torso.

Location of impact techniques:

C&R



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

During a foot pursuit of a suspect that fled from Officer Mucura, I located the subject hiding behind a residence off of Vine Street. The suspect came at me after being told he was under arrest and to show me his hands. I got the subject into a front bear hug and at that time, we both went down to the ground on the ice and snow. After a brief struggle, I got the suspect's left arm behind his back and held him in the prone position until Officer Mucura arrived to handcuff him. As a result of the struggle, I sustained minor lacerations and an abrasion to my left knee. The suspect sustained a minor contusion to his left chest along with some scratches from falling onto the ice.

[Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief [Signature]

Policy Compliance Yes ☒ No ☐

12/23/09

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: Joshua Macera Date: 12/15/2009 Case #: 373992

Supervisor's Name: Cpl. Krachajian Date of Incident: 12/15/09

Time of incident: 2:38 Am Status: On duty / ☒ off duty / ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Clear & Cold

Location of Incident: 235 Elm St sidewalk 113

Information received prior to initial contact:

underage drinking party loud noise complaint

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☒ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☒ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐)

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age 19 Sex M

Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☐

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age Sex

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Scratches to suspects left cheek, Cpl. Krachajian sustained injuries to his left knee

MONTPELIER POLICE DEPARTMENT

USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☒ No ☐ Pepperball Launcher: Yes ☐ No ☒ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☒ Area: ☐ Both ☐

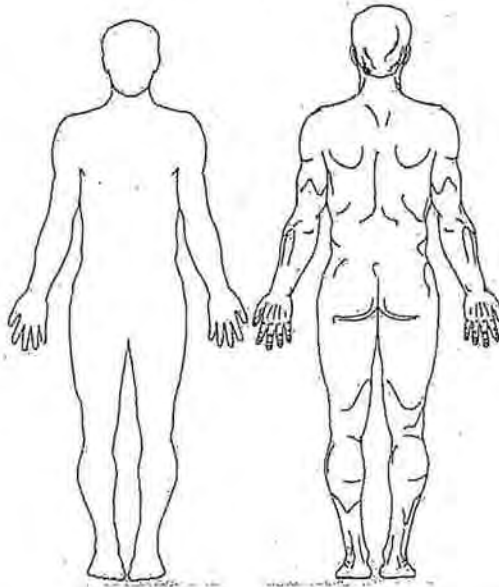
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☒ No ☐ if no

explain: Allowed to use face wash system in PD.

OC administrative warning read to suspect: Yes ☒ No ☐

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Attempted to place suspect in protective custody. Suspect refused to
comply. Attempted verbal commands to lay down suspect refused, used
front trip suspect went to ground got back up. Advised he would be
sprayed still refused to comply. Sprayed OC. Suspect took off on
foot located on vine st. Suspect was guided to ground and handcuffed.

Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☒ No ☐

Chief _____

Policy Compliance Yes ☒ No ☐

12/23/09

AFFIDAVIT

STATE OF VERMONT
Washington County, ss.

NOW COMES Joshua J. Macura, Affiant, duly sworn and on oath deposes and says he has probable cause to believe that Charles H. O'Regan DOB: 12/8/1990 has committed the offense of Larceny from the Person in Violation of Title 13 V.S.A. § 2503, Disorderly Conduct in violation of Title 13 § 1026, Assault of Law Enforcement Officer in Violation of Title 13 V.S.A. § 1028, Resisting Arrest in Violation of Title 13 V.S.A. § 3017, Possession of Malt Beverage in Violation of Title 7 V.S.A. § 657.

- 1) On December 18, 2009 at approximately 2:38 AM I responded to a report of a possible underage drinking party located at 235 Elm Street Montpelier, VT. When we arrived Corporal David Kachajian of the Montpelier Police Department spoke with the complainant located in the downstairs apartment. The complainant said for the last three hours youths had been going up and down the stairs and were being very loud. She said the youths were going into the apartment on the third floor and then into the basement of the building. The complainant said there was a room in the basement and knew the landlord had told the kids on a previous occasion that they were not allowed in the basement or to use the room.
- 2) After we spoke with the tenants in the third floor apartment Corporal Kachajian then went to investigate the basement while I secured some drug paraphernalia in the cruiser. I then returned to the basement where I found Corporal Kachajian conducting a search of the basement area. While conducting the search of the area we noticed an empty Long Trail beer bottle on the floor. We then located a room in the back of the basement with the door slightly open. I could see lights on inside the room and knocked on the door announcing "Montpelier Police is there anyone in here." As I began pushing the door open I noticed it was a furnished room with food, chairs, couches and a coffee table which contained several beer bottles on it. I also noticed a glass bong on the floor which is commonly used to smoke marijuana. I also noticed a dog in the corner of the room on a mattress and the outline of a body under a blanket on the same mattress.
- 3) I again announced "Montpelier Police wake up" towards the body. I observed no movement and noticed a sign which read "Happy Birthday Charlie" above the bed. I yelled "Charlie wake up" several times and then noticed the body move. While speaking with Charles H. O'Regan DOB: 12/8/1990 I noticed an odor of intoxicants and asked if he had been drinking alcohol. O'Regan said he had not. I then spoke with the landlord Gary Schy who advised no one was supposed to be living in the room and that he rents it out as an office space. Schy said O'Regan could stay at his residence for the night.
- 4) I then escorted O'Regan back out to my cruiser where I asked him for a sample of his breath. O'Regan advised me he wanted to speak with a lawyer and refused to take the breath test. I advised O'Regan because I felt he was under the influence of alcohol I was placing him in protective custody and would be transporting him back to the Montpelier Police Department where I would contact someone sober to come and pick him up. O'Regan refused to get in the cruiser and so I advised him I was going to be placing him in handcuffs. O'Regan then began to push against me to get into the cruiser and I advised him he needed to get out of the cruiser so I could place him in handcuffs.

5) O'Regan refused to comply after I advised him several times to exit the cruiser. I then was able to pull O'Regan from the cruiser where he began to push away from me again. I advised O'Regan to lie on the ground which he refused to do. I then conducted the forward trip on O'Regan and was able to get him on the ground. O'Regan then pushed back against me and was able to stand back up. After attempting this twice I advised O'Regan if he did not comply I would spray him with OC (Oleoresin Capsicum). I advised O'Regan this approximately five (5) times and then deployed the OC. While deploying the OC O'Regan reached up and took the OC from my hand. O'Regan then pushed away from me and began running south on Elm Street then west on Winter Street.

6) O'Regan was located by Corporal Kachajian on Vine Street alongside a building. Corporal Kachajian advised O'Regan he was under arrest and to show him his hands which he refused to do. Corporal Kachajian then began to attempt to gain control of O'Regan who still had the can of OC with him. During the struggle Corporal Kachajian sustained injuries to his left knee which consisted of scratches and an abrasion. Corporal Kachajian said on a scale from 1-10, 10 being the most pain he estimated his pain to be a three (3).

7) Court Clerk Paula Tremblay was contacted and the following conditions of release were set:

You must give the court bail as follows: C. A Surety Bond or cash in the amount of \$250.00.

1. You must come to court when you are told to.

2. You must give your attorney or the court clerk your address and phone number. If it changes you must tell them immediately.

3. You must not be charged with or have probable cause found for a new offense while this case is open.

12. You must NOT buy, have or drink any alcoholic beverage.

16. You must come to court on 12/18/2009 at 12:30 PM.

31. No release until blowing .000%.

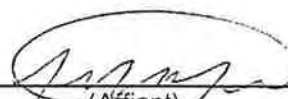
8) I advised O'Regan of the conditions and he said he had the money. I then asked him for a sample of his breath and he advised he wanted to speak with an attorney. I advised O'Regan before he could be released he needed to show his blood alcohol content was .000%. O'Regan refused to provide a sample of his breath. O'Regan was transported to Barre City Jail for not abiding by condition number 31.

Subscribed and Sworn to before me on

This 14th day of December, 2009


(Notary Public)

(Judicial Officer)


(Affiant)

12/18/2009
(Date)

SUPPLEMENTAL AFFIDAVIT

**MONTPELIER
POLICE DEPARTMENT
Case # 373992**

**STATE OF VERMONT
WASHINGTON COUNTY S.S.**

Now comes Corporal David Kachajian, affiant being duly sworn and on oath, deposes and says:

I am a certified law enforcement officer within the State of Vermont, and have been since 2005 when I was certified by the Vermont Criminal Justice Training Council. I am employed by the Montpelier Police Department as a full time Officer.

On December 18, 2009 at approximately 2:38 a.m. Officer Macura and I responded to 235 Elm Street for a report of a possible underage drinking party at the residence. Upon arrival on scene we met a female resident on the first floor of the residence who advised us that for the past 2 to 3 hours, there had been numerous people being loud and going in and out of the third floor apartment and the basement of the apartment building. The female also stated that it appeared that the people were underage and intoxicated.

At this time we went to the third floor of the residence and investigated the initial complaint concerning the underage drinking party. After speaking with the resident, Samuel Hildebrand (19 years of age), who voluntarily let us into his apartment, we were able to determine that he was not intoxicated. We were able to determine that he had some people over to his residence earlier and that there were signs that an underage drinking had taken place such as empty beer bottles and "keg cups" present throughout the apartment. The apartment also had a stale odor of what I recognized, through my training and experience to be, marijuana. There were also several glass "bongs" present in the apartment as well as a bong made out of a gas mask. No marijuana was located in the apartment itself.

After speaking with Mr. Hildebrand, we left the third floor apartment and exited the residence. While Officer Macura placed some drug paraphernalia we had been given by the resident into our cruiser that was parked in the front of the house, I walked to the right rear of the residence and located a partially open basement door with a light on inside. At this time I peered inside and could only see a small area from my vantage point. I entered the basement where the underage drinkers were reportedly located, and looked around to see if anyone was there. It was at this point that Officer Macura joined me inside. Upon checking the interior, which appeared to be an unfinished basement, we located an unlocked door at the end of room. When we cracked the door open, we announced that we were the Montpelier Police and at that time, observed purple light emanating from inside. It was at this point that Officer Macura observed a male, female, and a small dog underneath some blankets in the corner of the room. From our first observations of the room, it appeared to be an illegal apartment that had been set up in the basement.

Soon after rousing the occupants inside of the room, we were able to identify them as Charles Oregon (DOB: 12/8/90) and Jessica Novak (DOB: 4/1/87). Both parties appeared to have been drinking as there was a strong odor of intoxicants coming from both their breath and from their person. There was also two large water "bongs" lying on the floor next to the mattress that the parties had been laying on. Mr. Oregon and Ms. Novak

SUPPLEMENTAL AFFIDAVIT

MONTPELIER
POLICE DEPARTMENT
Case # 373992

STATE OF VERMONT
WASHINGTON COUNTY S.S.

denied having consumed any alcohol this evening and stated that they had not attended any party on the third floor of the apartment house. When we asked Mr. Oregon if he lived in the room we found him in, he stated to us that he lived there in exchange for working for the landlord, Gary Schy, and that he paid him \$50 a month for utilities.

While conducting our investigation, Officer Macura, contacted Mr. Schy to determine if Mr. Oregon was lawfully present where we located him inside of the apartment building. Mr. Schy would neither confirm nor deny that the room was an apartment and only stated that he rented it out as office space. After speaking with Mr. Schy, Officer Macura escorted Mr. Oregon outside and back to our cruiser to obtain a BAC on him because he was underage. A few minutes later, while I was still in the basement speaking with Ms. Novak, I heard Officer Macura calling for assistance on his portable radio. I also heard that Officer Macura was now in a foot pursuit with Mr. Oregon.

Upon exiting the residence I was able to make contact with Officer Macura via radio and learned that he had chased Mr. Oregon onto Vine Street and had lost sight of him in the area. Approximately one minute later I located Officer Macura on Vine Street, at which time he advised me that Mr. Oregon had fought with him beside his cruiser when he tried to place him into protective custody. Officer Macura went on to state that Mr. Oregon had been sprayed with pepper spray (OC) and that during the course of him spraying him, Mr. Oregon grabbed the can of spray away from him. It was at this point the Mr. Oregon fled from Officer Macura on foot.

At this time Officer Macura and I split up and searched the area. While checking the residences on the South side of Vine Street, I rounded the corner next to the rear of one of the homes and suddenly observed Mr. Oregon standing up against the side of the house holding his dog in his left arm. I immediately ordered Mr. Oregon to drop the dog, told him that he was under arrest, and then ordered him to show me his hands. Mr. Oregon refused to do so and started to move away from the house towards me. I immediately grabbed Mr. Oregon in a bear hug and tried to knock the dog from his arm so that it would not get injured from an impending struggle with the suspect. Mr. Oregon dropped the dog onto the snow and ice covered ground and then the both of us slipped and fell. As we fell, I observed the canister of pepper spray that the suspect had stolen from Officer Macura, go flying out and onto the ground from the area of Mr. Oregon's hands. After a brief struggle with the suspect, I was able to gain control of him and placed his left arm behind his back while restraining him face down on the ground. Officer Macura arrived a few seconds later and assisted me with handcuffing Mr. Oregon.

Mr. Oregon was handcuffed behind his back (handcuffs double-locked) and then escorted back to where our cruiser was parked. During the incident, Berlin Police Officer Edward Page arrived on scene to assist us and subsequently transported Mr. Oregon back to the Montpelier Police Department for processing.

SUPPLEMENTAL AFFIDAVIT

MONTPELIER
POLICE DEPARTMENT
Case # 373992

STATE OF VERMONT
WASHINGTON COUNTY S.S.

Subscribed and Sworn to before me on

This 18 day of December 2009



(Notary Public)



(Affiant)

12/18/09

(Date)

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Christopher M. Trubas Date: 11-18-09 Case #: 1211-09-372421

Supervisor's Name: Wade Cochran Date of Incident: 11-17-09

Time of incident: 2147 hrs Status: On duty / ☒ off duty / ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☒

Weather Conditions: C / Part

Location of Incident: College St

Information received prior to initial contact:

None

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☒ Necessary to defend self: ☐

Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐)

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☐ No ☒

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

I think he had a cut on his hand

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

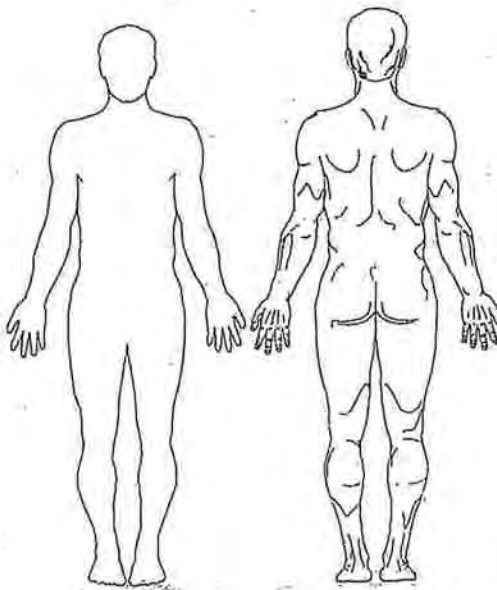
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: body, left arm

Number of impact techniques used? 0 Which technique utilized? _____

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

suspect fled from car stop. suspect grabbed by back
of coat & thrown to ground. officer on suspect,
turned him over, secured left arm behind
his ~~left~~ back & placed into handcuffs.

Involved Officer's Signature [Signature]

Supervisor's Signature [Signature]

Policy Compliance Yes ☒ No ☐

Chief [Signature]

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Cpl. David Kochojian Date: 11/1/09 Case #: 371549
Supervisor's Name: Cpl. David Kochojian Date of Incident: 11/1/09
Time of incident: 05:27 Status: On duty / ☒ off duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: Clear / 40° Fahrenheit

NOV 02 2009

Location of Incident: 42 Main Street and 1 Pitkin Court (at Police Station)

Information received prior to initial contact:

Intoxicated male was reported banging on windows on Main Street. Appeared to be very incapacitated and was staggering down the sidewalk.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☒ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐ Arm bar take down.
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 24 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☐ No ☒
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Suspect sustained bloody lip after being restrained against the wall next to the room cell door. Very minor cut to what appeared to be the suspect's lower lip.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

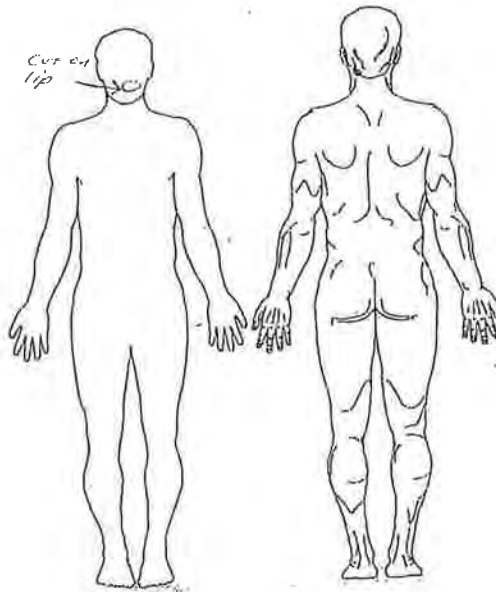
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: N/A

Number of impact techniques used? 0 Which technique utilized? Arm bar take down

Location of impact techniques:



Other: Arm bar was used to gain control of the suspect when he refused to go back into the cell. Handcuffs were also used to restrain the subject twice when he refused to re-enter the cell and became combative. Handcuffs were secured and locked each time.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

While bringing the prisoner into the cellblock, he refused to enter and he comply with having his belongings removed for both his safety and that of the officers. When Officer Brown and I attempted to get him into the holding cell, the subject became combative. Arm bars were used to take control of the subject. In the process of restraining the intoxicated male, we fell against the wall next to the holding cell and the subject sustained a laceration cut to his lower lip. EMS was called to evaluate the injury. LMP ceased treatment. The Correctional Center in St. Johnsbury was notified of the matter being. Medical staff at the correctional center advised they would tend to the minor cut if necessary.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

11/04/09

POLICE OFFICER'S FORMAL REPORT
MONTPELIER POLICE DEPARTMENT

11/01/09 09:04

PAGE: 1

TTYP1 -49

Case#: 371549

rpt date: 11/01/09 08:42
ucr: 312 PC-TRANSPORT TO DETOX

reported: SUNDAY

11/01/09 05:27

location: 42 MAIN ST

follow up by: (N)ONE NEEDED
officer:

case status: CLEARED/CLOSED NORMAL

rpt status: COMPLETED

review officer: 49 P.O.KACHAJIAN

sup review officer:

comp/vict notify: No
cir/involve type:

complaint: MALE POSS -56 POUNDING ON STORE WINDOWS

reporting officer: 49 P.O.KACHAJIAN
second officer: 51 P.O. BEAN

assignment: A car: 810
sup/back-up:

*** NAMES ***

type	mast#	name/add	phone	dob	ss#
INVOLVED	022041	BRAYTON, CHRISTOPHER M			

*** NARRATIVE ***

Use of Force Form completed regarding this incident:

During the course of trying to get the subject into the holding cell, Mr. Brayton became very combative and refused to comply with our commands and requests. On several occasions, Mr. Brayton attempted to pull away from Officer Bean and I refused to go into his holding cell by placing his foot in the doorway to prevent the door from closing. Mr.. Brayton also attempted to leave the holding cell several times once he was placed inside and threatened to assault both Officer Bean and I if we didn't let him out. Arm Bar restraints were subsequently used to subdue and control Mr. Brayton because his resistance and/or non-compliance to our commands to get into his holding cell were not being followed. When we tried to escort him into the cell, he actively resisted us and tried to pull away while tensing his muscles. He also began to yell and scream at us. Mr. Brayton was finally restrained in the cell with the addition of having handcuffs being placed on him to prevent him from assaulting either Officer Bean or myself. The handcuffs were later removed when he calmed down, but had to be re-applied later on when he once again began to actively resist us when being told to go back into his holding cell. While in his cell, Mr. Brayton repeatedly kicked and punched the cell door with his hands and feet. As a

POLICE OFFICER'S FORMAL REPORT
MONTPELIER POLICE DEPARTMENT

11/01/09 09:04
PAGE: 2
TTYPl -49

Case#: 371549

*** NARRATIVE ***

result, fresh bruises were observed on his hands when the transport team was preparing to secure him for transport to the St. Johnsbury Correctional Center.

Prior to leaving the police facility, Mr. Brayton advised that he no longer wanted to go to CVH to have his already healed cut, that he had sustained the day before shaving, looked at. The correctional center was contacted regarding the minor laceration to Mr. Brayton's lip. The correctional center advised that the nurse at the facility would evaluate the injury to Mr. Brayton's lip and prior neck "laceration" from shaving and would provide any necessary treatment should it be deemed needed.

=====
chief [] capt/oic [] cid [] traffic [] fire [] other []
=====

I recommend this case be declared:

Unfounded() Not Cleared() Court Action() Cleared by Arrest()
Case Declared:

Active() Complete() Unfounded() Domestic Violence()

[Signature] *11/01/09*
Reporting Off's Sig. Date/Time

[Signature] *11/01/09*
OIC Signature Date/Time

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Officer's Name: JENNINGS Appendix A Date: 7/27/09 Case #: 366221
Supervisor's Name: CPL KACHAISIAN Date of Incident: 7/27/09
Time of incident: 01:05 Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☐
Weather Conditions: CLOUDY
Location of Incident: #137 MAIN ST - TRINITY CHURCH
Information received prior to initial contact:

SUBJECT WAS OBSERVED TO PULL A US FLAG
FROM A STREET LIGHT POLE ON STATE ST
AT ELM ST.

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☐ No: ☒
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☒
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

NO INJURIES

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

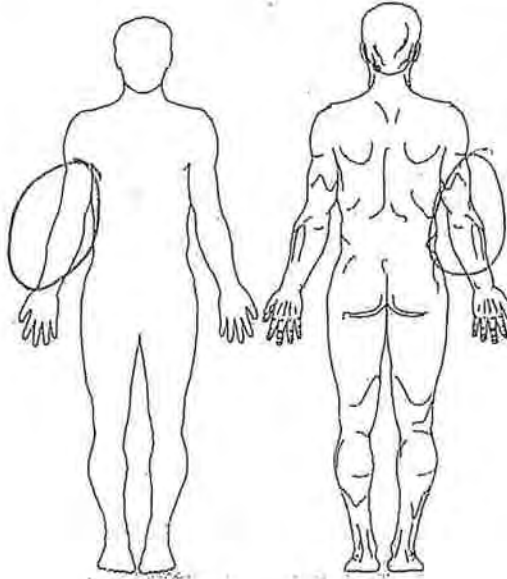
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: RIGHT ARM

Number of impact techniques used? ____ Which technique utilized? AIRM BARE USED

Location of impact techniques: NO IMPACT WEAPONS



Other: N/A

Summary of Events:

(Note: summarize only attach officer report for complete details.)

SEE ATTACHED DOCUMENT

[Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

[Signature]
Chief

Policy Compliance Yes ☒ No ☐

07/27/09

I Observed while on foot patrol a subject on State Street at Elm Street pull a US flag down from a street light pole (Unlawful Mischief). The bracket was damaged beyond repair. 817 Bouchard stopped the Gotavaskis at Elm Street and while interviewing Gotavaskis fled on foot up Elm to Langdon onto Hazen Court onto Main Street and down School Street. Bouchard pursued on foot I did so in his EQ. While circling Trinity Church Gotavaskis was stopped he refused to comply using verbal commands to lie-down issued by Officer Bouchard. I verbally commanded additional commands to lie-down. Gotavaskis refused and appeared to position himself so he could pass and continue to flee. I approached and continued to command Gotavaskis to lie on the ground he refused to comply and I found it necessary to use an arm bar to bring him to the ground (grass covered surface) in order to maintain control and handcuff the subject.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: R. Moulton Date: 11/1/08 Case #: 351075
Supervisor's Name: R. Cleveland Date of Incident: 11/1/08
Time of incident: 0228 hours Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: Cal
Location of Incident: School Street and Elm Street

Information received prior to initial contact:

Male subject appeared to be coming on TD Bandwidth
Drive-Thru

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☒ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 19 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

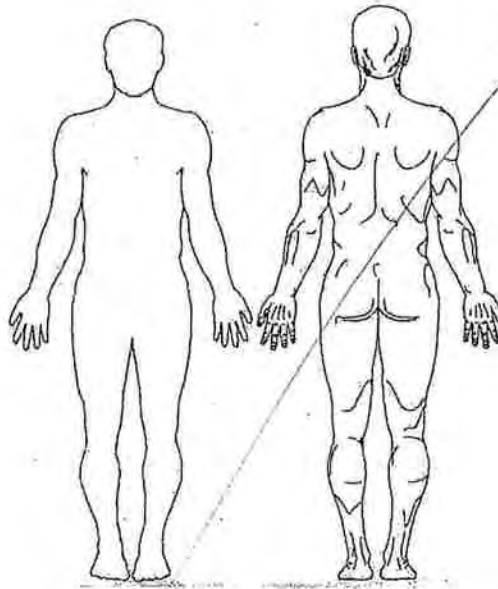
Abusions to Right Cheek, Both hands + EThews

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Firearm incident

Vest worn Y ☐ N ☐ Sights used Y ☐ N ☐ Flashlight used Y ☐ N ☐ Reload? Y / N
Shooting Position(s) Used: standing ☐ kneeling ☐ sitting ☐ other ☐
Who fired first?Officer: ☐ Suspect: ☐ Other: ☐
Number of shots?.....Officer: _____ Suspect: _____ Other: _____
Reason for discharge? Protect self: ☐ Citizen: ☐ Prisoner: ☐ Unintentional: ☐
Wounds received: Officer ☐ Suspect ☐ Other Party ☐ Property Damage by Stray Rounds ☐
Location of bullet hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Supervisor's Signature _____ Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Baton incident

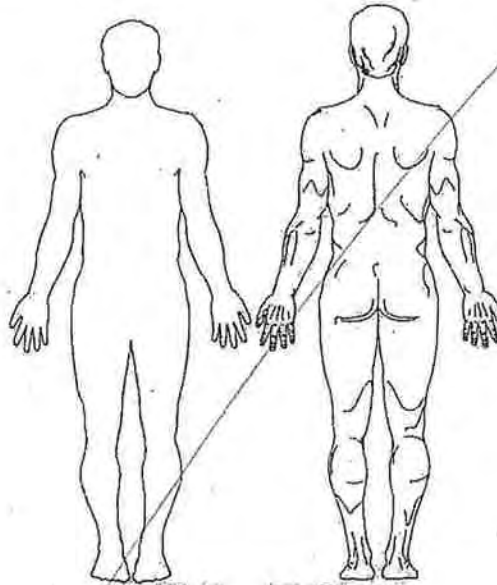
Straight Baton: ☐ Expandable Baton: ☐ Riot Baton: ☐ PR-24: ☐

Impact technique Y ☐ N ☐ Control technique Y ☐ N ☐ Both Y ☐ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? _____

Location of Strikes: _____



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Policy Compliance Yes ☐ No ☐

Supervisor's Signature _____

Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☒ N ☒

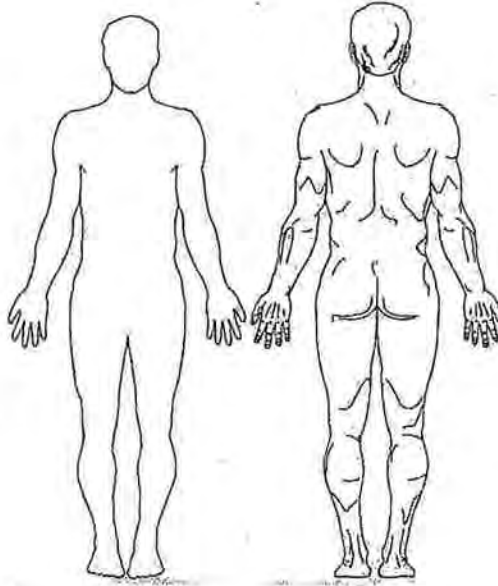
Control technique Y ☒ N ☐

Both Y ☒ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? Non-compliant handcuffing

Location of impact techniques: _____



Other: Subject tripped and fell face first injuring
hands, elbow and face. I immediately gained control of
subject and placed his arms on his back for handcuffing.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Subject was seen possibly wandering on building. I approached and asked Subject what he
was doing. Subject stated he was just walking. I asked him what he had done
due to the fact he could not speak very well. He said, "Nothing." I asked him
for his last name and he would only tell me his name was Isaac. I asked to see his
ID and he ran away. I pursued on foot and Subject tripped as a
result of the uneven pavement and concrete. I quickly assumed the position
of Non-compliant handcuffing until he was restrained.

Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☒ No ☐

Chief _____

Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Tire deflating spikes

Why violator fled: (if known) Avoid: arrest Y ☐ N ☐ Citation / VTC Y ☐ N ☐ Unknown Y ☐ N ☐

Number of South Burlington units in pursuit? _____ Other Agencies: _____

Deployment Strategy: hasty ☐ surprise ☐ obvious ☐ Method of Deployment: throw ☐ pull ☐

Results: subject drove around ☐ subject drove through ☐ Officer Vehicle spiked ☐

Distance traveled after spiked / injuries sustained: _____

(Use narrative for; Highway description, speed/direction of pursuit and traffic volume)

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's signature

Policy Compliance Yes ☐ No ☐

Chief _____

Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT

USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☐ No ☐ Pepperball Launcher: Yes ☐ No ☐ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☐ Area: ☐ Both ☐

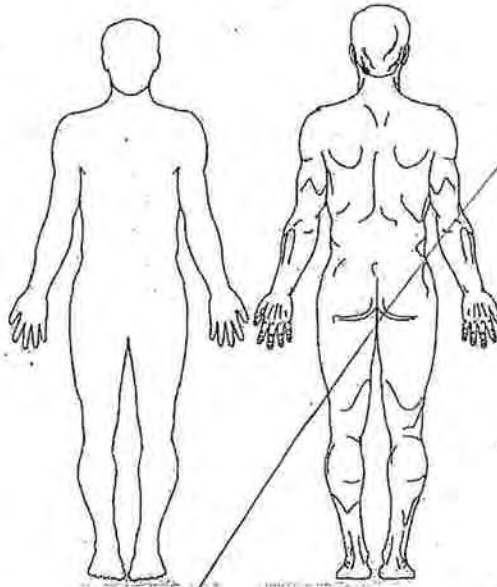
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☐ No ☐ if no

explain: _____

OC administrative warning read to suspect: Yes ☐ No ☐

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☐ No ☐

Chief _____

Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Maccera Date: 6/8/11 Case #: 403576

Supervisor's Name: Sgt. Anderson Date of Incident: 5/23/11

Time of incident: 7:34 pm Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☐

Weather Conditions: Clear

Location of Incident: Hubbard Park / Parkway ST.

Information received prior to initial contact:

None

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☒ Necessary to defend another: ☒

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 22 Sex F

Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐ Age ____ Sex ____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Scrapes on arms & legs on suspect
left elbow on officer

Minor abrasions to

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

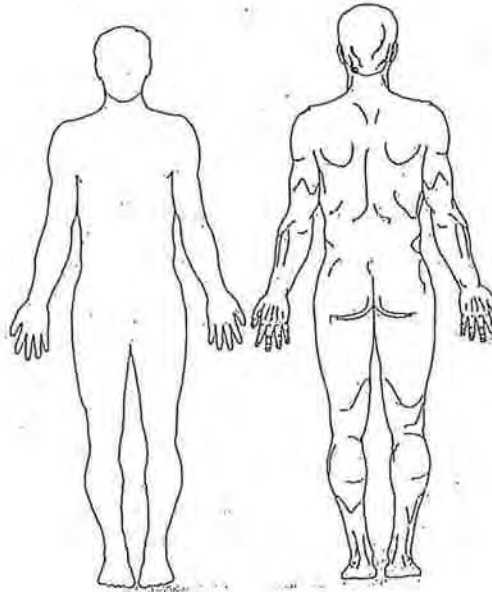
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: Arms & Legs

Number of impact techniques used? Which technique utilized? Arm bar.

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

See affidavit
Full ARREST. DEFENDANT NOT COMPLIANT w/
OFFICERS or EMS PERSON WHO WAS CHECKING
HER WELFARE. HIGHLY INTOXICATED SUSPECT.

[Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief [Signature]

Policy Compliance Yes ☒ No ☐

1211-11-403576
Montpelier
Police Department

AFFIDAVIT

STATE OF VERMONT
Washington COUNTY, ss.

Now comes Officer Joshua Macura, affiant, being duly sworn and on oath, deposes and says he has probable cause to believe that Brady L. Wood DOB: 09/12/1988 has committed the offense of Driving While Intoxicated a violation of Title 23 VSA § 1201 (a), Disorderly Conduct a violation of Title 13 VSA § 1026 and Assault of law enforcement officer, firefighter, emergency room personnel a violation of Title 13 VSA § 1028.

- 1) On May 23, 2011 at approximately 7:34 PM I was on patrol in the City of Montpelier, VT. I was driving west on Parkway Street Montpelier, VT which goes through Hubbard Park when I came across a one car crash. The vehicle was identified as a 2001 Volkswagen GTI bearing Vermont registration ESW469 registered to Brady L. Wood DOB: 09/12/1988. The vehicle was facing south and was partially off the roadway. I noticed the air bags had deployed in the vehicle and there was heavy front end damage to the vehicle. The vehicle appeared to have struck an approximately 10 inch thick tree breaking the top of the tree off which was lying on both sides of the roadway.
- 2) I found two females standing on the passenger side of the vehicle with the door open. I asked if everyone was alright and was informed they were but were very upset. I asked what happened and was not given an answer by either person. I then asked who was driving. While asking these questions I noticed Brady L. Wood DOB: 09/12/1988 was very unsteady on her feet and was using the car for support. Wood advised me "she was driving" indicating Hannah E. Blow DOB: 09/23/1988. I looked at Blow and asked if that was correct. Blow looked at Wood and reluctantly said yes. I advised Blow if she was lying to me it was going to be an issue and I wanted to know the truth. I received no response so I again asked who was really driving. I received no answer from Blow but again Wood said "she was driving." Again I asked Blow if that was correct and Blow advised me again, after looking at Wood, reluctantly advised me she was the one driving. I then asked Blow for her license, registration and proof of insurance. Blow gave me her license and said the vehicle was not hers and did not know where the registration and insurance was located. I then asked Wood for the same information. Wood appeared to be trying to find the information in the vehicle. I noticed while she was doing this she was very unsteady, her speech was slurred and she would stop often and I would have to remind her what she was looking for. Wood appeared very intoxicated during my interactions with her.
- 3) When Sergeant Nordenson arrived on scene he advised me this was the vehicle he was looking for earlier in the night. At approximately 17:52 hours Sergeant Nordenson was assigned incident number 403568. The incident was reported by a park visitor through a 911 call which was transferred to the Montpelier Police Department. Sergeant Nordenson advised me after receiving the call he checked the area of Parkway Street and Winter Street and found the vehicle unoccupied and parked near the pond. Sergeant Nordenson advised me the caller had reported there were two intoxicated females driving the vehicle erratically. The caller reported the vehicle was a green Volkswagen bearing VT registration ESW469.
- 4) Sergeant Nordenson then started speaking with Wood while I asked Blow to speak with me near my cruiser. I explained to Blow I wanted to know the truth about who was driving. I advised Blow if she was the one driving I would like her to tell me but if there was a different story I would also like her to tell me that also. Blow advised me she was not the one driving and that Wood had been driving. Blow advised me she had agreed she was the driver to keep Wood from getting in trouble. Blow said they had both consumed one beer and one mixed drink around 4 PM. I asked if she had seen Wood drink anything after the crash took place. Blow advised me

Wood had not had anything to drink after the crash. Blow advised the crash had taken place 20 minutes prior to my arrival.

5) While speaking with Blow I observed two males arrive on scene. It appeared they were not going to go around the scene and so I started walking towards them to ask them to not walk through the crash scene when Wood who was crying started running towards the male and then advised she was leaving with the male. I advised Wood she would need to stay on scene until we had figured everything out. At this time Dana Huoppi of the Montpelier Fire Department reached over and touched Wood on the arm at which time she began swinging her arms and hitting him. Officer Truhan of the Montpelier Police Department and I then grabbed Wood arms to prevent her from hitting Huoppi anymore. Wood refused to calm down and was trying to pull away and her arms were still moving. Wood refused to cooperate and during the incident was guided to the ground where she was placed in handcuffs for her safety and the safety of those on scene. While on the ground I advised Wood to stop resisting and relax but Wood continued to move around and kick her feet. Wood was placed in the back of the cruiser where she continued to yell and cry. While on scene the Montpelier Fire Department had the driver's side door open and was trying to locate the vehicles year off a sticker located on the door frame. While reading the information to the firemen I noticed three 16 ounce Rolling Rock beer cans in an open paper bag just behind the front driver's seat. I noticed the six pack carrying device was still attached to two of the three cans and one had come loose. Three of the 16 ounce beer cans were missing from the bag.

6) I transported Wood back to the Montpelier Police Department to collect further information about the incident. When I arrived at the police department I noticed Wood arm was bleeding and called to have the Montpelier Ambulance Service evaluate her. While waiting I explained to Wood she had been arrested on scene for attempting to assault the firefighter and for being disorderly. I also advised Woods I suspected she was intoxicated and was driving the vehicle. I attempted to conduct sobriety exercises with Wood but she refused to cooperate. While attempting to conduct the exercises I noticed Wood swayed while standing and used the wall for support. Wood speech was also slurred and she was unable to follow instructions during the HGN exercise. I noticed Wood eyes were bloodshot and watery. I asked Wood if she wanted to try any of the exercises and she advised me she did not. I explained to Wood I could read them to her and she could then decide but Wood advised she did not want to do any of them. I then asked for a sample of her breath and she also refused that. Based on my observations of Wood both at the crash scene and at the police department I believe she was under the influence of alcohol and advised Wood I would be processing her for suspicion of DUI.

7) Wood refused to answer any of my questions during the processing and advised me she did not want to speak with an attorney before deciding whether or not to submit to a breath test. At approximately 20:25 hours Wood changed her mind and asked to speak with a lawyer. The on call public defender Brian Marsicovetere was contacted and Wood spoke with him. At the completion of the conversation I asked Wood if she would submit to a breath test. At approximately 20:34 and again at 21:15 hours Wood refused to submit to a breath test.

8) During the processing the Montpelier Ambulance Service arrived to evaluate the cut on Wood arm. Upon their arrival Wood was fairly calm and so I left the room so they could evaluate her injuries. After a few moments I heard some chairs being pushed around in the room. When I arrived in the room where Huoppi and Wood were located I found Wood was being combative towards Huoppi. Wood was crying and yelling and again was flailing her arms. Officer Truhan and I placed Wood in handcuffs and then placed her in a locked holding cell. I finished the processing with Wood in the cell. During her time in the cell she continued to yell

and kick the steel door. A helmet was placed on Wood head to prevent any injuries since she was very unsteady and refused to stay seated on the bench. Wood removed the helmet eventually even though she was still handcuffed. When I would open the cell door Wood would push her way through the doorway and into me. Several times I had to push Wood back into the cell and at one point sustained a minor abrasion to my left elbow while trying to control Wood. Washington County Mental Health was contacted to evaluate Wood due to her highly intoxicated state. James Pugliese arrived and after conversing with Wood and I, deemed Wood incapacitated. Wood was then placed in protective custody and transported to the St. Johnsbury Correctional Facility. During the ride to the correctional facility I had to explain several times to Wood what was going on as she kept asking. Wood also continued to yell and cry during the transport.

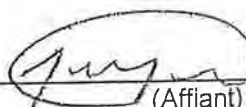
9) Blow completed a written statement which reads as follows: "We had lunch and a beer and went to hubbard park. She went up around the corner to turn around and ended up hitting a tree."

10) Brady L. Wood DOB: 09/12/1988 was cited to appear in Washington Superior Court on 6/09/2011 at 12:30 PM to answer to the charge of Driving While Intoxicated a violation of Title 23 VSA § 1201 (a), Disorderly Conduct a violation of Title 13 VSA § 1026 and Assault of law enforcement officer, firefighter, emergency room personnel a violation of Title 13 VSA § 1028.

Subscribed and Sworn to before me on

This 1ST day of June, 2011

Charles H. Hildt
(Notary Public) (Judicial Officer)


(Affiant)
6/1/11
(Date)

Response to Resistance	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes:	
CALEA Standard: 1.3.1, 1.3.2, 1.3.5, 1.3.6., 1.3.7, 1.3.8., 1.3.9, 1.3.10, 26.1.1	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to direct officers in the appropriate response to resistance.
- II. **Policy:** The policy of this department is to protect and serve all citizens while at the same time respecting the rights of suspects and balancing the need for officer safety in response to resistance events. It is the policy of this department that officers will use only reasonable force to bring an incident or event under control. Reasonable force is only that force which is necessary to accomplish lawful objectives. All responses to resistance must be objectively reasonable.
- III. **Definitions:**
 - A. **Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily harm or death.
 - B. **Non-Deadly Force:** All uses of force other than those that is likely to cause serious bodily harm or death.
 - C. **Imminent:** Impending or about to occur.
 - D. **Objectively Reasonable:** The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances that the officer using the force is presented with.
 - E. **Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person, believes that the prescribed facts exist.
 - F. **Serious Bodily Harm/Injury:** Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.
 - G. **Active resistance:** a subject actively resists when they take affirmative action to defeat an officer's ability to take them into custody.

- H. **Electronic Control Device:** Electronic Control Devices, TASER,TM or stun-guns (electronic control weapons) that disrupt the central nervous system of the body.

IV. Procedure:

- A. In determining the appropriate level of response to a subject's resistance an officer should consider:
- a. How serious is the offense the officer suspected at the time the particular force used?
 - b. What was the physical threat to the officer or others?
 - c. Was the subject actively resisting or attempting to evade arrest by flight?
- B. **Force Options:** Officers have several force options that will be dictated by the actions of the suspect upon the appearance of the police officer. Officers may be limited in their options due to the circumstances and actions of the subject. For example, an officer who immediately observes a subject with a firearm unjustifiably threatening another may immediately respond with deadly force without considering other force options.
- a. **Command Presence:** Visual appearance of officer where it is obvious to the subject due to the officer's uniform or identification that the officer has the authority of law.
 - b. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
 - c. **Soft Empty Hand Control:** Officer's use of hands on the subject to direct the subject's movement; Techniques that have a low potential of injury to the subject.
 - d. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporarily incapacitate the subject.
 - e. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject.
 - f. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
 - g. **Impact Weapons:** Batons, ASP/Expandable Batons may be utilized in cases where officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and failed or where, based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
 - h. **Canine:** Use of canine to bite and hold subject to prevent escape or to gain control of a subject who is actively aggressing toward officer(s). Prior to deployment of a canine, a warning in the form of an announcement shall be made.
 - i. **Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily harm or death
- C. **Deadly Force:** The use of deadly force is objectively reasonable when:

- a. The officer is faced with an imminent threat of serious bodily harm or death to him/herself, or some other person who is present, or;
 - b. To prevent the escape of an individual in cases where the officer has probable cause to believe that the subject has committed a violent felony involving the infliction or threatened infliction of serious bodily harm or death AND by the subject's escape they pose an imminent threat of serious bodily harm or death to another.
 - c. Officers should warn the subject prior to using deadly force where feasible.
- D. Once the subject's active resistance has ceased and control has been gained an officer is no longer authorized to use force. Officers should immediately provide any necessary medical assistance to the subject to the degree to which they are trained and provide for emergency medical response where needed.
- E. Discharge of Firearms Restrictions:
- a. Warning shots are prohibited.
 - b. Discharge of firearms is prohibited when the officer is presented with an unreasonable risk to innocent third parties.
 - c. When a moving vehicle is involved, use of deadly force by discharging a firearm is dangerous, can be ineffective, and should not occur when there is an unreasonable risk to the safety of persons other than the subject. Whenever possible, officers should avoid placing themselves in a position where use of deadly force is the only alternative.
 - d. Even when deadly force is justified, firearms shall not be discharged at a vehicle unless:
 - i. The officer has a reasonable belief that an occupant of the vehicle poses an imminent threat of death or serious physical injury to the officer or another person, or
 - ii. The officer has a reasonable belief that an occupant is using the vehicle in a manner that poses an imminent threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.
 - iii. Officers shall consider the potential threat to innocent third parties under such circumstances.
- F. **Less-Lethal Weapons/Tactics:** Prior to deployment of any less-lethal weapon, officers must be trained and certified in the proper use of the weapon from both the technical and legal aspects. All deployments must be consistent with departmental use of force training and policy.
- a. **Chemical Spray:**
- i. Chemical Spray shall not be deployed as a compliance technique for a person who is passively or verbally non-compliant. Active resistance/active aggression shall be required.
 - ii. Chemical Spray shall never be used as a punitive measure.
 - iii. Officers should never spray from a pressurized can directly into a subject's eyes from a close distance due to the potential for eye injury as a result of the

pressurized stream. Officers should never spray directly into a subject's eyes from closer than three feet or the distance recommended by the manufacturer of the spray (whichever is shorter) unless deadly force would be justified.

- iv. Officers shall consider alternatives to chemical spray when attempting to control a subject in a crowded-enclosed area due to the innocent over-spray that may cause the onset of panic.
- v. Officers shall consider alternatives to chemical spray when the event is inside a building, particularly where the building has a closed-ventilation system due to the potential impact on innocent persons who may have to be evacuated (temporarily) from the locations.
- vi. Once control is gained, officers should immediately provide for the decontamination of the subject.
- vii. If the person shows any signs of physical distress or does not recover in a reasonable amount of time, officers should immediately direct an emergency medical response and render first-aid at the degree for which they are trained.

b. Electronic Control Devices

- i. An electronic control device as a force option is the same level of force as chemical spray.
- ii. Electronic Control Device must be worn on the weak-side in either a weak-hand draw or cross-draw position.
- iii. Electronic Control Device deployment shall not be considered for the passively resistant subject. Active resistance/active aggression shall be required.
- iv. Flight from an officer, standing alone, is not a justification for the use of an electronic control device. Officers should consider the nature of the offense suspected, the level of suspicion with respect to the person fleeing, and the risk of danger to others if the person is not apprehended immediately.
- v. Officers must be trained concerning the ability of electrical charge to act as an ignition for combustible materials. (Note: Officers have been seriously injured and or killed after deploying a Electronic Control Device in the presence of open natural gas during suicidal person call).
- vi. Multiple Electronic Control Device deployments against an individual may increase the likelihood of serious injury where the individual is suffering from other symptoms such as cocaine intoxication. Policy and training should encourage officers to minimize the successive number of discharges against an individual where possible.
- vii. The agency recognizes however, particularly where back-up officers are unavailable, that multiple applications may be necessary to gain or maintain control of a combative individual.
- viii. No more than one officer should deploy an electronic control device against a single individual at the same time.
- ix. A contributing factor to serious injury or death is the level of a subject's exhaustion. Studies recommend that when an officer believes that control of

a subject will be necessary and met with resistance, deployment of the Electronic Control Device should be considered early on in the event so that the person has not reached a level of exhaustion prior to the Electronic Control Device's use.

- x. In cases where subject is actively resisting an officer's attempt to take them into custody but not threatening the officer with an assault, it is recommended that the Electronic Control Device be used in the "push stun mode."
- xi. The preferred targeting is the center mass of the subject's back, however it is recognized that it is not always possible to get behind the subject.
- xii. Where back-targeting is not possible, frontal targeting should be lower center mass; intentional deployments to the chest shall be avoided where possible.
- xiii. Officers who are aware that a female subject is pregnant shall not use the Electronic Control Device unless deadly force would be justified due to the danger created by the secondary impact or the possibility of muscle contractions leading to premature birth.
- xiv. Officers shall make all reasonable efforts to avoid striking persons in the head, neck, eyes or genitals.
- xv. Officers are prohibited from using the device as a punitive measure.
- xvi. Electronic Control Devices shall not be used against a person who is in physical control of a vehicle in motion unless deadly force would be justified based on an existing imminent threat.
- xvii. A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable. Model policies as well as courts have noted that giving a subject, who is assaultive toward the officer, a warning may enhance the danger to the officer and the subject by giving the subject time to avoid the deployment.
- xviii. Officers should warn other officers that a deployment is about to occur.
- xix. The device should not be used on a handcuffed person to force compliance unless the subject poses a threat to the officer through physical conduct or active resistance cannot otherwise be controlled.
- xx. Officers should consider the location and environment of the subject. i.e. Is the subject at the top of a stairwell such that when incapacitated by the Electronic Control Device they fall down the stairs causing a collateral injury. Officers shall avoid using Electronic Control Device in cases where the subject is elevated i.e. roof, fire escape, tree, bridge, stairwell, etc. etc. such that the secondary impact may cause serious injury
- xxi. Officers should be aware that a subject's heavy clothing may impact the effectiveness of the Electronic Control Device.
- xxii. Officers should consider whether the subject has been exposed to combustible elements that may be on their person such as gasoline. The use of an Electronic Control Device on such persons may cause an ignition and fire.
- xxiii. Officers should consider the particular subject and any vulnerabilities they

may have such as: juveniles, pregnant women, persons who are small in stature, and the elderly .

- xxiv.** Alternative tactics shall be utilized where the officer has prior information that the subject suffers from a disability which would increase the danger to that person by using the Electronic Restraint Device. i.e. A person at the scene tells an officer that the subject has a heart condition.
- xxv.** Deployed probes that have been removed from a suspect should be treated as a bio-hazard.
- xxvi.** Where EMS is available, their services may be utilized for the removal of darts that have penetrated the skin as long as such removal can be accomplished without causing further injury or pain to the subject.
- xxvii.** All persons who have been the subject of an Electronic Control Device deployment shall be cleared medically and monitored for a period of time with a focus on symptoms of physical distress. Any person who appears to be having any form of physical distress following the deployment of an ECD, shall be transported to a medical facility for a medical examination. It should be noted that studies indicate that persons who suffer from excited delirium may not be immediately impacted and the onset of difficulty may occur a period of time after the police control event.
- xxviii.** Mandatory Medical Clearance at Hospital:
 - (a)** Persons struck in a sensitive area-eyes, head, genitals, female breasts.
 - (b)** Where the probes have penetrated the skin and EMS cannot safely remove darts in accord with this policy.
 - (c)** Persons who do not appear to have fully recovered after a short period of time (Model Policies use a ten-minute time limit, however, officers who observe unusual physical distress should immediately call for medical assistance and should not wait the ten-minute recovery period recommended by some of the model policies)
 - (d)** Persons who fall into one of the vulnerable classes such as juveniles, pregnant women, persons who are small in stature, persons who officers become aware have a pre-existing medical condition that increases danger and the elderly.
 - (e)** Subjects who request medical assistance.

xxix. Additional Documentation:

- (a)** All deployments of an Electronic Control Device shall be documented including those cases where a subject complies once threatened with such a device. By documenting the non-discharge uses, an agency establishes officer judgment and control as well as the deterrent effect of this tool. Documentation shall be done using the Response to Active Resistance (RAR) form detailed in this policy.
- (b)** Photographs of the affected area should be taken following the removal of darts from the subject to document any injury.
- (c)** Supervisory personnel shall be notified and shall review all Electronic

Control Device deployment for consistency with policy and training.

- (d) Darts/Cartridges shall be properly stored and maintained as evidence following a discharge.
- (e) Officers are required to complete a "response to active resistance form" which shall be reviewed by a supervisor following the ECD use.
- (f) All deployments shall be reviewed by the agency as well as training personnel.
- (g) Where there is any indication of lasting injury, claim or complaint, internal data from device shall be maintained. All ECD units will be audited monthly to ensure that all deployment/activations have been reported as required.

c. Impact Weapons: Batons, ASP/Expandable Baton

- i. Impact weapons may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control.
- ii. Examples would be where other options have been utilized and failed or where, based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
- iii. Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.
- iv. Impact tools as non-impact weapons: Officer may use impact tools for non-impact strike techniques such as come-alongs and restraint holds in accordance with agency training.

- d. Immediate measure of defense** - Where necessary an officer may take action or use any implement to defend the officer's life or safety, or the life or safety of another, with implements or devices not normally intended to be weapons or issued as public safety equipment.

V. Reporting Response to Active Resistance:

- A. Purpose:** It is the purpose of this policy to provide police employees and supervisors with guidelines for reporting response to active resistance. The department will develop a Response to Active Resistance (RAR) form to capture all required information described in this policy.
- B. Policy:** Police officers are given the authority to use force to overcome a subject's resistance to the officer's order to comply, effect arrest, defend against assault, and prohibit flight. This policy mandates that members of the Department accurately, completely and timely report subject control of active resistance and a supervisor conducts a prompt investigation and reports this investigation findings.

VI. Definitions:

- A. Reportable response to active resistance:** Verbal commands, soft-empty hand control, and handcuffing do not require a separate reporting form. The following are reportable force options when used by an officer to compel compliance from a subject in conformance with the officer's official duties, whether on or off duty or while employed in an off duty paid detail, include:

- a. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporary incapacitate the subject.
- b. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject. (See additional documentation-ECD section)
- c. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
- d. **Impact Weapons:** Batons, ASP/Expandable Baton may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and failed or where based on the officer's perception at the time, the other options.
- e. **Impact Weapons:** Batons, ASP/Expandable baton may also be used for non-impact techniques such as come-alongs and restraints as trained by this agency.
- f. **Pointing of Firearms:** Any time an officer points a firearm at an individual, notwithstanding the fact that deadly force is not ultimately deployed. This does not include drawing a firearm and maintaining at the low-ready position.
- g. **Firearms discharges:** Any discharge of a firearm other than at the range or during qualification whether unintentional, for animal dispatch, or whether a subject is hit or not will be reported in a separate manner consistent with these policies.
- h. **Canine use:** Use of a police canine will be reported on a special form to capture any form of use whether there is contact with a subject or not.
- i. **Deadly Force:** Force that creates a substantial likelihood of causing serious bodily harm or death.

B. Procedures:

- a. Officers who become involved in an incident that required any reportable force option are required to immediately notify their supervisor. The involved officer will provide a detailed documentation of the use of force utilized in the official police report prepared for the incident involved.
- b. A Report of Response Active Resistance (RAR) form shall be prepared by a supervisor whenever an officer of this agency utilizes reportable force, as described in the definition of this policy, in the performance of their duties.
- c. The RAR form will be completed in detail including a narrative account of the following:
 - i. The actions of the subject that necessitated that use of force as a response to overcome the active resistance of the subject.
 - ii. The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
 - iii. Any injuries or complaint of injuries of either the subject or the officer and any medical treatment received.

C. Supervisory Responsibilities: Once notified of an incident in which an officer has utilized force, the supervisor, to the extent that one is available, will immediately respond to the scene to investigate the incident. If the involved officer's supervisor is not available to respond, another supervisor will be dispatched to complete the RAR. The supervisor will accomplish the following investigative steps in conducting the investigation:

- a. Interview the involved subject if they are cooperative, to determine their account of the incident. If they expressly indicate they have a complaint the supervisor shall complete a Public Service Report. If they have any type of injury, Internal Affairs or the designated departmental IA person will be notified. Additionally, should the supervisor determine that unreasonable force was utilized, the Internal Affairs designated investigator will be notified and assume control of the response to resistance investigation.
- b. If a crime scene exists, or police equipment exists, which may contain forensic evidence, the supervisor shall ensure that the scene and evidence is processed, photographed and preserved.
- c. Take photographs of the involved officer(s) and subject(s) depicting any potential injuries or documenting the lack of any injuries to the parties involved.
- d. Interview, preferably recorded, all witnesses to the incident and document their description of the event.
- e. Ensure that a qualified health care provider handles any injuries or other medical condition being experienced by the involved person.
- f. The supervisor shall review any video recording of the incident, if available, prior to the completion of the RAR and the approval of the officer's reports
- g. The supervisor investigating the use of reportable force shall be responsible for the review and approval of the officer's reports of the incident, when practicable.
- h. The supervisor will complete the RAR prior to completing their shift and submit it along with the officer's report to their chain of command for review.



RESPONSE TO RESISTANCE FORM

CASE # _____

DATE OF INCIDENT ____/____/____

INCIDENT LOCATION _____

TIME OF INCIDENT _____

- ! **SUPERVISOR** IS TO COMPLETE THIS FORM IN DETAIL
- ! **COPY** OF COMPLETED **INCIDENT REPORT** IS TO BE ATTACHED
- ! **ORIGINAL** (W/ATTACHMENTS) WILL BE FORWARDED TO THE **CHIEF'S OFFICE**, VIA CHAIN OF COMMAND

OFFICER / EMPLOYEE INFORMATION (FORM COMPILED FOR EACH OFFICER USING FORCE)	
NAME _____	ID# _____
YES* NO MEDICAL TREATMENT REQUIRED	INJURY/WORK COMP. PAPERWORK COMPLETED
*DESCRIBE INJURY _____	
TRANSPORTED ADMITTED TO HOSPITAL TREATED-RELEASED EMS OTHER	
MEDICAL FACILITY/TREATING PHYSICIAN _____	
☐ PHOTOGRAPHS TAKEN	
☐ DUTY STATUS	

SUBJECT / SUSPECT INFORMATION	
NAME _____	
DOB _____	RACE _____ SEX _____
CRIMINAL CHARGE(S) _____	
☐ NO INJURY ☐ COMPLAINT OF INJURY ☐ VISIBLE INJURY ☐ MEDICAL ATTENTION ☐ REFUSED	
*DESCRIBE INJURY _____	
TRANSPORTED ADMITTED TO HOSPITAL TREATED/RELEASED EMS OTHER	
☐ PHOTOGRAPHS TAKEN	

DID ANYONE WITNESS THE RESPONSE TO RESISTANCE? YES NO	
STATEMENT (S) TAKEN ☐ YES ☐ NO (INDICATE ON WITNESS LINE FOR EACH TAKEN)	
IDENTIFY NAME, ADDRESS, PHONE _____	
WITNESS #1 _____	
WITNESS #2 _____	
WITNESS#3 _____	

NARRATIVE (ARTICULATE SERIOUSNESS OF OFFENSE SUSPECTED AT TIME FORCE WAS USED/ PHYSICAL THREAT TO OFFICER OR OTHERS & SUBJECT'S ACTIVE RESISTANCE OR ATTEMPT TO FLEE)

[illegible][illegible]

RESISTANCE		RESPONSE	
1	VERBAL	1	PRESENCE
2	PASSIVE PHYSICAL	2	COMMUNICATION
3	ACTIVE PHYSICAL	3	PHYSICAL CONTROL
4	AGGRESSIVE PHYSICAL	4	INTERMEDIATE WEAPONS
5	AGGRAVATED PHYSICAL	5	INCAPACITATION
		6	DEADLY FORCE

SUSPECT FACTORS:		SUSPECT WEAPONS:	
SEX	DRUG YES NO	HANDS	FIREARM
HEIGHT	ALCOHOL YES NO	FEET	VEHICLE
WEIGHT	UNKNOWN DRUG/ALC. ☐	IMPACT	CHEMICAL
AGE		EDGED	Other

OFFICER RESPONSES (CHECK ALL THAT APPLY)			
☐ COMMAND PRESENCE	☐ VERBAL COMMANDS	☐ SOFT EMPTY HAND CONTROL	
<u>RESTRAINT DEVICES</u>	<u>ESCORTS</u>	<u>TAKE DOWNS</u>	<u>STRIKES:</u>
HANDCUFFS ☐ CHECK-FIT ☐ DOUBLE-LOCK LEG IRONS HOBBLE	FIELD BENT WRIST ☐ PRESSURE POINT FINGER LOCK SHOULDER LOCK HAMMER LOCK	ARM BAR BENT WRIST FINGER LOCK SHOULDER LOCK HAMMER LOCK CALF STRIKE PULL DOWN	PUNCH PALM HEEL HAMMER FIST FORE ARM ELBOW KNEE STRIKE LEG KICK

<u>BATON</u>	<u>CHEMICAL (OC OR OTHER)</u> (CIRCLE APPROPRIATE DEVICE)	<u>BEAN BAG OR COMPATIBLE</u>
FORE HAND STRIKE REVERSE STRIKE CLOSED BATON STRIKE	FULL INCAPACITATION PARTIAL INCAPACITATION NO APPARENT AFFECT	☐ FULL INCAPACITATION # ROUNDS _____ ☐ PARTIAL INCAPACITATION ☐ NO AFFECT DISTANCE _____ FEET

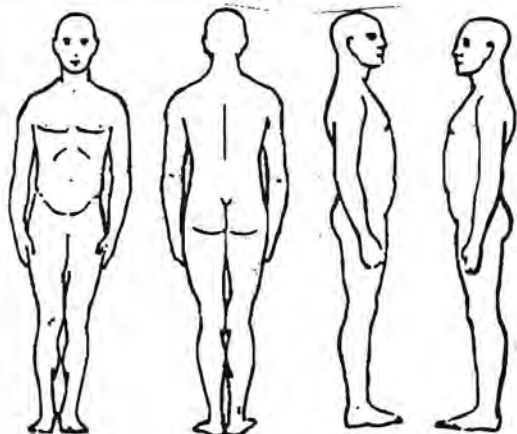
<u>M26 / X26 TASER</u> (CIRCLE APPROPRIATE DEVICE) ☐ DEPLOYED ☐ DRIVE STUN DEPLOYMENT DISTANCE _____ FT NUMBER OF CYCLES _____ ☐ EFFECTIVE ☐ NON-EFFECTIVE ☐ M26 / X26 SERIAL # _____ ☐ CARTRIDGES(S) SERIAL #(S) _____ _____ _____	<u>FIREARM DISCHARGED OR POINTED</u> ☐ PISTOL ☐ SHOTGUN ☐ LONG GUN POINTED ONLY _____ COMPLIANCE ☐ YES ☐ NO NUMBER OF SHOTS _____ NUMBER OF HITS TO TARGET _____ SHOTS ACCOUNTED FOR _____ SHOTS UNACCOUNTED FOR _____ WEAPON SERIAL # _____
--	---

RESPONSE TO RESISTANCE

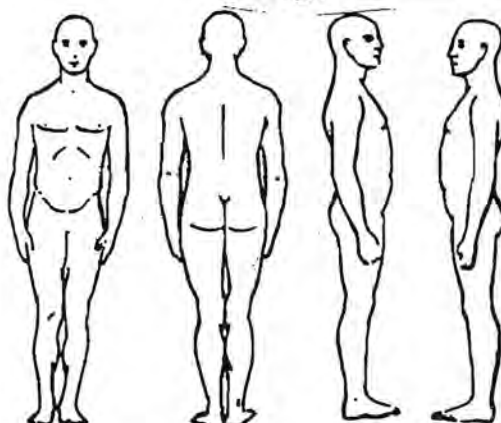
CASE # _____

DATE OF INCIDENT ____ / ____ / ____

CIRCLE THE AREA (S) OF IMPACT AND/OR INJURY
 PHOTOGRAPHS OF INJURIES ... YES NO ... BY WHOM



SUSPECT



OFFICER

Video Review

☐ Video Available

☐ Video Reviewed by:

☐ Video Preserved

REVIEWED BY / SIGNATURE / COMMENTS	ID#	DATE
SUPERVISOR:		
ON-SCENE ☐ Yes ☐ No		
COMMENTS		
TRAINING OFFICER		
COMMENTS		

CONT'D		
INTERNAL AFFAIRS		
COMMENTS		
CHIEF OF POLICE:		
COMMENTS:		

Montpelier Police Department General Order

USE OF FORCE

Date reviewed: October 7, 2009

This policy is for departmental use only and does not apply in any criminal or civil proceeding. This policy should not be considered as establishment of a higher legal standard or conduct for officers in case of third party claims. Violations of this policy will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and/or criminal sanctions in a recognized judicial setting.

General Policy

- A. Sworn officers of the Montpelier Police Department will use that force which is objectively reasonable to control a situation, effect an arrest or investigatory detention, overcome resistance to arrest, or defend themselves or others from harm.
- B. When the use of force is objectively reasonable the degree of force employed should generally be in direct relationship to the amount of resistance employed by the person or the immediate threat the person poses to the officer or others.
- C. The use of force by officers of the department will generally be progressive in nature. This force may be in the form of advice, warnings, persuasion, verbal encounters, passive control, use of chemical agents, physical contact, baton or other less-lethal weapons, or the use of deadly force.
- D. Officers must weigh the circumstances of each case and employ only that amount of force which is objectively reasonable to control the situation or persons.
- E. Officers shall not use techniques that restrict or stop the flow of blood to the brain except, when the use of deadly force is objectively reasonable.

Use of Force Continuum

The dynamics of all encounters are different, making it extremely difficult to attempt to categorize and define the levels of force appropriate in any given situation. It is, however, possible to categorize the levels of force that may be used, to various degrees, in any situation. When officers determine that the use of force is objectively reasonable they shall, to the extent possible, utilize an escalating level of force as described in the Use of Force Resistance/Response model contained in this policy. However, nothing in this order requires an officer to start at the bottom of the continuum. Officers must use a level of force that they feel will be effective and is objectively reasonable.

Officer Response(s) Categories

A. Cooperative Controls

The police officer arriving on the scene is the first use of force. The mere presence of a uniformed police officer will move on or break up a crowd; often that is all the force that is necessary. After arriving on the scene, you may have to move to the next level of force by trying to persuade the subject to comply with your commands. Telling the subject "Stand over there" or "Let me see your driver's license" are verbal commands. These also include controls designed to preserve officer safety and security (includes communications skills and handcuffing).

B. Contact Controls

Light subject control is considered a passive control measure. This is the first step in seeking compliance with your commands. Escorting an intoxicated subject out of a bar would be a good example of passive control. This may require some light inoffensive physical touching, compliant handcuffing, and compliant escort techniques (countermeasures designed to guide or direct the subject).

C. Compliance Techniques

Include resistant countermeasures designed to counter the subject's enhanced degree of resistance. Oleoresin Capsicum (herein after referred to as O.C.) weapons are generally the first less-lethal weapons used in the continuum. Neither will cause any injury or long lasting effect on the person. Consistent with department use of force training, this would also include unarmed control and restraint tactics (such as; Non-compliant Escort, Arm Bar takedowns, Wristlocks, etc.) and the impact weapon used for compliance.

D. Defensive Tactics

Impact weapon strikes, empty hand strikes designed to cease the subject's non-lethal assault on the officer or others, regain control, and assure continued compliance. (i.e. Blocks, Strikes, or Kicks, designed to have less-lethal effects)

E. Deadly Force

Countermeasures designed to cease an assault, which are lethal or could cause great bodily harm to the officer or others. These tactics could include; firearms, vehicles, neck restraint, impact weapons, or other techniques that have the likelihood of causing death or serious bodily injury.

1. The use of deadly force by officers of the Montpelier Police Department is prohibited except as follows:
 - a. When in defense of human life, including the officer's;
 - b. When an Officer has the objectively reasonable belief that the use of deadly force is in the defense of any person, including the officer, who is in immediate danger of death or serious bodily injury.

Training

- A. All sworn personnel shall be issued a copy of this policy, Use of Force, and receive classroom training on its contents prior to being authorized to carry a firearm or non-lethal weapon. This training will be conducted annually.
- B. Only officers demonstrating proficiency, as determined by the firearms training section, through a prescribed course of fire, in agency authorized firearms will be allowed to carry such firearms.
- C. All officers will qualify at least semi-annually with the firearms and ammunition they carry on or off duty. This training will be conducted by certified firearms instructors.
- D. Officers who fail to receive a passing score with their duty weapon(s) in accordance with department testing procedures shall be relieved of their police powers and immediately reassigned to non-enforcement duties. Remedial training will be given to the officer as soon as possible by the firearms training division. This remedial training will be documented in writing and kept by the firearms training division.
- E. An officer shall not be permitted to carry or use a weapon unless they have been trained and qualified in its proficient use as determined by training procedures. This training and qualification will be documented and kept by the supervisory firearms instructor for the Montpelier Police Department.
- F. An officer who has taken extended leave or suffered an illness or injury that could affect his firearms ability will be required to re-qualify before returning to full enforcement duties.
- G. An officer carrying an off-duty firearm must show proficiency by completing and passing a course of fire with the department's firearms training personnel.
- H. All officers will be trained and qualified in the use of O.C. spray and the extended range capsicum/impact delivery system known as the Pepperball Launcher and shall demonstrate their proficiency on an annual basis.

- I. All officers who elect to carry an expandable baton will be trained and certified in its proper use and shall demonstrate their proficiency on an annual basis.
- J. In the event that an officer is unable to certify or re-certify in the use of a less-lethal weapon, the officer will be unable to carry that weapon. The officer will undergo remedial training by an instructor of that weapon until the officer is able to certify and show proficiency in the use of that weapon.

Authorized Weapons

A weapon that is intended for use in the performance of duty by a trained and sworn officer of this department shall first be reviewed, inspected and approved for use prior to being carried by the officer. Inspections of less-lethal weapons will be done by a certified instructor or armorer for that weapon.

Firearms

A. On Duty

- 1. The firearms training personnel will recommend for the Chief's approval, types and calibers of firearms and ammunition, authorized for use by members of the Montpelier Police Department.

Effective February 2008, the approved and issued firearm to all MPD sworn personnel is the Glock model 22 in .40 S&W caliber. As part of the duty issued weapon system, all uniform personnel were also issued a Streamlight TLR-1 weapon light that shall remain affixed to the firearm when utilizing the holster designed for the firearm with light.

- 2. All officers will also be required to qualify with both the department's long-gun weapon systems which consist of the following:

- Remington model 870 pump-action shotgun (.12 gauge)
 - Colt and Bushmaster M-16/M-4 type firearms in .223 Rem. caliber

B. Off Duty

- 1. An officer carrying an off-duty firearm must show proficiency by completing and passing a course of fire with the department's firearms training personnel.
- 2. An officer carrying an off-duty firearm must also carry their department issued identification card and badge.

Less-Lethal

A. On Duty

1. Less-lethal weapons carried by officers will only be issued in accordance with the provisions of this policy and established department training standards.
2. All officers will be issued O.C. spray. All O.C. spray shall be Non-Flammable Electronic Immobilization Device compatible.
3. Montpelier Police Department less-lethal weapon systems consist of the expandable baton, O.C. spray, and the Pepperball Launcher.

Secondary / Personal Weapons

- A. Officers may only carry a Montpelier Police Department approved firearm for use as a personal secondary firearm provided they have satisfactorily qualified with that weapon by one of the department's firearms instructors.

The MPD approved secondary firearm (non-issued) is the Glock model 27 in .40 S&W caliber. Officers shall use departmental issue duty ammunition for use in a personal secondary weapon that will be carried on duty.

- B. Officers who carry a second defensive firearm in addition to the standard duty firearm must register his/her secondary weapon with the firearms training officer(s). The officer must qualify with that firearm prior to carrying it. This defensive firearm must be carried in a concealed manner and used only when the primary (duty) firearm is inaccessible.
- C. Officers are allowed to carry a small utility knife while on duty.

Prohibited Weapons

- A. Any firearm that has not been approved by the firearms training personnel or the Chief of Police shall be prohibited from being worn on duty.
- B. Any officer carrying a NON-APPROVED firearm while on off duty status will be considered a civilian and not an officer representing the Montpelier Police Department. Vermont State law permits any citizen to carry a concealed firearm. Officers with NON-APPROVED firearms are considered to be acting as private citizens not covered by Montpelier Police Department rules and regulations.

Less-Lethal

- A. Officers are only authorized to carry those less-lethal weapons that are issued and or approved by the department.

Handcuffing

- A. All officers of the Montpelier Police Department upon placing handcuffs on a subject will, as soon as reasonably possible, check the handcuffs for proper fit and double lock them for safety.

Safety / Restrictions

- A. Restrictions on the use of firearms:
 - 1. Warning - When officers are about to invoke deadly force, they will, when possible and/or practicable, issue a verbal warning to the suspect. In this warning, officers will identify themselves as police officers and instruct the suspect to cease or stop whatever action that has caused the officer to consider the use of deadly force.
 - 2. Shoot to Incapacitate - Officers will fire their weapons to stop and incapacitate an assailant from completing a potentially deadly act as described in this order.
 - 3. At or from moving vehicles - Officers will not discharge a firearm at or from a moving vehicle except when all other reasonable means have been exhausted and it is necessary for the defense of the officer's life or the life of another person, or the officer has probable cause to believe that the officer or others are in immediate danger of death or serious bodily injury.
 - 4. Risk to innocent bystanders - When officers are about to discharge their firearm, they will be cognizant of their field of fire and will not unnecessarily create a substantial risk of harm to innocent persons.
 - 5. Warning shots - Officers will not discharge their firearm for the purpose of a warning shot.
 - 6. While under the influence of alcohol or drugs - Officers will not carry or use any firearm while under the influence of alcohol or drugs.
 - 7. To destroy animals - The killing of an animal is justified for:
 - a. self defense

- b. to prevent substantial harm to the officer or others
 - c. when the animal is so sick or badly injured that humanity requires its relief from further suffering.
8. Domestic Violence Restriction - Officers who have a valid court order in effect against them shall not possess a firearm while off duty. The officer will be allowed to wear his firearm on duty. The firearm will be left at the station when the officer has completed his tour of duty.

Upon any conviction of a Domestic Violence offense, supervisor shall recover, from the officer involved, any issued firearm that he/she has in their control.

- B. Except for general maintenance, storage or authorized training, officers will not draw or exhibit their firearm unless circumstances create a strong suspicion to believe that it may be necessary to lawfully use the firearm in conformance with other sections of this policy.
- C. Officers will not point or direct their firearm at a person unless circumstances create the objectively reasonable belief that it may be necessary to lawfully use the firearm in conformance with other sections of this policy.
- D. Officers will secure and store firearms, on and off duty, in such a way as to insure no unauthorized person will have access to or gain control over the firearm.
- E. Officers may discharge their firearm for the purpose of practice on the police department or other established shooting range.
- F. Officers will exercise all normal safety precautions and obey all appropriate rules or directives while practicing on the department range or any other established range.

Inspections

- A. All firearms will be inspected on a periodic basis by the firearms training officers to insure that all firearms are in good working order. A firearm that is found to be defective will be taken out of service and sent to an armorer or the factory to be repaired. The officer will be issued another firearm of the same model and caliber as the one that is being repaired.
- B. All off-duty firearms and ammunition carried by an officer of the Montpelier Police Department must be inspected and registered by the firearms training division.
- C. Periodic inspections of less-lethal weapons shall be conducted by certified instructors for the particular weapon. Weapons found to be unsafe shall be

taken out of service immediately and, if department issued, replaced as soon as practical.

Reports

Firearms / Use of Force Continuum

- A. Officers are required to report, using a department report format, any discharge of their firearms.
1. The officer will report orally to the immediate supervisor, as soon as is practical, after the incident in which the weapon was fired.
 2. Provided that the officer is able, a preliminary written report will be submitted by the officer involved prior to the end of their shift.
 3. If the officer involved is injured or unable to submit a report, the officer's supervisor will submit a written report prior to going off duty for that shift.
 4. This report will be submitted to the Chief and will include the Use of Force Report, as well as a detailed account of the incident, explanation of what force was used, why it was used and the extent of injury (if any) that was inflicted or sustained. This rule does not apply to rounds fired on the range during training or regular practice unless an injury results from such discharge (or to the discharge of a weapon to destroy a sick or injured animal).
 5. In the event of an officer involved shooting incident, or a use of force incident that results in serious bodily injury or death the immediate supervisor will;
 - a. Relieve the officer involved from normal duty;
 - b. Take control of the firearm or weapon used, in a discreet manner and outside of public view so as not to cause embarrassment to the officer.
 - c. If practical, the firearm should be replaced with a firearm of the same make, caliber, and model.
 - d. Request assistance from the Vermont State Police Bureau of Criminal Investigation to provide an outside agency investigation of the incident.

The Chief will relieve the officer from normal duties, and assign the officer to administrative duties pending results of the formal investigation. The officer

will also be required to attend a psychological debriefing prior to reassignment to normal duties.

6. The above mentioned reports will be completed prior to the end of the shift, and forwarded to the Chief of Police.
- B. Officers are required to submit a Use of Force Form (Appendix A) whenever:
1. Their actions result in, or are alleged to have resulted in, injury or death of another person; and/or
 2. They apply force to a subject greater than step "B" (Contact Controls) of the Use of Force Continuum.
 3. They apply force through the use of the Tire Deflating Spike System (TDSS as outlined in the MPD Vehicular Pursuit General Order. The documentation for the use of the Tire Deflating Spike System shall be the form of the officer's report detailing the circumstances and reasons for the TDSS deployment. A copy of this report will be submitted to the supervisor on duty at the time of the TDSS deployment and to the Chief of Police.
 4. Use of force reports will be submitted to their immediate supervisor by the end of their shift. This report will be forwarded to the Chief of Police via the chain of command. Each level of the chain of command shall indicate on the form that it has been reviewed.
 5. In the event that the use of force is questionable, the Chief of Police will follow the guidelines set forth in this General Order. This report along with the officers' incident report will describe, in detail, the circumstances surrounding their use of force and the resulting injury or death, if any.

Vehicles

- A. Where police are involved with pursuing other vehicles, it will be considered a use of force. Whenever a pursuit occurs, officers will follow the guidelines as outlined in the MPD Vehicular Pursuit General Order.

Records

- A. The appropriately designated staff of the Montpelier Police Department is responsible for instituting and maintaining records pertaining to all department weapons, authorized ammunition, personal weapons carried by officers, firearms training, all firearms qualifications, and weapon certifications.

- B. The records of registered off duty firearms will be maintained by the firearms training division.
- C. The Chief of Police shall conduct an annual review of all of the Use of Force reports submitted. A review of these incidents may reveal a pattern or trend that may indicate that additional training or policy modifications need to be made.

Medical Aid

- A. In cases of injury to prisoners or bystanders, officers shall be responsible to ensure that appropriate medical aid is provided to the injured subject at the earliest possible opportunity.
 - 1. The shift supervisor shall be notified of all injuries incurred as a direct or indirect result of the use of force in an arrest situation.
 - 2. All injuries incurred by prisoners as a result of the use of force in an arrest situation shall be documented in the arrest report as well as in the Use of Force report.

Investigations / Review Board

- A. In the event of a complaint of an alleged or actual serious injury or death of another person caused by an officer's use of force, the Chief of Police shall:
 - 1. Appoint an Administrative Review Board consisting of one certified instructor (Defensive Tactics or Firearms), one Sergeant and one patrol officer. This review board shall investigate the circumstances surrounding the use of force. In determining justification for the use of force, the board may only consider the facts known to the officer at the time the force was used.
 - 2. The review board shall report their findings, in writing, to the Chief within five days of their being convened. The report shall include a recommendation for further action. The report will also include the relevant facts and circumstances surrounding the incident and whether the use of deadly and/or non-deadly force was consistent with department policies and/or State statutes. The five day limit may be waived by the Chief.

Definitions

- A. **Force:** Conduct on the part of a police officer that is designed to assist the officer in controlling a situation or the actions or behavior of a person or persons.
- B. **Progressive Force:** The escalation of force used by an officer in order to control a situation or the actions of persons. (pursuant to the use of force continuum).
- C. **Deadly Force:** Any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury.
- D. **Less-Lethal Weapon:** A weapon, other than a firearm, that is designed not to cause death or great bodily harm, used to control persons or defend oneself or others, from harm.
- E. **Serious Bodily Injury:** Means bodily injury which creates a substantial risk of death or which causes substantial loss or impairment of the function of any bodily member or organ or substantial impairment of health, or substantial disfigurement.

Approved by Anthony J. Facos, Chief of Police

Date of review: October 7, 2009

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: _____ Date: _____ Case #: _____

Supervisor's Name: _____ Date of Incident: _____

Time of incident: _____ Status: On duty / ☐ off duty / ☐

Indoors: ☐ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☐

Weather Conditions: _____

Location of Incident: _____

Information received prior to initial contact:

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐

Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☐ N ☐ Asked: ☐ Advised: ☐ Ordered: ☐

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐)

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☐ Medical Attention? Yes ☐ No ☐ Age ____ Sex ____

Was Officer Injured? Yes ☐ No ☐ Medical Attention? Yes ☐ No ☐

Was a Third Party Injured? Yes ☐ No ☐ Medical Attention? Yes ☐ No ☐ Age ____ Sex ____

Subject complied after force was enacted. Yes ☐ No ☐

Subject resisted during the entire encounter. Yes ☐ No ☐

Unable to control subject and take into custody. Yes ☐ No ☐

Describe injuries to suspect, officer or third party:-

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Firearm incident

Vest worn Y ☐ N ☐ Sights used Y ☐ N ☐ Flashlight used Y ☐ N ☐ Reload? Y / N

Shooting Position(s) Used: standing ☐ kneeling ☐ sitting ☐ other ☐

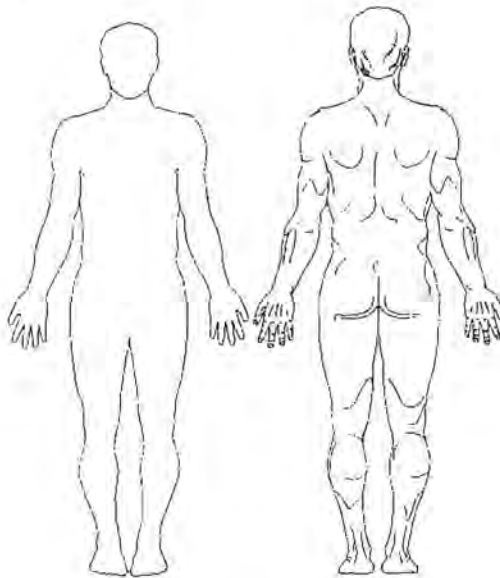
Who fired first?Officer: ☐ Suspect: ☐ Other: ☐

Number of shots?.....Officer: _____ Suspect: _____ Other: _____

Reason for discharge? Protect self: ☐ Citizen: ☐ Prisoner: ☐ Unintentional: ☐

Wounds received: Officer ☐ Suspect ☐ Other Party ☐ Property Damage by Stray Rounds ☐

Location of bullet hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Baton incident

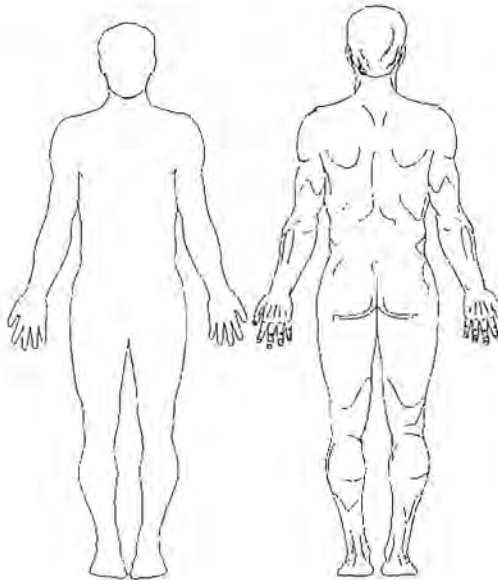
Straight Baton: ☐ Expandable Baton: ☐ Riot Baton: ☐ PR-24: ☐

Impact technique Y ☐ N ☐ Control technique Y ☐ N ☐ Both Y ☐ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? _____

Location of Strikes: _____



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Supervisor's Signature _____ Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Controlled with body

Impact technique Y ☐ N ☐

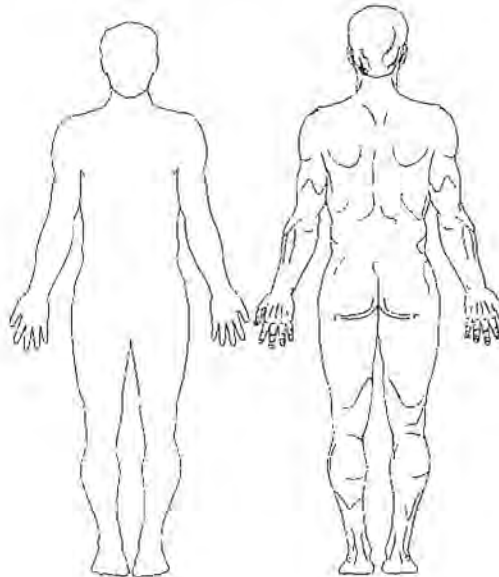
Control technique Y ☐ N ☐

Both Y ☐ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? _____

Location of impact techniques: _____



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☐ No ☐

Chief _____

Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Tire deflating spikes

Why violator fled: (if known) Avoid: arrest Y ☐ N ☐ Citation / VTC Y ☐ N ☐ Unknown Y ☐ N ☐

Number of Montpelier PD units in pursuit? _____ Other Agencies: _____

Deployment Strategy: hasty ☐ surprise ☐ obvious ☐ Method of Deployment: throw ☐ pull ☐

Results: subject drove around ☐ subject drove through ☐ Officer Vehicle spiked ☐

Distance traveled after spiked / injuries sustained: _____
(Use narrative for; Highway description, speed/direction of pursuit and traffic volume)

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's signature

Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☐ No ☐ Pepperball Launcher: Yes ☐ No ☐ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☐ Area: ☐ Both ☐

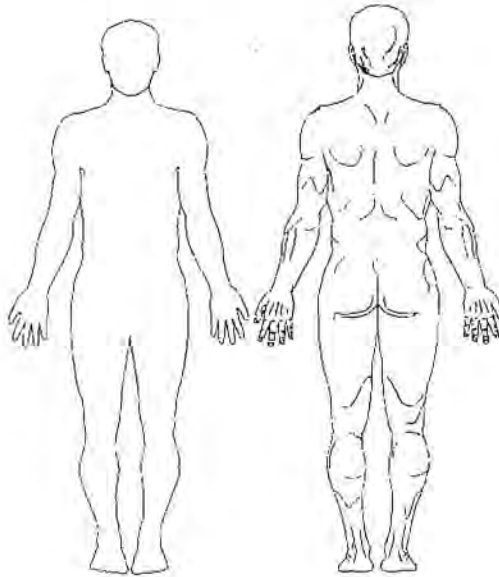
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☐ No ☐ if no

explain: _____

OC administrative warning read to suspect: Yes ☐ No ☐

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

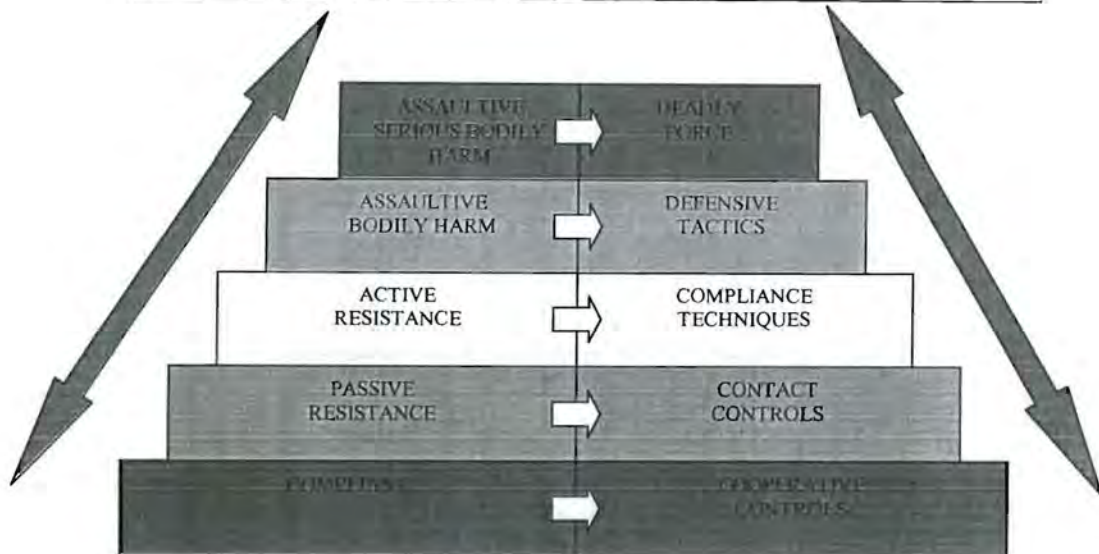
Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE USE OF FORCE CONTINUUM



REASONABLE OFFICER PERCEPTION

REASONABLE OFFICER RESPONSE

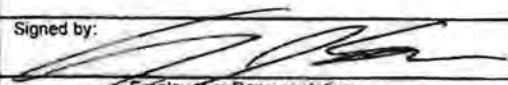


STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 4/98)
(Approved for use as OSHA 101)
State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E	1. Legal Name: CITY OF MONTPELIER		2. Business Name: MONTPELIER POLICE	
M	3. Mail Address: No. and Street 39 MAIN ST		City MONTPELIER	State VT
P			Zip 05602	
L	4. Location (if different from Mail Address): 1 PITKIN COURT		Federal ID No. 03600579	
O	5. Nature of Business (list principal products or service of concern): MUNICIPALITY - PUBLIC SAFETY		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
Y			Telephone No. 802 223-9514	
E	17. Date of Accident: 05-01-08		Hour a.m. p.m.	
R	18. Location of Accident: Town or City BARGE CITY, VERMONT (COURTHOUSE BLDG)		20. Machine or tool involved in the accident: BICYCLE	
A	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
C			22. Object or substance directly causing injury: BICYCLE HANDLE BARS	
C	23. Describe what employee was doing: EMPLOYEE WAS TRAINING AT EMPLOYER REQUEST AT MOUNTAIN BIKE SCHOOL.			
I	24. How did accident occur? Describe events leading up to the accident: LEARNING TECH. FOR NEGOTIATING STAIRS W/ BICYCLE FOR BIKE PATROL PURPOSES.			
D	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
E	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes EMPLOYER PROVIDED HELMET, GLOVES, SHOES			
N	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
T	28. If safety equipment was provided, was it being used? ☐ No ☒ Yes			
I	29. Describe the injury and the part of body injured: LEFT WRIST TORQUED WHILE RIDING BICYCLE DOWN STAIRS			
N	30. Any Lost Time? ☒ No ☐ Yes		31. Employee returned to work? ☐ No ☒ Yes	
J	If yes, date disability began: N/A		If yes, date returned: 05-01-08	
U	Last date paid in full: N/A		At what weekly wage: \$	
R	32. Did injury result in death? ☒ No ☐ Yes		33. If death, name and address of nearest relative: N/A	
Y	If yes, date of death: N/A		Relationship: N/A	
I	34. Name and Address of Physician: N/A			
N	35. Name and Address of Hospital: N/A			
S	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.			
S	Name in full:		Policy No.	
	Signed by: 		Title Chief of Police	
	Employer or Representative		Date 05/05/08	

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 4/98)
(Approved for use as OSHA 101)

State File
No.

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <i>City of Montpelier</i>		2. Business Name: <i>Montpelier Police Dept</i>	
	3. Mail Address: <i>1 Pithin Court</i>		City <i>Montpelier</i>	State <i>VT</i>
	4. Location (if different from Mail Address):		Zip <i>05602</i>	
	5. Nature of Business (list principal products or service of concern): <i>Public Safety</i>		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
				Federal ID No. <i>03600579</i>
				Telephone No. <i>802 223-3445</i>
A C C I D E N T	17. Date of Accident: <i>09-11-2008</i>		Hour <i>12.18</i> a.m. p.m.	20. Machine or tool involved in the accident: <i>NO</i>
	18. Location of Accident: Town or City <i>1 Pithin Court Montpelier, VT 05602</i>		21. Was it defective? ☐ No ☐ Yes If yes, describe how. <i>N/A</i>	
	19. On employer's premises? ☐ No ☒ Yes If yes, name of dept.: <i>1 Pithin Court</i>		22. Object or substance directly causing injury: <i>Head butting</i>	
	23. Describe what employee was doing: <i>Attempting to subdue subject</i>		Was this the employee's regular occupation? ☐ No ☒ Yes	
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident: <i>Subject head butted Patrol Officer in the mouth</i>			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☐ Yes <i>N/A</i>			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.") <i>N/A</i>			
I N J U R Y	28. If safety equipment was provided, was it being used? ☐ No ☐ Yes <i>N/A</i>			
	29. Describe the injury and the part of body injured: <i>Swollen upper lip and small cut on inside of mouth</i>			
	30. Any Lost Time? ☒ No ☐ Yes		31. Employee returned to work? ☐ No ☐ Yes	
	If yes, date disability began.		If yes, date returned.	
R E S U L T	32. Did injury result in death? ☒ No ☐ Yes		33. If death, name and address of nearest relative.	
	If yes, date of death.		Relationship	
	34. Name and Address of Physician: <i>Brian Starns - Arcadia Family Health - Berlin, VT</i>			
	35. Name and Address of Hospital: <i>N/A</i>			
I N S U R A N C E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.			
	Name in full:		Policy No.	
	Signed by: <i>[Signature]</i>		Date: <i>09/16/08</i>	
	Employer or Representative		Title <i>Chief of Police</i>	

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)
State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier		
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT	Zip 05602
A C C I D E N T	4. Location (if different from Mail Address):				Federal ID No. 03-6000579
	5. Nature of Business (list principal products or service of concern): Municipality				Do you regularly employ 10 or more employees? ☒ Yes ☐ No Telephone No. 802.223.9514
A C C I D E N T	17. Date of Accident: 06/02/2009	Accident time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: n/a	
	18. Location of Accident: Town or City State 575 Stonecutters Way - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
I N J U R Y	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: building contains PCB material	
	23. Describe what employee was doing: responded to complaint of children skateboarding in the building				
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident. responded to complaint				
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.				
T O O L S	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes				
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")				
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes				
	29. Describe the injury and the part of body injured. Employee reported he was exposed to PCB				
I N J U R Y	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes	If yes, date returned. 06/02/2009
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.		
I N J U R Y	34. Name and Address of Physician none				Relationship
	35. Name and Address of Hospital none				Remained overnight? Yes ☐ No ☒
I N J U R Y	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT				
	Name in full: VLCT				Policy No.
I N J U R Y	Signed by:				
	Employer or Representative Title Date				
Provided Form 8 Labor & Industry Ins. Co. Employer Employee					

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
M	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
P				Zip 05602
L	4. Location (if different from Mail Address):			
O				
Y	5. Nature of Business (list principal products or service of concern): Municipality			Federal ID No. 03-6000579
E				Telephone No. 802.223.9514
R	Do you regularly employ 10 or more employees? ☒ Yes ☐ No			
A	17. Date of Accident: 06/02/2009	Accident Time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: none
C	18. Location of Accident: Town or City State 575 Stonecutters Way - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
C	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: building contains PCB material
I	23. Describe what employee was doing: responded to complaint of children skate boarding in the building			Was this the employee's regular occupation? ☐ No ☒ Yes
D	24. How did accident occur? Describe events leading up to the accident. responded to complaint			
E	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
T	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I	29. Describe the injury and the part of body injured. employee reported he was exposed to PCB			
J	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
U				If yes, date returned. 06/02/2009
R	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
Y	Relationship			
	34. Name and Address of Physician none			
	35. Name and Address of Hospital none			Remained overnight? Yes ☐ No ☒
I	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
N	Name in full: VLCT			Policy No.
S	Signed by:			
	Employer or Representative		Title	Date

Provided Form 8

Labor & Industry

Ins. Co.

Employer

Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
			Zip 05602	
	4. Location (if different from Mail Address):		Federal ID No. 03-6000579	
A C C I D E N T	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
			Telephone No. 802.223.9514	
A C C I D E N T	17. Date of Accident: 06/06/2009	Accident Time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City State 54 Main Street - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: general exposure to blood from two subjects
	23. Describe what employee was doing: responded to 911 call, subsequently struggled with two subjects			Was this the employee's regular occupation? ☐ No ☒ Yes
	24. How did accident occur? Describe events leading up to the accident. struggled with two subjects with self inflicted lacerations			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. general exposure to blood - Confirmed HEP C			
	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
				If yes, date returned. 06/07/2009
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
			Relationship	
	34. Name and Address of Physician Concentra Medical			
	35. Name and Address of Hospital Concentra Medical		Remained overnight? Yes ☐ No ☒	
I N S U R E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT		Policy No.	
	Signed by:			
	Employer or Representative Title Date			

____ Provided Form B ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier		
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT Zip 05602	
	4. Location (if different from Mail Address):				
	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No		
A C C I D E N T	17. Date of Accident: 06/06/2009		Accident Time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.	
	18. Location of Accident: Town or City State 54 Main Street Apt. 6 - Montpelier, Vermont		20. Machine or tool involved in the accident: none		
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		21. Was it defective? ☒ No ☐ Yes If yes, describe how.		
			22. Object or substance directly causing injury: exposure to blood, confirmed Hepatitis		
I N J U R Y	23. Describe what employee was doing: Received call from 911 that there were people at 54 Main St whom had cut or been cut very <u>occupationally</u> . ☐ Am I ☒ Yes the ag				
	24. How did accident occur? Describe events leading up to the accident. See above				
	25. Can the employer prevent this type of accident? ☐ No ☒ Yes If yes, describe how. obtain Tasers				
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes				
I N S U R E	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful.") obtain Tasers				
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes				
	29. Describe the injury and the part of body injured: exposure to blood, confirmed Hepatitis				
	30. Any Lost Time? ☒ No ☐ Yes		If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
I N S U R E	32. Did injury result in death? ☒ No ☐ Yes		If yes, date of death.	33. If death, name and address of nearest relative.	At what weekly wage: \$ 851.60
	34. Name and Address of Physician None				
	35. Name and Address of Hospital None				
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT				
I N S U R E	Name in full: VLCT		Policy No.		
	Signed by:				
	Employer or Representative		Title	Date	

Provided Form 8

Labor & Industry

Ins. Co.

Employer

Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev 4/98)
(Approved for use as OSHA 101)
State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company. Give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <i>City of Montpelier</i>		2. Business Name: <i>Montpelier Police Department</i>		
	3. Mail Address: <i>1 Pitkin Court</i> No. and Street		City <i>Montpelier</i>	State <i>Vermont</i>	
	4. Location (if different from Mail Address): <i>Montpelier</i>		State <i>Vermont</i>	Zip <i>05602</i>	
	5. Nature of Business (list principal products or service of concern): <i>City Government - Law Enforcement</i>		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Federal ID No. <i>034000579</i> Telephone No. <i>(802) 223-3445</i>	
A C C I D E N T	17. Date of Accident: <i>1/6/09</i>		Hour <i>2:00</i> <i>a.m.</i> p.m.	20. Machine or tool involved in the accident: <i>Police Cruiser - Prisoner Prison Release Lock</i>	
	18. Location of Accident: Town or City <i>Montpelier</i>		State <i>Vermont</i>	21. Was it defective? ☐ No ☒ Yes If yes, describe how. <i>Sharp edges present around lock release button</i>	
	19. On employer's premises? ☐ No ☒ Yes If yes, name of dept.: <i>Montpelier Police Department</i>		22. Object or substance directly causing injury: <i>Prisoner Prison Release Button</i>		
	23. Describe what employee was doing: <i>Dismissing button on prisoner screen release to raise it into the locked position</i>		Was this the employee's regular occupation? ☐ No ☒ Yes		
D E S C R I B E	24. How did accident occur? Describe events leading up to this accident. <i>Sharp edge on side of release button abraded the tip of right hand index finger pad.</i>				
	25. Can the employer prevent this type of accident? ☐ No ☒ Yes If yes, describe how. <i>Leave screen down. Grind down the sharp edge around release button.</i>				
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes				
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")				
I N J U R Y	28. If safety equipment was provided, was it being used? ☐ No ☐ Yes <i>N/A</i>				
	29. Describe the injury and the part of body injured. <i>Fractured tip of right hand index finger.</i>				
	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began. <i>N/A</i>	Last date paid in full: <i>N/A</i>	31. Employee returned to work? ☐ No ☒ Yes	If yes, date returned. <i>1/6/09</i>
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death. <i>N/A</i>	33. If death, name and address of nearest relative. <i>N/A</i>		Relationship <i>N/A</i>
S I G N A T U R E	34. Name and Address of Physician <i>N/A - No physician seen.</i>				
	35. Name and Address of Hospital <i>N/A - Treated injury by self. (Bandage)</i>				
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.				
	Name in full: <i>[Signature]</i>		Policy No.		
Signed by: <i>[Signature]</i>		Chief of Police		Date <i>01/07/09</i>	
Employer or Representative		Title		Date	

Vermont

DEPARTMENT OF LABOR -- ATTN: WORKERS' COMPENSATION
5 Green Mountain Drive, PO Box 488
Montpelier, VT 05601-0488

Form 1 (Rev. 7/08)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form and send original to the Commissioner of Labor within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <u>City of Montpelier Police Dept</u>		2. Business Name: <u>City of Montpelier</u>	
	3. Mail Address: No. and Street <u>100 North Main St</u> City <u>Montpelier</u> State <u>VT</u> Zip <u>05602</u>		5. Federal ID No.	
	4. Location (if different from Mail Address):		7. Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
	6. Nature of Business (list principal products or service of concern): <u>Police Dept</u>		8. Telephone No. <u>802 223 3445</u>	
A C C I D E N T	22. Date of Accident: <u>02-10-09</u> Accident time <u>11:30</u> a.m. p.m. Began shift <u>8</u> a.m. <u>4</u> p.m.		23. Machine or tool involved in the accident: <u>N/A</u>	
	24. Location of Accident: Town or City <u>Berlin</u> State <u>VT</u>		25. Was it defective? ☒ No ☐ Yes If yes, describe how.	
	26. On employer's premises? ☒ No ☐ Yes If yes, name of dept:		27. Object or substance directly causing injury: <u>Falling down hole</u>	
	28. Describe what employee was doing: <u>He was sleeping for 15 minutes - Fight in progress</u>		Was this the employee's regular occupation? ☒ No ☐ Yes	
D E S C R I B E	29. How did accident occur? Describe events leading up to the accident: <u>Fell down hole on floor - bent body</u>			
	30. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	31. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
	32. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
I N J U R Y	33. If safety equipment was provided, was it being used? ☐ No ☒ Yes			
	34. Describe the injury and the part of body injured: <u>Crushed Cartilage bent Breast area</u>		35. Was this a first-aid only injury: ☐ Yes ☒ No	
	36. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	37. Employee returned to work? ☐ No ☐ Yes
	38. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	39. If death, name and address of nearest relative.	Relationship
I N S U R A N C E	40. Name and Address of Physician: <u>Dr. Bernard Webster - c/o Bethel VT Hospital Berlin, VT</u>		41. Name and Address of Hospital: <u>Bethel VT Hospital - Airport Rd - Berlin, VT</u>	
	42. Workers' Compensation Insurance Carrier, Do NOT give your insurance agent's name.		Remained overnight? Yes ☒ No ☐	
	Name in full:		Policy No.	
	Signed by: <u>[Signature]</u>		Date: <u>02/11/09</u>	
Employer or Representative		Title: <u>Chief of Police</u>		

Provided Form 8

Dept. of Labor

Ins. Co.

Employer

Employee

Equal Opportunity is the Law

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City Of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
			Zip 05602	
	4. Location (if different from Mail Address):		Federal ID No. 03-6000579	
E R	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
			Telephone No. 802.223.9514	
A C C I D E N T	6. Name of Employee First Name Last Name	7. Date of Accident 05/28/2009	8. Accident Time 9:10 a.m. p.m.	9. Began Shift 8:00 a.m. p.m.
	10. Machine or tool involved in the accident: n/a		20. Machine or tool involved in the accident: n/a	
C I R C U M S	18. Location of Accident: Town or City Main St Middle School - Montpelier, Vermont		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: curbing	
D E S C R I B E	23. Describe what employee was doing: walking from roadway onto sidewalk		Was this the employee's regular occupation? ☐ No ☒ Yes	
	24. How did accident occur? Describe events leading up to the accident. stubbed toe on curbing, causing lower back strain			
E M P L O Y E R	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
T H E I N J U R Y	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I N J U R Y	29. Describe the injury and the part of body injured. lower back strain			
	30. Any Lost Time? ☐ No ☒ Yes	If yes, date disability began 05/29/2009	Last date paid in full: 06/02/2009	31. Employee returned to work? ☐ No ☒ Yes
R E L A T I O N S H I P	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
	34. Name and Address of Physician Thomas Kurchin and Rebecca Scholl		Relationship	
I N J U R Y	35. Name and Address of Hospital n/a		Remained overnight? Yes ☐ No ☒	
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
S I G N E D	Name in full: VLCT		Policy No.	
	Signed by:			
Employer or Representative		Title		Date

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
M	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
P				Zip 05602
L	4. Location (If different from Mail Address):			
O				
Y	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Federal ID No. 03-6000579
E				Telephone No. 802.223.9514
R				
A	17. Date of Accident: 06/05/2009	Accident Time 11:39 a.m. p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: N/A
C	18. Location of Accident: Town or City 54 Main Street - Montpelier, Vermont		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
C	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: exposure to large amounts of blood	
I	23. Describe what employee was doing: responded to a call		Was this the employee's regular occupation? ☐ No ☒ Yes	
D	24. How did accident occur? Describe events leading up to the accident. man and woman stabbing/cutting themselves, struggled with both parties and subsequently exposed to			
E	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
T	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I	29. Describe the injury and the part of body injured. exposed to large amounts of blood			
N				
J	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
U				If yes, date returned. 06/06/2009
R	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
Y			Relationship	
	34. Name and Address of Physician n/a			
	35. Name and Address of Hospital n/a			Remained overnight? Yes ☐ No ☒
I	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
N				
S	Name in full: VLCT			Policy No.
	Signed by:			
	Employer or Representative		Title	Date

Provided Form 8

Labor & Industry

Ins. Co.

Employer

Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
O F F I C E	4. Location (If different from Mail Address):		Zip 05602	
	5. Nature of Business (list principal products or service of concern): Municipality		Federal ID No. 03-600579	
A C C I D E N T	6. Date of Accident: 12/11/2009		Accident Time a.m. 3:59 p.m.	Began Shift a.m. 4:00 p.m.
	7. Date of Accident: 12/11/2009		20. Machine or tool involved in the accident: n/a	
C O N D I T I O N S	18. Location of Accident: Town or City Main Street - Montpelier, Vermont		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: blood and combative patient	
I N J U R Y	23. Describe what employee was doing: escorting patient to ambulance		Was this the employee's regular occupation? ☐ No ☒ Yes	
	24. How did accident occur? Describe events leading up to the accident. patient became combative and altercation took place.			
E M P L O Y E R	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
T H E I N J U R Y	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful.") using safety equipment			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I N J U R Y	29. Describe the injury and the part of body injured. thumb, face and blood sprayed into mouth and eyes			
	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
R E S U L T S	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
	34. Name and Address of Physician n/a		Relationship	
I N J U R Y	35. Name and Address of Hospital Central Vermont Hospital		Remained overnight? Yes ☐ No ☒	
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
S I G N E D	Name in full: VLCT		Policy No.	
	Signed by:			
Employer or Representative Title Date				

Provided Form 8 Labor & Industry Ins. Co. Employer Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E	1. Legal Name:		2. Business Name:	
M	City of Montpelier		City of Montpelier	
P	3. Mail Address:	No. and Street	City	State
L	39 Main Street		Montpelier	VT
O	4. Location (if different from Mail Address):			Zip
Y				05602
E	5. Nature of Business (list principal products or service of concern):			Federal ID No.
R	Municipality			03-600579
	Do you regularly employ 10 or more employees?			Telephone No.
	☒ Yes ☐ No			802.223.9514
A	17. Date of Accident:	Accident Time	Began Shift	20. Machine or tool involved in the accident:
	12/11/2009	a.m. 3:59 p.m.	a.m. 4:00 p.m.	n/a
C	18. Location of Accident:	Town or City	State	21. Was it defective? ☒ No ☐ Yes If yes, describe how.
	Main Street - Montpelier, Vermont			
C	19. On employer's premises? ☒ No ☐ Yes	22. Object or substance directly causing injury:		
	If yes, name of dept.:	blood		
I	23. Describe what employee was doing:			Was this the employee's regular occupation? ☐ No ☒ Yes
	assisting other officers to subdue suspect			
D	24. How did accident occur? Describe events leading up to the accident.			
	approached scene and observed two other officers struggling with suspect in front of bar.			
E	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
T	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful.")			
	using safety equipment			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I	29. Describe the injury and the part of body injured.			
N	face and hands exposed to blood			
J	30. Any Lost Time?	If yes, date disability began.	Last date paid in full:	31. Employee returned to work?
U	☒ No ☐ Yes			☐ No ☒ Yes
R	32. Did injury result in death?	If yes, date of death.	33. If death, name and address of nearest relative.	If yes, date returned.
Y	☒ No ☐ Yes			12/11/2009
	34. Name and Address of Physician			At what weekly wage:
	n/a			\$ 802.00
	35. Name and Address of Hospital			Remained overnight? Yes ☐ No ☒
	Central Vermont Hospital			
I	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.			
N	VLCT			
S	Name in full:			Policy No.
	VLCT			
	Signed by:			
	Employer or Representative		Title	Date

Provided Form 8

Labor & Industry

Ins. Co.

Employer

Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
			Zip 05602	
	4. Location (if different from Mail Address):			Federal ID No. 03-6000579
	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Telephone No. 802.223.9514
A C C I D E N T	17. Date of Accident: 12/11/2009	Accident Time a.m. 3:59 p.m.	Began Shift a.m. 4:00 p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City Main Street - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: blood
	23. Describe what employee was doing: responding to call - male fell through window			Was this the employee's regular occupation? ☐ No ☒ Yes
	24. How did accident occur? Describe events leading up to the accident. approaching scene, observed two other police officers struggling with suspect			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful.") use safety equipment			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I N J U R Y	29. Describe the injury and the part of body injured. face and hands			
	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
	34. Name and Address of Physician n/a			
	35. Name and Address of Hospital Central Vermont Hospital			Remained overnight? Yes ☐ No ☒
I N S U R E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT			Policy No.
	Signed by:			
	Employer or Representative		Title	Date
	Provided Form B		Labor & Industry	Ins. Co.
			Employer	Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
M	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
P			Zip 05602	
L	4. Location (if different from Mail Address):			
O	Federal ID No. 03-6000579			
Y	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Telephone No. 802.223.9514
E	17. Date of Accident: 12/11/2009	Accident Time a.m. 3:59 p.m.	Began Shift a.m. 4:00 p.m.	20. Machine or tool involved in the accident: n/a
R	18. Location of Accident: Town or City Main Street - Montpelier, Vermont		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
A	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: blood	
C	23. Describe what employee was doing: assisting another police officer		Was this the employee's regular occupation? ☐ No ☒ Yes	
I	24. How did accident occur? Describe events leading up to the accident. arrived on scene, observed another police officer struggling with suspect			
D	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
E	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
N	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful."). using safety equipment			
T	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. head and hands exposed to blood			
I	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
N				If yes, date returned. 12/11/2009
J	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
U			Relationship	
R	34. Name and Address of Physician n/a			
Y	35. Name and Address of Hospital Central Vermont Hospital			Remained overnight? Yes ☐ No ☒
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
I	Name in full: VLCT		Policy No.	
S	Signed by:			
	Employer or Representative		Title	Date

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
O Y E R	4. Location (if different from Mail Address):			Zip 05602
	5. Nature of Business (list principal products or service of concern): Municipality			Do you regularly employ 10 or more employees? ☒ Yes ☐ No
F E D E R A L I D N O.	Federal ID No. 03-6000579			Telephone No. 802.223.9514
A C C I D E N T	17. Date of Accident: 12/15/2009	Accident Time a.m. 12:00p.m.	Began Shift 8:00 a.m. p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City State Main Street Middle School - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
C A U S E	19. On employer's premises? ☐ No ☒ Yes If yes, name of dept.: Main Street Middle School			22. Object or substance directly causing injury: n/a
	23. Describe what employee was doing: leaving classroom, turned to left to respond to someone calling him			Was this the employee's regular occupation? ☐ No ☒ Yes
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident. walking and turned to left to respond to someone calling him			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N O T E	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. lower back			
J U R Y	30. Any Lost Time? ☐ No ☒ Yes	If yes, date disability began. 12/15/2009	Last date paid in full: 12/17/2009	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	At what weekly wage: \$ 1026.80
S I G N E D	34. Name and Address of Physician Concentra Medical			Relationship
	35. Name and Address of Hospital n/a			Remained overnight? Yes ☐ No ☒
I N S U R E D	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT			Policy No.
S I G N E D	Signed by:			
	Employer or Representative: _____ Title _____ Date _____			
Provided Form 8 Labor & Industry Ins. Co. Employer Employee				

08/19/2010 10:54 8024832343

VT POLICE ACADEMY

PAGE 01

DEPARTMENT OF LABOR
Drawer 20
Montpelier, VT 05620-8401Form 1 (Rev. 6/05)
(Approved for use as OSHA 101 and 301)

State File No.

VERMONT**EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY**

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company. Give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <u>Montpelier Police Department</u>		2. Business Name: <u>City of Montpelier</u>	
	3. Mail Address: No. and Street <u>1 Pitkin Place</u>		City <u>Montpelier</u>	State <u>VT</u>
	4. Location (if different from Mail Address): <u>Montpelier</u>		Zip <u>05642</u>	Federal ID No. <u>036000579</u>
	5. Nature of Business (list principal products or service of concern): <u>Injury during Academy Training</u>		Do you regularly employ 10 or more employees? ☐ Yes ☒ No	
A C C I D E N T	17. Date of Accident: <u>08/12/10</u>	Accident Time a.m. <u>16:40</u> p.m.	Began Shift <u>0600</u> a.m. p.m.	20. Machine or tool involved in the accident:
	18. Location of Accident: <u>VCITC</u>	Town or City <u>Pittsford</u>	State <u>VT</u>	21. Was it defective? ☒ No ☐ Yes If yes, describe how.
C O N D I T I O N S	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: <u>UNKNOWN</u>	
	23. Describe what employee was doing: <u>Physical Training</u>		Was this the employee's regular occupation? ☐ No ☒ Yes	
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident: <u>UNKNOWN. Thought it was muscle fatigue.</u>			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N O T E	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured: <u>PINCHED NERVE IN LOWER BACK</u>			
I N S U R A N C E	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	At what weekly wage? \$ Relationship
I N S U R A N C E	34. Name and Address of Physician: <u>CONVE-NIENT Medical Care</u>		Remained overnight? Yes ☐ No ☒	
	35. Name and Address of Hospital: <u>25 North Main St.</u>			
I N S U R A N C E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. <u>Vermont League of Cities + Towns</u>			
	Name in full:		Policy No. <u>2010</u>	
I N S U R A N C E	Signed by: <u>[Signature]</u>		Title <u>Finance Director</u>	
	Employer or Representative		Date <u>8/19/10</u>	

Provided Form 6

Dept. of Labor

Ins. Co.

Employer.

Employee

Equal Opportunity is the Law



DEPARTMENT OF LABOR - ATTN: WORKERS' COMPENSATION
PO Box 488
Montpelier, VT 05601-0488

Form 1 (Rev. 2/09)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYER FIRST REPORT OF INJURY

Complete form and send original to the Commissioner of Labor within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: MPD		2. Business Name: MONTPELIER POLICE DEPT.			
	3. Mail Address: No. and Street 1 PITKIN COURT		City MONTPELIER	State Zip VERMONT 05602		
	4. Location (if different from Mail Address):		5. Federal ID No.: 03-6000579			
	6. Nature of Business (list principal products or service of concern): LAW ENFORCEMENT		7. Do you regularly employ 10 or more employees? ☒ Yes ☐ No			
A C C I D E N T	22. Date of Accident: 08/20/10		Accident Time: AM 1730 PM	Began Shift: 8 AM PM	23. Location of Accident: Town or City State MONTPELIER VT	8. Telephone No.: 802 223-3445
	24. Machine or tool involved in the accident:				25. Was it defective? ☐ Yes ☐ No	
	26. On employer's premises? If yes, name of department: ☐ Yes ☒ No				27. Object or substance directly causing injury: HUMAN BLOOD	
	28. Describe what employee was doing: RESPONDING TO SHOOTING INCIDENT				Was this the employee's regular occupation? ☒ Yes ☐ No	
	29. How did accident occur? Describe events leading up to the accident: ATTEMPTING TO PROVIDE MEDICAL CARE					
	30. Can the employer prevent this type of accident? ☐ Yes ☒ No				If yes, describe how.	
	31. Was safety equipment, such as goggles or guards, etc. provided? ☒ Yes ☐ No					
	32. Could the injured have prevented this type of accident? ☐ Yes ☒ No				If yes, describe how (do not say "By being more careful").	
	33. If safety equipment was provided, was it being used? ☐ Yes ☒ No					
	I N J U R Y	34. Describe the injury and the part of the body injured: EXPOSURE TO BLOOD TO SKIN				35. Was this a first-aid only injury: ☐ Yes ☐ No
36. Any Lost Time? ☐ Yes ☒ No		If yes, date disability began		Last date paid in full:		
38. Did injury result in death? ☐ Yes ☐ No		If yes, date of death:		39. If death, name and address of nearest relative:		
40. Name and address of Physician:				Relationship:		
41. Name and address of Hospital:				Remained Overnight ☐ Yes ☐ No		
42. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.						
I N S	Name in full: VLCT PACIF		Policy No. 2010			
	Signed by: [Signature]		Title: Finance Director		Date: 8/26/10	

___ Provided Form 8 ___ Dept. of Labor ___ Ins. Co. ___ Employer ___ Employee

Equal Opportunity is the Law



DEPARTMENT OF LABOR - ATTN: WORKERS' COMPENSATION
PO Box 488
Montpelier, VT 05601-0488

Form I (Rev. 2/09)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYER FIRST REPORT OF INJURY

Complete form and send original to the Commissioner of Labor within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <u>City of Montpelier</u>		2. Business Name: <u>City of Montpelier Police Dept</u>	
	3. Mail Address: No. and Street <u>39 Main St</u>		City <u>Montpelier</u>	State <u>VT</u> Zip <u>05602</u>
	4. Location (if different from Mail Address):		5. Federal ID No.: <u>03-6000579</u>	
	6. Nature of Business (list principal products or service of concern): <u>City Law Enforcement</u>		7. Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
A C C I D E N T	8. Telephone No.: <u>802-223-3885</u>		23. Location of Accident: Town or City <u>Montpelier</u> State <u>VT</u>	
	22. Date of Accident: <u>9/5/10</u>	Accident Time: <u>AM 4:43 PM</u>	Began Shift: <u>AM</u> <u>PM</u>	25. Was it defective? ☐ Yes ☐ No
	24. Machine or tool involved in the accident: <u>N/A</u>		27. Object or substance directly causing injury: <u>intoxicated male</u>	
	26. On employer's premises? If yes, name of department: <u>Police Dept</u>		28. Describe what employee was doing: <u>Restraining a prisoner</u>	
I N J U R Y	29. How did accident occur? Describe events leading up to the accident: <u>Assaulted by an intoxicated male who charged while being hand-cuffed. Head was slammed against the ground.</u>		30. Can the employer prevent this type of accident? ☐ Yes ☒ No	
	31. Was safety equipment, such as goggles or guards, etc., provided? ☒ Yes ☐ No		32. Could the injured have prevented this type of accident? ☐ Yes ☒ No	
	33. If safety equipment was provided, was it being used? ☒ Yes ☐ No		35. Was this a first-aid only injury: ☐ Yes ☒ No	
	34. Describe the injury and the part of the body injured: <u>Lacerations on back of right hand - swelling + bruising</u>		36. Any Lost Time? ☐ Yes ☒ No	
	37. Employee returned to work? ☒ Yes ☐ No		38. Did injury result in death? ☐ Yes ☒ No	
	39. If death, name and address of nearest relative:		40. Name and address of Physician: <u>Dr. Matt Greenberg</u>	
	41. Name and address of Hospital: <u>Central VT Medical Center</u>		42. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.	
	43. Name in full: <u>VLCT PACIF</u>		Policy No.: <u>2010</u>	
	Signed by: <u>[Signature]</u>		Title: <u>Finance Director</u>	
	Employer or Representative		Date: <u>9/8/10</u>	

Provided Form 8 Dept. of Labor Ins. Co. Employer Employee

Equal Opportunity is the Law

Email from Chief Tony Facos about worker compensation claims made by police officers

September 2, 2011 4:55:14 PM EDT

Here is the worker's comp information from HR relating to MPD officers only (some situations have impact MFD personnel as well) that dealt with situations involving non-compliant for combative individuals:

2006—1 officer suffered a broken finger while struggling with a combative subject.
(pay out: \$0.00)

2007—1 officer suffered lacerations and abrasions to wrist while making arrest. (pay out: \$0.00)

1 officer tore Achilles tendon during foot pursuit. (pay out: \$39,430.54)

2008—1 officer was "head butted" and received injuries to lip and mouth. (pay out: \$0.00)

2009—3 officers exposed to large amounts of blood (confirmed hepatitis) while restraining two subjects. (pay out: \$900.00)

4 officers (1 of whom was physically assaulted) exposed to blood while making arrest. (pay out: \$6,000.00)

2010—1 officer lacerated his hand while restraining non-compliant intoxicated suspect.
(Pay out: \$2,000.00)

Chief Tony Facos

Summary of Taser company May 2010 warnings

From Taser International's bulletin Important ECD Product Safety and Health Information May 1, 2010, which supersede all previous bulletins. The items are copy-pasted from that bulletin; no wording has been changed. I did underline the titles. Not all warnings are listed here.

Minimize Repeated, Continuous, or Simultaneous Exposures

Reasonable efforts should be made to minimize the number of ECD exposures. ECD Users should use the lowest number of ECD exposures that are objectively reasonable to accomplish lawful objectives and should reassess the subject's resistance level before initiating or continuing the exposure.

Control and Restrain Immediately

Begin control and restraint procedures, including restraining the subject during ECD exposure, as soon as reasonably safe and practical to do so in order to minimize total ECD exposure. The ECD User, and those individuals assisting the User, should avoid touching the probes, wires, and the area between the probes to avoid accidental or unintended shock during ECD electrical discharge.

Sensitive Body Part Hazard

When possible, avoid intentionally targeting the ECD on sensitive areas of the body such as the head, throat, chest/breast, or known pre-existing injury areas without legal justification. The preferred target areas are the lower center mass (below chest) for front shots and below the neck area for back shots.

Incapacitation, Falling, and Startle Hazard

ECD Use may cause muscular contraction, Neuro Muscular Incapacitation ("NMI"), startling, and falling, which could result in death or serious injury

NMI and Secondary Injuries

An ECD may cause NMI if probes are within sufficient proximity to complete a circuit, with sufficient spread, and an adequate circuit is completed and maintained rendering the subject temporarily unable to control movement and may cause a fall. Also, ECD use may cause a startle response. This loss of control or startle may increase risk of death or serious injury resulting from loss of balance, fall, change in momentum, drowning, or loss of control of any mode of transportation, conveyance, or machinery. Especially at risk is a person who:

- Could fall and suffer impact injury to the head or other area;
- Is on an elevated or unstable surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, crane, dock, chair, bunk bed, or stair);
- Is less able to catch or protect self in a fall (e.g., restrained, handcuffed, incapacitated, or immobilized);
- Could fall on a sharp object (e.g., holding a knife or other edged weapon or sharp object on ground);
- Is running, in motion, or moving under momentum;
- Is operating or riding in or on any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, cart, train, or airplane), conveyance (e.g., escalator, moving walkway, elevator, skateboard, skates, or rollerblades), or machinery;
- Is located in water, mud, or marsh environment if the ability to move is restricted; or
- Is physically infirm, elderly, or pregnant.

Eye Injury Hazard

If a TASER probe, electrode, or electrical discharge contacts or comes into close proximity to an eye it could result in serious injury, including permanent vision loss. DO NOT intentionally aim an ECD at the eye of a person or animal without justification.

Laser Light Could Result in Serious Eye Injury

The ECD uses a LASER as a targeting aid. Avoid intentionally aiming the LASER at the eye of a person or animal without justification. NEVER aim the LASER at aircraft.

Fire and Explosion Hazard

ECD Use could result in a fire or explosion when flammable gases, fumes, vapors, liquids, or materials are present. An ECD can ignite explosive and flammable clothing or materials, liquids, fumes, gases, or vapors (e.g., gasoline, vapor or gas found in sewer lines or methamphetamine labs, butane-type lighters, or flammable hair gels). Do not knowingly Use an ECD in the presence of any explosive or flammable substance without legal justification. Note that some self-defense sprays use a flammable carrier, such as alcohol.

Muscle Contraction or Strain-Related Injury

ECDs can cause strong or moderate muscle contractions that may result in physical exertion, athletic, or sport-type injury, including, but not limited to, injury such as hernia, rupture, dislocation, tear, or other injury to soft tissue, organ, muscle, tendon, ligament, nerve, bone, or joint. Fracture to bone, including compression fracture to vertebrae, may occur. These injuries may be more serious and more likely to occur in people with pre-existing injuries, conditions or special susceptibilities, which include but are not limited to, known or unknown: pregnancy; osteopenia; osteoporosis; spinal injury; or previous muscle, disc, ligament, joint, bone, or tendon damage or surgery. Such injuries may also occur when a person reacts to the ECD deployment or discharge by making a rapid movement.

Physiologic or Metabolic Effects

The ECD can produce physiologic or metabolic effects which include, but are not limited to, changes in: acidosis; adrenergic states; blood pressure; calcium, creatine kinase ("CK"); electrolytes (including potassium), heart rate and rhythm; lactic acid; myoglobin; pH; respiration; stress hormones or other biochemical neuromodulators (e.g., catecholamines). Reasonable effort should be made to minimize the number of ECD exposures and resulting physiologic and metabolic effects. In human studies of electrical discharge from a single ECD of up to 15 seconds, these effects on acidosis, CK, electrolytes, stress hormones, and vital signs have been comparable to or less than changes expected from physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques. Adverse physiologic or metabolic effects may increase risk of death or serious injury.

Higher Risk Populations

ECD Use on a pregnant, infirm, elderly, small child, or low body-mass index (BMI) person could increase the risk of death or serious injury. ECD Use has not been scientifically tested on these populations. The ECD should not be Used on members of these populations unless the situation justifies possible higher risk of death or serious injury.

Physiologically or Metabolically Compromised Persons

Law enforcement personnel are called upon to deal with individuals in crises that are often physiologically or metabolically compromised and may be susceptible to arrest-related death ("ARD"). The factors that may increase susceptibility for an ARD have not been fully characterized but may include: a hypersympathetic state, autonomic dysregulation, capture myopathy, hyperthermia, altered electrolytes, severe acidosis, cardiac arrest, drug or alcohol effects (toxic withdrawal, sensitization to arrhythmias, etc), alterations in brain function (agitated or excited delirium), cardiac disease, pulmonary disease, sickle cell disease, and other pathologic conditions. These risks may exist prior to, during, or after law enforcement intervention or ECD Use, and the subject may already be at risk of death or serious injury as a result of pre-existing conditions, individual susceptibility, or other factors. In a physiologically or metabolically compromised person any physiologic or metabolic change may cause or contribute to death or serious injury. Follow your agency's Guidance when dealing with physiologically or metabolically compromised persons.

Neurocardiogenic Response (Fainting)

A person may experience an exaggerated response to an ECD exposure, or threatened exposure, which may result in a person fainting or falling with possible secondary injury.

Seizure

Repetitive stimuli (e.g., flashing light or electrical stimuli) can induce seizure in some people. This risk may be increased in a person with a seizure history or if electrical stimuli pass through the head area. This may also result in a person falling with a possible secondary injury.

Use-of-Force Reports, Summary

<u>DATE</u>	<u>SUBJECT</u>	<u>CIRCUM</u>	<u>FORCE USED</u>	<u>SUBJECT INJURY</u>	<u>OFFICER INJURY</u>
11/01/08	male, 19, urinating	flight, fell	handcuff	abrasions	none
01/25/09	female, 42	unk. med. condit, non-comply	wristlock, cuff, dragged	none	none
07/27/09	male	flight, non- comply	arm bar, cuff	none	none
11/01/09	male, 24	active resist	arm bar, cuff	slight cut	none
11/17/09	male	flight from vehicle	thrown down, cuff	hand cut?	none
12/11/09	male, 19	underage alc, foot pursuit intox'd	OC, bear hug, down, cuff	scratch	scratch
03/05/10	male, 44	Intox (.276 BAC), Protect. Cust. raised fist WCMH screener	cuff, pull-down	none	none
03/20/10	male, 25	punching wall, parents wanted him removed, flight, MH eval	neck pulldown 3 knee strikes cuff	scrape	none
05/26/10	female, 10	at school, WCMH screener	held, carried	none	none
07/20/10	male, 37	flailing, non-comply, highly agitated, cuff, WCMH screener	armbar to ground	none	none

09/05/10	male, 47	Intox (.324 BAC), Protect.Cust. active non-comply	cuff, leg irons and hog-tie transport	swollen eye	hand laceration
10/29/10	male, 64	WCMH request for assist. in serving mental health exam warrant (Schizoaffective pt.), not taking meds, also mech. heart valve, "wildly" waving board at p.o.	OC, pepperballs firearm displayed	bruising from pepperballs	none
05/23/11	female, 22	DUI, highly intox'd, hitting officer, Protect. Cust.	cuff, helmet abrasion	scrapes	
06/18/11	?	noise disturbance	cuff	none	none
06/19/11	male	stolen vehicle, tried to reach into pocket	arm bar, cuff	cut, scratches	none

2008

MPD PD.RLGS
v5.5n(8.7.1)
platoon: ALL
action code: 13P
geo code: ALL
where: ALL
date/time s

MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:22 PAGE 1
TTYPI -9

ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
to: from: 01/01/2008 to: 12/31/2008
string:
case# rep unit personrel #1 personnel #2 other per

{	(	1)	04/27/08	B	339858	13P-		254 ELM ST VINE ST
{	(	2)	06/19/08	C	343068	13P-	5336	1 PITKIN CT
{	(	3)	07/04/08	A	343972	13P-	2424	9 SCHOOL ST
✓	(	4)	08/09/08	B	346173	13P-	2498	27 STATE ST
(	✓	5)	09/11/08	B	348171	13P-	5336	1 PITKIN CT

↓
348134

MPD PD,RALG
v5.5m

MONTPELIER POLICE DEPARTMENT
ARREST LOG by DATE

06/24/11 21:02 PAGE 1
TTYPI

from date: 01/01/08
to date: 12/31/08

from chg: 13B2
to chg: 13B2

from off: ALL off type
to off: (A
typ: ADULT

arrest/charge type: A

name	t	case#	date	statue	desc	off
------	---	-------	------	--------	------	-----

012306 VANSOLKEMA, BRADSHAW ALLAN 101 NORTHFIELD ST, MONTPELIER, VT
dob: 10/25/51 56 A 343056 06/19/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

036927 FOWLER, KEITH R 55 MERCHANTS ST, BARRE, VT
dob: 04/04/87 21 A 343753 06/30/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

037411 DURANLEAU, DANA JEAN 6 AVERILL ST, BARRE, VT
dob: 11/17/51 56 A 346173 08/09/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

023788 MAGANA, NICHOLAS JAY 132 MAIN ST, PLAINFIELD, VT
dob: 01/29/75 29 A 348138 09/11/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

348134

MPD PD.RALG
v5.5m

MONTPELIER POLICE DEPARTMENT
ARREST LOG by DATE

06/24/11 21:02 PAGE 1
TTYPI 9

from date: 01/01/08
to date: 12/31/08

from chg: 13B2
to chg: 13B2

from off: ALL Off type
to off: (A
typ: JUVENILE

arrest/charge type: A

name t case# date statue desc off off
----- -1- -2-

036646 COLLINS, KYLE

88 FRANKLIN ST, BARRE, VT

dob: 09/02/92 15 A 339858 04/27/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

2009

MPD PD.RLGS
v5.5n(8.7.1)

MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:22 PAGE 1
TTYP1 -9

platoon: ALL
action code: 13P ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
geo code: ALL to: from: 01/01/2009 to: 12/31/2009
where: ALL string:
date/time s case# rep unit personnel #1 personnel #2 other pps

(1)	01/12/09	B	355147	13P-		11 WEST ST NEW SCHOOL
(2)	02/24/09	C	357584	90C-	2421	44 MAIN ST
(3)	07/29/09	A	366344	90D-	2456	21 MAIN ST
(4)	08/16/09	A	367308	90D-		MEMORIAL DR I-89
(5)	08/16/09	C	367337	90D-	5420	X STATE ST ELM ST
(6)	10/03/09	C	369985	13P-	5397	X NORTHFIELD ST COLONIAL DR
(7)	12/11/09	C	373677	13P-	2591	108 MAIN ST

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE 1
TYPE

shift: B

date: 01/12/09 MONDAY

pg/1st

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A

**rcv*clr*

12:36 * 11 WEST ST and NEW SCHOOL MON

590 13P

*ibr: 1: 90C 2: 590

355147 * STUDENT IN CRISIS/ OUT OF CONTROL

MON

*

707-9

: LEMOGE, SUE

Def: LEFEBVRE, ALISON A

12/03/88 009-72-1120

645 BARTLETT HILL R BERLIN,VT 05602

*** UNIT(S) ***

801 MON P CHIEF FACOS

707-9

r> 12:43 d> 12:43 a> 12:43 c> 12:55 k> h>

802 MON P SGT MARTEL

707-9

r> 12:42 d> 12:42 a> 12:42 c> 12:42 k> h>

807 MON P DET. NOLAN

707-9

r> 14:07 d> 14:07 a> 14:07 c> 14:53 k> h>

811 * MON P P.O. PONTBRIAND

707-9

r> 12:36 d> 12:36 a> 12:37 c> 14:53 k> h>

*** COMMENTS ***

811 MON 12:36:18 CD-590-STUDENT IN CRISIS/ OUT OF CONTROL

707-9

811 MON 12:37:07 -23

707-9

801 MON 12:43:52 -23 @ 11 WEST ST.

707-9

801 MON 12:47:41 HAVE ONE -95

707-9

811 MON 12:51:01 -76 -19 ONE FEMALE -95 CAR 6 SM 1733

707-9

801 MON 12:55:36 @ -19 WITH HER.

707-9

801 MON

707-9

801 MON -21 TO WDC RE 1316-10-08WNCR & 656-6-08WNCR. BOTH CASES

707-9

801 MON HAVE BEEN DISPOSED. -21 P&P, NO RECORD IN P&P.

707-9

801 MON

707-9

801 MON

707-9

801 MON

707-9

801 MON SUPERVISOR - SGT N MARTEL

707-9

801 MON INV OFFICER - PTLMN J PONTBRIAND

707-9

801 MON DEFENDANT - ALISON LEFEBVRE

707-9

801 MON CHARGES - SAPO & DC.

707-9

801 MON

707-9

801 MON

707-9

801 MON 12:55:00 10-8

707-9

811 MON 14:06:00 76 TO WDC W/ 10-95/ EQ 6/ SM 1733/ 21 COURT

707-9

811 MON TO LET THEM KNOW/ DONE/ 807 W/ 811

707-9

811 MON

707-9

807 MON 14:07:50 807 ASSISTING 811

707-9

811 MON 14:53:54 10-8/ EM WAS 1740

707-9

811 MON

707-9

807 MON WHILE ATTEMPTING TO PLACE LEFEBVRE IN THE REAR SEAT OF THE

707-9

807 MON CRUISER SHE WAS UNCOOPERATIVE AND SOMEWHAT COMBATIVE,

707-9

807 MON KICKING, ETC. ONCE ON THE REAR SEAT SHE ATTEMPTED TO KICK

707-9

807 MON THE RIGHT REAR WINDOW SO SHE WAS RESTRAINED WITH LEG

707-9

807 MON RESTRAINTS. EVEN AFTER THE RESTRAINTS WERE PLACED ON HER

707-9

807 MON LEGS, LEFEBVRE CONTINUED TO TRY TO KICK. AT COURT, LEFEBVRE

707-9

807 MON SPIT AT A WDCS DEPUTY AND SHE CONTINUED TO HOLD UP WITH

707-9

807 MON BEHAVIOR SIMILAR TO WHAT IS DESCRIBED ABOVE. LEFEBVRE

707-9

807 MON ULTIMATELY ENDED UP WITH HER HANDS SECURED IN FRONT (BELT)

707-9

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE 2
TTYPS

shift: B

date: 01/12/09 MONDAY

org/lsc

*** COMMENTS ***

807 MON AND HER FEET WERE SHACKLED TO HER HANDS. A SPIT SOCK WAS
807 MON PLACED OVER HER HEAD.
807 MON
807 MON ON 03-10-2998 AT 11:40:00 HOURS ALISON LEFEBVRE'S GLASSES
807 MON WERE RETURNED TO ELIZABETH GUILFOYLE
807 MON

officer's signature

date

Montpelier Police Department

State Of Vermont
Washington County ss.



Affidavit
1211-08-342494

Now Comes **Officer James Pontbriand**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Alison Lefebvre**, DOB 12/03/1988 has committed the offense(s) of **Disorderly Conduct** and **Simple Assault on a Police Officer** in violation of **Title 13, Vermont Statutes Annotated, Section 1026 and 1028(a)**.

Based on the following facts:

1. On Monday, January 12, 2009 at approximately 1245 hours the Montpelier Police Department received a call from the New School in Montpelier (11 West Street, Montpelier, Vermont). The New School is an alternative school for challenged youth(s). The caller indicated they had a student out of control and had to be restrained by staff at the school.
2. Chief Facos and I responded to the school where we were met by a staff member and directed to a room at the front of the building. I could hear a female yelling from the room and observed a female known to me as Alison Lefebvre (dob 12/03/1988) being restrained by three staff members. Alison is known to me from prior involvements from similar incidents.
3. I introduced myself to Alison and advised her that she had a chance to calm down and work things out with the school. Alison responded by stating "fuck you" and spitting on me. I again tried to calm Alison down and explain the situation to her with the help of the staff. Again Alison's response was to spit on me and use profanity.
4. The decision was made to place Alison under arrest for disorderly conduct and simple assault on a police officer. As the Chief and I attempted to get Alison to her feet she kicked Chief Facos several times. Although the Chief stated he did not feel pain as a result of the assault he did have to take defensive action to protect himself from injury.

Subscribed and sworn to before me on,
This 12th day of January, 2009

Charles H. Hurlbert
Notary Public

Affiant

Date

1/12/09

5. Due to the Alison's combative and assaultive behavior she was not fingerprinted or photographed.
6. I contacted the Washington County District Court and was advised to transport Alison for immediately for arraignment.

Subscribed and sworn to before me on,
This 12th day of January, 2009

Cheryl Grant
Notary Public

[Signature]
Affiant
1/12/09
Date

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP: *

shift: C

date: 02/24/09 TUESDAY

06/11

***** RQ 90C DISORDERLY CONDUCT *

**rev*lr*
186 90C

21:05 * 44 MAIN ST MON

*ibr: 1: 13P 2: 308 3: 186

357584 * EMPLOYEE FEELS LIGHT HEADED

* ID #: 2421

: WILL 911 A49,

Def: PONZIO, CHRISTOPHER J

02/13/76

3786 VERMONT ROUTE 1 WESTFIELD, VT 05874

call-back# 223-7070

*** UNIT(S) ***

805 MON P SGT. COCHRAN

r> 21:23 d> 21:23 a> 21:23 c> 23:31 k> h>

809 MON P P.O. MACURA

r> 21:23 d> 21:23 a> 21:23 c> 23:30 k> h>

813 MON P P.O. MOULTON

r> 21:19 d> 21:19 a> 21:19 c> 23:31 k> h>

MAS2 * MON A

r> 21:05 d> 21:05 a> 21:06 c> 22:28 k> h>

*** COMMENTS ***

MAS2 MON 21:05:27 CD-186-EMPLOYEE FEELS LIGHT HEADED

MAS2 MON 21:06:00 MAS1 OOO AND OS

MAS2 MON 21:19:50 K6 REQ PD RESP

813 MON 21:19:00 -76 AND -23

MAS2 MON 21:19:00 K6 ADV UN COOPERATIVE PT

805 MON 21:23:31 -23 WITH 813

813 MON 21:29:37 11-20, 11-21

805 MON 21:42:51 REQ -21 TO CVH TO MAKE SURE THEY HAVE AN

805 MON 21:42:00 OFFICER

MAS2 MON 21:52:00 MAS1 ENROUTE 2 CVH

805 MON 21:52:00 ADV 813 WILL ALSO NEED TO BE CHECKED AT CVH

813 MON 21:53:35 -8 FROM SCENE -76 TO CVH

MAS2 MON 21:59:37 MAS1 ARRIVING CVH

809 MON 22:08:14 -8 -76 BACK TO THE CITY

805 MON 22:12:39 REQ -21 TO 814 TO COME IN FOR COVERAGE -21 MADE

MAS2 MON 22:22:31 MAS1 CLEAR RETURNING

MAS2 MON 22:28:26 MAS1 BIQ

MAS2 MON

MAS2 MON

MAS2 MON CASE MADE-

MAS2 MON SUSPECT - CHRISTOPHER PONZIO

MAS2 MON INVESTIGATING OFFICER - PTLM MOULTON

MAS2 MON SUPERVISOR - SGT COCHRAN

MAS2 MON CHARGE - DISORDERLY CONDUCT, SAPO, RESISTING ARREST

MAS2 MON CITED - 04/09/2009

805 MON 22:59:21 -8 -76 TO -19

805 MON

805 MON ON FEBRUARY 24, 2009 AT APPROXIMATELY 2105 HOURS DISPATCH

805 MON ADVISED ME THAT THE MONTPELIER FIRE DEPARTMENT WAS

805 MON REQUESTING POLICE RESPONSE TO THE BLACK DOOR AS THEY WERE

805 MON DEALING WITH A COMBATIVE PATIENT.

805 MON

805 MON UPON ARRIVAL TO THE BLACK DOOR I MET LT. JAKE LARABEE OF

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 9

shift: C

date: 02/24/09 TUESDAY

one/le:

*** COMMENTS ***

805 MON THE MONTPELIER FIRE DEPARTMENT WHO ADVISED THAT THE PATIENT
805 MON WAS BEING EXTREMELY COMBATIVE. THE PATIENT WAS IDENTIFIED
805 MON AS CHRISTOPHER PONZIO (DOB 2/13/76).

805 MON I SPOKE TO PONZIO WHO WAS SEATED ON THE FLOOR IN THE
805 MON DOORWAY TO THE OWNER'S OFFICE. PONZIO ADVISED THAT HE JUST
805 MON NEEDED A MINUTE AND FOR US TO BE PATIENT. FIRE DEPARTMENT
805 MON PERSONNEL WERE TRYING TO GET INFORMATION FROM HIM AND HE
805 MON STARTED YELLING, "SHUT THE FUCK UP". I ADVISED PONZIO TO
805 MON SETTLE DOWN AND BE COOPERATIVE AND THAT WE WERE THERE TO
805 MON HELP HIM.

805 MON AFTER APPROXIMATELY 15 MINUTES OF SPEAKING TO PONZIO AND
805 MON HIS EMOTIONAL STATE RISE AND FALL, PONZIO FELL OVER AND HIT
805 MON HIS HEAD ON THE PULL DOWN STAIRS TO THE ATTIC. MYSELF AND
805 MON A FIREFIGHTER TRIED TO HELP PONZIO UP WHEN HE BECAME
805 MON ENRAGED AND STARTED FIGHTING ME.

805 MON PONZIO WAS EVENTUALLY RESTRAINED AND WE TRIED TO CALM HIM
805 MON DOWN SO THE FIRE DEPARTMENT COULD TRANSPORT HIM THE
805 MON HOSPITAL. I ADVISED PONZIO THAT WE WOULD BE PLACING HIM IN
805 MON A STAIR CHAIR TO TAKE HIM DOWN FROM THE 3RD FLOOR. PONZIO
805 MON STATED HE UNDERSTOOD. WHILE WE WERE TRYING TO HELP HIM IN
805 MON THE CHAIR HE BECAME ENRAGED AGAIN AND STARTED TO FIGHT AND
805 MON KICK. PONZIO KICKED A MONTPELIER FIREFIGHTER IN HIS HAND.
805 MON PONZIO AGAIN WAS RESTRAINED.

805 MON WE TRIED TO MOVE PONZIO OUT OF THE OFFICE AND FOR THE THIRD
805 MON TIME HE STARTED FIGHTING AND RESISTING AGAIN. I YELLED AT
805 MON HIM TO STOP RESISTING. AT THAT TIME CORPORAL MACURA AND
805 MON SGT. COCHRAN WERE ABLE TO RESTRAIN HIM AND HE WAS
805 MON EVENTUALLY STRAPPED TO A BACKBOARD AND BOUGHT OUT TO THE
805 MON AMBULANCE.

805 MON WHILE AT THE HOSPITAL PONZIO WAS YELLING, "YOU STUPID
805 MON MOTHER FUCKERS" AND "YOU ARE FUCKING ASSHOLES". PONZIO
805 MON STATED TO THE DOCTOR THAT HE WAS COHERENT AND LUCID AND
805 MON UNDERSTOOD WHAT WAS GOING ON.

805 MON WHILE AT THE HOSPITAL I WAS TREATED FOR MY INJURIES AND
805 MON RELEASED. THE FIREFIGHTER WAS TREATED FOR HIS INJURY AND
805 MON AT THE TIME OF THIS REPORT WAS STILL IN THEIR CARE.

805 MON I CITED PONZIO FOR DISORDERLY CONDUCT, SAPO, AND RESISTING
805 MON ARREST. WHILE EXPLAINING THE CITATION TO PONZIO HE STATED
805 MON THAT HE WOULD SEE ME IN COURT. PONZIO WAS UNABLE TO SIGN
813 MON THE CITATION AS HE WAS BEING RESTRAINED.

813 MON SGT. MARK MONTEITH OF THE BERLIN POLICE DEPARTMENT CALLED
813 MON AND ADVISED SGT. COCHRAN THAT PONZIO AGAIN STATED HE WAS
813 MON COHERENT AND UNDERSTOOD WHAT WAS GOING ON.

813 MON

05/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 3
TTYP5 - 2

shift: C

date: 02/24/09 TUESDAY

*** COMMENTS ***

813 MON IT SHOULD BE NOTED THAT WHILE THE INITIAL STRUGGLE WITH
813 MON PONZIO WAS TAKING PLACE, HE GRABBED THE HANDLE OF MY DUTY
813 MON WEAPON AND SGT. COCHRAN WAS ABLE TO PLACE PONZIO IN A WRIST
813 MON LOCK AND KEEP HIM FROM GETTING MY GUN.

officer's signature

date



1211-09-357584

Affidavit

Montpelier Police Department

State Of Vermont

Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Christopher J. Ponzio DOB: 02/13/1976** has committed the offense of **Disorderly Conduct** in violation of Title 13, Vermont Statutes Annotated, Section **1026; Assault of Law Enforcement Officer** in violation of Title 13, Vermont Statutes Annotated, Section **1028; Assault of Fire Fighter** in violation of Title 13, Vermont Statutes Annotated, Section **1028; Resisting Arrest** in violation of Title 13, Vermont Statutes Annotated, Section **3017**.

Based on the following facts:

1. On February 24, 2009 at approximately 2105 hours I was on duty for the Montpelier Police Department. At that time the Montpelier Police Department's dispatch advised me that the Montpelier Fire Department was at The Black Door Restaurant with a male patient that was being combative. Dispatch advised me that the fire department personnel requested the assistance of the Montpelier Police Department. Dispatch also advised me that the male patient was complaining about being light headed.
2. I responded to The Black Door Restaurant located at 44 Main Street in the City of Montpelier, Vermont. Upon arrival I went to the third floor of the establishment and met with Lieutenant Jake Larrabee, Firefighter Nicholas Bresette, Firefighter Brian Farnham and Student Firefighter Jake Timian all of the Montpelier Fire Department. While speaking with Lieutenant Larrabee I observed the male patient who was identified as Christopher Ponzio (DOB 2/13/76) sitting in the doorway to the office of the restaurant owner Philip Gentile. Gentile was also present and was in the office. Lieutenant Larrabee advised me that Ponzio was very combative with the fire department personnel as they were trying to assist Ponzio with his medical issue.
3. I spoke with Ponzio who at that time was breathing as though he was hyper-ventilating. Ponzio asked who I was and I identified myself to him. I advised Ponzio that I was a police officer. While speaking with Ponzio he appeared to go through spells of extreme anger and then back to a somewhat calm manner. While Speaking to Ponzio he began yelling, "Shut the fuck up you fucking assholes." I spoke with Ponzio for approximately fifteen (15) minutes trying to get Ponzio to calm down so the fire department personnel could attend to his medical needs. During my conversation with Ponzio, Sergeant Wade Cochran and Corporal Josh Macura, both of the Montpelier Police Department, arrived at the scene.

Subscribed and sworn to before me on,

This 16 day of March, 2009


Notary Public

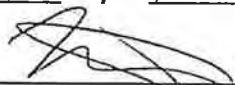

Affiant

3/16/09

Date

4. While speaking to Ponzio, I told him that we were there to help him and that he needed to go to the hospital. Ponzio agreed by saying, "I know." Lieutenant Larrabee advised Ponzio several times that they were there to help him and described what he needed to do to get him to the hospital. Ponzio stated he understood and then began yelling, "Just be fucking patient."
5. While I was speaking to Ponzio he was sitting down in the doorway to the office. Firefighter Bresette was in the office near Ponzio's feet trying to gain information from Ponzio. Firefighter Farnham was in the office as well and was near Ponzio's right side. I was on Ponzio's left side in the doorway. After speaking to Ponzio for approximately fifteen (15) minutes, Ponzio appeared to faint and fall to his right side. I stepped in to help Ponzio up. I took Ponzio by his left arm while Firefighter Farnham took Ponzio by his right arm. Firefighter Farnham and I tried to sit Ponzio back up when Ponzio attacked me.
6. Ponzio lunged at me and knocked me to the floor. Ponzio grabbed my testicles and began squeezing as hard as he could. Ponzio also began striking me. Ponzio also was kicking at Firefighter Bresette striking him in the hand. I felt extreme pain during the altercation and on a scale of 1-10 I would rate the pain at a 10.
7. At that time I began to strike Ponzio using front punches. Sergeant Cochran and Corporal Macura came into the office and began to restrain Ponzio. During the altercation Sergeant Cochran ordered me to protect my duty weapon as Ponzio had his hand near my weapon and at one point was touching the magazine well to my duty weapon. Ponzio was restrained by Sergeant Cochran and Corporal Macura. Ponzio was then handcuffed.
8. With Ponzio in handcuffs he was advised by Lieutenant Larrabee that he was going to be transported from the third floor using a chair designed for emergency personnel to bring patients down stairs. Ponzio advised he understood and that he needed a minute. After a short time I advised Ponzio that we needed him to get in the chair. I advised Ponzio that we would help him into the chair. While trying to help Ponzio into the chair he became combative and started resisting. I advised Ponzio to stop resisting several times and he was put in the chair.
9. While Ponzio was in the chair he was wheeled out into the third floor hallway when he became combative again. Ponzio was yelling, "You guys are fucking assholes." Ponzio tried to stand up and tipped the chair over and Sergeant Cochran, Corporal Macura and I restrained Ponzio to the floor. I again ordered Ponzio to stop resisting, while Student Firefighter Timian retrieved a backboard from the ambulance. When the backboard arrived Ponzio was placed face down and strapped several times so he could not move or resist any further. Ponzio was then brought down to the ambulance and transported to the Central Vermont Medical Center. Sergeant Cochran asked me to go to the hospital to be treated for the injuries I sustained during the altercation.
10. The following pictures are accurate pictures of the injuries I sustained during the

Subscribed and sworn to before me on,
This 16 day of March, 2009



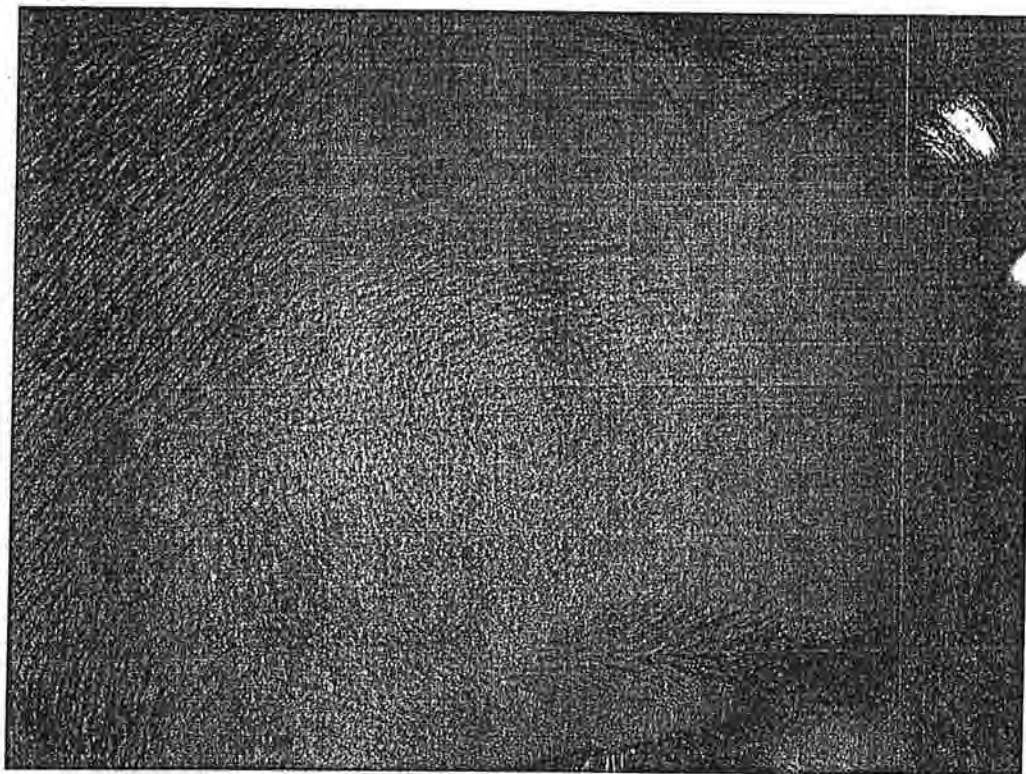
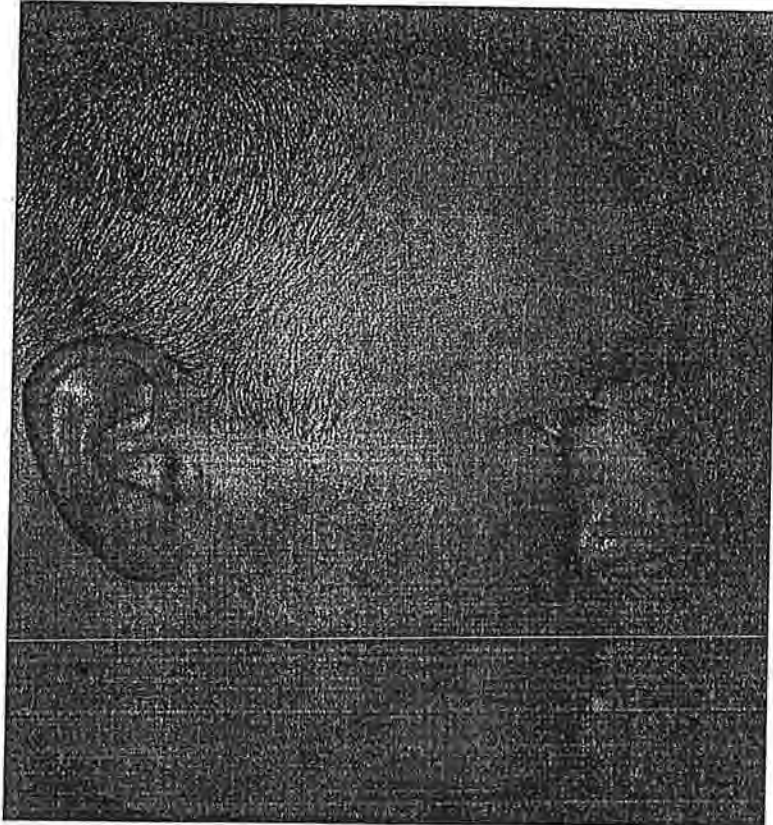
Notary Public



Affiant
3/16/09

Date

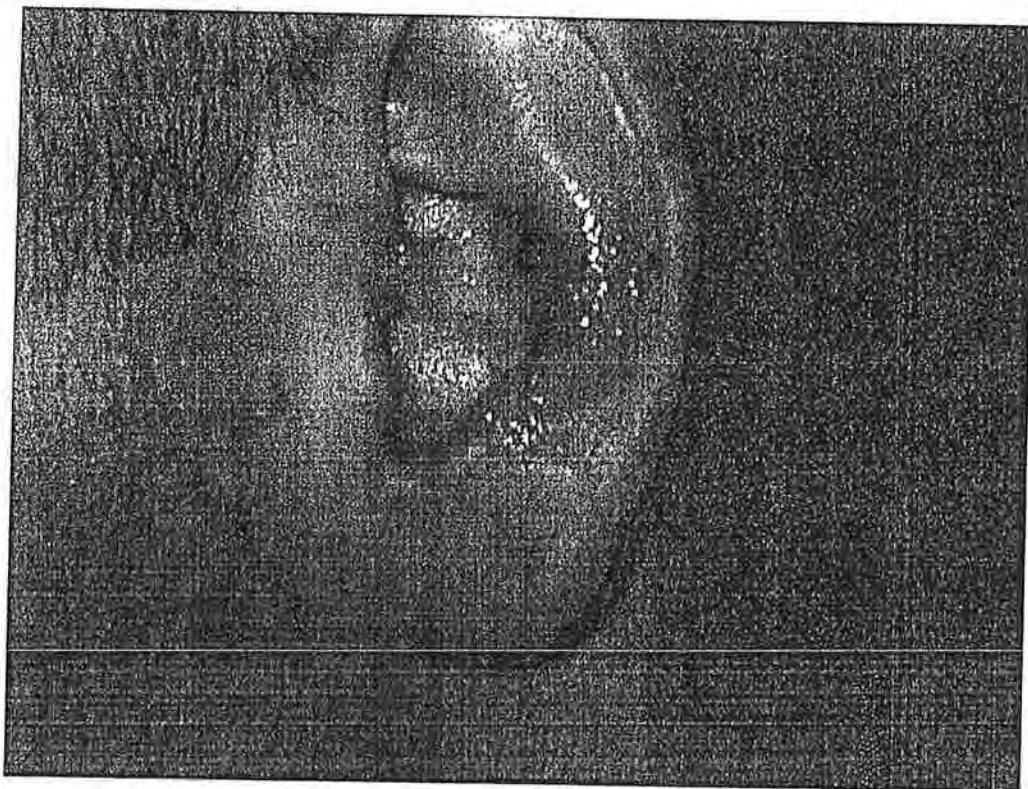
altercation with Ponzio.



Subscribed and sworn to before me on,
This 16 day of March, 2009

Notary Public

Affiant
3/16/09
Date



11. The injuries I sustained and was treated for during the altercation were a skin tear to my left ear, a bruise to my forehead and sore testicles. Firefighter Bresette was treated at the hospital as well for the injury he sustained to his left hand.
12. While at the hospital Ponzio had to be restrained to the bed. While I was being treated I could hear Ponzio yelling, "You're all fucking assholes." After being medically cleared by the doctor I went to where Ponzio was. I advised Ponzio that he was being issued a citation for the offenses he committed. Due to Ponzio being restrained and his violent outbursts Ponzio was unable to sign the citation. Ponzio did acknowledge that he understood he had to go to court. After I issued Ponzio his citation he began to spit on the walls and equipment in his area. A spit hood was then placed on Ponzio's head.
13. While I was speaking with Sergeant Cochran in the nurse's station, Sergeant Mark Montecito of the Berlin Police Department advised me that Ponzio stated to him that Ponzio was coherent.
14. On March 2, 2009 I met with Philip Gentile (Owner of the Black Door). I asked Gentile to give a sworn written statement. In Gentile's sworn written statement which is attached and referenced as if fully set forth herein, he says the following:
"On Tuesday night February 24 at approximately 8:30 PM, an employee of mine at the Black Door, Chris Ponzio, left his position as bartender at the second floor bar and came up to my office on the third floor complaining of lightheadedness and shortness of breath."

Subscribed and sworn to before me on,
This 16 day of March, 2009



Notary Public



Affiant

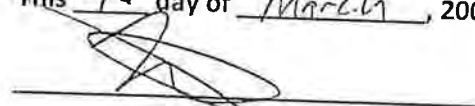
3/16/09

Date

He then slumped to the floor leaning against my office door and requested I call 911 immediately for help. I did so while my chef offered Chris some water. We had him lie on his side with a pillow under his head while we awaited the EMT's. They did arrive just several minutes later. The EMT's encouraged Chris to tell them what was going on and how he was feeling. Chris could only articulate in-between his episodes of faintness, and much of what he was saying was incomplete. They offered him help getting into the chair for transport to the ambulance, but Chris became verbally abusive towards the technicians. He threatened them if they touched him, so the EMT crew called for help from the police. They arrived in less than 2 minutes and Officer Kevin Moulton tried reasoning with Chris. It appeared as if they knew one another beforehand. Chris refused to cooperate, verbally swearing then striking out at the officers and techs surrounding him in the office. They wrestled him to the ground, placed his arms behind his back, and placed handcuffs on him. They encouraged him into the chair and as he was exiting the office, he stood up and once again became combative. They wrestled him to the ground once again in the third floor hallway. The EMT's brought in a gurney which allowed them to strap Chris facedown for transport to the hospital. They exited the third floor backdoor, down the stairs to the awaiting ambulance. During this time Chris was awake and conversing."

15. Ponzio was cited to appear in Washington County District Court on April 9, 2009 to answer to the charges of Disorderly Conduct, Assault on Law Enforcement Officer, Assault on Fire Fighter and Resisting Arrest. Ponzio was not fingerprinted or photographed. At this time I would ask the court to have Ponzio appear at the Montpelier Police Department for the taking of his photograph and fingerprints.
16. Based upon the above facts and circumstances there is probable cause to believe that Christopher Ponzio committed the offenses of Disorderly Conduct, Assault on Law Enforcement Officer, Assault on Fire Fighter and Resisting Arrest.

Subscribed and sworn to before me on,
This 14 day of March, 2009



Notary Public



Affiant

3/16/09

Date



1211-09-357584

Supplemental Affidavit
Montpelier Police Department

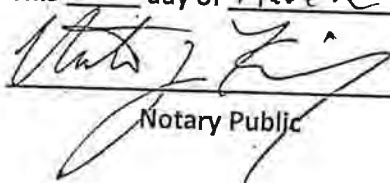
State Of Vermont
Washington County ss.

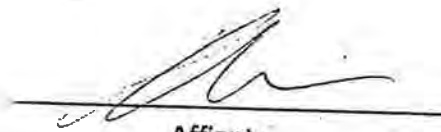
Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says the following:

1. On February 24, 2009 at approximately 2105 hours myself and Montpelier Fire Fighter Nicholas Bresette were involved in a physical altercation with Christopher Ponzio (DOB 2/13/76). Attached and referenced as if fully set forth here in, is the sworn written statement of Fire Fighter Bresette. In Fire Fighter Bresette's statement he says the following:

"On 2-24-09 around 2100 I responded to 44 Main St, The Black Door, for a male with lightheadedness. During assessment Mr. Ponzio became verbally abusive toward MFD crew. We told Mr. Ponzio that if he didn't stop with the abuse Montpelier Police would be called. Mr. Ponzio asked for PD to respond and Lt. Larrabee radioed this to dispatch. MPD showed up with 3 officers. While trying to calm the patient and assisting him off the floor he grabbed an officer around the head. While doing this Mr. Ponzio pushed me away causing me to fall on the ground crushing my left hand between the clipboard I was holding and the floor. After he was restrained with handcuffs by MPD he was standing up and with his back push another officer against the wall. While trying to restrain the patient he kicked his foot at me striking me in the left wrist/lower hand area. I immediately felt a sharp pinch in my left wrist and hand. PT was then restrained by being strapped to a backboard to avoid further injury to himself or others. Upon lifting the PT into the ambulance on the stretcher I instantly felt an even sharper pinch in my left hand causing me to be unable to make a fist. Another firefighter had to lift the patient in cause I was unable to do so. I told my Lt. of the problem I was having with my hand and wrist. He advised me to get evaluated at CVH once we dropped the patient off. PT was transported to CVH to be evaluated. Once I arrived at CVH and was evaluated and X-rays were taken. They showed a possible fracture in the second metacarpal. I was sent home in a splint and unable to work until further evaluation. A subsequent CT scan showed no fracture but damage to the muscle and bone. I missed the rest of my shift along with being unable to work 5 days after."

Subscribed and sworn to before me on,
This 31 day of March, 2009


Notary Public


Affiant
3/31/09
Date

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE:
TTY:55

shift: A

date: 07/29/09 WEDNESDAY

06/18

***** RQ 90D QUI-ALCOHOL OR DRUGS*

**rcv*clr*
910 90D

00:56 * 21 MAIN ST MON

*ibr: 1: 312 2: 13P

366344 * DOMESTIC IN PROGRESS

* ID #: 2456

Def: GORSHTEN, DIANA

02/12/78

7 MARINERS BEND ERIELLE, NJ 08730-1251

Invo: DALTON, JONATHAN B

10/23/81

PO BOX 210 WASHINGTON, UT

call-back#

229-9043

*** UNIT(S) ***

804 MON P SGT. NORDENSON

r> 00:56 d> 00:56 a> 00:57 c> 04:25 k>

h>

809 * MON P P.O. MACURA

r> 00:56 d> 00:56 a> 00:56 c> 01:51 k>

h>

810 MON P P.O. KACHAJIAN

r> 00:56 d> 00:56 a> 00:57 c> 04:46 k>

h>

817 MON P P.O. BOUCHER

r> 00:56 d> 00:56 a> 00:56 c> 00:56 k>

h>

*** COMMENTS ***

809 MON 00:56:17 CD-910-DOMESTIC IN PROGRESS

804 MON 00:57:00 -23 W/809

809 MON 01:02:00 -99 CA JONATHAN DALTON DOB 11/09/81 OR 10/23/81

809 MON 01:02:00 NEG -99

804 MON 01:02:00 WITNESS VEH IS GOV G413430H.A

804 MON 01:02:00 SUSPECT VEH IS NJ SZK68G.A, VAL 2002 VOLVO

810 MON 01:05:00 HAVE THE FEMALE OPERATOR -95 FOR -55

810 MON 01:05:00 -99 DIANA GORSHTEN, NEG -99, VAL IN NJ

804 MON 01:07:00 REQ -21 TO BOBS TO TOW THE NJ VEH -21 MADE

810 MON 01:08:00 -76 TO -19 WITH THAT FEMALE -95 ALSO -7 -19

804 MON 01:25:00 -8 FROM SCENE, BOBS HAS THE VEHICLE

804 MON 01:28:00 REQ -21 TO WCMH SCREENER, -21 MADE

809 MON 01:51:40 -8

809 MON MALE PBT WAS .135

810 MON 02:11:40 GARY THE WCMH SCREENER IS AT -19

810 MON 02:41:54 SCREENER CLEAR OF -19

809 MON 02:47:26 -76 TO BARRE CITY WITH MALE CAR 271 SM 41677

809 MON 03:07:00 -8 MALE AT BARRE CITY FOR DETOX

810 MON 04:13:23 -76 TO BCPD W/FEMALE CAR 276 SM 12217

810 MON 04:24:47 -7 BCPD EM 12223

804 MON 04:25:12 -8

810 MON 04:46:16 -8

810 MON

810 MON CASE MADE

810 MON INVESTIGATING OFFICER - CPL KACHAJIAN

810 MON SUPERVISOR - SGT NORDENSON

810 MON SUSPECT - DIANA GORSHTEN

810 MON CHARGE - DUI, ASSAULT ON AN OFFICER

810 MON CITED - 07/29/2009

AFFIDAVIT

STATE OF VERMONT
WASHINGTON COUNTY, ss.

NOW COMES Corporal David Kachajian, affiant(s), being duly sworn and on oath, deposes and says he has probable cause to believe that Diana Gorshtein (DOB: 2/12/78) has committed the offense(s) of Simple Assault on a Police Officer, a violation of 13, Vermont Statutes Annotated Section 1028 (a)(1).

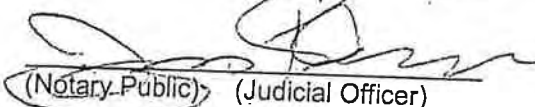
On July 29, 2009 at approximately 2:52 a.m. during the course of completing processing on a female for DUI, I had occasion to observe the suspect, DIANA GORSHTEIN (DOB: 2/12/78), cover up the surveillance camera in her holding cell with toilet paper.

At this point I went to the cell door, which was closed at the time, and asked Ms. Gorshtein several times to remove the toilet paper from the camera. Ms. Gorshtein refused to do so unless I let her smoke a cigarette. Upon her refusal to remove the paper, I entered the cell in order to move Ms. Gorshtein to another holding cell so that I could remove the toilet paper safely. I told Ms. Gorshtein to step out of the cell, which she refused. At this point I placed my hand on her arm and attempted to escort her from the cell. It was at this point that Ms. Gorshtein tried to pull away from me.

As this was happening, a brief struggle ensued between me and the suspect as I was trying to remove her from her cell. After finally moving her out of her cell, Ms. Gorshtein began to scream that I was breaking her arm and continued to struggle. As I attempted to put her into the adjoining cell, Ms. Gorshtein punched me with a closed fist in the right cheek, just underneath my eye. After I was hit, I attempted to get Ms. Gorshtein's arm behind her back so that I could handcuff her. Ms. Gorshtein continued to struggle with me and at that point, we fell down to the ground. As I got up from the floor, Ms. Gorshtein swung at me again and caught me in the right eye with her fingernails, causing my glasses to fly off my face and onto the cell block floor.

Subscribed and sworn to before me on

this 29 day of July, 09


(Notary Public)

(Judicial Officer)


(Affiant)

7/29/09

(Date)

It was at this time that Sgt. Nordenson arrived to assist me in getting Ms. Gorshtein into handcuffs. After a brief, continued struggle on the floor of the cell block, Ms. Gorshtein was handcuffed behind her back (handcuffs double-locked) and then placed back into a holding cell. Due to her assaultive behavior, the handcuffs were left on Ms. Gorshtein to prevent her from assaulting any other officers. As a result of getting struck by Ms. Gorshtein, I had considerable pain in both my left eye and on my right cheek, just below my right eye.

As a result of this incident, Ms. Gorshtein was issued a citation to appear in the Washington County District Court on August 29, 2009 at 12:30 p.m. to be arraigned for the crimes of Simple Assault on a Police Officer and DUI-Criminal Refusal. Bail was also requested on Ms. Gorshtein and was later granted by Court Clerk Paula Tremblay in the amount of \$1000.00. Conditions of release were also set by Ms. Tremblay. I respectfully request that the honorable court command Ms. Gorshtein, on her date of arraignment, as part of her conditions of release, to report to the Montpelier Police Department to be both fingerprinted and photographed. Due to her belligerent and potentially assaultive behavior at the time of his arrest, I did not feel that it would have been safe to attempt to obtain this processing information from the suspect.

Subscribed and sworn to before me on

this 29 day of July, 2009


(Notary Public) (Judicial Officer)


(Affiant)
7/29/09
(Date)

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYPS

shift: A

date: 08/16/09 SUNDAY

***** RQ 90D OUI-ALCOHOL OR DRUGS*
00:01 * MEMORIAL DR and I-89 MON
*ibr: 1: 308 2: 13P 3: 312
367308 * 10-80 EPP103.A
*

**rcv*
176 90D

Invo: HAUGHTON, FRANK B 01/28/65
68 AHRICHBALD ST BURLINGTON, VT 05401
Def: JORDAN, CAROLANN P 04/26/63
50 B ARCHIBALD ST BURLINGTON, VT 05401

*** UNIT(S) ***

805 MON P SGT. COCHRAN
r> 00:01 d> 00:01 a> 00:01 c> 03:41 k> h>
809 * MON P P.O. MACURA
r> 00:01 d> 00:01 a> 00:01 c> 03:41 k> h>
810 MON P P.O. KACHAJIAN
r> 00:32 d> 00:32 a> 00:32 c> 03:41 k> h>
814 MON P P.O. DION
r> 00:01 d> 00:01 a> 00:01 c> 01:58 k> h>
MAS2 MON A
r> 00:20 d> 00:20 a> 00:20 c> 00:54 k> h>

*** COMMENTS ***

809 MON 00:01:00 CD-176-10-80 EPP103.A
809 MON 00:03:00 VEH IS NOW STOPPED NEAR I-89 ON RAMP
805 MON 00:03:00 805,814 -76 HIS LOCATION
809 MON 00:07:00 -27 FEMALE RO, VAL REIN W/PRIORS
809 MON 00:07:58 BE OUT SCREENING
814 MON 00:13:05 -99 FRANK HAUGHTON DOE 01/28/1965, HE IS 99 IN
814 MON 00:14:00 BURLINGTON VT
805 MON 00:18:00 HAVE MR HAUGHTON -95 HE DOESN'T HAVE THE BAIL
805 MON 00:18:00 OF \$72
805 MON -21 TO BURLINGTON PD FOR COPY OF WARRANT, THE WARRANT IS
805 MON ACTUALLY FROM WINOOSKI AND IN CHITTENDEN COUNTY EACH PD IS
805 MON NOW THEIR OWN HOLDING STATION, BURLINGTON PD TRANSFERED
805 MON DISPATCH TO WINOOSKI, THEY CONFIRMED THE WARRANT AND FAXED
805 MON A COPY OF THE WARRANT
814 MON 00:20:00 REQ MAS RESP HAVE A FEMALE UNRESPONSIVE
814 MON 00:20:00 BREATHING
MAS2 MON 00:20:00 TONE FOR MAS
MAS2 MON 00:23:00 MAS2 RESP
814 MON 00:24:00 REQ -21 TO BOBS FOR VEHICLE
809 MON 00:28:00 HAVE THAT FEMALE -95 FOR -55 ALSO RESISTING AND
809 MON 00:28:00 SAPO
805 MON 00:30:00 ADV CAROLANN IS BEING COMBATATIVE TRY TO KICK OUT
805 MON 00:30:00 WINDOW IN EQ 276
809 MON 00:30:00 -76 TO -19 WITH THAT FEM CAROLANN -95 SM 12969
809 MON 00:32:00 -7 -19 EM 12970
810 MON 00:32:00 -7 -19 WITH 809
814 MON 00:32:00 -21 TO BOBS FOR TOW, THEY ARE -76
805 MON 00:32:00 FORM 356 SENT TO WINOOSKI FOR HAUGHTON WARRANT
814 MON 00:49:00 HAVE 2ND FEMALE -95 FOR PC-DETOX -81 .175
814 MON 00:49:00 -99 SUZANNE LEDUC BORN IN 1969 RAN FORM 221
814 MON 00:49:00 FOUND 1 SUZANNE LEDUC BORN IN 69 PID 61216421

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 9

shift: A

date: 08/16/09 SUNDAY

08/16/09

*** COMMENTS ***

814 MON 00:49:00 AND SHE IS NEG 99, -21 TO BARRE CITY
814 MON 00:49:00 TO SEE IF THEY HAVE ROOM, THEY DO, -21 TO WCMH
814 MON 00:49:00 FOR SCREENER, JIM IS -76 TO BCPD TO MEET 814
814 MON 00:52:00 -76 TO BARRE CITY SM 97883 CAR 275
MAS2 MON 00:52:00 MAS2 CLEAR RETURNING NO TRANSPORT
MAS2 MON 00:54:00 MAS2 BIQ
805 MON 00:55:00 -8 FRANK HAS BEEN DROPPED OFF AT BCPD
805 MON WARRANT PAPERWORK FILED IN PSW 09 FOLDER, WITH COPY OF Q
805 MON SHEET
814 MON 01:58:32 -8 SHE FEMALE SUZANNE HAS BEEN DROPPED OFF AT
814 MON 01:58:53 BARRE CITY
814 MON CASE MADE
814 MON INV OFFICER - PTLM MACURA
814 MON SUPERVISOR - SGT COCHRAN
814 MON SUSPECT - CAROLANN JORDAN
814 MON CHARGE - DUI, RESISTING ARREST, ASSAULTING AN OFFICER
814 MON CITED -
809 MON 02:45:34 -76 TO SAINT JOHNSBURY WITH CAROLANN
805 MON 02:46:25 -76 WITH 809
809 MON 03:41:10 -8 CAROLANN HAS BEEN DROPPED OFF AT ST JOHNSBUR
809 MON 03:41:31 JOHNSBURY CCC EM 13009
809 MON 04:20:51 -61
809 MON VIDEO REQUEST RECIEVED AND VIDEO'S MADE AND SUBMITTED TO
809 MON WCSA'S OFFICE ON 9/9/09.
809 MON
809 MON REQUEST FROM SA'S OFFICE FOR VIDEO OF PROCESSING. THEY
809 MON ADVISED THE PREVIOUS COPY DID NOT CONTAIN THE PROCESSING
809 MON VIDEO'S. NEW DVD MADE OF ALL THE VIDEOS'S FOR BOTH THE
809 MON SA'S OFFICE AND DEFENSE. THESE ALONG WITH DIRECTIONS ON HOW
809 MON TO VIEW THEM HAVE BEEN PLACED IN THE SA'S FOLDER.

officer's signature

date

1211-09-367308
Montpelier
Police Department

AFFIDAVIT

STATE OF VERMONT
Washington COUNTY, ss.

Now comes Officer Joshua Macura, affiant, being duly sworn and on oath, deposes and says he has probable cause to believe that Carolann P. Jordan DOB: 04/26/1963 has committed the offense of Driving While Intoxicated (3) a violation of Title 23 VSA § 1201 (a) (2), Resisting Arrest a violation of Title 13 VSA § 3017, Assault of Law Enforcement Officer a violation of Title 13 VSA § 1028, Contempt of Court a violation of Title 13 VSA § 7559e and Disorderly Conduct in violation of Title 13 § 1026.

1) On August 16, 2009 at approximately 12:01 AM while westbound on Memorial Drive I observed a 2004 Ford van bearing VT registration EPP103 travelling westbound in the left lane. The Ford van was the lead vehicle and was travelling at approximately 25 mph in the posted 35 mph speed zone. The road conditions were good but I noticed the van's right signal was on and was not changing lanes. After approximately 200 feet the van began to slowly change lanes and after approximately 150 feet moved into the right lane. After doing this one of the vehicles following the van continued in the left lane accelerating to the posted speed limit and passing the van. While following the van I noticed it was still being operated at approximately 25 mph and was weaving slightly in the lane. The van would start to cross the white line then move back into the lane slightly and then back towards the white line. I also noticed the right rear taillight lens was broken and was emitting white light rather than red light. I activated my blue lights at the start of the turn lane for Dog River Road and saw no indication that the driver was preparing to pull to the side of the roadway. I then activated my siren and after approximately thirty three (33) seconds the vehicle pulled to the side of the roadway. Memorial Drive is a public highway as defined in Title 23 and was open to the general flow of traffic at the time.

2) While speaking with the driver I noticed an odor of intoxicants and an open 24 ounce can of *"The Original Twisted Tea Hard Iced Tea"* containing 5% alcohol by volume on the front passenger seat floor. The can was in the upright position in the middle of the floor area and had nothing around it to hold it in place. The driver identified herself as Carolann P. Jordan. Later through a DMV check I was able to determine her DOB is 04/26/1963. Jordan advised me she had not consumed anything alcoholic that day. Jordan advised me she was coming from White River Junction. When I asked her what route she had taken she advised me she had used the "road" and was coming from the Friendly's Restaurant. I then asked Jordan for her license, registration and proof of insurance. Jordan began going through some paperwork in her glove box and handed me proof of insurance. Jordan began to apologize to me but I was unable to determine what she was sorry for. I again asked Jordan for her license and registration and she advised me I had her registration. I advised Jordan I had her proof of insurance. Jordan began looking through a bag and then advised me she did not have her license with her. I asked Jordan if she had any form of identification with her and she advised me, "what you don't believe me my name is Carolann Jordan." Jordan went on to advise me she did not have any identification with her.

3) Before returning to my car I asked Jordan if I could have the open hard iced tea can. Again Jordan apologized and handed me the can. I noticed the can was approximately 1/3 full. After conducting a records check I asked Jordan to exit the vehicle so I could conduct some field sobriety exercises with her. I conducted the HGN exercise and then was advised by Jordan after explaining the walk and turn and one leg stand exercise that she cannot perform them. While explaining the walk and turn exercise Jordan was unsteady and started the exercise before I advised her to begin. Jordan also used her arms for balance while standing in place and when she did start the exercise early did not touch heel to toe. I asked Jordan numerous times to stand at

the rear of her vehicle on the white line which I pointed to. Jordan failed to do this and numerous times started walking into the travel portion of the lane. I then asked Jordan if she can count and she advised me she couldn't. I next asked Jordan for a sample of her breath and she advised me she did not want to give one.

4) I then advised Jordan that she was under arrest for suspicion of driving under the influence. Corporal David Kachajian of the Montpelier Police Department and I placed Jordan in handcuffs which were double locked and checked for tightness. I asked Jordan if she had any knives, needles or anything that will hurt me on her. Jordan refused to answer. Moments after starting my search of Jordan, she began to get agitated and started to resist. Jordan was advised to stop resisting and to hold still. Jordan began to yell while twisting away from Corporal Kachajian and me and then kicked Corporal Kachajian in the left calf. Corporal Kachajian advised me on a scale from 1-10 10 being the worst pain he had ever felt he put the pain from the kick at a 4 and advised me "that really hurt".

5) Upon completing the search Jordan was escorted back to the cruiser. During the walk back to the cruiser Jordan continued to yell and twist from our grasp. Jordan was placed in the back seat of the cruiser and within a minute had positioned herself on her back and began yelling and kicking the back door glass window with both feet. I opened the back door and advised Jordan to stop kicking the window and that if she broke it additional charges would be filed. After shutting the door I began to prepare to transport Jordan back to the police department. While Jordan continued to yell she again began to kick the back door glass window with both feet. I exited the cruiser and opened the back door pulling Jordan towards me and away from the window. Jordan then began pushing with her feet against the seat eventually pushing herself out of the cruiser and onto the roadway. At this time traffic proceeding west bound came to a stop as Jordan had pushed her and me into the travel portion of the roadway. Jordan was then placed in leg shackles and placed back into the cruiser.

6) Upon arriving at the Montpelier Police Department I asked Jordan to exit the vehicle. Jordan refused to do this and so Corporal Kachajian and I removed Jordan from the cruiser. Jordan refused to stand up and so she was pulled into a holding cell. Jordan was read Miranda and advised me "I want a lawyer". When asked if she wanted to talk to me now Jordan advised me "I want my attorney". At approximately 1:11 AM I contacted the on call public defender Sarah Kouassi. At approximately 1:20 AM Jordan finished speaking with Kouassi. Jordan advised me she wanted to speak with her attorney Bud Allen but did not know his number. Corporal Kachajian was able to locate a phone number for Allen and a message was left at his office at approximately 1:22 AM. Jordan requested that I contact another attorney for her but she was unable to tell me the phone number to call. At approximately 1:46 AM I asked Jordan five (5) times if she would give me a sample of her breath as evidence. Jordan advised me I needed to read her rights to her and that she wanted her attorney. After the fifth (5) time I advised Jordan I would consider her not answering me as a refusal.

7) I then asked Jordan for her current mailing and residential address. Jordan advised me she wanted her lawyer. I then asked Jordan if she was currently on active duty in the armed forces and Jordan advised me yes. When asked for Jordan's Command Unit, Service Branch and Service Number Jordan advised me "a lady".

8) A review of Jordan's criminal history shows on 03/24/1992 a conviction for DWI 1 and on 11/8/2003 a conviction for DUI 2 and on 08/05/2009 a charge for DUI 3. Jordan's criminal history also shows 11 prior failure to appear charges, 1 assault on a police officer, 1 violation of conditions of release and 1 resisting arrest. Officer Ron Dion advised me while he was transporting one of the occupants from Jordan's vehicle he referred to Jordan as Nancy. At this

time I have not been able to positively identify Jordan. I have contacted four (4) different agencies (Lebanon NH PD, Burlington VT PD, VT Probation and Parole and Berlin VT PD) and have yet to obtain a photo of Jordan.

9) At approximately 2:00 AM I contacted Court Clerk Carolyn Hutchinson who set the following conditions:
You must give the court bail as follows: C. A secured appearance bond in the amount of \$1000.00.

1. You must come to court when you are told to.
 2. You must give your attorney or the court clerk your address and phone number. If it changes you must tell them immediately.
 3. You must not be charged with or have probable cause found for a new offense while this case is open.
 8. You cannot drive any motor vehicle, including a car, truck, or motorcycle unless you have a valid driver's license, one that is not suspended or expired or revoked.
 12. You must not buy, have or drink any alcoholic beverage.
 16. You must come to court on August 18, 2009 at 12:30 PM.
- Other Conditions: Hold until zeros or bail.

10. A review of Courts Online shows court conditions were set by the Honorable Patricia Zimmerman. The following conditions were set on 8/5/2009:

1. You must come to court when you are told to.
2. You must give your attorney or the court clerk your address and phone number. If it changes you must tell them immediately.
3. You must not be charged with or have probable cause found for a new offense while this case is open.
7. You cannot drive any motor vehicle, including a car, truck or motorcycle.
12. You must not buy, have or drink any alcoholic beverage.
31. Other Conditions Deft. To meet with Howard for an assessment on Friday 8/14 @ 1pm.

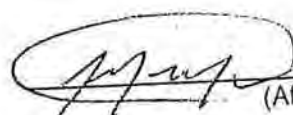
8) Carolann P. Jordan DOB: 04/26/1963 was transported to the St. Johnsbury Correctional Facility on 08/16/2009. Jordan was cited to appear in Washington District Court on August 18, 2009 at 12:30 PM to answer to the charges of Driving While Intoxicated, Resisting Arrest, Assault of Law Enforcement Officer, Contempt of Court and Disorderly Conduct.

9) On 08/17/2009 at approximately 7:40 PM the Honorable Kathleen M. Manley was contacted due to Jordan possibly being held at the St. Johnsbury Correctional Facility for more than 48 hours. The Honorable Kathleen M. Manley advised me she found probable cause to hold Jordan until her court date on 08/18/2009. St. Johnsbury Correctional Facility was contacted with this information and a copy of this affidavit was faxed to the facility. Due to Jordan's aggressive behavior fingerprints and a photograph have not yet been taken for this offense. Jordan also refused to provide any biographical information.

Subscribed and Sworn to before me on

This 18 day of August, 2009


(Notary Public) (Judicial Officer)


(Affiant)
8/18/09
(Date)

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 1

shift: C

date: 08/16/09 SUNDAY

***** RQ 90D OUI-ALCOHOL OR DRUGS*

**151-50D

20:59 * X STATE ST and ELM ST MON

*ibr: 1: 151 2: 13P 3: 308

367337 * ERRATIC OPERATIVE VEH TURNING ONTO ELM

56161

* ID #: 5420

45 -9

Def: HOLTER, GAYLE

04/26/59

10 CROSS ST MONTPELIER, VT 05602

Wit: SANCES, ZACHARY A

10/18/66

PO BOX 141 E MONTPELIER, VT 05651

call-back#

839-9674

*** UNIT(S) ***

805 MON P SGT. COCHRAN

45 -45

r> 21:21 d> 21:21 a> 21:22 c> 21:45 k> h>

809 MON P P.O. MACURA

45 -45

r> 20:59 d> 20:59 a> 20:59 c> 21:45 k> h>

813 * MON P P.O. MOULTON

45 -45

r> 20:59 d> 20:59 a> 20:59 c> 23:59 k> h>

814 MON P P.O. DION

45 -45

r> 23:35 d> 23:35 a> 23:35 c> 23:59 k> h>

MAS1 MON A

45 -45

r> 22:50 d> 22:50 a> 22:52 c> 23:52 k> h>

*** COMMENTS ***

813 MON 20:57:20 CD-151-ERRATIC OPERATING VEH TURNING ONTO ELM

45 -45

813 MON 20:57:34 GRAY VOLVO VT TEMP D32567 TURNED ONTO SCHOOL, THEN

45 -45

813 MON 20:57:49 ONTO MAIN, RAN STOP SIGN. TURNED ONTO LANGDON,

45 -45

813 MON 20:58:07 TRYING TO PARK, WAY UP ON CURB, TALKING WITH HER

45 -45

813 MON 20:58:17 COMP SAYS SEEMS REALLY INTOXICATED

45 -45

813 MON 20:59:28 -23

45 -45

813 MON 21:02:08 27/99 VT 92392821 NEG 99 SUSP CIVIL FOR "IP"

45 -45

809 MON 21:02:31 -23 WITH 813

45 -45

813 MON 21:03:26 27/99 92385361 VAL/NEG99 IS EX HUSBAND/WITNESS

45 -45

813 MON 21:06:08 OUT SCREENING

45 -45

809 MON 21:20:56 REQ ANOTHER UNIT 805 EN RT

45 -45

805 MON 21:21:03 -76

45 -45

805 MON 21:22:33 -23

45 -45

809 MON 21:23:33 1120/21

45 -45

813 MON 21:24:29 -76 W/HER 10-95 S/M 42698 EQ 271

45 -45

809 MON 21:26:51 -7 PD WITH HER

45 -45

813 MON 21:44:48 ON WITH PUB DEF BRIAN MARSCIVOTERE/MIC OFF

45 -45

813 MON 21:47:57 OFF PHONE WITH PUB DEF / MIC ON

45 -45

813 MON 22:04:29 BECOMING SLIGHTLY AGITATED DURING FINGERPRINTS

45 -45

813 MON 22:04:41 728 REQ 814 STAND BY IN CASE OF PROB/CALMED

45 -45

813 MON 22:21:36 BECAME COMBATIVE WHEN 809 ATTEMPTED TO MOVE

45 -45

813 MON 22:21:55 HER TO CELL AFTER SHE WAS GOING THROUGH DESK

45 -45

813 MON 22:22:09 IN INTERVIEW ROOM. NOW IN SECURE CELL, POUNDING

45 -45

813 MON 22:22:22 ON DOOR.

45 -45

813 MON 22:28:04 STILL SCREAMING, KICKING DOOR REPEATEDLY.

45 -45

813 MON 22:40:09 COVERING UP CELL VIDEO CAMERA AGAIN

45 -45

813 MON 22:46:30 805 AND 814 RESTRAINING HER TO KEEP HER FROM

45 -45

813 MON 22:46:46 CLIMBING UP ON THE BENCH AND COVERING THE

45 -45

813 MON 22:46:54 CAMERA, RESISTING, KICKING / SCREAMING

45 -45

813 MON 22:48:52 SHE REQ AMBULANCE / TONED MAS

45 -45

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE 2
TYPE

shift: C

date: 08/16/09 SUNDAY

*** COMMENTS ***

MAS1 MON 22:50:04 CREW EN RT ON FOOT / WILL TRANSPORT IF NEEDED
MAS1 MON 22:52:39 EMT ON SCN
MAS1 MON 22:57:28 MAS2 ON SCN
MAS1 MON 23:27:33 MAS2 CLR EN RT CVH
814 MON 23:30:31 EN RT TO CVH FOLLOWING MAS
MAS1 MON 23:35:30 ARR CVH
814 MON 23:35:42 OUT AT CVH W/MAS
MAS1 MON 23:52:07 CLR THIS CALL, RETURNING WITH TRANSPORT
814 MON 23:59:59 CLR END OF SHIFT
813 MON 23:59:59 CLR END OF SHIFT
813 MON
813 MON CASE MADE
813 MON INVESTIGATING OFFICER - PTLM MCULTON
813 MON SUPERVISOR - SGT COCHRAN
813 MON SUSPECT - GAYLE HOLTER
813 MON CHARGES - DUI, SIMPLE ASSAULT ON AN OFFICER, RESISTING
813 MON ARREST
813 MON CITED - TUES AUGUST 18TH 2009
813 MON
814 MON 01:13:00 -76 TO ST JOHNSBURY WITH THAT FEMALE FROM CVH
814 MON CAR 275 SM 97916 WITH 819 AND 2ND OFFICER
814 MON -8 EM 97956
814 MON
813 MON ON 9/9/09 I RECEIVED A REQUEST FROM ATTORNEY ROBERT
813 MON SHEFTMAN FOR VIDEOS RELATING TO THIS INCIDENT. COPIES WERE
813 MON MADE AND BURNED TO DISCS AT 0021 HOURS ON 9/9/09. THE
813 MON DISCS HAVE BEEN PLACED INTO THE SA'S FOLDER FOR DISCOVERY.
813 MON THE ENCLOSED CHECK WAS PLACED INTO LU ANN BROWNELL'S MAIL
.813 MON BOX.

officer's signature

date



1211-09-367337
Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Gayle A. Holter** DOB: 04/26/1959 has committed the offense(s) of **Driving While Under the Influence** in violation of Title 23, Vermont Statutes Annotated, Section 1201 (a) (2); **Resisting Arrest** in violation of Title 13, Vermont Statutes Annotated, Section 3017 and **Simple Assault on a Law Enforcement Officer** in violation of Title 13, Vermont Statutes Annotated, Section 1028.

Based on the following facts:

1. On August 16, 2009 at 2057 hours I was on duty for the Montpelier Police Department. At that time the Montpelier Police Department's dispatch advised me of a vehicle that was being operated in an erratic manner. The complainant was identified as Coleen Austin (DOB 6/4/1967).
2. According to Austin, she and her husband Joel Austin (DOB 12/19/1967) were travelling West on Route 2 near Mekklesen's RV Center located at 2419 Route 2 in the Town of East Montpelier, Vermont. Austin advised that she observed a vehicle in the wrong lane of Route 2 and initially thought the operator had made a U-turn. Austin advised she was following the vehicle and observed it travel off the road surface several times and onto the dirt shoulder before the intersection of Route 2 and Towne Hill Road. Austin stated the vehicle turned right onto Towne Hill Road and again travelled off the right side of the roadway.
3. Austin further stated that as the vehicle continued travelling west on Towne Hill Road it crossed the center line into the other lane and then swerved back into the correct lane and then off the right side again. Austin claimed that they continued to follow the vehicle down Towne Hill Road and the vehicle almost struck a mailbox. Austin advised the vehicle did not stop for the stop sign at the intersection of Main Street and Towne Hill Road. Austin further stated that as they followed the vehicle down Main Street it almost struck a parked car.
4. Austin stated that they continued to follow the vehicle as she was on the phone with 9-1-1 advising them of the situation. Austin stated that the vehicle drove around the block and then pulled into Langdon Street where the vehicle pulled into a parking space. Austin advised that her husband pulled up next to the vehicle and spoke with the female operator. Austin advised that while her husband was speaking to the operator, the operator claimed that she needed help finding the light switch. Austin said, "It was obvious that she was impaired." Austin went on to say that at that time she saw the blue lights of my cruiser and they left the area.

Subscribed and sworn to before me on,
This 17 day of August, 2009



Notary Public

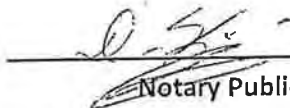


Affiant
8/17/09

Date

5. As I arrived at Langdon Street, I observed a 1985 Volvo 240 bearing Vermont (temporary) registration D32567 parked on the South side of Langdon Street in the City of Montpelier, Vermont. I observed a female sitting in the driver's seat. The female operator was identified by a suspended Vermont Operator's license as Gayle Holter (DOB 04/26/1959). All of the previously mentioned roads and streets are public highways and were open to the general flow and circulation of traffic at the time of the incident.
6. I advised Holter of the call we had received about her erratic operation. I asked Holter if she had any alcohol to drink and she stated she did not. I observed Holter's eyes to be watery and bloodshot. Holter's speech was also slurred. I detected a faint odor of intoxicants coming from Holter's person. At that time I asked Holter if she would perform field sobriety exercises and she consented.
7. The exercises were performed on the sidewalk. The exercises were performed in accordance with my training at the Vermont Police Academy. The results of the field sobriety tests are located on the DUI-Infrared affidavit.
8. Upon unsatisfactorily performing the field sobriety exercises, I asked Holter if she would submit to a preliminary breath test and she declined. I advised Holter that she was being placed under arrest for the suspicion of DUI. I asked Holter to turn around and place her hands behind her back. Holter began to walk away. I grabbed Holter's arm and told her that she was under arrest. Holter began to resist. I ordered Holter to stop resisting. At that time myself and Officer Josh Macura (of the Montpelier Police Department) were trying to gain control of Holter by using rear wrist locks. Holter continued to resist by swinging her arms and not letting me place her in handcuffs.
9. At that time, Holter was brought to the ground using an arm bar takedown. While Holter was on the ground she continued to resist and I repeatedly ordered her to stop resisting. I eventually was able to gain control of Holter and place her into handcuffs. The handcuffs were checked for proper fit and double locked. Officer Macura and I helped Holter to her feet and escorted her to my cruiser. When we got to the cruiser and opened the door, Holter began to resist further. Holter then kicked her foot at me and grazed my groin. I immediately felt the kick and on a scale of 1 -10 the pain I felt was at a level of 3. I advised Holter that I would also be charging her with Simple Assault on a Police Officer. After securing Holter in my cruiser I spoke to Holter's ex-husband Zachary Sances (DOB 10/18/1966). I asked Sances how much alcohol Holter had consumed. Sances advised that Holter had not consumed a lot of alcohol, but that what she did consume, mixed with the medications she was taking, was making her act like that.
10. Holter was then transported to the Montpelier Police Department for processing. While at the Montpelier Police Department Holter refused to give a sample of her breath as evidence. Holter signed the DUI-Infrared affidavit stating that she refused to speak to an attorney prior to making her decision to refuse the evidentiary test. At that time I contacted the on-call attorney anyways. The on-call attorney contacted was Brian Marsicovetere.

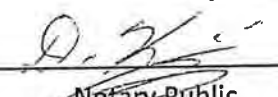
Subscribed and sworn to before me on,
This 17 day of August, 2009


Notary Public

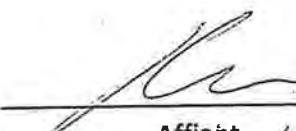

Affiant
8/17/09
Date

11. I advised Holter that I had the on-call attorney on the phone for her to speak to. I asked Holter if she would like to talk to him. Holter agreed to talk to attorney Marsicovetere. After Holter spoke to attorney Marsicovetere, I asked her if she would give a sample of her breath as evidence. At that time Holter refused to submit to the evidentiary test.
12. Throughout my involvement with Holter I noticed her behavior to fluctuate from calm to extremely combative. Holter repeatedly advised me of her mental status stating that she suffers from an extreme Post Traumatic Stress Disorder. I advised Holter that I was doing everything I could to de-escalate the situation and keep her calm.
13. Holter was brought into the processing room from the interview room while I performed the infrared test that Holter refused. Holter was fingerprinted and photographed. Holter was then brought back into the interview room to complete the processing. While in the Interview Room Holter again became irate and was eventually moved into a cell. While in the cell Holter became out of control. Holter was climbing on the bench and beating on the door. For Holter's safety she was handcuffed to the bench.
14. Holter then asked for an ambulance. At that time I advised dispatch to have the Montpelier Fire Department respond to the police department for Holter. Holter was then transported to the Central Vermont Medical Center for treatment of her injuries she allegedly sustained while resisting arrest. Those injuries include abrasions to her elbow, knee, and a cut on her finger. Holter continually complained about the handcuffs being too tight. I advised Holter that the handcuffs were properly secured. I also advised Holter that I could fit my finger between her wrists and the handcuffs.
15. I called Washington County District Court clerk Paula Tremblay to have conditions and bail set for Holter. Tremblay set bail at \$500.00. Conditions set by Tremblay are the following:
1. *You must come to court when you are told to.*
 2. *You must give your attorney or the court clerk your address and phone number. If it changes, you must tell them immediately.*
 3. *You must not be charged with or have probable cause found for a new offense while this case is open.*
 12. *You must not buy, have or drink any alcoholic beverages.*
 16. *You must come to court on Tuesday August 18, 2009 at 12:30 PM.*
 31. *No release without blowing .000% BAC.*
16. Based upon the above facts and circumstances there is probable cause to believe that Gayle Holter committed the offenses of Driving While Under the Influence, Resisting Arrest, and Simple Assault on a Law Enforcement Officer.

Subscribed and sworn to before me on,
This 17 day of August, 2009



Notary Public



Affiant
8/17/09

Date

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 3

shift: C

date: 10/03/09 SATURDAY

01:13

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A

23:07 * X NORTHFIELD ST and COLONIAL DR MON

*ibr: 1: 176

369985 * 75 W/ ETB270/ NORTHFIELD & COLONIAL DR

* ID #: 5397

: 805,

Oper: KAMBEROVIC, AJDIN

11/08/87

98 CEDAR HILL MONTPELIER, VT 05602

*** UNIT(S) ***

805 * MON P SGT. COCHRAN

r> 23:07 d> 23:07 a> 23:07 c> 23:59 k> h>

809 MON P P.O. MACURA

r> 23:08 d> 23:08 a> 23:08 c> 23:59 k> h>

812 MON P P.O. BEAN

r> 23:22 d> 23:22 a> 23:22 c> 23:36 k> h>

*** COMMENTS ***

805 MON 23:07:38 CD-176-75 W/ ETB270/ NORTHFIELD & COLONIAL DR
805 MON 23:09:50 28/ EXPIRED SEPT 09/ 27/RO/SUSP/CIVIL
805 MON 23:08:00 27/MADELINE MILLER/NO LICENSE
805 MON 23:13:00 21 BOBS FOR TOW/ AWD SUBARU OUTBACK/21 MADE/76
809 MON 23:08:00 W/ 805
809 MON 23:14:00 PUT SOMETHING IN LEFT BOOT
809 MON 23:17:00 00/99 W/SUBJECT
812 MON 23:22:17 W/ 805 & 813/ STARTING 0099 WITH THE CAR
812 MON 23:36:45 10-8
805 MON 23:47:31 F IS 10-95 FOR ASSAULT ON PO/809
805 MON 23:50:00 10-8/ 76 TO 19
809 MON 23:50:00 76 TO 19 W/ 10-95/ EQ 276/ SM/ 15466
809 MON 23:53:00 AT 19 W/ 10-95/ EM/ 15467
809 MON 23:56:00 I/P MALE & OLDER F RE THIS CASE
809 MON 23:59:50 SEE CONTINUED
809 MON STOP WAS FOR DE/ TICKET ISSUED FOR OSC
809 MON
809 MON CASE MADE - SIMPLE ASSAULT ON POLICE OFFICER
809 MON INVESTIGATING OFFICER - PTLM MACURA
809 MON SUPERVISOR - SGT COCHRAN
809 MON SUSPECT - MADELINE MILLER
809 MON SEE CONTINUED 369986

officer's signature

date

**Montpelier Police Department Referral to
Montpelier Community Justice Center Restorative Justice Alternative**
Please fill in as much information as is known

Name: Madeline M. Miller _____ DOB: 09/11/1992 _____ Age: 17 _____

Address: 1556 Chandler Road West Berlin, VT 05663 _____

Phone: H 802-223-0005 _____ W _____ Cell: 802-272-7812 _____

Parent/Guardian (if minor): Grandparent (temp guardian) Betty Miller Mom is a WCMF patient _____

Address, if different from above _____

Phone: H- 802-272-7667 _____ W _____ Cell _____

Offense: Assault on a Police Officer, Possession of Regulated Drug Marijuana Date of Offense:
10/4/2009

Description of Offense (or attach affidavit): During a traffic stop Miller was advised her backpack was being seized but she refused to surrender it. Upon attempting to remove it she began to resist and Sgt. Cochran lost control of her right hand and she began to punch me in the chest. Miller was restrained and placed under arrest. A search of her backpack revealed 10 grams of marijuana. Miller admits that she is a recovering addict. From what I am told her drug of choice use to be heroine. Miller had tobacco in her bag along with Q-tips a spoon and a white plate along with water and lighters. All items are commonly used by drug users.

Has the person been informed of the referral? Yes X No _____ If so, date 10/4/2009 _____

Victim's Name: Society and Officer Macura _____ DOB NA _____ Age NA _____

What contact has your office had with the victim? 24 involvements and 2 arrests with Montpelier Police
Department _____

REFERRED BY Officer Macura _____ Phone 802-223-3445 Email jmacura@montpelier-vt.org

Date of Referral 10/4/2009 _____

Submit to: Montpelier Community Justice Center
39 Main Street, City Hall; Montpelier, VT 05602
ybyrd@montpelier-vt.org
FAX: 223-9529 Phone: 223-9606

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE 1
TTY: 1

shift: C

date: 12/11/09 FRIDAY

orig/ls

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
23:15 * 108 MAIN ST MON
*ibr: 1: 186
373677 * REPORT OF MALE THAT WENT THROUGH FRONT WINDOW
* ID #: 2591
Def: LEVI, MELCHIZEDEK
2541 E 73RD ST CHICAGO, IL 60649
call-back# (802) 223-8277

**rcv*clr*
186 13P

11/10/87

*** UNIT(S) ***

804 MON P SGT. NORDENSON
r> 23:26 d> 23:26 a> 23:26 c> 23:56 k> h>
809 MON P P.O. MACURA
r> 23:46 d> 23:46 a> 23:46 c> 23:46 k> h>
810 MON P P.O. KACHAJIAN
r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>
813 MON P P.O. MOULTON
r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>
814 MON P P.O. JENNINGS
r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>
818 MON P P.O. TRUHAN
r> 23:17 d> 23:17 a> 23:17 c> 23:56 k> h>
MAS1 * MON A
r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>
MAS2 MON A
r> 23:26 d> 23:26 a> 23:32 c> 23:43 k> h>

*** COMMENTS ***

MAS1 MON 23:15:50 CD-13P-REPORT OF MALE THAT WENT THROUGH FRONT
MAS1 MON WINDOW, WENT HEAD FIRST THROUGH THE GLASS.
813 MON 23:17:21 -23
MAS1 MON 23:17:24 A1 O/S
818 MON 23:17:42 -23
810 MON 23:17:53 -23
MAS1 MON 23:23:31 ENROUTE TO CVH
810 MON 23:24:07 MALES IN CUSTODY, ALL UNITS WILL BE -76 TO
810 MON 23:25:38 BACK TO DECON.
810 MON 23:25:00 MAS ENROUTE TO THE PD FROM CVH.
804 MON 23:26:00 BE -76 TO CVH AS WELL, 814 IS IN THE AMBULANCE
804 MON 23:26:00 275 IS ON THE SIDE OF THE STREET.
MAS1 MON 23:29:00 12A1 ARRIVED CVH.
804 MON 23:30:23 OUT AT CVH
MAS2 MON 23:32:19 12A2 ON SCENE.
MAS2 MON 23:43:24 12A2 CLEAR AND BIQ.
809 MON 23:46:55 PICKED UP 275 AND BROUGHT IT BACK TO -19.
MAS1 MON 23:50:04 12A1 R/Q
804 MON 23:50:00 MALE SAYS HE'S LEVI SAMIR SALIM MELCHIZEDEK
804 MON 23:50:00 11/10/1987
804 MON 23:50:00 IL ID, 10055787320L, ERROR FROM IL,
804 MON 23:50:00 RAN BY NAME/DOB, NOT ON FILE
804 MON 23:50:00 NOTHING COURTS ONLINE/BCPD NO RECORD EITHER
MAS1 MON 23:56:46 12A1 BIQ.
MAS1 MON
MAS1 MON 12/14/2009 - 15:19 MR LEVI AT -19 FOR ITEMS, ALL ITEMS

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 49

shift: C

date: 12/11/09 FRIDAY

org/ls:

*** COMMENTS ***

MAS1 MON RETURNED TO HIM, HE CHECKED EVERYTHING AND SIGNED Q SHEET
MAS1 MON SIGNED Q SHEET PLACED IN MISC FOLDER

7:11
7:11 7:11

officer's signature

date



1211-09-373677

Affidavit

Montpelier Police Department

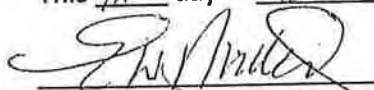
State Of Vermont
Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Melchizedek Levi** DOB: 11/10/1987 has committed the offense(s) of **Disorderly Conduct** in violation of Title 13, Vermont Statutes Annotated, Section 1026 and **Simple Assault on a Law Enforcement Officer** in violation of Title 13, Vermont Statutes Annotated, Section 1028.

Based on the following facts:

1. On December 11, 2009 at approximately 2315 hours I was on duty for the Montpelier Police Department. At that time the Montpelier Police Department's dispatch received a report of a male that went head first through a pane of glass at the "Three Penny Taproom" which is located at 108 Main Street in the City of Montpelier, Vermont.
2. At approximately 2317 hours I arrived at the scene. I parked my cruiser in the alley North of the "Three Penny Taproom". I walked to the front door of the "Three Penny Taproom" and observed the window to the front door was smashed. I asked some people in the doorway where the injured male was located. I was directed towards the entry way to Rivendell Books located at 100 Main Street.
3. As I approached the entry way to Rivendell Books I heard a male's voice yelling "Fuck You" repeatedly. I observed a male, who was later identified as Melchizedek Levi (DOB 11/10/1987), sitting in the entry way to Rivendell Books. Levi was holding a towel on his head. The towel was blood soaked. Also in the entry way were two (2) females. Levi continued to yell "Fuck You" to the females. At that time the male stood up. I approached Levi and told him I would bring him to the ambulance which was parked in the roadway. Levi stepped towards me and I held his right elbow to offer assistance to the waiting ambulance and to get him away from the two (2) females which he appeared to be upset with.
4. While walking towards the ambulance Levi jerked his arm away from me. Levi then squared off towards me and yelled, "Fuck you!" I reached for Levi's arm to escort him to the ambulance when he tackled me into a parked car. At that time I ordered Levi to get down on the ground. Levi continued to struggle with me and throw punches at me. I then struck Levi with three (3) forward punches. Officer Truhan of the Montpelier Police Department assisted me in getting Levi to the ground. Levi continued to fight and was subsequently sprayed with Oleoresin Capsicum by Officer Truhan. Levi was bleeding profusely from a head wound. Levi's continued belligerent behavior and resistance resulted in myself, Officer Truhan, Corporal Kachajian, Corporal Jennings, Firefighter Eggleston, and Lieutenant Huoppi being exposed to large amounts of blood. It was noted that each affected respondents uniforms were blood soaked.

Subscribed and sworn to before me on,
This 12th day of December, 2009


Notary Public


Affiant
12/12/09
Date

5. Levi was then restrained with handcuffs and brought to the waiting ambulance. Levi continued to struggle with officers and EMTs while on the stretcher and continually used loud vulgar language. While Levi continued to carry on, including calling us "White Trash" a crowd formed and observed his behavior. The crowd was estimated to be approximately 15 people. Levi was transported to the Central Vermont Medical Center for treatment of his injuries.
6. I returned to the Montpelier Police Department to decontaminate from the blood exposure and the Oleoresin Capsicum exposure.
7. While at the Montpelier Police Department I called Stan Brinkenhoff (DOB 2/25/1983). Brinkenhoff was a witness to struggle and captured part of the incident on video. I asked Brinkenhoff to come to the Montpelier Police Department to give a sworn written statement. Brinkenhoff arrived at the Montpelier Police Department and provided a sworn written statement. In Brinkenhoff's sworn written statement which is attached and referenced as if fully set forth here in, he says the following:

"On this evening I was at the three penny tavern. I walked in, and ordered a beer. After ordering a beer for a friend, we conversed near the entryway to the bar. I saw a dark skinned gentleman walk very hastily past me towards the door, the door opened and then I heard glass shatter. Looking over I saw the dark skinned gentleman covering his face, and the door smashed in. He was clearly bleeding profusely.

We finished our beers and were walking out when I saw the same gentleman "hugging" a police officer. The gentleman and the officer were on the edge of Main St. I did not see what caused them to become engaged, however they seemed calm. I.e. I just walked out and saw nothing to the contrary. The gentleman appeared to be upset, and was swinging at an officer. The officer appeared to take two or three punches to the face before responding with force including punches. Between the gentleman's punches and the officer's return punches the gentleman seemingly made belligerent remarks, though the exact terms are fleeing(sic). The gentleman was brought to the ground by two officers extremely professionally, and I began recording the incident at this time. The police and emt seemed to be all saying "we only want to help" whilst(sic) the individual restrained even while on the ambulance bed unit.

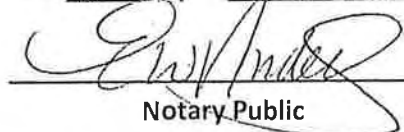
At no time this evening did I see any Montpelier Police Officer conduct himself in any manner other than absolutely professional. The officer I saw "hugging" the gentleman responded with minimal force, and nothing that seemed to be even closely in equality with the gentleman's "attacks".

Even after the officer responded with force and asked the gentleman to lay down, he seemingly continued to throw punches and resist assistance."

8. I asked Montpelier Firefighter Leon Eggleston and Montpelier Fire Lieutenant Dana Huoppi to provide me with sworn written statements. In Firefighter Eggleston's sworn written statement which is attached and referenced as if fully set forth here in, he says the following:

"On Dec 11th the Montpelier Fire Dept was called to treat a male who put his head through a window at the Three Penny Taproom on 108 Main Street. I with LT Huoppi arrived on scene to find the male seated on the steps of Rivendell Book Store on 100

Subscribed and sworn to before me on,
This 12th day of December, 2009


Notary Public

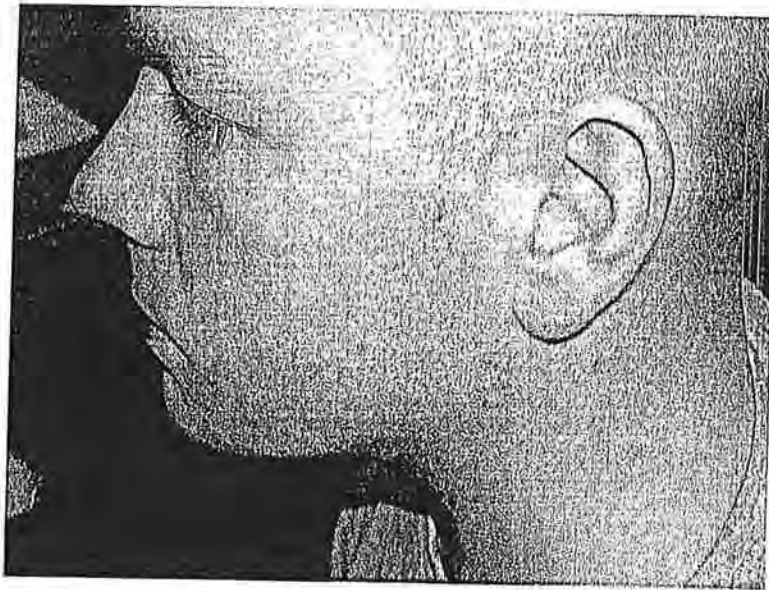

Affiant
12/12/09
Date

Main Street. Officer Moulton professionally offered assistance and began walking the male towards the ambulance. The male continued to act belligerent. A struggle began just off the sidewalk near a few parked cars in front of the bookstore. Officer Moulton and the other Montpelier Police Officers acted in the best interest of the nearby bystanders and Montpelier Fire Dept Emts."

9. In Lt. Huoppi's sworn written statement which is attached and referenced as if fully set forth here in, he says the following:

"I responded on an Ambulance call for the report of a man that had put his head thru a window. On scene the pt was yelling from the steps of the book store. Montpelier Police Officer was walk the pt to the Ambulance. The pt and the officer started to struggle. The officer lost his footing and the pt push him into a parked car folding the mirror. The officer punched the pt and they went to the ground the pt was yelling about a lawsuit and was not cooperative. The pt was handcuffed and moved to the Ambulance on a cot. The pt was transported to the Central Vt Hospital."

10. During the altercation with Levi my left thumb was injured. The pain I felt was about a five (5) on a scale of 1 - 10. I sought treatment at the Central Vermont Medical Center and was advised of a possible sprain to my left thumb. Also I was struck in the face during the altercation. I suffered some swelling and discoloration on my left cheek area. The following photograph is accurate and depicts the injury I sustained to my left cheek.



11. It should be noted that while at the Central Vermont Medical Center Levi submitted to a preliminary breath test. The result of the test was a .115.

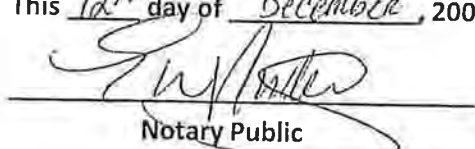
12. I contacted Court Clerk Paula Tremblay to set conditions and bail. Tremblay set the following bail and conditions.

C. A Surety Bond or cash in the amount of \$1500.

1. You must come to court when you are told to.

2. You must give your attorney or the court clerk your address and phone number. If it

Subscribed and sworn to before me on,
This 12th day of December, 2009


Notary Public


Affiant

12/12/09
Date

changes, you must tell them immediately.

3. You must not be charged with or have probable cause found for a new offense while this case is open.

12. You must not buy, have or drink any alcoholic beverage.

15. You must NOT abuse or harass in any way Officer Moulton.

16. You must come to court on Monday December 14, 2009 at 12:20 PM.

31. No release until BAC of .000.

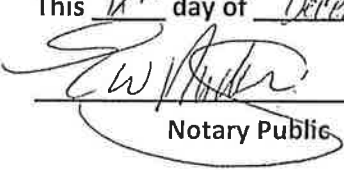
13. Levi was issued a citation to appear in Washington County District Court on December 14, 2009 to answer to the charges of Disorderly Conduct and Simple Assault on a Law Enforcement Officer.

14. Due to Levi's combative behavior, we were unable to obtain his fingerprints and photograph. I would ask the court to order Levi to appear at the Montpelier Police Department for the taking of his fingerprints and photographs.

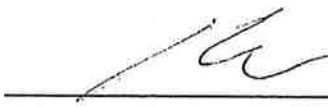
15. Levi was transported to the Barre City Police Department for lodging due to the lack of bail.

16. Based upon the above facts and circumstances there is probable cause to believe that Melchizedek Levi committed the offenses of Disorderly Conduct and Simple Assault of a Law Enforcement Officer.

Subscribed and sworn to before me on,
This 12th day of December, 2009



Notary Public



Affiant

12/12/09

Date



1211-09-373677
Supplemental Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says the following:

1. On December 12, 2009 at approximately 2339 hours I was on duty for the Montpelier Police Department. At that time I went to "Positive Pie 2" located at 20 State Street in the City of Montpelier, Vermont. I spoke with Amy Leventhal (DOB 3/15/1980) who advised she had witnessed the incident at the "Three Penny Taproom" on December 11, 2009. I asked Leventhal to give a sworn written Statement about what she observed. Leventhal agreed and asked to come over to the Montpelier Police Department on December 13, 2009.
2. At approximately 1804 hours on December 13, 2009 Leventhal arrived at the Montpelier Police Department. Leventhal filled out a sworn written statement. In Leventhal's sworn written statement which is attached and referenced as if fully set forth here in, she says the following:

"I was in Three Penny Tavern at 11:00ish pm Friday evening. There was a huge glass breaking noise. We were leaving anyway so continued to the door and saw that a kid had fallen into the glass. Blood was all over the snow. When we left, we saw that an EMT was holding his head and it was bleeding excessively. He was swearing and yelling and bleeding. The cops came, and an ambulance came. The bleeding kid stood up and threw a punch at one cop. The cop did not try to restrain him. He immediately began throwing punches. It looked like a bar fight. Finally other cops came over and they handcuffed him and took him away. I had just gotten off work that night and had only one glass of wine."

3. I was later contacted by Jordan Simons (DOB 2/24/1990) by telephone. I asked Simons to give a sworn written statement and she advised she was travelling to Maine and was not available to come in. I asked her to tell me of the events that occurred outside the "Three Penny Taproom" on December 11, 2009. Simons advised she was at the "Three Penny Taproom" having dinner and hanging out. According to Simons, she left the bar and went to visit her mother who was in town visiting. She continued by advising she was re-approaching the bar and all of a sudden heard glass breaking and Mel (Levi) was standing there confused.
4. I asked Simons if she knew Mel's full name and she said, "No." I asked Simons if she was Mel's girlfriend and she said, "We had been dating." I asked Simons to continue with her observations. Simons advised of Mel "gushing" blood and that she does not do well with blood. Simons stated that her mother ran into the bar and got a white compress. Simons advised of a huge crowd gathering around them and she then got sprayed with

Subscribed and sworn to before me on,
This 13 day of December, 2009

Notary Public

Affiant

12/13/09

Date

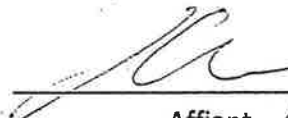
"pepper spray".

5. I asked Simons if she observed when the police arrived and she said, "No. I'm sorry." I asked Simons if she observed any of the altercation with the police. Simons said, "I can not recall any (pause)." Simons continued by saying, "there was a lot of blood and I was concentrating on wanting Mel to get in the frickin ambulance." I told Simons she was obviously there (at the scene of the altercation) if she was pepper sprayed. Simon's said, "I know I was there."
6. I contacted Lori Shapman of Farmington, Maine. Shapman is Simons' mother. I asked Shapman to recall what she had observed. Shapman stated she was at the scene of the altercation. Shapman stated the male (Levi) had broke the window and cut himself. She claims she went back inside the "Three Penny Taproom" to get napkins for the male. She came out and the male was yelling obscenities and arguing with an EMT. She further claims a police officer came up behind the male to stop the incident.
7. I spoke to Matt McCarthy and Scott Kerner; both are partners in owning the "Three Penny Taproom". Both McCarthy and Kerner advised they did not witness the altercation. McCarthy further claimed that all he knew was what people had told him.

Subscribed and sworn to before me on,
This 13 day of December, 2009



Notary Public



Affiant
12/13/09

Date

MPD PD.RLGS
v5.5n(8.7.1)
platoon: ALL
action code: 13P
geo code: ALL
where: ALL
date/time s

(2010)
MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:24 PAGE 1
TTYPI

ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
to: from: 01/01/2010 to: 12/31/2010
string:
case# rep unit personnel #1 personnel #2 other per

(1) 08/01/10 A 387225 13P- 2593
(2) 08/11/10 B 387835 13P- 945
(3) 08/20/10 C 388388 13P- 4187
(4) 09/05/10 B 389341 13P- 2438
(5) 10/26/10 B 392299 13P- 2431
(6) 10/29/10 C 392471 13P-
(7) 11/09/10 B 393061 13P- 5336

156 MAIN ST SPRING ST
73 MAIN ST
16 BARRE ST
949 DOG RIVER RD
112 STATE ST → No Affidavit
8 WILDER ST
1 PITKIN CT

from date: 01/01/10
to date: 12/31/10

from chg: 13B2
to chg: 13B2

from off: ALL Off type
to off: (A
typ: ADULT

arrest/charge type: A

name t case# date statue desc off off

004418 PALMER, CHRISTINE MELIA 440 CENTER RD, EAST MONTPELIER,
dob: 12/17/75 34 A 387225 08/01/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

007641 ROSATO, DAWN P 100 LCOMIS ST, MONTPELIER, VT
dob: 05/05/43 67 A 387836 08/10/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

006713 CAPLIN, JENNIFER M 118 BARRE ST, MONTPELIER, VT
dob: 01/10/80 30 A 388388 08/20/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

001637 SMITH, JOEY D 421 JUNCTION RD, BERLIN, VT
dob: 02/19/63 47 A 389341 09/05/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

029506 LEFEBVRE, ALISON ASHLEY 1763 MAIN ST, MONTPELIER, VT
dob: 12/03/88 21 A 392299 10/26/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

008121 SHAW JR, CARLOS A 8 WILDER ST, MONTPELIER, VT
dob: 07/05/46 64 A 392471 10/29/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

036927 FOWLER, KEITH R 55 MERCHANTS ST, BARRE, VT
dob: 04/04/87 23 A 392878 11/05/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 725-707

Shift: A

date: 08/01/10 SUNDAY

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
05:51 * 156 MAIN ST apt: X and SPRING ST MON
*ibr: 1: 150 2: 290 3: 312
387225 * POSS -56 FEMALE NEAR DENTIST OFFICE
* ID #: 2593

RQir*
150 13P

094300
725-9

: MALE AT -19,
Def: PALMER, CHRISTINE M
440 CENTER RD EAST MONTPELIER, VT 05602
223-4738

12/17/75 008 725-1051

call-back#

*** UNIT(S) ***

802 MON P SGT MARTEL h>
r> 08:27 d> 08:27 a> 08:27 c> 08:27 k>
810 MON P P.O. KACHAJIAN h>
r> 08:18 d> 08:18 a> 08:23 c> 10:12 k>
812 * MON P P.O. BEAN h>
r> 05:51 d> 05:51 a> 05:54 c> 08:00 k>
816 MON P P.O. TRUHAN h>
r> 08:05 d> 08:05 a> 08:05 c> 10:12 k>

725-707

707-707

725-707

707-707

*** COMMENTS ***

812 MON 05:51:37 CD-150-POSS -56 FEMALE NEAR DENTIST OFFICE
812 MON 05:54:21 -23 THE AREA
802 MON 05:55:32 -23 THE AREA
802 MON 05:57:50 -27 FL PID 0354075742060, NO RECORD
812 MON 06:02:00 FEMALE IS CHRISTINE PALMER, NEG 99
812 MON 06:05:00 -76 TO -19 WITH HER, CAR 1 SM 64242
812 MON 06:07:51 -7 -19 EM 64243
812 MON 06:16:08 REQ -21 TO WCMH, -21 MADE, ANDREW IS -76
812 MON 07:06:26 REQ -21 TO SAINT JOHNSBURY, THEY HAVE ROOM
812 MON 07:53:42 ALL BELONGINGS PLACED IN PURSE AT FRONT WINDOW
802 MON 08:01:30 -8
816 MON 08:05:16 -76 ST J CCC CAR 1 SM 64243.
816 MON 08:18:17 -76 BACK WITH HER, SHE WAS ABLE TO GET
816 MON 08:18:37 OUT OF ONE CUFF AND HIT 816.
810 MON 08:18:00 810 -76 FROM HERE WILL MEET TOWNE HILL & RT 2.
810 MON 08:23:56 -23 W/ 816 TOWNE HILL BY HAWKINS FARM.
810 MON 08:27:08 SHE HAS BEEN RESECURED/ 810 WILL BE
816 MON 08:27:27 ASSISTING ON THE TRANSPORT.

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

725-

SUPERVISOR - SGT N MARTEL
INV OFFICER - PTLMN C TRUHAN
CHARGE - UNLAWFUL MISCHIEF, ATTEMPTED SIMPLE ASSAULT ON
A POLICE OFFICER.
CITED - TO APPEAR ON COURT ON SEPTEMBER 23, 2010

10:12:05 -61

SEE NARRATIVE AND CASE FILE FOR REPORT.

58



1211-10-387285
Affidavit
Montpelier Police Department

State of Vermont
Washington County ss.

Now comes Officer Christopher M. Truhan, affiant, being duly sworn and on oath, states that he has probable cause to believe that Christine M. Palmer DOB: 12-17-75, has committed the offenses of Assault on a Law Enforcement Officer and Attempted Unlawful Mischief, violations of Title 13, Vermont Statutes Annotated sections 1028 and 3701.

On 08-01-10, at approximately 0801 hours, I transported Christine M. Palmer DOB: 12-17-75, from the Montpelier Police Department to the Northeast Regional Correctional Facility in St. Johnsbury to be held in protective custody for intoxication. The trip was recorded via the in-car video system. Palmer was taken into custody by Officer Chad Bean of the Montpelier Police Department on Main Street in Montpelier at approximately 0604 hours.

While en route to the correctional facility, it appeared Palmer took her seat belt off and was lying across the back seat. Palmer also began kicking one of the back windows. In the video, she can be seen kicking near the area of the door panel as well. I pulled into the parking lot of a convenience store in Plainfield so I could put her seatbelt back on. I discovered Palmer's left hand wasn't handcuffed. I secured her left arm behind her back and tried to get her right arm behind her back, but she refused to give it to me. Her right arm was positioned such that her right hand wasn't visible to me. While trying to secure her, she struck me on the left side of my face with the handcuffs. I left her in the backseat and closed the door. She can then be seen in the video kicking the partition between the back and front seats, as well as the passenger-side, rear window. I notified dispatch of the situation and headed back to Montpelier for assistance in getting her secured. I met with Sgt. Neil Martel and Corporal David Kachajian of the Montpelier Police Department on Towne Hill Road in East Montpelier and we were able to secure her. Corporal Kachajian rode with me to the correctional facility from that point on.

During the second attempt to drive her to the correctional facility, she again tried to kick the window out. Palmer was successfully transported to the correctional facility. Afterwards, I observed tread prints from a shoe on the passenger-side, rear window and door, which I photographed. Palmer was issued a citation to appear in Washington District Court to answer to the charges of Attempted Assault on a Law Enforcement Officer and Attempted Unlawful Mischief.

Subscribed and sworn to before me on
this 2 day of August 2010.

Notary Public
Affiant
08-02-10
Date

MONTPELIER POLICE DEPARTMENT
LOG REPORT

6/24/11 18:20
v5.5c

org/1st

date: 08/11/10 WEDNESDAY

shift: A

rev
813 813
055510
725-9

***** Q 813 CONTINUING INVESTIGATION
00:00 * 73 MAIN ST apt: APT 56 MON
387836 * CONTINUATION OF CASE # 387836
* ID #: 945 ALARM #: 307
Comp: BLAKELY, DAVID W
73 MAIN MONTPELIER, VT 05602
Invo: ROSATO, DAWN P
100 LOOMIS ST MONTPELIER, VT 05602
229-0345
call-back#

07/24/52
05/05/43

*** UNIT(S) ***

803 MON F SGT. CLEVELAND h>
r> 00:00 d> 00:00 a> 00:05 c> 01:11 k>
805 * MON F SGT. COCHRAN h>
r> 00:00 d> 00:00 a> 00:00 c> 03:00 k>
813 MON F P.O. MOULTON h>
r> 00:00 d> 00:00 a> 00:00 c> 04:27 k>

725-725
725-725
725-725

*** COMMENTS ***

805 MON 00:00:00 CD-813-CONTINUATION OF CASE # 387836
805 MON 00:03:00 805 REQ 803 AS FEM HAS A KNIFE AND WILL NOT
805 MON 00:03:00 TURN IT OVER AND PUT DOWN
813 MON 00:03:00 803 COPIED DIRECT -76
803 MON 00:05:00 -23
805 MON 00:10:00 805 HAVE FEM -95
805 MON 00:18:00 SCREENER AT -19

725-
725-
725-
725-
725-
725-
725-
725-

813 MON CASE MADE -
813 MON INVESTIGATING OFFICER - PTLM MOULTON
813 MON SUPERVISOR - SGT COCHRAN
813 MON SUSPECT - DAWN ROSATO
813 MON CHARGES - SIMPLE ASSAULT ON PO, RESISTING ARREST, DISORDERLY
813 MON CONDUCT

725-9
725-
725-9
725-
725-
725-
725-
725-

803 MON 01:11:01 CLEAR OF THIS CALL
805 MON 01:46:00 -76 TO ST JAY WITH FEMALE, CAR 6 SM 38741
805 MON 02:37:00 813 ADV ST JAY REQ SHE BE TAKEN TO HOSPITAL TO
805 MON BE SCREENED FOR POSS MEDICAL PROBLEMS, -76 TO THEIR WITH
805 MON CAR 6 NOW
805 MON 03:00:00 -42
813 MON 04:15:00 -8 SHE HAS BEEN LODGED AT SAINT JAY, CLEARED BY
813 MON HOSPITAL

officer's signature

date

6/24/11 18:19
v5.5a

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYPS -9

org/ls:

Shift: C

date: 08/10/10 TUESDAY

**rcv*clr*
150 90C

055910
40 -9

07/24/52

05/05/43

45 -725

45 -725

45 -

725-

725-

725-

725-

***** RQ 90C DISORDERLY CONDUCT *

23:52 * 73 MAIN ST MON

*ibr: 1: 308 2: 90J 3: 150

387836 * FEMALE GUEST ACTING ERRATICALLY

* ID #: 945 ALARM #: 307

Comp: BLAKELY, DAVID W

73 MAIN MONTPELIER, VT 05602

Def: ROSATO, DAWN P

100 LOOMIS ST MONTPELIER, VT 05602

call-back#

223-6170

*** UNIT(S) ***

805 * MON P SGT. COCHRAN

r> 23:58 d> 23:58 a> 23:58 c> 23:59 k>

h>

813 MON P P.O. MOULTON

r> 23:58 d> 23:58 a> 23:58 c> 23:59 k>

h>

*** COMMENTS ***

805 MON 23:58:51 CD-150-FEMALE GUEST ACTING ERRATICALLY

805 MON 23:59:00 CLEAR END OF SHIFT

813 MON 23:59:00 CLEAR END OF SHIFT

813 MON

813 MON SEE CONTINUED CASE # 387839

officer's signature

date

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TYPE:

08/11/10

date: 08/11/10 WEDNESDAY

shift: B

***** R 13P ASSAULT-OFFICER ASSAULTED *13A
15:56 * 73 MAIN ST MON
387887 * FOR NIBRS - SEE CASE FOLDER 387836
* ID #: 945 ALARM #: 307
Def: ROSATO, DAWN P
100 LOOMIS MONTPELIER, VT 05602
Vic: MOULTON, KEVIN T
1 PITKIN CT MONTPELIER, VT 05602

***-EVT-1r*

13P

05/05/43

9 -9

05/05/43 440-44-3484

03/31/76

*** UNIT(S) ***

813 * MON P P.O. MOULTON

r> 15:56 d> 15:56 a> 15:56 c> 15:56 k> h>

*** COMMENTS ***

813 MON 15:56:57 CD-13P-FOR NIBRS - SEE CASE FOLDER 387836

officer's signature

date



1211-10-387836
Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes Officer Kevin Moulton, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that Dawn Rosato DOB: 05/05/1943 has committed the offense(s) of Disorderly Conduct in violation of Title 13, Vermont Statutes Annotated, Section 1026; Simple Assault on a Police Officer in violation of Title 13, Vermont Statutes Annotated, Section 1028; Resisting Arrest in violation of Title 13, Vermont Statutes Annotated, Section 3017.

Based on the following facts:

1. On August 10, 2010 at approximately 2358 hours I was on duty for the Montpelier Police Department. At that time I was dispatched to 73 Main Street Apartment 56 in the City of Montpelier, Vermont for the report of a female guest acting erratically. The complainant was identified as David Blakely (DOB 7/24/52). Dispatch advised the female was holding a knife and making Blakely uncomfortable. Dispatch further advised the female was holding the knife and pointing it at Blakely while she was twisting it.
2. Sergeant Wade Cochran (of the Montpelier Police Department) and I responded to the area. Upon arrival to apartment number 56, we knocked on the door several times. Sgt. Cochran knocked harder and the door opened. I then noticed Dawn Rosato (DOB 5/5/43) sitting on the couch holding a knife. I know Rosato through professional involvements. Sgt. Cochran ordered Rosato to drop the knife and she would not comply.
3. I drew my firearm and Sgt. Cochran displayed his OC (Oleoresin Capsicum). Upon multiple times ordering Rosato to drop the knife she would not comply. Sgt. Cochran requested additional units to respond. While waiting for back up to arrive, Sgt. Cochran had me blind Rosato with the flashlight on my firearm. With Rosato blinded and distracted, Sgt. Cochran was able to grab the knife from Rosato's grasp. Rosato began to struggle with Sgt. Cochran and she was eventually brought to the floor. While we were trying to secure Rosato with handcuffs she continued to struggle. Sgt. Cochran ordered Rosato to stop resisting and she did not comply. Rosato was eventually secured with handcuffs.
4. While trying to bring Rosato to the ground floor she continued to struggle. While in the elevator Rosato stomped on my left foot. On a scale of 1 - 10 with 10 being the highest level of pain, I was at a level 1 when Rosato stomped on my foot. Rosato was eventually brought outside. Rosato was placed into my cruiser and transported to the Montpelier Police Department.
5. While at the Montpelier Police Department I called Washington County Court Clerk Paula Tremblay to set bail and conditions of release on Rosato. The following bail and conditions of release were ordered by Court Clerk Tremblay.

Subscribed and sworn to before me on,
This 11 day of August, 2010


Notary Public


Affiant
8/10/10
Date

c. A Surety Bond or Cash in the amount of \$1500.00.

1. You must come to court when you are told to.

2. You must give your attorney or the court clerk your address and phone number. If it changes, you must tell them immediately.

3. You must not be charged with or have probable cause found for a new offense while this case is open.

13. You must NOT buy, have use any dangerous/deadly weapons.

14. You must NOT have contact with David Blakely, which includes in person, in writing, by telephone, by email or through a third person.

15. You must NOT abuse or harass in any way David Blakely.

16. You must come to court on Wednesday August 11, 2010 at 12:30 AM/PM.

6. Due to Rosato's inability to produce bail, she was lodged at the Northeast Regional Correctional Facility in Saint Johnsbury, Vermont.

7. It should be noted that the Montpelier Police Department had numerous involvements with Rosato acting oddly in the past month. Rosato has been reported to be acting incoherently and has appeared that her emotional state has escalated in recent encounters. It is believed she possibly suffers from an unknown mental condition.

8. Based upon the above facts and circumstances there is probable cause to believe that Rosato has committed the offenses of Disorderly Conduct, Unlawful trespass and Resisting Arrest.

Subscribed and sworn to before me on,
This 11 day of August, 2010


Notary Public


Affiant
8/11/10
Date

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 1

01/18/80

shift: C

date: 08/20/10 FRIDAY

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
22:51 * 16 BARRE ST MON
*ibr: 1: 917 2: 497
388388 * OUT W/ JEN CAPLIN BY ST AUGUSTINES/ 10-56
* ID #: 4187
: 809,813,
Def: CAPLIN-SURRELL, JENNIFER M
118 BARRE ST MONTPELIER, VT 05602

**rcv*clr*
- 210 13P

05/10/80

01/10/80 0000 0000 -2

9 9

9 -9

*** UNIT(S) ***

809 * MON P P.O. MACURA
r> 22:51 d> 22:51 a> 22:51 c> 23:10 k>
813 MON P P.O. MOULTON
r> 22:51 d> 22:51 a> 22:51 c> 23:10 k>

h>

h>

*** COMMENTS ***

809 MON 22:51:11 CD-910-OUT W/ JEN CAPLIN BY ST AUGUSTINES/ 10-56
813 MON 22:52:36 21 FSU/ 21 MADE
813 MON 22:54:18 FSU ADV 76/ ETA 10 MIN
813 MON 23:10:34 10-8/ FSU HAS HER
813 MON CASE MADE
813 MON INVESTIGATING OFFICER: PATROLMAN MOULTON
813 MON SUPERVISOR: CORPORAL KNISLEY
813 MON CHARGE: SIMPLE ASSAULT / ASSAULT ON A CORRECTIONS OFFICER
813 MON CITED:

9
9
9
9
52
52
52
52
52
52

officer's signature

date



1211-10-388388
Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Jennifer Caplin** DOB: 01/10/80 has committed the offense of **Assault on a Correctional Officer** in violation of Title 13, Vermont Statutes Annotated, Section 1028 (a) (1).

Based on the following facts:

1. On August 20, 2010 at approximately 2251 hours I was on duty for the Montpelier Police Department. At that time I was on bicycle patrol with Officer Josh Macura (Montpelier Police Department). Officer Macura and I were in the area of St. Augustine's Church located at 16 Barre Street in the City of Montpelier, Vermont. Shortly before going to Barre Street I was approached by a concerned citizen who stated there was an intoxicated female walking in the center of Barre Street and arguing with a male.
2. Officer Macura located Jennifer Caplin (DOB 1/10/80) sitting on the ground on the east side of St. Augustine's church. I approached Caplin with Officer Macura. I know Caplin through multiple professional involvements. While speaking to Caplin it became immediately clear that Caplin was highly intoxicated. Caplin could not speak clearly as her words were extremely slurred. Caplin was also unsteady as she was sitting on the ground. Caplin was swaying from side to side as she was seated.
3. Officer Macura continued to speak to Caplin. I stepped away and called dispatch to advise them of the situation. I asked dispatch to contact the Barre Field Supervisory Unit (FSU) of the Department of Corrections. Through my many involvements with Caplin I knew she was being supervised by FSU. I asked dispatch to advise FSU that Caplin was highly intoxicated. Dispatch stated that FSU was in the area and en-route to the Montpelier Police Department to pick up Caplin. I asked that FSU pick up Caplin from our location as she was so intoxicated and we were on bicycles and unable to transport her. Due to being on bicycle patrol I was unable to have Caplin submit to a preliminary breath test.
4. FSU Correctional Officers Matt Andrus and Jamie Benneig arrived shortly after being called. I showed CO Andrus and CO Benneig where Caplin was located. When CO Andrus spoke to Caplin she quickly became angered and starting yelling obscenities at us. CO Andrus told Caplin to get up. Caplin had a difficult time getting to her feet and was very unsteady as she walked. I also was able to detect the odor of intoxicants coming from her person while trying to help her to the FSU vehicle.
5. While at the FSU vehicle CO Benneig secured Caplin with handcuffs. CO Benneig then placed Caplin in the rear seat of their vehicle. While Caplin was in the vehicle Officer Macura and I were explaining the situation to CO Andrus and CO Benneig. At that time CO Andrus noticed some movement from where Caplin was sitting. CO Andrus looked inside the vehicle and noticed Caplin was lying on the seat and had unfastened her seatbelt. CO Andrus opened the door and Caplin tried to get out of the vehicle. CO Andrus tried to keep Caplin inside the vehicle and Caplin became combative. Caplin had managed to free herself from the handcuffs and started fighting with CO Andrus. CO Benneig began to assist CO Andrus as Caplin was fighting. I went to the other side of the vehicle and opened the door. I got into the vehicle and pulled

Subscribed and sworn to before me on,
This 3 day of October, 2010

Notary Public

Affiant
10/3/10
Date

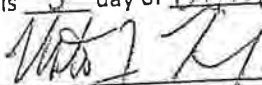
Caplin back into the vehicle. Caplin was brought under control by CO Andrus and CO Benneig. Caplin was re-secured with handcuffs and leg irons were placed on her as well.

6. After Caplin was again secured in the vehicle I spoke to CO Andrus about the situation. CO Andrus advised that Caplin hit him in the face. I shined my flashlight on CO Andrus' face and noticed a scratch which was bleeding on his right cheek. Officer Jeff Pearson (Montpelier Police Department) had arrived shortly before the altercation. Officer Pearson took a picture of the scratch on CO Andrus' face. The following picture is accurate and depicts the injury sustained to CO Andrus' face.

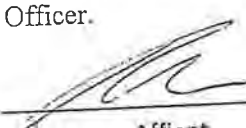


7. CO Andrus provided me with an affidavit. In Andrus' affidavit which is attached and referenced as if fully set forth herein, he says the following:
"A Montpelier PD officer advised me that I was bleeding from a scratch on my face. It was where Ms. Caplin hit me in the face. The pain resulting from this was on a scale of 1-10 and it was a 2."
8. Caplin was then transported to the Northwest State Correctional Facility in Swanton, Vermont. Caplin was later cited by the Franklin County Sheriff's Department to appear in Washington County Superior Court on October 28, 2010. Caplin has not been fingerprinted or photographed. I would ask the court to order Caplin to appear at the Montpelier Police Department for the taking of her fingerprints and photograph.
9. Based upon the above facts and circumstances there is probable cause to believe that Jennifer Caplin committed the offense Assault on a Correctional Officer.

Subscribed and sworn to before me on,
This 3 day of October, 2010



Notary Public



Affiant
10/3/10

Date

MONTPELIER POLICE DEPARTMENT
LOG REPORT

CIR/18

2/24/11 18:01
v5.50

date: 09/05/10 SUNDAY

ift: B

** CVH 1r*

0-1113
12/1-9

02/19/63 008-43-365

46-4

707-45

45-4

707-4

46

707

707

707

707

707

707

707

707

707

707

707

707

46

46

46

46

46

46

46

46

46

46

46

46

46

46

46

46

46

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
15:34 * 949 DOG RIVER RD MON
*ibr: 1: 312 2: 314
389341 * -56 MALE AT ROAD SIDE
* ID #: 2438 ALARM #: 210
: W14,
Def: SMITH, JOEY D
29 COURT ST MONTPELIER, VT 05602
call-back# 223-9511

*** UNIT(S) ***

807 MON P DET. NOLAN h>
r> 17:35 d> 17:35 a> 17:35 c> 20:12 k>
808 MON P P.O. KNISLEY h>
r> 17:32 d> 17:32 a> 17:32 c> 17:32 k>
810 MON P P.O. KACHAJIAN h>
r> 15:34 d> 15:34 a> 15:39 c> 20:12 k>
819 MON P A. APGAR h>
r> 17:45 d> 17:45 a> 17:45 c> 18:03 k>
821 * MON P P.T. POJENNINGS h>
r> 15:34 d> 15:34 a> 15:39 c> 18:03 k>

*** COMMENTS ***

821 MON 15:34:00 CD-314--56 MALE AT ROAD SIDE
821 MON 15:39:33 -23
821 MON 15:42:27 -99 BUBAR, DEAN G 06/16/1962
810 MON 15:43:39 -99 MARDEN, MATTHEW 01/18/1961
810 MON 15:43:57 -99 SMITH, JOEY 02/19/1963
821 MON 15:50:03 BUBAR IS A .306 AT THIS TIME.
821 MON 15:58:13 SMITH IS A .324/ HAVE HIM -95 FOR PC
821 MON 15:58:32 UNIT 276 SM 40218
810 MON 15:58:45 GIVING BUBAR RIDE TO RES 45 BARRE ST
810 MON 15:59:01 BELIEVE THERE IS SOMEONE THERE TO CARE FOR HIM
810 MON 15:59:16 MARDEN IS NOT -56/ LEAVING ON HIS BICYCLE.
810 MON 16:00:05 -76 CAR 271 SM 66439.
821 MON 16:01:33 EM 40219 @ -19
810 MON 16:03:00 E/M 66440
810 MON 16:24:29 -8 WITH HIM, LANDLORD WILL KEEP EYE ON HIM
810 MON 16:43:45 -76 ER, HE WAS HEAD BUTTING CELL, COMBATIVE,
810 MON 16:44:00 HAS SHINER BY HIS EYE, ADV CVH OF THIS, ADV
810 MON 16:47:57 BARRE CITY, ADV VSP DISP REQ A BERLIN UNIT IF
810 MON 16:48:09 AVAILABLE
810 MON 16:48:51 -7 CVH EM 40222
821 MON 16:50:12 VSP DISP ADV BERLIN UNIT -76
808 MON 17:32:03 -7/8 FROM THE ER -25 WITH 810 AND 821
810 MON 17:32:18 WILL BE CHARGING SMITH WITH SAPO, 10/14 CITE
810 MON 17:32:39 810 GETTING BLOOD TEST, POSSIBLE HEP B EXPOSURE
807 MON 17:35:00 807 -41 EN RT TO CVH
810 MON 17:42:43 ADV ST. J OF THIS DETOX
819 MON 17:45:00 SPO POULIN -41 AS 819. EMAIL TO 729 TO ADVISE.
821 MON 18:03:56 -8 THE CASE, BACK ON PATROL
810 MON 18:22:33 -8 FROM CVH EN RT ST J SM 40272 EQ1
807 MON 20:09:27 BACK IN AREA
807 MON 20:12:19 -8

06/24/11 18:01
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 2

shift: E

date: 09/05/10 SUNDAY

*** COMMENTS ***

810	MON	CASE MADE: SIMPLE ASSAULT ON A POLICE OFFICER:	45 -
810	MON	SUSPECT: JOEY D SMITH 02/19/63	45 -
810	MON	INVESTIGATING OFFICER: CPL DAVID KACHAJIAN M810	45 -
810	MON	ASSISTING OFFICERS: CPL MATTHEW KNISLEY M808	45 -
810	MON	OFC WILLIAM JENNINGS M821	45 -
810	MON	TRANSPORT OFFICER: INV STEVE NOLAN M807	45 -
810	MON	CITED: 10/14/10 VT DISTRICT COURT, BARRE, WASHINGTON CO.	45 -
810	MON	LODGED: DETOX AT ST. JOHNSBURY CORRECTIONS	703 -
810	MON	09/09/2010	703 -
810	MON	10:46:00 JOEY SMITH IP FOR HIS BELONGINGS, RELEASED BY 811.	703 -

officer's signature

date

AFFIDAVIT

MONTPELIER
POLICE DEPARTMENT

STATE OF VERMONT
WASHINGTON COUNTY S.S.

NOW COMES Corporal David Kachajian, being duly shown and on oath, deposes and says he has probable cause to believe that Joey Smith (DOB: 2/19/63) has committed the offense(s) of Simple Assault on a Police Officer, a violation of Title 13, Vermont Statutes Annotated Section 1028 (a)(1).

On September 5, 2010 at approximately 3:34 p.m. the Montpelier Police Department Dispatch Center was contacted by a deputy sheriff (W-14) from the Washington County Sheriff's Office advising that there were three intoxicated males lying in the grass across from the City of Montpelier Department of Public Works on Dog River Road.

At this time Corporal Knisley, Officer Jennings and I responded to the area to assist the deputy with the three individuals. Upon arrival on scene we located the three males lying down on the ground in the woods across from the City of Montpelier Sewerage Treatment Plant. One of the males that we encountered, later identified as a party by the name of Joey Smith (DOB: 2/19/63), was extremely impaired and was so intoxicated that he defecated in his pants while we were speaking with him. A subsequent PBT test administered to Mr. Smith showed him to have a BAC of .324%.

Due to the fact that Mr. Smith was too intoxicated to take care of himself, we placed him into protective custody. Mr. Smith initially resisted being placed into custody and after a very brief struggle; Officer Jennings and I were able to handcuff him behind his back (handcuffs double-locked and checked for tightness). Mr. Smith was transported back to the Montpelier Police Department by Officer Jennings and placed into a holding cell to await the arrival of a screener from Washington County Mental Health.

Subscribed and sworn to before me on

This 6th day of September 20 10

Thomas M. Courneau
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/6/10
(Date)

After Mr. Smith met with the screener and was advised that he would be taken to the Barre City Police Department lock up for detoxification, he started to become increasingly agitated. Mr. Smith began to scream and yell and then started to bang his head on the glass of the holding cell door (Note: Mr. Smith had been left handcuffed while in the holding cell because of his initial resistance to being handcuffed and because he kept threatening to assault us if we were to take the handcuffs off of him).

A short time later, Corporal Knisley, Officer Jennings and I entered the cell block and prepared to remove Mr. Smith from the cell so as to be transported to the Barre City Police Department. When we opened the cell door, both Officer Jennings and I asked Mr. Smith to please step out for us. Mr. Smith refused and stated that we would need to come in to get him if we wanted him. I stated to Mr. Smith that we just wanted to take him over to the Barre Police Department so that he could detox and then asked him to not make this situation any more difficult than necessary. Mr. Smith began to yell and scream and was spitting as he spoke. He then suddenly lowered his body posture and charged out of the holding cell towards me with his head partially lowered.

Fearing that Mr. Smith was going to either strike me with a head butt and/or shoulder strike, I instinctively put my left hand up in front of me in an attempt to block him from hitting me. At this point, I was able to block his charge at me by placing my left hand on the right side of his neck in the area of his Trapezius muscle and lower neck. I then stepped back and tried to push him away to my right side by grabbing his right arm with my right hand. As I pushed him away, I also attempted to direct him to the ground to prevent him from being able to continue to fight. As I tried to guide him down to the cell block floor, Mr. Smith struck the left edge of his head on the door jamb of the cell block door. At this time both Mr. Smith and I went down to the ground and in the process, my right hand was crushed between him and the cement floor. As a result, the back of my right hand was lacerated and began to swell. On a scale of 1-10, 1 being no pain and 10 being the most painful injury I have ever sustained, the pain I was now feeling in my hand was a 4. As a result of Mr. Smith's head hitting the edge

Subscribed and sworn to before me on

This 6th day of September 2010

Thomas Connerman
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/6/10
(Date)

of the door, he sustained a large bump to the area around the top of his left eye. Mr. Smith's eye immediately began to swell and a small spot of blood was visible towards the top of the area that was swelling.

After we were able to get Mr. Smith somewhat under control, we were forced to pick him up off of the ground because he was still thrashing and kicking. After carrying him into the sally port area of the police department where our cruiser was located, we attempted to place Mr. Smith into the back seat for transport. Mr. Smith continued to actively resist us and attempted to kick both Officer Jennings and I several times while we were standing next to the right door jamb of the cruiser. To protect both us and Mr. Smith from injury, Officer Jennings placed leg irons on Mr. Smith. Mr. Smith kept yelling at me and made numerous threats towards me while we were placing him into the back of the cruiser. On several occasions he demanded that we take the handcuffs off of him and would as well threaten that he would "Take care of me" if we let him out of them. Once we were able to get him into the cruiser and shut the doors, Mr. Smith proceeded to try and kick the back windows of the car out. Because of this, we were forced to hobble/hogtie him using a nylon restraining lanyard.

Due to the injury Mr. Smith sustained to his head/eye orbit from hitting the edge of the door when he charged me, Officer Jennings and I transported him to the Central Vermont Medical Center for treatment. While at the hospital, Mr. Smith continued to threaten me and indicated on numerous occasions that he would "Take care of me" and "Get me" when he was released from custody. While Mr. Smith was being treated at the hospital, I also received treatment for my right hand injury. I was also advised by the attending physician that I would need to have my blood tested every four to six weeks for six months for the possible exposure to the suspect's blood due to the fact that Mr. Smith may be infected with blood borne diseases to include Hepatitis B (Note: Mr. Smith refused to have his blood taken/tested at the hospital to confirm and/or deny this possibility).

Subscribed and sworn to before me on

This 6th day of September 2010

Thomas M. Cunningham
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/6/10
(Date)

After we were both treated and cleared from the hospital, with the assistance of Detective Corporal Nolan, I transported Mr. Smith to the St. Johnsbury Correctional Center for detox. Upon arrival at the correctional center, Mr. Smith was issued a citation to appear in the Washington County District Court on October 14, 2010 at 12:30 p.m. to be arraigned on the charge of Simple Assault on a Police Officer. Mr. Smith refused to sign the citation.

Due to the fact that Mr. Smith was very combative and assaultive on the date he was taken into custody, I respectfully request that the honorable court order Mr. Smith, on his date of arraignment and as a part of his conditions of release, to report to the Montpelier Police Department to be both fingerprinted and photographed. I also respectfully ask that the court make it a condition of his release that Mr. Smith attends mandatory alcohol treatment due to his obvious severe alcohol problem.

Subscribed and sworn to before me on

This 6th day of September 2010

Thomas M. Connerman
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/16/10
(Date)

MONTPELIER POLICE DEPARTMENT
LOG REPORT

09/18/10

date: 10/26/10 TUESDAY

10/24/11 18:01
v5.50

Shift: B

*RECV LIR
7 1P

56310
707-9

12/03/88 009-72-2120

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
09:14 * 112 STATE ST MON
*ibr: 1: 917
392299 * CASE WORKER REQ. ASSISTANCE WITH OUT OF CONTROL
* ID #: 2431 ALARM #: 203
: AGNT 43,
Def: LEFEBVRE, ALISON A
1763 MAIN ST MONTPELIER, VT 05602

call-back#

477-2329

*** UNIT(S) ***

804 * MON P SGT. NORDENSON
r> 09:14 d> 09:14 a> 09:18 c> 10:32 k>
814 MON P P.O. PEARSON
r> 09:14 d> 09:14 a> 09:18 c> 10:32 k>

h>

h>

*** COMMENTS ***

804 MON 09:14:04 CD-917-CASE WORKER REQ. ASSISTANCE WITH OUT OF CONT
804 MON 09:18:00 -23/ DEPT. HEAD FROM NEW SCHOOL IS ON SCENE
804 MON CALL CAME VIA 911 FROM EILEEN 477-2329. ANOTHER WORKER
804 MON HILLARY LEONARD, IS WITH LEFEBVRE BACK OF THE CHIT. BANK
804 MON IN MONTPELIER. LEFEBVRE HAS PULLED HER HAIR AND SPIT ON
804 MON HER. CALLER ADV. LEONARD HAS LOCKED HERSELF IN HER CAR.
804 MON WHICH IS A BLACK JEEP.
804 MON
804 MON 09:23:00 -95 / -76 -19 CAR 271 SM 69597.
814 MON 804 ADV. -28 ON HILARY LEONARDS VEH IS DCT846.A
814 MON 09:27:20 @ -19 WITH HER.
814 MON 09:28:07 814 EM-69598
814 MON 09:32:23 -21 MADE TO SCREENERS.

814 MON CASE MADE:

814 MON SUPERVISOR/INV OFFICER - SGT E NORDENSON
814 MON CHARGE - SAPO
814 MON CITED - NO CHARGES FILED PER 804

814 MON 09:37:00 DARLENE/WCMH SCREENERS/-76
814 MON 09:52:00 AL FROM THE FRANCIS FOUNDATION IS AT -19
814 MON 09:59:04 DARLENE/SCREENERS/IP TO SEE ALISON
814 MON 10:02:00 APPROX. TIME WCMH SCREENER ARRIVED @ -19
804 MON 10:32:00 -8

804 MON ON 10-26-2010 AT APPROXIMATELY 0914 HOURS THE MONTPELIER
804 MON POLICE DEPARTMENT RECEIVED AN EMERGENCY 911 CALL REPORTING
804 MON AN OUT OF CONTROL FEMALE IDENTIFIED AS ALISON LEFEBVRE
804 MON DOB 12-03-1988. LEFEBVRE IS KNOWN TO ME AS A CLIENT OF
804 MON THE FRANCIS FOUNDATION.

804 MON UPON ARRIVAL I OBSERVED TWO FRANCIS FOUNDATION EMPLOYEES
804 MON SPEAKING WITH LEFEBVRE (HILARY AND AL)
804 MON

date

MONTPELIER POLICE DEPARTMENT
LOG REPORT

51/15

date: 10/29/10 FRIDAY

10/24/11 18:01
75.50

Shift: C

**rev*clrk
917 3P

052 10
101-9

07/05/46

722-712

707 721

101-707

721-723

707-712

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

707

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
16:03 * 8 WILDER ST MON
*ibr: 1: 917
392471 * REQ. ASSIST TAKING CLIENT INTO CUSTODY AS HE
*

: WCMH SCREENER, DARLENE
Def: SHAW JR, CARLOS A
8 WILDER ST MONTPELIER, VT 05602
839-0333

call-back#

*** UNIT(S) ***

804 MON P SGT. NORDENSON
r> 21:20 d> 21:20 a> 21:20 c> 23:52 k>
810 * MON P P.O. KACHAJIAN
r> 16:03 d> 16:03 a> 16:55 c> 21:39 k>
812 MON P P.O. KACHAJIAN
r> 17:09 d> 17:09 a> 17:09 c> 21:36 k>
813 MON P P.O. MOULTON
r> 16:58 d> 16:58 a> 16:58 c> 21:38 k>
MAS1 MON A
r> 21:18 d> 21:18 a> 21:20 c> 22:16 k>

h>

h>

h>

h>

h>

*** COMMENTS ***

810 MON 16:03:00 CD-917-REQ. ASSIST TAKING CLIENT INTO CUSTODY AS HW
810 MON IS REFUSING TO TAKE HIS HEART MEDICATIONS. 810 HAD SOME
810 MON ADDITIONAL QUESTIONS ABOUT THIS CALL AND WILL CALL
810 MON DARLENE ON HER CELL 839-0333.
810 MON 16:11:53 -21 FROM DARLENE, THE ADDRESS IS # 8 WILDER
810 MON 16:55:02 -23 8 WILDER ST.
813 MON 16:58:08 -23
813 MON 17:09:15 -8 HE IS REFUSING TO COME OUT/ -76 BACK TO
813 MON 17:09:30 WRITE UP A SEARCH WARRANT.
810 MON 17:11:32 -8 FOR NOW. WILL RETURN ONCE WARRANT IS
813 MON 17:12:27 SIGNED.
813 MON 19:04:47 -76 TO JUDGE DEVINES RES.
MAS1 MON 21:13:18 12A1 STAGING ON WILDER.
MAS1 MON 21:20:00 A1 O/S
804 MON 21:20:00 -23
804 MON 21:24:09 HAVE THAT MALE IN CUSTODY
MAS1 MON 21:28:23 HE IS ON THE AMBULANCE NOW.
MAS1 MON 21:28:58 12A1 ENROUTE TO CVH.
MAS1 MON 21:35:48 12A1 ARRIVED CVH
804 MON 21:36:08 804 -23 AT CVH
812 MON 21:36:34 812 -8
813 MON 21:38:08 -8 COPY OF WARRANT LEFT INSIDE THE RES.
810 MON 21:38:52 -21 FROM NICOLE GOKEY 279-5419
810 MON SHE HAS CONCERNS FOR HER ANIMALS THAT ARE IN HER APT.
810 MON (APT 5) AS HER NEIGHBOR TOLD HER THE POLICE SPRAYED SOME
810 MON TYPE OF CHEMICAL.
MAS1 MON 22:09:58 12A1 R/Q
MAS1 MON 22:16:57 12A1 BIQ.
CASE MADE
810 MON INVESTIGATING OFFICER CPL KACHAJIAN
810 MON

24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY26 9

shift: C

date: 10/29/10 FRIDAY

010/18

*** COMMENTS ***

810	MON	SUPERVISOR SGT NORDENSON	72
810	MON	SUSPECT: CARLOS SHAW	72
810	MON	CHARGE: ATTEMPTED AGGRAVATED ASSAULT	72 7 1
810	MON	CITED TO APPEAR IN COURT ON 12/2/10 @ 12:30 HOURS/WCDC	72 49
810	MON		72
810	MON		72
813	MON	22:55:00 -7 -8 WENT OVER THE OC WARNINGS W/MR SHAW	49
813	MON		49
813	MON	SEE CASE FOLDER.	72
813	MON		72
813	MON	SEE 396251 WHERE CARLOS SHAW COMES IN FOR FINGER PRINTING.	72

officer's signature

date

AFFIDAVIT

STATE OF VERMONT
WASHINGTON COUNTY, ss.

NOW COMES Corporal David Kachajian, affiant(s), being duly sworn and on oath, deposes and says he has probable cause to believe that Carlos A. Shaw, Jr. (DOB: 7/5/46) has committed the offense(s) of Attempted Aggravated Assault on a Law Enforcement Officer (Two Counts), a violation of Title 13, Vermont Statutes Annotated Section 1024.

On October 29, 2010 at approximately 4:03 p.m. the Montpelier Police Department was contacted by Washington County Mental Health (WCMH) Case Worker Darlene Duff (DOB: 7/5/46) requesting that we assist her with serving an Emergency Psychiatric Examination Order on a subject by the name of Carlos A. Shaw, Jr. (DOB: 5/7/59) who resides at 8 Wilder Street/Apt. #2 in the City of Montpelier.

Ms. Duff advised me that Mr. Shaw is a client of WCMH and has not been taking his required prescription medication, Coumadin (also known as Warfarin, an anti-coagulant), which could pose a potentially life threatening incident for him if not taken as prescribed. Ms. Duff went on to tell me that she had obtained an Emergency Psychiatric Examination Order and currently had it in her possession. At this time I arranged to meet her at Mr. Shaw's residence in an attempt to have him voluntarily go to the hospital for treatment and/or an examination.

Upon arrival at 8 Wilder Street, I met with Ms. Duff, WCMH Case Worker Gary Gordon (DOB: 6/13/52), and Dr. Stuart Graves (M.D.) of WCHM. At this time I looked at the order that had been issued by Dr. Graves and read the statement given by Ms. Duff in the application of the order itself. According to Ms. Duff's statement on the order:

"Carlos Shaw is a 64 year old male who resides in an independent living situation in Montpelier. He is a CRT client of Washington County Mental Services-Diagnosed

Subscribed and sworn to before me on

this 31st day of October, 2010

[Signature]
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
10/29/10
(Date)

with Schizoaffective D/O. Carlos has a aggressive behavior and medication non-compliance. Today I received a call from Heather Griffin CRT Assit Supervisor) indicating concern that Carlos had not taken his medication (Warfarin) which presents a significant medical health risk. This clinician followed up w/Dr. Oraves and Julie Sullivan who contacted Dr. Curchin (clients PCP). According to Julie Sullivan, "Dr. Curchin reported that Carlos needs his Coumadin (Warfarin) for his mechanical heart valve and therefore recommends this emergency exam due to the potential health risk this poses". Dr. Graves, Gary Gordon and this writer went to Carlos apartment to convey the importance/medical risk of refusing his heart medication. Client refused to open his door to speak w/us and refused to take medication. As mentioned above client presents with serious medical [unknown word] and is refusing to engage in treatment. For these reasons, it is the opinion of Dr. Graves, Dr. Graves, Dr. Curchin, and this clinician that client meets the criteria for this order of treatment".

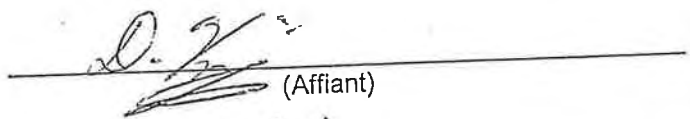
After looking over the order, I entered the apartment building and went to the door of apartment # 2, where Mr. Shaw resides. I knocked on the door and heard someone yell "Who is it" from inside. I advised Mr. Shaw why I was there and tried to explain to him that the workers from WCMH and I were concerned about his wellbeing. When I asked Mr. Shaw if either I could come in or if he would come out so that we could speak with him, he refused. Mr. Shaw was extremely agitated and appeared to be paranoid from the statements he was making. After pleading for over fifteen minutes with Mr. Shaw to come out of his apartment, I asked him one more time to meet with us to which he replied, "If you come in your violating my rights and I'll defend myself with force".

At this time I went back downstairs and met with Ms. Duff, Mr. Gordon, and Dr. Graves. Officer Moulton of the Montpelier Police Department had arrived at this point to assist me and we discussed our options. It was agreed that we would apply for a search warrant for Mr. Shaw's apartment so that we could enter and take custody of him so that he could be treated.

Subscribed and sworn to before me on
this 31st day of October, 2011


(Notary Public)

(Judicial Officer)


(Affiant)
10/31/11
(Date)

Upon arrival back at the Montpelier Police Department, Officer Moulton completed an affidavit of probable cause and submitted an application for a search warrant to the honorable Judge Thomas Devine for Mr. Shaw's premises. Judge Devine subsequently issued the search warrant to Officer Moulton for 8 Wilder Street/Apt. # 2. Prior to serving the search warrant at the residence of Mr. Shaw, Officer Moulton and I discussed the incident with our shift supervisor, Sgt. Eric Nordenson. Sgt. Nordenson advised us that Mr. Shaw could be violent and had assaulted people in the past. Sgt. Nordenson also told us that Mr. Shaw had threatened to shoot police officers in the past as well when they had gone to his residence on prior incidents. When I asked WCMH if they had any knowledge of Mr. Shaw having any weapons in his possession, they indicated that they did not know.

At approximately 9:18 p.m. Sgt. Nordenson, Officer Dion, Officer Bean, Officer Moulton, and I arrived at 8 Wilder Street to serve the search warrant on Mr. Shaw's apartment. At 9:20 p.m. we entered the apartment building and went to the second floor where Mr. Shaw's apartment was located. At this time Officer Moulton knocked on the door and asked Mr. Shaw to come out to speak with us. Officer Moulton told Mr. Shaw that we wanted to make sure that he was taking his medications and that we wanted to make sure he was alright. Mr. Shaw yelled through the door to us that he wasn't coming out and that we only wanted to "Give him psychotropic drugs". We then heard Mr. Shaw say that he would defend himself with force if we tried to come into his apartment to get him. At this point Officer Moulton asked him if he had any weapons to which Mr. Shaw said, "I'm not telling you".

Due to the fact that Mr. Shaw may have been arming himself while inside of the apartment and due to the fact that we were worried that a prolonged standoff with him might cause the stress of the situation to cause him to have a cardiac arrest because of his not having taken his medications, we decided to enter the apartment. At this point, Sgt. Nordenson started to knock on the door to mask the sound of Officer Moulton trying to turn the key, which we received from WCMH, in the door lock. Once the door was

Subscribed and sworn to before me on

this 31st day of October, 2010


(Notary Public) (Judicial Officer)


(Affiant)
10/31/10
(Date)

unlocked, Officer Moulton pushed the door open, only to find that it was chained from inside. Officer Moulton immediately forced the door open with a ram and I went around him on his right side to enter the apartment.

As I entered the apartment, I immediately observed Mr. Shaw standing approximately six feet away from me holding a three foot wooden board over his head. When he saw me enter, he immediately began swinging the board at my wildly. I immediately backed out of the apartment as he was running towards me trying to hit me in the head with the board. As I was backing out, I was yelling to him to "Drop the weapon". When I reached the threshold of the door, I moved to the right and stepped down onto the narrow flight of stairs that led up to the second floor. At this point I observed the end of the board coming towards Officer Moulton, who had been standing just outside of the doorway behind me. Upon seeing the board being swung at Officer Moulton, I raised my department issued pepper ball launcher and shot five pepper ball rounds at the doorway threshold in an attempt to stop Mr. Shaw from advancing any further towards Officer Moulton.

Even after I shot the five rounds, dispersing a cloud of pepper spray in front of Mr. Shaw, he continued to swing the board at Officer Moulton. At this time I moved slightly forward and shot two more pepper ball rounds at Mr. Shaw, who was now partially visible in the doorway. The rounds struck Mr. Shaw in the area of his shoulder/upper chest, but did not stop him. It was at this point that Officer Moulton took out his canister of pepper spray and sprayed it towards Mr. Shaw's face. After Mr. Shaw was sprayed in the face, he moved back into the apartment, but was still brandishing the board and swinging it violently towards us. After I rounded the corner from the stairs and into the apartment, I shot four more pepper balls at Mr. Shaw, hitting him twice in the chest and then twice in the shoulder as he turned. After getting hit with the last pepper ball, Mr. Shaw finally dropped the board and fell down onto the floor. After falling down to the floor, Mr. Shaw was handcuffed by Officer Dion (handcuffs double-locked and checked for tightness) and immediately removed from the apartment

Subscribed and sworn to before me on
this 31st day of October, 2010


(Notary Public) (Judicial Officer)


(Affiant)

(Date)

to an awaiting ambulance outside of the apartment building. Once on the ambulance stretcher, Mr. Shaw became compliant with our orders and/or commands. We continued to advise him that we only wanted to help him and were concerned for his mental and physical health.

Mr. Shaw was later transported to the Central Vermont Medical Center for a medical and/or psychiatric evaluation per the Emergency Examination Order we served on him. I was later advised by Sgt. Nordenson that Mr. Shaw told him at the hospital that the next time he deals with us he will, "Get us with a machine gun". Mr. Shaw was later transported to the State Hospital in Waterbury, Vermont for a psychiatric evaluation.

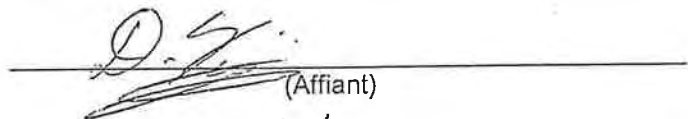
As a result of this incident, Mr. Shaw was served at the hospital by Sgt. Nordenson with a citation to appear in the Washington County District Court on December 2, 2010 at 12:30 p.m. to be arraigned on the charge of Attempted Aggravated Assault on a Law Enforcement Officer [Two Counts].

I respectfully request that the honorable court order Mr. Shaw, on his date of arraignment and as a condition of his release, to report to the Montpelier Police Department at a later date to be both fingerprinted and photographed. Due to Mr. Shaw's physical and mental wellbeing being a priority on the date he was taken into custody as well as his obvious violent actions towards the officers on scene, he was not processed at the time.

Subscribed and sworn to before me on

this 31st day of October, 2010


(Notary Public) (Judicial Officer)


(Affiant)
10/31/10
(Date)

06/24/11 18:22
-5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP5 9

shift: C

date: 11/05/10 FRIDAY

old/lst

***** RO 90C DISORDERLY CONDUCT *

**rev'dir*
314 90C

20:22 * 1 PITKIN CT MON

*ibr: 1: 314 2: 308.

3928 * INTOX. MALE WANDERING AROUND DOWNTOWN

56520
707-9

* ID #: 5336 ALARM #: 800

: 2JUVENILES,

Def: FOWLER, KEITH R

04/04/87 008-70-3040

MONTPELIER, VT 05602

call-back#

223-3445

*** UNIT(S) ***

810 MON P P.O. KACHAJIAN

707-707

r> 20:22 d> 20:22 a> 20:22 c> 21:10 k>

h>

707-707

811 MON P P.O. BEAN

r> 20:24 d> 20:24 a> 20:24 c> 20:27 k>

h>

707-707

820 * MON P P.T. P.O. OFFIC

r> 20:22 d> 20:22 a> 20:22 c> 21:10 k>

h>

*** COMMENTS ***

820 MON 20:22:00 CD-314-INTOX. MALE WANDERING AROUND DOWNTOWN

707-707

820 MON FOLLOWED TWO JUV COMPLAINTS TO -19. IS OUT FRONT.

707-

820 MON DUNSCO MN#044506 & JOHALE MN#041225.

707-

820 MON 20:24:00 OFFICERS OUT FRONT TRYING TO TAKE HIM INTO CUST

707-707

810 MON 20:26:00 HAVE HIM -95/ OUT AT -19

707-707

810 MON -21 TO FSU.

707-

810 MON (CORRECT TIME FOR THIS INCIDENT SHEET IS 20:22:00)

707-707

810 MON SUPERVISOR - SGT E NORDENSON

707-

810 MON INV OFFICER - CPL D KACHAJIAN

707-

810 MON CHARGE - DISORDERLY CONDUCT / RESISTING ARREST

707-

810 MON ATTEMPTED SIMPLE ASSAULT ON A POLICE OFFICER.

707-

810 MON CITED - DEC. 16, 2010 12:30.

707-707

810 MON

707-

810 MON 21:02:00 FSU AT -19

707-

810 MON 21:10:00 FSU HAS HIM

707-

810 MON

810 MON SEE 393061 FOR NIBRS PURPOSES FOR ATTEMPTED ASSAULT ON PO

810 MON

officer's signature

date

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 2

shift: B

date: 11/09/10 TUESDAY

01/11/10

***** R 13P ASSAULT-OFFICER ASSAULTED *13A
14:42 * 1 PITKIN CT MON
393061 * FOR NIBRS PURPOSES-SEE CASE 392878
* ID #: 5336 ALARM #: 800
Def: FOWLER, KEITH R
MONTPELIER, VT 05602
Vic: KACHAJIAN, DAVID W
1 PITKIN CT MONTPELIER, VT 05602
call-back# 223-3445

** 13P 13P
56510
9 -9

04/04/87 003 70 104

06/02/72 013-52-248-

*** UNIT(S) ***

810 * MON P P.O.KACHAJIAN

r> 14:42 d> 14:42 a> 14:42 c> 14:42 k> h>

*** COMMENTS ***

810 MON 14:42:27 CD-13P-FOR NIBRS PURPOSES-SEE CASE 392878

9

9

officer's signature

date

AFFIDAVIT

STATE OF VERMONT
WASHINGTON COUNTY, ss.

NOW COMES David Kachajian, affiant(s), being duly sworn and on oath, deposes and says he has probable cause to believe that Keith Fowler (DOB: 4/4/87) has committed the offense(s) of Attempted Simple Assault on a Police Officer, Disorderly Conduct, Resisting Arrest, a violation of Title 13, Vermont Statutes Annotated Section 1028, 1026, 3017.

On November 5, 2010 at approximately 8:22 p.m. while at the Montpelier Police Department I was notified by Dispatch that two young males had just come into the front lobby of the police station and were complaining that an intoxicated male was following them. Dispatch also advised that the male was now standing outside of the police station between the Montpelier City Hall and the steps of the police department.

At this time Officer Dion and I walked out the side door of the police station and went to the front of the building. When we arrived at the front of the building we observed a male subject, later identified as Keith Fowler (DOB: 4/4/87), staggering around near the front of the police station. When we approached the male, he immediately began to walk away from us. It was immediately apparent to both Officer Dion and I that this male was intoxicated as we observed him barely able to walk and could smell an extremely strong odor of intoxicants coming from his person. When we asked the male who he was and where he lived, he didn't answer us and continued to stagger away. Because we were in a busy parking lot with a lot of vehicle traffic coming through and because we believed that due to his intoxicated state that Mr. Fowler could possibly injure himself or someone else, we decided to place him into protective custody.

At this point Officer Dion and I each took hold of one of Mr. Fowler's arms and attempted to handcuff him. We also advised him that we were placing him into protective custody. As we were trying to handcuff him, Mr. Fowler started to yell and scream and began to actively resist us by refusing to put his hands behind his back and kicking his feet at both of our legs. After struggling with Mr. Fowler for about a minute, we were finally able to get him handcuffed behind his back. Mr. Fowler continued to struggle and refused to walk when we tried to walk him over to the sally port entrance to the police station. He also proceeded to spit at us and again tried to

Subscribed and sworn to before me on

this 5th day of Nov, 10


(Notary Public) (Judicial Officer)


(Affiant)
11/5/10
(Date)

kick us in the shins. When we arrived at the sally port garage, we radioed Dispatch and asked them to open the door so that we could bring Mr. Fowler into the building. As the door was opening, Mr. Fowler tried to step on my foot. I told him to stop trying to kick me and at that point he raised his right leg up and attempted to kick me in the left knee. At this time I grabbed a hold of his right pant leg cuff and pulled his leg backwards to prevent him from trying to strike me.

As I was pulling his leg back, Officer Dion and Officer Bean, who had just arrived to assist us, grabbed his arms and escorted him down to the floor of the sally port on his stomach. Mr. Fowler continued to struggle and fight with us by kicking and twisting his body. He also continued to spit at us. Upon entrance into the holding cell area of the police station, Mr. Fowler was shackled with leg irons and the handcuffs we had originally placed on him were double locked. For his safety as well as officer safety, he was placed on the floor, face down, to prevent him from trying to kick us again and to prevent him from falling down and injuring himself.

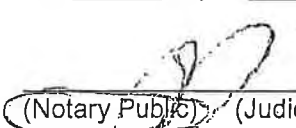
After bringing Mr. Fowler into the police station, we learned that he was currently under supervision with FSU. FSU was contacted and subsequently took custody of Mr. Fowler.

As a result of this incident, Mr. Fowler was issued a citation to appear in the Washington County District Court on December 16, 2010 at 12:30 p.m. to be arraigned on the charges of Disorder Conduct, Resisting Arrest, and Attempted Simple Assault on a Police Officer. Due to his intoxicated state and assaultive behavior, Mr. Fowler did not sign his citation. The citation was handed over to FSU Officer Al George to give to Mr. Fowler when he is no longer intoxicated.

I respectfully request that the honorable court order Mr. Fowler, on his date of arraignment and as part of his conditions of release, to report to the Montpelier Police Department to be both fingerprinted and photographed.

Subscribed and sworn to before me on

this 5th day of Nov, 10


(Notary Public)

(Judicial Officer)


(Affiant)

11/5/10
(Date)

2011

MPD PD.RLGS
v5.5n(8.7.1)
platoon: ALL
action code: 13P
geo code: ALL
where: ALL
date/time s

MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:24 PAGE
TTYP1

ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
to: from: 01/01/2011 to: 06/24/2011
string:
personnel #1 personnel #2 other per

(: 1) 06/18/11 C 405226 13P- 786 52 PROSPECT ST

MPD PD.RALG
v5.5m

MONTPELIER POLICE DEPARTMENT
ARREST LOG by DATE

06/24/11 21:04 PAGE 1
TTYPl -9

from date: 01/01/11
to date: 06/24/11

from chg: 13B2
to chg: 13B2

from off: ALL off type
to off: (A
typ: ADULT

arrest/charge type: A

name t case# date statue desc off off

009711 JONES, ADAM MICHAEL 52 PROSPECT ST, MONTPELIER, VT
dob: 10/27/80 30 A 405226 06/18/11 13-VSA-1 SIMPLE ASSAULT (OFFICER)

55

06/24/11 18:01
v5.50

2011

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TYPE: 2

shift: C

date: 06/18/11 SATURDAY

ore/lst

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
21:14 * 52 PROSPECT ST MON
*ibr: 1: 145 2: 312
405226 * LOUD MUSIC COMING FROM HOUSE ACROSS THE STREET
* ID #: 786
Def: JONES, ADAM M
52 PROSPECT ST MONTPELIER, VT 05602
Invo: COLLINS, DENNIS M
52 PROSPECT ST MONTPELIER, VT 05602
call-back# 223-7534

cvlr*
10 3F

054230
730-9

10/27/80

07/23/72 018-60-2966

*** UNIT(S) ***

805 MON P SGT. COCHRAN
r> 21:48 d> 21:48 a> 21:52 c> 23:42 k> h>
812 MON P P.O. MOULTON
r> 22:01 d> 22:01 a> 22:01 c> 22:09 k> h>
816 MON P P.O. ADAMS
r> 22:03 d> 22:03 a> 22:03 c> 22:06 k> h>
821 * MON P P.T. POJENNINGS
r> 21:48 d> 21:48 a> 21:52 c> 23:42 k> h>

730-730

730-730

730-730

730-730

*** COMMENTS ***

821 MON 21:14:18 CD-910-LOUD MUSIC COMING FROM HOUSE ACROSS THE STRE 730-730
821 MON 21:17:49 ON ASSIGNMENT- WILL BE -76 WHEN FINISHED 730-
805 MON 21:48:05 -76 730-
805 MON 21:52:05 -23 730-
821 MON 21:52:09 -23 730-
805 MON 22:00:44 REQUESTING ANOTHER UNIT, MULTIPLE UNITS RESP 722-
805 MON 22:01:21 NOW 722-
821 MON 22:01:34 821 ADV THEY ARE 1121 730-
812 MON 22:01:41 -23 730-
805 MON 22:02:48 805 ADV TO NOTIFY ALL UNITS THEY ARE ALL SET 730-
816 MON 22:03:25 -23 PROSPECT ST 730-
805 MON 22:04:40 W6 X PORTING MALE TO -19 730-
805 MON 22:04:58 MALE -95 FOR DISORDERLY CONDUCT, FAILURE TO ID 730-
805 MON 22:04:00 AND ASSUALT ON A PO 722-
816 MON 22:06:18 -8 730-
805 MON 22:05:00 -99 CHECK ON MA 018602966/ NEG IN VT- NO EX MA 730-
805 MON 22:07:48 W6 -23 AT -19 W/ MALE 730-
812 MON 22:09:41 -8, LIST DENNIS MURTAGH/DIANE MURTAUGH AS WITNESSES 730-730
821 MON 22:12:04 -8 730-
805 MON 22:13:56 W6 LEFT -19 722-
805 MON 22:18:55 BAC .242 730-
805 MON 730-
805 MON 730-
805 MON CASE MADE 730-720
805 MON INVESTIGATING OFFICER; 821- PT WILLIAM JENNINGS 730-
805 MON SUPERVISING OFFICER; 805- SGT WADE COCHRAN 730-
805 MON ASSISTING OFFICER; WCSO W6- MARC POULIN 730-9
805 MON CHARGE; DISORDERLY CONDUCT, ASSAULT ON A 730-
805 MON POLICE OFFICER 730-
805 MON CITED; 730-
805 MON 730-
805 MON 22:27:40 -21 FROM GARY ETA 20-30 MINS 722-

C 4/11 18:01
v5.5a

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTYPS

shift: C

date: 06/18/11 SATURDAY

06/18/11

*** COMMENTS ***

805 MON 22:54:00 GARY NOW AT -19
821 MON 22:58:00 -21 FROM FSU- NOT ON W/ THEM
805 MON 23:14:43 805,821 -76 TO BCPD CAR 6 SM 58659
805 MON 23:28:00 OUT AT BCPD EM 56666
805 MON 23:42:00 -8

723-
730-
730-
730-
730-

officer's signature

date



1211-11-405226

Affidavit

Montpelier Police Department

State Of Vermont

Washington County ss.

Now Comes Officer William M. Jennings, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that Adam M. Jones DOB:102780 has committed the offenses of Disorderly Conduct and Assault on a Police Officer all in violation of Title 13, Vermont Statutes Annotated, 1026 & 1028.

Synopsis:

Montpelier Police Dispatch received a reported complaint of loud music at an apartment. Upon arrival on-scene officers attempted to speak with the parties involved. While conversing with the subject, he refused to identify himself became extremely upset and aggressive, shouting in a loud voice obscenities and at one point spat in the face of one of the police officers on-scene. It should be noted this address is in a residential neighborhood. During this incident several of the residents were noted to be watching the incident unfold.

Based on the following facts:

On June 18, 2011 at approximately 21:14 hours Montpelier Police dispatch received the report of loud music coming from a residence at 52 Prospect Street, Montpelier, Vermont. Police units were unable initially to respond due to volume of calls.

At approximately 21:52 hours myself and Sergeant W. Cochran arrived on-scene. We could detect voices and other audible sounds (slapping sounds – possibly hand to skin contact) coming from the residence. We initially attempted to gain access by knocking on a second floor exterior door. We were advised that the entrance was located off of the front of the apartment building. We were met at this entrance by Adam M. Jones DOB: 10/27/80. While conversing with Sergeant Cochran it was evident that he was becoming more and more upset. His voice began to elevate to shouting and using profanities. Sergeant Cochran was attempting to gather the identity and renter of the apartment information. It was apparent that Jones was becoming more agitated. Jones would not comply with the simplest of requests. Sergeant Cochran brought Jones forward off the front porch. I assisted with Jones being placed into restraints (hand cuffs). A second male later identified as Dennis Collins DOB 07/23/72 came to the door and was conversing with

Subscribed and sworn to before me on,
This 23 day of June, 2011

Notary Public

Affiant

Date

Sergeant Cochran. Jones continued to shout loudly, using profanities and was attempting to push off/shove me. At one point he notably gathered saliva and mucous material spitting this material attempting to strike me in the face. I turned slightly, bladed Jones in a defensive position. The discharge sprayed my face and was noted latter while at the police department to have collected/pooled material on my right sleeve in the bicep area. I brought Jones to the ground on the lawn to gather further control and avoid any further activity. Jones throughout my contact at the scene was aggressive, verbally abusive and would not comply with any request. I attempted throughout my contact with Jones to speak in a controlled low volume.

A second police unit (WCSD W-6 Poulin) was requested, with Jones being transported to the Montpelier police department.

While on scene Dennis Collins advised that he was at the Jones apartment listening to music, etc. That Jones had consumed approximately three alcoholic beverages. Collins advised on several occasions that Jones was out of control (acting out) and appeared to be unsure why. Collins advised that Jones should not have acted as he did – spitting, etc.

Officer K. Moulton while on-scene advised that he had spoken with David Murtagh of 51 Prospect Street. Mr. Murtagh advised he had witnessed the incident.

Jones was transported to the police department, where he was evaluated for intoxication. An Alco-meter was administered with the results being .242 BAC. Washington County Mental Health screened Jones and determined that he should be held at Barre City's holding facility until his BAC level was reduced.

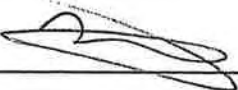
A citation was issued for Adam Jones to appear in Washington District Court on July 14, 2011 for the violations of Disorderly Conduct and Assault on a Police Officer.

On June 22, 2011 I met with Mr. Murtagh at his residence (51 Prospect Street-across the street from the incident location). He initially gave me a brief verbal statement; I requested he complete a written statement.

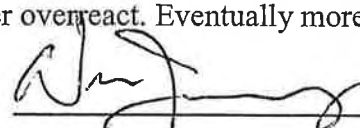
The following is the statement received.

On Friday nite June 17th about 10 PM I noticed a light being shined at the building across the street at 52 Prospect, when I went to the door to see what it was, I noticed two police officers at the upstairs apartment door and they were talking to one of the occupants and they were asking him for identification and the occupant would not cooperate with the police and started to get very belligerent and started swearing at the police officers. The more the officers talked to him the worse he became. Then the occupant started to spit at the officer, who then wrestled him to the ground and handcuffed him and all the while the occupant kept swearing and getting more and more verbally aggressive toward the two officers, who to my amazement were being very restrained in there attitude and never once did they ever overreact. Eventually more officers

Subscribed and sworn to before me on,
This 23 day of June, 2011



Notary Public


Affiant

6/23/11
Date

arrived and put a covering over the occupant's mouth to prevent him from spitting and he was taken away in one of the police cruisers.

End of statement:

Mr. Murtagh gave a very similar verbal statement. He did advise "He had not heard swearing like that since being in the navy".

Subscribed and sworn to before me on,
This 23 day of June, 2011



Notary Public



Affiant

6/23/11

Date

Assault-on-Officers Cases, Summary

Vermont statutory definition of Simple Assault, in 13 V.S.A. Section 1023, is: Causing or attempting to cause "bodily injury". "Bodily injury" is defined in Section 3251(5) as "physical pain, illness or any impairment of physical condition".

All assaults for these three years were logged as simple assaults or attempted simple assault on officer. There was no aggravated assault.

2008

5 reported, no supporting documents provided to Committee.

2009

7 reported.

DESCRIPTION OF INCIDENT	NATURE OF ASSAULT
01/12/09: "challenged" female student "out of control/in crisis", previously known to police department	Spitting, kicking. No injury.
02/24/09: combative male subject light-headed, hyper-ventilating, fainted and fell, medical issue, extreme anger alternating with calm, incoherent, p.o. trying to take him to hospital	Sore testicles, spitting and "striking": bruise to forehead, left ear skin tear, pain to pinched left hand
07/29/09: DUI, female, in holding cell, officer escorting her by her arm to different cell	punch to cheek, scratch in eye area

DESCRIPTION OF INCIDENT	NATURE OF ASSAULT
08/16/09: DUI, intoxicated female, agitated	kick to calf, pain
08/16/09: DUI, intoxicated female, combative-to-calm fluctuation, advised she suffers PTSD	her kick "grazed my groin"
10/04/09: female, 17, officer lost control of her right hand	she punched his chest
12/11 or 12/09: male, 22, BAC .115, fell through barroom glass door, subject punched officer, officer punched subject to ground; large amounts of blood, agitated, OC deployed, being escorted to ambulance, officer lost footing, struggle on ground	possible sprain to left thumb with pain, swollen left cheek

2010

7 reported.

08/01/10: female, 24, intoxicated, protective custody, being cuffed, struck officer	struck officer in face with handcuffs during transport
08/10/10: female, previously known to police dept., Erratic behavior, holding knife, disarmed, handcuffed	stomped on officer's foot; pain

DESCRIPTION OF INCIDENT

08/20/10: female, "highly intox'd", previously known to the police dept., cuffed, combative, leg irons added.

09/05/10: male, "extremely impaired", defecated in pants, BAC .324, protective custody, "very brief struggle", officer's hand between suspect and ground as they fell, leg irons added, hogtied for transport

10/26/10: "out of control" client of Frances Foundation (mental health and developmental disabilities), screeners called, subject released w/o citation to Foundation

10/29/10: police dept. called by WCMH caseworker to assist serving Emerg. Psych. Exam. Order on 64 yr-old WCMH client who was not taking psych meds and has mechanical heart valve. Living in Indep. Living situation. Schizoaffective Disorder. Swung wooden board over his head wildly.

11/05/10: male, intox'd, on foot, need for protective custody. Kicking while cuffed.

NATURE OF ASSAULT

hit officer on face; scratch on face

attempted to kick
laceration back of right hand, pain

kicked officer twice in shin

threat, no contact

Subject spat and tried to kick

2011

DESCRIPTION OF INCIDENT

I reported.

06/18/11: male, loud music complaint, agitated,
BAC .242, hood place over head.

NATURE OF ASSAULT

spat, attempted to punch officer,
no physical contact, no injury

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: August 4, 2011
RE: Interview with Cindy Taylor-Patch

I interviewed Cindy Taylor-Patch by phone on August 2, 2011. She is the Director of Training at the Vermont Police Academy, and has worked at the Academy the past ten years. She leads the mental health training, and is the only one on staff who teaches it. She has a masters degree in forensic psychology, with a police work concentration. Her previous work was as a screener for Addison County and Rutland, also as a case manager. Cindy related the following.

Mental health training is not mandatory for currently certified police, but all new full-time police trainees get it at the Academy. New part-time trainees do not receive the training. Full-time police general training is 6 weeks (with possible options to extend it an additional 3 weeks). Part-time training is one week or 58 hours. Part-time police elect 60 hours of electives training during the next year. Part-time police get provisional certification, which means they cannot work alone for the first year till they finish the additional electives and some field training.

The mental health training is 8 hours at the academy. Alternatively, if it is received locally as an in-service training, it is 6 hours, as part of yearly supplemental training of 30 hours for part-time and 20 hours for full-time officers.

The week-long Crisis Intervention Training, which Cindy received in Maine, emphasizes human interaction, local facilities visits and meetings, and teamwork. It uses role playing, and goes more in depth regarding topics that "we're only scratching the surface on" in Vermont's own 8-hour training. It brings in psychiatrists to instruct about medications and compliance, and addicts who speak about their experience. There's more human connection in the week-long course.

Vermont's one-day course "is ok for basic awareness, but doesn't give the awareness of the longer course."

Cindy and others have tried to have the week-long CIT training adopted by Vermont, but "we need more people to buy into it, like the Memphis and other CIT programs were able to get". She has proposed county-wide CIT teams for Vermont, just like agencies that share canine units.

These CIT teams have a different approach than screeners, who often aren't called or wanted by the police at encounter scenes for safety reasons. Members of the CIT teams are usually law enforcement personnel. The data that has been collected from the CIT approach has shown a reductions of injuries, and also a saving of officer time because the CIT personnel are trusted by both emergency room personnel and screeners. The CIT approach has also shown a reduction of liability. And it provides extra training for the employees that a police force already has, because they observe the CIT team on the scene.

Cindy said the police social worker model is a “very exciting” model, both for handling difficult situations and for officers learning from the police staff social worker. It may be possible to do this on a county-wide basis.

She regards both the CIT and the police social worker approach as “critical” elements for a force.

As to stun guns, she takes no position. She is in the middle of the law enforcement and mental health worlds. She noted that Vermont does not provide taser training, TASER International does that.

She will see if it's possible to provide us both the Vermont curriculum and the CIT curriculum. She might be able to speak to us if we felt more from her were necessary, but Tuesday evenings are not possible, we would have to meet on another evening.

END

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: July 28, 2011
RE: Interview with Joe Damiata, Vermont League of Cities and Towns

I interviewed Mr. Damiata this date at the VLCT offices in Montpelier. Joe is the manager of the League's safety and health programs, is an underwriter, and was familiar with the various VLCT model policies, including the one titled "Response to Resistance" that Chief Facos is proposing to adopt. Joe has worked with Chief Facos in various contexts, and has high respect for him.

The purpose of the League is to insure member towns and cities in Vermont. VLCT has distributed to its clients a collection of model policies created by the Legal and Risk Management Institute, a national company owned by a former police chief, and whose policy-making panel is composed solely of current and retired law enforcement personnel. "Our ultimate goal is to reduce the exposure and liability of municipalities," Joe stated.

As to the Response to Resistance policy, he stated that "police departments should go through it and customize it, make sure it fits their department. We don't tell them to take these and put them [directly] on the shelf."

During the course of our conversation, Joe made the following additional comments:

1. Complete training at the Vermont Police Academy for full-time officers is 16 weeks plus another 4 if certain special training is added, such as DUI. Part-time police, however, receive only one week's training.
2. The adoption of tasers does not affect the amount of a city's insurance premium.
3. He agreed that the introductory paragraph of the Response to Resistance policy purports to give no legal rights sounds like the policy is legally unenforceable in a court of law. He also conceded that this language would have the effect of discouraging a citizen from believing the policy was legally enforceable.
4. In being written from a motivation to minimize legal exposure of a city or town, Joe said he can understand how a citizen panel such as ours might be concerned that the Response to Resistance policy, aimed at risk management, might not weigh all countervailing interests, such as citizen protection from low policy standards, or the interest that there not be a too-early resort to a particular level of force due to a low deployment standard. (These two examples were mine.)
5. Joe acknowledged the presence of vague terms in some policies, such as the example I pointed out to him on page one of the Response to Resistance model policy on page one, being the definition of "reasonable belief". He said police policy organizations such as the

International Association of Chiefs of Police, as well as insurance companies, sometimes favor vague policy terms.

6. Even though cameras can sometimes capture events that increase exposure to liability, Joe stated that, on balance, from a risk management standpoint, “cameras are better than no cameras”, and that body cameras capture the full event.

7. “Our main goal”, he concluded, “is to protect [cities and towns] from liability.”

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: August 9, 2011
RE: Interview with Thomas Hanley, Chief, Middlebury Police Department

I interviewed Chief Hanley today by telephone. Hanley has been chief of the Middlebury force for the past twenty years, having previously been in law enforcement in Connecticut. He stated the following.

“We’re not so wrapped with officer injuries that we felt we needed tasers. And it’s expensive. There’s purchase, training, replacement, recurring costs, constant training, etc.” In a cost-benefit analysis, we decided we didn’t need them.

Middlebury’s crime statistics “are about in the middle of Vermont communities. We don’t have a lot of violent crime, it’s mostly property crime. We’re not seeing day-to-day or historical evidence of the need for tasers. If I were in a more combative environment, I might think twice about it.”

Middlebury has not had a lot of workers comp claims by officers. Most of our officer injuries are close contact injuries, like punches, bites, lacerations and abrasions. No injuries that have required hospitalization. Our most severe injury was a broken hand once.

Hanley has not had requests from his officers to get tasers tasers, just occasional queries about whether they need them. Nor has the town exerted pressure on the force to get tasers.

The Middlebury force emphasizes officer fitness, training and personal skills in dealing with confrontational situations. Beyond that, they rely on pepper spray, which has been a “pretty effective tool” in most instances.

Hanley’s decision not to seek tasers comes from his question: “Is this a tool we need, or a gadget sitting on the officer’s belt? You’re not going to go into a high risk situation with a taser drawn, you’re going to have your gun drawn. A taser can give the officer a false sense of safety or security.”

Many of the Middlebury officers have gone through the 6-hour Academy mental health training, and the local mental health office has done supplemental in-service training for them. Middlebury, as a town with mental health facilities, has a large number of mental health-challenged individuals, as well as its fair share of substance abuse cases.

END

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: August 3, 2011
RE: Interview with Sam Hill, Sheriff, Washington County

I interviewed Washington County Sheriff Sam Hill by phone on July 14, 2011.

Sheriff Hill thinks stun guns are an excellent tool but that "we don't need them here". He said that's because "we're not front-line officers". However, the Sheriff's routine citizen contacts do include vehicle stops for various infractions including Driving Under the Influence; transporting juveniles and people in some stage of mental health commitment proceedings; and also in being the agency that transports prisoners between prisons and courts.

Hill stated that his office does not incur many work-related injuries, and none have been major. Some of the injuries that have occurred have been while transporting prisoners. His officers rely on batons, pepper spray and physical restraint.

Some of his officers have requested stun guns. Hill has no interest in acquiring them.

Report and Recommendations of the
Committee on Tasers
to the
Montpelier City Council

November 2, 2011

Submitted by:

Jeffrey Dworkin (chair)
Polly Ellerbe
Zack Hughes (co-chair)
Marilyn Mode

Not joining, and submitting
a separate report:

Nick Marro

Table of Contents

Executive Summary	i-ix
Introduction and Conclusions	1
I. A General Orientation to Tasers	1
II. Weighing the Risks against the Potential Utility of Tasers in Montpelier	3
1. How Safe Are Tasers? The Research and the Views	5
2. The Widely-Recognized Dangers, Cautions and Limitations Pertaining To the Use of Tasers	9
3. Studies Indicate That Tasers: 1) Do Not Cause A Reduction in the Use of Lethal Force, 2) Do Cause an Earlier Resort to Higher Levels of Force, and 3) Are Frequently Recklessly Deployed in Violation of Accepted Standards.	13
4. The Montpelier Use-of-Force Reports and Their Meaning	15
5. The Montpelier Assault-on-Officer Reports and Their Meaning	16
6. Putting Our “Typical Force Scenarios” in a Taser Context	17
a) A Montpelier Case Example	
b) Comparing Montpelier to Some Other Vermont Communities	
7. The Community Views and the Police-Community Relationship	21
8. The Workers Compensation Argument	21
9. The Expansion of Municipal Liability Exposure	22
10. A Realistic Appraisal of the True Total Costs	23

III. The Police Department Has Not Proposed a Prudent and Protective Policy Regarding Tasers, Raising the Prospect of the Introduction into the Community of a Poorly-Regulated New Weapon.

24

A. The Introductory Language of the Proposed Policy Seeks to Make Its Provisions Legally Unenforceable By A Citizen Aggrieved By Police Use of Force.

B. The Proposed Policy Locates Tasers Dangerously Low on the Use of Force Continuum, Encouraging Early and Premature Resort to a Potentially Lethal Weapon

C. The Proposed Policy Chooses A Vague and Dangerously Permissive Standard To Govern When Tasers May Be Used on Subjects.

D. A High Policy Standard Regarding the Deployment of Tasers is Especially Important for Public Protection, in Light of the Low Standard Used by the Federal Court Regarding Allegations of Excessive Force.

IV. In Light of the Lack of Objective Showing That Tasers Are Necessary Here, There are Better, More Productive Ways to Spend the Money To Advance Public Safety

33

V. If the City Council Approves the Purchase of Tasers, The Following Preconditions To Their Purchase and Use Should Be Adopted

36

Executive Summary

Introduction

A committee of Montpelier residents was appointed by the City Council and charged to recommend whether the Council should approve buying Tasers for the city police force, and if so, to recommend any conditions, limitations or standards that should pertain. The Committee met weekly from May through October, 2011, taking various forms of evidence on the subject.

The Committee recommends that Montpelier not authorize the purchase of Tasers for the police. The Committee further recommends that should the Council decide to authorize the purchase, certain prerequisites should be in place before a purchase is made and the weapon is deployed, in order to increase community safety and confidence.

I. A General Orientation to Tasers

The Taser is a pistol-shaped weapon that fires two probes at a person (“probe mode”). The probes are connected to the Taser by wires, and when fired they embed in the person and deliver an electric charge of 50,000 volts. The electric charge is experienced as excruciating pain, full-body muscle contraction, and a loss of physical control. The Taser can also be pressed against the person (“drive stun” mode), which causes extreme pain without muscle contraction. The amount of electricity delivered by a Taser is 100 times that which causes intolerable pain in laboratory studies. Because the Taser probes are propelled by nitrogen (rather than by an explosive propellant), the device is subject to no government oversight or regulation. Further, the device has not been adequately studied to determine its effects on various human populations. The company refers to the device as “less lethal”. It is capable of causing death and serious bodily injury.

II. Weighing the Risks against the Potential Utility of Tasers in Montpelier

Strong arguments are made on both sides of the question whether to buy Tasers for the Montpelier police. There are hypothetical situations when a Taser could be useful. But the Committee was charged with making an “assessment of need” for the weapon here, in Montpelier; and to do that the Committee focused on what really happens here, not what can be imagined. Many communities have adopted Tasers, in and out of Vermont; many have not. The threshold question for the Committee was whether Tasers are necessary, advisable and appropriate in Montpelier, based on this city’s unique circumstances.

As a guiding rule for this analysis, the Committee looked to the highly respected International Association of Chiefs of Police (IACP), which states, in a position paper on “Use of Force”:

The National Law Enforcement Policy Center does not advocate the use of any specific non-deadly force weapons. The appropriateness of any such weapon depends largely on the needs and desires of each police department in the context of **the community in which it operates** and in accordance with the **service demands** and **typical force scenarios** faced by its police personnel. . . . A critical element

of that decision-making process is an assessment of the **limitations of each device** or technique, and the **potential for its abuse or failure**. [Emphases added.]

Chief Facos has advocated for Tasers based on his belief that: 1) there have been frequent-enough incidents where Tasers would have been the best option; 2) there have been frequent incidents of assaults on police officers in Montpelier; and, 3) Tasers would lower worker compensation claims. Our research presents a different picture regarding each of these points.

1. How Safe Are Tasers? The Research and the Views

The Taser company has maintained that the risk of death or serious injury from the device is extremely low. But after the company lost two multi-million dollar lawsuits, in 2008 and 2011, due to having insufficiently warned of the dangers of the device, it began to publish more realistic warnings about the device for its user-clients. In 2009, and again in 2010, the company warned users to curtail the use of Tasers to a very limited group of people, to very limited parts of the body, and to very limited situations. As a consequence of these new warnings, any report before 2009 on the dangers and utility of Tasers is outdated in that it likely underestimates the dangers of the device. In the new warnings:

1. The company now says that Tasers should not be used on people who are members of the high risk, or vulnerable, populations, including: those who are physically infirm, elderly, or pregnant; suffering from drug effects, alcohol effects, or cardiac disease; in mental health distress; and suffering one of a long list of pre-existing conditions. **Most of the subjects in typical “street” encounters are no longer safe targets for Tasers.**

2. The company now advises not to shoot at the chest, because of serious cardiac-related concerns. The company further warns not to shoot at the head, throat, chest/breast, known pre-existing injury areas, and eyes. "The preferred target areas are the lower center mass (below chest) for front shots and below the neck area for back shots." **Much of the body is now not safely targetable.**

3. The company now says that people especially at risk of serious injury or death are those who could fall and hit their heads, are on an elevated area, are restrained, are anywhere near a knife, are in motion, or are in water. **Many situations are no longer safe for Taser use.**

The number of deaths associated with Taser use is difficult to calculate. Amnesty International claims 349 such deaths from 2001-2008. Some regard this figure as low, others as high, but that the device has been a contributing cause of numerous deaths, and many more injuries, is undeniable. The company now concedes the risk of death associated with the device.

Single shots of Tasers are regarded by the U.S. Department of Justice as probably safe for "healthy, normal, non-stressed, non-intoxicated persons". But this healthy, normal population is not the one against whom the weapon is predominantly deployed. Most confrontational situations encountered by the police nationally, and virtually all encountered by the Montpelier police, involve either intoxicated or mentally distressed persons – two populations on whom the Taser company itself now warns against use of the weapon.

The company's new warnings likely understate the danger of the weapon. An analysis of various product safety studies that have been conducted on Tasers found that the likelihood of a study concluding Taser devices are safe was 75 percent higher when the studies were either funded by the manufacturer or written by authors affiliated with the company, than when studies were

conducted independently.

When all the cautions, prohibitions and limitations are accounted for, it is apparent that a **Taser may only be discharged against a healthy, sober, rational, and clear-headed non-elderly adult who is not pregnant, running, nor in a dangerous environment, and that the device must be capable of being reliably aimed at the abdomen or the back.** All current limitations show that the Taser is now a weapon of extremely limited safe applicability.

Added to this is the fact that Tasers have a high potential for erroneous deployment, with the possibility of tragic consequences. That is because an officer in the field, managing difficult circumstances, simply cannot know enough to know if it is safe to use a Taser. How can he or she know if a suspect has a heart condition, is pregnant, is intoxicated, mentally ill or cognitively impaired, to name just a few of the vulnerable populations on which a Taser must not be used?

A further risk for safe deployment is the fact that the probes from a Taser cannot be aimed as precisely as a gun or pepperball launcher, because the Taser probes move further apart as the distance they fly increases, at the rate of one foot for every seven feet of travel. This difficulty in accurate aiming means it is exceedingly difficult in the field to avoid hitting the prohibited areas of the body. As the company admits: “[T]his is not a precision aiming device. There will be many times when people are hit in head, chest, and eye.”

Overall, the unknowability of the health and circumstances of the subject, coupled with the inherent dangers and imprecision of the device, put police in a stressful conundrum: In the rapidly-evolving and perceptually challenging circumstances of police-citizen confrontation, the police cannot know as much as they need to know about the subject to be able to feel reasonably confident that the device can be safely deployed. As the Maryland Attorney General’s Report states: “[A] use-of-force option that normally is not deadly, may in some instances be lethal even where the officer had no intention of using lethal force, did not believe lethal force was necessary, and used the force tool in a manner that normally would not increase the risk of death”. All the warnings about, and all the trainings in the use of, the weapon cannot remove this dilemma for the officer and this danger to the public.

2. Studies Indicate That Tasers: 1) Do Not Cause A Reduction in the Use of Lethal Force, 2) Do Cause an Earlier Resort to Higher Levels of Force, and 3) Are Frequently Recklessly Deployed in Violation of Accepted Standards.

Taser proponents often assert that when the police have Tasers, the use of firearms goes down. Data from three departments in Arizona that serve 2.3 million residents show that this hypothesis is not true. This study showed no reduction in the use of firearms by police where Tasers were in the arsenal. It also showed that the presence of Tasers was associated with an earlier resort to a higher level of force against subjects.

This same conclusion was reached in a study of the Houston police. The Houston Chronicle reported in 2007 that “officers have shot, wounded and killed as many people as before the widespread use of the stun guns.” Thirty-five per cent of the Taser deployments led to no crime being charged.

And in a just-released study of Taser incidents in New York State, 60% of reported incidents using Tasers did not meet a criterion of aggression by the suspect or a risk of physical injury. More than 25% of Taser incidents involved shocks to the subject's chest area, in spite of the explicit warnings by the company that targeting the chest can cause cardiac arrest. 85% of tased subjects were neither armed nor believed to be armed.

Thus, the available data indicate that Tasers do not result in a reduced resort to lethal force, but that they do cause an earlier resort to higher levels of force where less severe force would suffice, thus exposing the citizenry to higher overall levels of force and attendant risks to life and health. The data also indicates an alarming lack of compliance with accepted standards governing the weapon's deployment. These data bear out the concern expressed in many studies and by numerous witnesses before the Committee, for the likelihood of "mission creep".

3. Are Tasers Right for Montpelier, in the Light of Our Own Data and Typical Force Scenarios?

The Committee analyzed various factors and data that bear on the decision whether there is a bona fide need for Tasers in Montpelier.

a) Use-of Force Reports. The committee analyzed police reports that document any use of force by police from the latter part of 2008 through June of 2011. These reports reveal that no party, neither officer or suspect, received a single serious injury in any of these incidents. In addition, 12 of the 15 incidents involved vulnerable populations or flight, which constitute populations and a situation in which Tasers are prohibited except in the most extreme circumstances. All fifteen incidents were handled competently and effectively by the police with their present array of skills and weaponry. It is apparent that we do not have "typical force scenarios" here that would warrant the addition of Tasers to our police arsenal.

b) Assault-on-Officer Reports. The committee was initially informed by Chief Facos that Montpelier had eight assaults on officers in 2008, and that this was the highest number of any Vermont city or town that reported that statistic. During Committee hearings he reduced this number to five. The committee analyzed documentation of assaults on officers from 2009 to date. They showed that four of the incidents involved no contact or injury whatsoever. Of the remaining 11, some minor injuries occurred, primarily in the nature of scrapes and pain. All the assaults were in the nature of simple assaults, none was aggravated. Again, the officers were able to handle all the incidents efficiently without serious injury to either party with the skills and weapons they have. Importantly, *every one* of these assault-on-officer cases involved an individual who was in a vulnerable population on which a Taser should not be used except when lethal force would be justified.

c) Different Communities, Different Choices. At Chief Facos's suggestion, the Committee interviewed the deputy police chief of Burlington and the police chief of South Burlington, both being cities which employ Tasers. For a contrasting approach, the Committee interviewed the chiefs of the Bennington and Middlebury police forces, both being towns which considered but declined to buy Tasers. It is clear that Montpelier's size, crime rate, arrests and typical force scenarios more resemble those of Bennington and Middlebury than those of the "more combative" environments of Burlington and South Burlington. .

d) A Deeply Divided Community. The community of Montpelier appears deeply divided over the issue of Tasers. This is borne out by the nearly even split in public opinion on the issue in this year's Doyle Poll. It is also noteworthy that most of the public comment at both the City Council's and the Committee's hearings on the matter indicated strong opposition to acquiring the weapon. Introducing this weapon in such a divided community, where the necessity for it has not been shown, is both unwarranted and could be harmful to the police-community compact, the most important asset of law enforcement.

e) The Workers Compensation Argument. Chief Facos asserted that Tasers will lower

our worker compensation claims. The Committee analyzed claims from 2008 to the present. These showed only minor injuries from any cause, and just one claim that led to a loss of work time, stemming from an officer stubbing his toe while walking from a roadway to a sidewalk. There was no incident underlying these claims in which the deployment of a Taser would have been appropriate, or in which its use would have avoided even the minor injuries for which claims were made.

g) The Expansion of Municipal Liability Exposure. The effect of the Taser company's recent and extensive limitations on its use is that the manufacturer has insulated itself from the kind of liability exposure it suffered in its 2008 and 2011 litigation losses. This "move" by the manufacturer now removes it as a "deep pocket" litigation target for product liability, and leaves police officers, municipalities and their insurers now standing alone in lawsuits alleging negligent use, excessive force, and substandard training and supervision.

h) The Real Costs. The cost of the weapon itself is only one part of the total cost of using Tasers. The Committee brought this up with Chief Facos, upon which he agreed to calculate the cost of the Taser units plus the prudent and necessary items mutually agreed upon, but the Chief did not produce such an estimate. Those agreed items and expenses include, for example, Crisis Intervention Team training, body cameras, defibrillators and data storage. The cost of these items is far above the cost of the units themselves. Any further consideration of Taser purchase by the Council should be preceded by a full and detailed calculation of all related costs, so that everyone, including taxpayers, can understand the true investment this weapon would require, in light of competing city needs and priorities.

III. The Police Department Has Not Proposed a Prudent and Protective Policy Regarding Tasers, Raising the Prospect of the Introduction into the Community of a Poorly-Regulated New Weapon.

A clear and specific use-of-force policy is in everyone's interest, citizens and police alike. As stated by the International Association of Chiefs of Police:

Police administrators should not be hesitant to develop comprehensive, strong, and definitive policies and procedures for fear that they may prove prejudicial to a future court assessment of an officer's conduct. In fact, **failure to adopt a use-of-force policy in clear and unequivocal terms will almost certainly have more serious consequences for the officer's agency and employing jurisdiction.**
[Emphasis added.]

The policy that has been proposed by Chief Facos is the model policy provided by the Vermont League of Cities and Towns (VLCT), the insurance company which ensures Montpelier. This policy is primarily written to protect insurance companies from financial liability, not to provide sound police guidance, nor citizen protection from low standards. The policy uses vague and non-mandatory language, poorly defines its terms, offers a confusing and low standard of deployment for Tasers, and purports that citizens have no legal right to sue based on violations of the policy. The insurer's own representative noted that the company does not expect a police force to put their model policy "directly on the shelf", but rather to modify it to fit the community. Unfortunately, this model policy has been taken whole-cloth by Chief Facos, and not modified by him to fit the circumstances and values of this community.

Contrary to his formal request for Tasers for use in “violent encounters”, Chief Facos has, in his proposed policy, advocated the lowest Taser deployment standard used anywhere— that of “active resistance”, which can be satisfied by as little as a “stiffening” “hunching” or pulling away. The standard for use of a Taser here should be “a threat of imminent serious bodily injury,” otherwise known as a lethal force standard. This is the standard that is recommended by several of the organizations that have studied Tasers, as well as the several human rights-oriented attorneys who spoke to the Committee. Any lower standard would be an invitation to the abusive deployment of the weapon that the public most fears, undermining the police-community relationship.

A high deployment standard is also important in light of the fact that our Second Circuit Court of Appeals, which presides over federal court appeals from Vermont, has shown a disturbingly unprotective view toward citizens alleging excessive force by police. This has recently been demonstrated when the court found no constitutional violation in the recent case of the Brattleboro protesters who were tased while passively protesting at a development site. It is a case that all police witnesses, including Chief Facos, said was wrongly decided, and an attitude on the part of the court that Chief Facos conceded is of “concern” to him.

The Chief’s proposed policy would place Tasers on the use-of-force continuum on a par with pepperballs. This is too low in light of the potential lethality of the weapon. Tasers should be located immediately below firearms on the continuum, to recognize their dangerousness, to discourage abusive or premature deployment, and to protect the public.

IV. In Light of the Lack of Objective Showing That Tasers Are Necessary Here, There are Better, More Productive Ways to Spend the Money To Advance Public Safety.

The City is facing difficult choices, in light of the condition of its infrastructure, schools, and tax base. Given that the evidence demonstrates a wish for Tasers based on hypothetical scenarios but not a real and present need for the device, any further expenditure for law enforcement should be directed toward more effective remedies.

We recommend that Crisis Intervention Team training be required as part of Montpelier police training. Such training in handling mental health issues goes far beyond the Act 80 training that every Montpelier Police Department employee now receives. A strong majority of Committee witnesses, including most of those from the field of mental health, advocated for CIT training to enable police to identify mental health issues and de-escalate difficult encounters. The FBI is a strong proponent of the training, and Chief Facos endorses the idea.

An alternative to CIT training is the funding of a staff position of a police social worker. This person would be trained in crisis intervention techniques, and could accompany officers to a disturbance or be called there quickly in order to de-escalate a confrontational situation and decrease the likelihood of violence.

V. Should the City Council Approve the Purchase of Tasers, The Following Preconditions To Their Purchase and Use Should Be Adopted.

Should City Council, despite the Committee’s recommendation, approve the purchase of Tasers, it is critical that high standards, strict safety measures, extensive training, and methods for

heightened police accountability be implemented before such purchase and deployment. The following, culled from the major studies of Tasers, are essential preconditions to their acquisition and deployment by the Montpelier Police Department.

1. Require Crisis Intervention Team training: The Committee further recommends this training for our officers even if Tasers are not added to the police arsenal.

2. Create a police social worker position in the police force.

3. Require and develop in-depth police training in the use and dangers of the device: The major research regarding Tasers expresses virtually universal skepticism regarding the company's assurances of safety. There is likewise a universal recommendation that local police forces not rely solely on the company's in-house training in the device, but rather supplement it with more in-depth and objectively arrived-at training standards. Officer certification in Taser use should also include personal exposure to a full-force and full-duration(five-second) discharge.

4. Adopt an "imminent threat of serious bodily injury" deployment standard: Tasers should be subject to an "imminent threat of serious bodily injury" deployment standard. The lower "risk of harm" standard is more atmospheric than substantive, does not restrain abusive or premature deployment, and is insufficiently protective of the public.

5. Position Tasers immediately below firearms on the force continuum.

6. Equip officers with body cameras: Police must be equipped with body cameras, for the protection they offer to everyone involved and to the City itself. Body cameras require policy that requires they be "on" at the beginning of any "street" encounters. Chief Facos has no objection to equipping officers with body cameras.

7. Carry defibrillators in cruisers and require officer training and competency in their use: Tasers are especially dangerous for individuals with heart conditions or who are highly agitated, including the intoxicated and the mentally ill. Heart complications, such as ventricular defibrillation, are a serious concern and a prominent suspect in Taser-related deaths. The Committee and Chief Facos agree with the wisdom of placing a defibrillator in every cruiser. Officers must be trained and shown competent in its use.

8. Collect and preserve data indefinitely: The Committee believes that it is imperative that Taser-related data be preserved indefinitely. Chief Facos agrees with this.

9. Add pepper foam to the police arsenal, and consider other less lethal alternatives to Tasers: The Police arsenal should include pepper foam. This weapon was specifically developed to offset one of the limitations of pepper spray, being that its gasses can be drawn into a ventilation system. The Committee also recommends the police department investigate other, non- and relatively less-lethal weapons, such as projected bean bags, foam batons, and the newly-developed police devices that immobilize by means of intense light.

10. Create a Citizen Review Board: The Committee strongly recommends, and Chief Facos believes could be beneficial, the creation of a Citizen Review Board, to review use-of-force incidents. Such a board would not only be a helpful investigatory tool for the city, but would also help maintain or improve police-community relations, especially in light of the deep division of public opinion regarding Tasers. The Committee recommends such a board regardless of whether Tasers are acquired. This board would need sufficient resources, unrestricted access to information, and meaningful powers, for it to have credibility in the community.

11. Prohibit drive stun mode: The Committee recommends the prohibition of the device in drive stun mode, to prevent both the aggravation of an encounter and to make less likely the potential for abusive deployment of the device.

12. Prohibit tasing a fleeing or running subject: All major studies prohibit deploying Tasers on fleeing or running subjects, due to the increased risk of injury or death.

13. Use specific, descriptive and mandatory language in written policy: The proposed VLCT policy is replete with suggestive, non-mandatory language that does not protect the officer or the public. Terms such as “should”, “it is recommended”, “should consider”, and similar non-mandatory language should be replaced with mandatory terms (“must”, “shall”) when possible. The lack of such language fails to guide police and is an invitation to municipal liability.

14. Include in any policy the current policy’s humane and cautious principles regarding an escalating use of force: Our current Use of Force policy, on page one, contains several common-sense, humane and cautious principles that the proposed VLCT policy omits. These principles require using escalating force, and only that amount of force which is necessary to control the situation or persons. These principles should be incorporated into any proposed or future use-of-force policy, to protect the public and limit potential city liability.

15. Fully specify all populations and circumstances relevant to limitations on Taser deployment: The itemizing of the prohibitions listed earlier in this report, *including the cognitively disabled*, should be set out with specificity in any written use of force policy.

16. Require warnings when possible before deployment.

17. Prohibit use of a taser as a pain compliance weapon or general force tool.

18. Prohibit multiple shots and continuous or prolonged exposure except where lethal force would be justified: Taser shocks should be as brief as possible. The death rate of subjects rises when multiple or continuous shocks are used..

19. Prohibit Taser use on subjects in restraints except where lethal force would be justified.

20. Avoid impairment of respiration: Respiratory complications are associated with

Taser use. Following Taser deployment, an officer must not employ a restraint method that could impair a subject's respiration.

21. Provide emergency medical care immediately after *all* taser use.

22. Monitor tased subject's health closely while in custody: Studies indicate that the in-custody death rate rises after the introduction of Tasers.

23. Reporting, supervision and monitoring: All Taser incidents must be reported on a use-of-force form extensively detailing events leading up to and following the discharge.

24. Supervisors should respond to the scene of any Taser deployment as soon as possible.

25. Conduct rigorous investigation following each deployment: A supervisory-level or higher inquiry must be conducted to determine the appropriateness of every deployment and whether there was strict adherence to policy and training. External investigation, by Citizen Review Board or otherwise, occur when a subject dies or is seriously injured, when there has been a substantial deviation from policy or training, when the subject is a restrained, or when a Taser is deployed against a member of a vulnerable population as defined in this report.

26. Monitor Taser use by the agency: The police force should use a tracking database that is capable of maintaining detailed information as to each device and each deployment, can reveal the circumstances of every Taser deployment, and can show the extent to which officers are relying on the device compared to other forms and methods of control. This information and data must be available to the public.

Report and Recommendations

Introduction and Conclusions

In the spring of 2011, the Montpelier City Council appointed six residents¹ to a committee to investigate and make recommendations regarding an issue which has been before the Council for several years – whether to grant the request of the Police Chief for funding to purchase fourteen electronic control devices (“Tasers”, “ECWs” [electronic control weapons], “ECDs” [electronic control devices], “stun guns”) for distribution to and use by officers in the police force. The appointees were selected from city residents who volunteered for the task. The Committee met weekly from May to November of 2011, hearing from experts, community leaders, and members of the public; reviewing numerous research and reports on Tasers; reviewing various video testimonies on the subject; and interviewing others with relevant information. The Committee deeply appreciates the scores of individuals who gave of their time to inform the Committee on the issues, by direct testimony, telephone interview, email and teleconference. The Committee is especially appreciative of the many Tuesday evenings Chief Facos devoted to this effort. Although this report reflects some differences of view between the Committee and the Chief, we were fortunate to have his strong advocacy a part of our process, and we are fortunate to have his dedicated leadership of the Montpelier Police Force.

The Council’s charge to the Committee was that it recommend:

- 1) whether the Council should approve the purchase of Tasers by the Police Department, and
- 2) if so, under what conditions, limitations and standards.

This report answers those questions in that order, followed by certain specific recommendations. It represents the views of four of the five Committee members. A separate minority report will accompany this one. The Committee concludes:

Recommendation 1: Montpelier should not purchase Tasers for the police.

Recommendation 2: Should the City Council authorize the purchase of Tasers notwithstanding the Committee’s recommendation, then certain conditions and prerequisites should be implemented prior to purchase and deployment in order to increase safety and community confidence.

I. A General Orientation to Tasers

The Taser (the most common brand of ECW) is a pistol-shaped, hand-held, battery-

¹ One Committee member resigned in September.

powered device that can be either fired at or pressed against an individual, discharging 50,000 volts of electricity into the subject. In its “probe” mode, two barbed darts are fired at the subject, typically from a distance of up to 21 feet. The darts are connected to the base unit by electrical wires. When both barbs successfully embed in the subject’s body, the Taser, wires and subject’s body complete an electrical circuit, causing a discharge of electricity into the subject. Each electrical discharge lasts for a predetermined five-second interval or, at the officer’s choice, for a continuous, indefinite length of time. In the probe mode the device causes excruciating pain, full-body muscle contraction, loss of physical control, immobilization and falling. In its “drive stun” mode, the base unit makes direct contact with the body. The electrical shock in this mode does not cause muscle contraction and physical immobilization; rather, it is strictly a pain-compliance device in this mode, inducing extreme pain continuously for as long as the device makes direct contact with the person’s body. The Police Executive Research Forum has warned that Tasers used in this manner “may have limited effectiveness” – it can cause the exacerbation of a confrontational situation – and so has discouraged police forces from using Tasers in the drive stun mode, although some forces still permit it, and the company still endorses use of Tasers in this manner.

There are misconceptions as to the force of the electric charge of a Taser.² The Taser company publishes the assertion that the X26 model, which is the one sought by Chief Facos, delivers an *average* current of 2.1 milliamps. However, a Taser doesn’t deliver its charge to the subject as an average, but rather as a series of pulses, which series is made possible by a capacitor that, like a bucket, stores power for each pulse. Thus, tased individual experiences the actual “delivered charge”, which for each pulse is approximately 100 micro-coulombs. To put this in perspective, laboratory experiments of human subjects show that intolerable pain is felt at 1.0 micro-coulombs.

In their original form, the Taser relied on a gunpowder-fired probe cartridge, and because of that explosive propellant the device was subject to federal regulation and oversight by the Bureau of Alcohol, Tobacco and Firearms and Explosives. However, since 1994 the the Taser company has manufactured the cartridge with nitrogen as the propellant, thereby removing the device from all meaningful government oversight and regulation.³ It is conceded by all interested parties, including the company, that the device has not been adequately studied to determine its effects on various human populations.

Tasers are commonly referred to as “less lethal” weapons, indicating they are considered to have less potential lethality than a firearm; they are nevertheless capable of causing death and

² The Committee’s attention was called to this issue by John Burton, a plaintiff’s attorney from Pasadena, California, who won the first successful verdicts against the Taser company, in 2008 and 2011. The explanation of the way the Taser functions electrically, which follows, is taken from Appendix A of the Braidwood Inquiry, a Canadian government study of that country’s use of Tasers, conducted following the 2007 death of a man who was tased at the Vancouver Airport.

³ The Consumer Product Safety Commission has the legal power to oversee the device, but has conducted no testing of it, nor offered any opinion as to its safety.

serious bodily injury.

II. Weighing the Risks against the Potential Utility of Tasers in Montpelier

Strong arguments are made on both sides of the question whether or not it would be helpful and prudent to add this weapon to the Montpelier police arsenal. On the one hand is the forceful position that both citizens and officers are protected by Tasers, because they may handle some police-citizen encounters in a manner that controls a difficult situation and subdues a violent individual without serious injury to either subject or officer, or without the resort to a firearm. A companion argument by proponents is that Tasers would lower police workers compensation claims. On the other hand, strong arguments are made that the device is unnecessary here, given: the nature of our crime statistics, the proven ability of the police to handle confrontations effectively and safely with its present skills and weaponry, the inherent dangerousness of the weapon, the ease with which the weapon can be abused, the temptation to make early resort to a Taser (“mission creep”) rather than rely on traditional non-lethal weapons and crisis intervention methods, the true costs of the weapon beyond simply its purchase price, and the effect acquiring this device may have on police-community relations.

It is indisputable that there are hypothetical situations of police-citizen confrontation in which Tasers might be helpful as a control device. In his testimony before the Committee, Police Chief Tony Facos offered frequent descriptions of such possibilities, and even had he not, it takes little effort to imagine such situations occurring anywhere, including here. But if simply being able to imagine and describe dangerous situations where a Taser could be useful were a sufficient and determining factor in the City Council’s decision-making, this Committee would never have been appointed. The City Council, like many around the country, has wrestled with this issue. This Committee was appointed because this decision is far more complex, difficult and multi-factorial than simply whether a situation could arise here in which a Taser could be useful. The complexity of this decision is reflected in the fact that while many cities, from Los Angeles to Chicago and Vermont communities such as Burlington and Barre and Brattleboro and St. Albans have adopted Tasers, many others, from San Francisco to Memphis and Vermont communities such as Bennington, Middlebury, Waterbury, Barre Town and the Washington County Sheriff’s Department⁴, have not.

As will be seen below, the Committee studied the major research and reports nationwide that have been conducted on Tasers. However, the relevant and overarching question that this

⁴ Sheriff Hill of the Washington County Sheriff’s Department was interviewed by a member of the Committee on July 14, 2011 by telephone. He said that although he considers the Taser an “excellent tool”, he has concluded: “I haven’t felt the need for them here”. The typical police-citizen encounter by the Sheriff’s Department involves vehicle stops such as for drunken driving, as well as the transport of prisoners, mental health commitments and juveniles – precisely the typical police-citizen scenarios that generate the use of force on the part of the Montpelier Police Department, as demonstrated by a survey of Montpelier police incident reports, set out *infra*. The Sheriff’s deputies are equipped with the same weapons as the Montpelier police officers and, like the Montpelier police, they have not had many work injuries, and no significant ones, from forceful encounters. See *infra*.

report seeks to answer is not how popular Tasers are among law enforcement agencies around the country or in Vermont, nor whether they could be beneficial in certain extreme circumstances, but rather whether they are advisable and appropriate here, in *this community*, at *this point in time*. As stated by the Maryland Attorney General’s Task Force on Electronic Weapons (“the Maryland Report”):

In deciding whether to add ECWs as a force option, the agency and community must recognize that the inclusion of ECWs will have an impact on an agency’s use-of-force program beyond simply adding a new force option. Agencies and communities that fully consider the many facets of adding ECWs will be in a better position to determine if the tool is right for their community.⁵

With that in mind, it will be seen that this report pays special attention, and gives special emphasis, to our own unique circumstances as a community. A helpful framework to begin that discussion comes from the well-respected International Association of Chiefs of Police (“the IACP”). In a position paper titled “Use of Force”, the IACP’s National Law Enforcement Policy Center states:

The National Law Enforcement Policy Center does not advocate the use of any specific non-deadly force weapons. The appropriateness of any such weapon depends largely on the needs and desires of each police department in the context of **the community** in which it operates and in accordance with the service demands and **typical force scenarios** faced by its police personnel. . . . A critical element of that decision-making process is an assessment of the **limitations of each device** or technique, and the **potential for its abuse or failure**. [Emphases added.]⁶

The Committee made use of this standard as a lodestar in assessing the need and appropriateness of acquiring this weapon, although, as shown below, other factors also entered into the equation. Chief Facos, both before City Council and the Committee, proposed that there exists a strong need for Tasers here. He based his view on what he believed was the safety of the weapon, as well as what he asserted was a history of frequent incidents when the police need to subdue combative subjects in circumstances where a Taser would have been the preferred and prudent force option. He also based his view on what he believed were frequent incidents of assaults on

⁵Maryland Report at 17. This is the most thorough of the various studies on Tasers, and the City Council is encouraged to read it for a foundational understanding of the subject. Other studies that the Committee found especially competent are the reports of: the American Civil Liberties of California, the National Institute of Justice, Amnesty International, the International Association of Chiefs of Police, the Police Executive Research Foundation, the American Civil Liberties Union of Arizona, and the Braidwood Inquiry (Canada). All are referenced in the bibliography following this report.

⁶ Even the Taser company, which has to be regarded as highly motivated by a pecuniary interest to see its product disseminated as widely as possible, mirrored this individualized community approach when it stated, in its training manual: “Each agency is responsible for creating their own use-of-force policy and determining how Taser devices fit into their use-of-force matrix based on legal and community standards”.

police officers here. Last, he based his view on his belief that Tasers would lower police workers compensation claims. The Committee investigated each of these claims by doing extensive research into the safety and limitations of the weapon. The Committee also requested, and received, the department's use-of-force reports and assault-on-officer reports for the past four years, and the department's workers compensation documents for the last several years. This research, and these documents, present a different picture.

1. How Safe Are Tasers? The Research and the Views

The Taser company has steadfastly advocated the safety of the device, maintaining that the risk of death or serious bodily injury is extremely low. Over the nearly two decades since the device has been manufactured in its current general form, the company has assured potential users that Tasers present no significant safety concerns. When it could not achieve an involuntary dismissal of a lawsuit, the company has, over much of the last decade, avoided judgments against it by settling such cases out of court, generally with a confidentiality agreement regarding the amount of the settlement. For that reason it could boast, somewhat disingenuously, that it had never lost in court. That stance changed after 2008, when a federal court jury held the company liable for approximately \$6.2 million in the case of a man who was tased five times by five officers while effecting his arrest.⁷ A second jury verdict against the company, for \$10 million, was awarded for the 2008 death of a 17 year-old boy, from cardiac arrest, after he was tased in a Charlotte, North Carolina convenience store for 37 continuous seconds and then an additional 5 seconds.⁸ These verdicts were based on the failure of the company adequately to warn of the inherent dangers of the weapon.

On the heels of these verdicts, the company began to publicly recognize more fully the dangerousness of the device, in a series of warnings and alerts beginning in 2009.⁹ Technically, the company had made an earlier recognition of the possibility of dangerousness when, in a Form 10-K Annual Report for the year 2005 which it filed with the Securities Exchange Commission, it stated its product "may result in serious, permanent bodily injury or death to those involved. Our products may cause or be associated with these injuries". But the 2009 and 2010 post-verdict warnings by the company went far further and published them in detail to its user-clients. In its September 30, 2009 training alert, it warned:

Physiologic or Metabolic Effects. The ECD can produce physiologic or metabolic effects which include, but are not limited to, changes in: acidosis; adrenergic states; blood pressure; calcium, creatine kinase ("CK"); electrolytes (including potassium), heart rate and rhythm; lactic acid; myoglobin; pH;

⁷ *Heston et al. v. City of Salinas, TASER International*. Post trial, the court omitted the jury's \$5.2 million award of punitive damages but it retained the compensatory damages and upheld the verdict.

⁸ *Fontenot v. TASER International, Inc.* The City of Charlotte avoided trial by settling with the plaintiff for over \$600,000.

⁹ These new warnings require a reevaluation of earlier reports and research that may underestimate the dangers associated with Tasers.

respiration; stress hormones or other biochemical neuromodulators (e.g., catecholamines). . . Adverse physiologic or metabolic effects may increase risk of death or serious injury.

Higher Risk Populations. ECD Use on a pregnant, infirm, elderly, small child, or low body-mass index (BMI) person could increase the risk of death or serious injury. ECD Use has not been scientifically tested on these populations. The ECD should not be used on members of these populations unless the situation justifies possible higher risk of death or serious injury.

Physiologically or Metabolically Compromised Persons. Law enforcement personnel are called upon to deal with individuals in crises that are often physiologically or metabolically compromised and may be susceptible to arrest-related death (“ARD”). The factors that may increase susceptibility for an ARD have not been fully characterized but may include: a hypersympathetic state, autonomic dysregulation, capture myopathy, hyperthermia, altered electrolytes, severe acidosis, cardiac arrest, drug or alcohol effects (toxic withdrawal, sensitization to arrhythmias, etc), alterations in brain function (agitated or excited delirium), cardiac disease, pulmonary disease, sickle cell disease, and other pathologic conditions. These risks may exist prior to, during, or after law enforcement intervention or ECD Use, and the subject may already be at risk of death or serious injury as a result of pre-existing conditions, individual susceptibility, or other factors. In a physiologically or metabolically compromised person any physiologic or metabolic change may cause or contribute to death or serious injury. Follow your agency’s Guidance when dealing with physiologically or metabolically compromised persons.

As to people in serious mental health and drug-related distress, i.e., subjects who are “exhibiting symptoms of exhaustion, distress or agitated/excited delirium”, the company stated the following month: “These subjects are at significant risk of arrest-related death.” Also new was the warning: “The primary risk of injury or death during ECD deployment is risk related to falls.” Even these cautions by the company must be taken with a concern for possible underestimation of the dangers of the device, in light of a 2011 scientific study of 50 Taser-related research studies that concluded: “These data demonstrate that studies funded by Taser International or written by authors affiliated with the company are nearly 18 times more likely to conclude that Tasers are safe. Research supported by Taser International may thus be significantly biased in favor of Taser safety.”¹⁰

Earlier in 2009, the American Medical Association had concluded:

Although [Taser] activation in normal volunteers appears to be very safe, these studies do not sufficiently reproduce the risks of Taser exposure among criminal

¹⁰ Azadani, MD, Teng, MD, et al., “Funding Source and Author Affiliation in Taser Research Are Strongly Associated with A Conclusion of Device Safety” (Am Heart J 2011; 162:533.7)

suspects, in whom coexisting medical and psychiatric conditions, alcohol and drug use, and other factors are often present. Human volunteers report that [Taser] exposure is an extremely unpleasant experience, inducing both physiologic and psychological stress. Some experimental studies have begun to address these confounding factors . . . Such studies cannot fully evaluate the responses of individuals who are confrontational, have taken drugs, or are desperate for escape, highly agitated, and combative.¹¹

The previous year, a report by Amnesty International identified approximately 350 Taser-proximate deaths since 2001, noting that “most of the individuals who died were agitated, disturbed and under the influence of drugs, and/or had underlying health problems such as heart disease.”¹² Some reviewers found this an exaggerated figure, others put the correct number at 459. While Amnesty did not claim there was a proven direct causal relationship in each of these cases between Tasers and the deaths that followed deployment (such causal relationship being difficult to determine by a medical examiner), most research reports on Tasers have inferred a causal relationship as to a significant portion of those deaths. In many of these deaths, cardiac arrhythmia is a prime suspect. A 2006 study of people who died following tasings found that 54.1% suffered from cardiovascular disease and 78.4% showed the presence of illegal drugs.¹³ As stated in Canada’s Braidwood Inquiry: “Although there is often a lack of physical evidence on autopsy to determine whether arrhythmia was the cause of death, if a person dies suddenly and from no obvious cause after being subjected to a conducted energy weapon, death is almost certainly due to an arrhythmia”.¹⁴

The Maryland Report took a more nuanced approach to arrive at the same conclusion, saying: “[T]he Task Force did not determine that the medical community has concluded that the ECW’s electrical impulse causes a lethal arrhythmia. However, the Task Force did find sufficient consensus that secondary factors from the restraint and incapacitation caused by an ECW (e.g., a fall or stress caused by being shocked) may cause serious injury or death.”¹⁵ The Braidwood Inquiry goes on to summarize other health hazards from use of Tasers:

The risk of ventricular fibrillation increases significantly in several circumstances – if the subject has cardiovascular disease or in thin subjects who have a smaller skin-to-heart distance. The intense pain, coupled with anxiety and stress, can cause an outpouring of adrenaline that can stimulate the heart and lead to dangerous arrhythmias. Skeletal muscle contractions can lead to acidosis,

¹¹“Use of Tasers by Law Enforcement Agencies”, June, 2009, available at

www.policeone.com/policeone/data/pdfs/Taser_ecd_resolution.pdf (“AMA report”)

¹² “‘Less Than Lethal’? The Use of Stun Weapons in Law Enforcement”, (hereafter, “Amnesty Report”), Dec. 2008, available at <http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf>.

¹³ Strote, J., et al., *Taser Use in Restraint-Related Deaths*, Prehospital Emergency Care, Vol. 10, No.4, pp. 447-450 (2006).

¹⁴ “Executive Summary and Recommendations”, at 6. Available at <http://www.braidwoodinquiry.ca/report/>

¹⁵ Maryland Report at 10-11.

which affects the electrolyte balance, making the heart more susceptible to ventricular fibrillation. Also, an electrical current coinciding with the T-wave peak may induce fibrillation with a threshold 25 or more times lower than at other times in the heartbeat cycle. Finally, there are several risks associated with deployment against a subject who is wearing an implanted pacemaker or defibrillator.

Several researchers have raised concerns that the electrical current from a conducted energy weapon may induce spasm in the muscles of respiration (diaphragm and intercostal muscles), interfering with the subject's ability to breathe. This could, in the case of prolonged deployment, lead to acute respiratory failure or acidosis. The body's natural response to acidosis is to hyperventilate, which can be frustrated if the subject is lying face down, if pressure is applied to the chest or neck area, or the officer's attempt to restrain the subject results in the subject struggling. The weapon's electrical current might also cause muscle damage (rhabdomyolysis), which can lead to cardiac arrest or acute renal (kidney) failure.¹⁶

The above shows the approach of those reports on Tasers that are at the more cautious end of the spectrum. A more permissive approach is that of the National Institute of Justice ("the NIJ Report"), an agency within the U.S. Department of Justice, which states: "There is no conclusive medical evidence in the current body of research literature that indicates a high risk of serious injury or death to humans from the direct or indirect cardiovascular or metabolic effects of short-term CED exposure in **healthy, normal, nonstressed, nonintoxicated persons**" (emphasis added.).¹⁷ What is important about this statement is that its population-restricting qualifiers have the effect of excluding most of the actual individuals and circumstances of the vast majority of police-citizen confrontations. As the IACP notes, these are "the very individuals most likely to come into contact with the police."¹⁸ The NIJ made these population restrictions because it found that Tasers contribute to stress that can exacerbate blood pressure and heart rhythms, and so pose special dangers for the intoxicated, mentally ill and individuals with an underlying medical condition.¹⁹ It also concluded that there is simply too little known about this, because the human studies to date have been small, and only involving healthy subjects, "so of questionable value".²⁰ Notwithstanding the cautions by the NIJ and others against deploying against vulnerable populations, one study, of 1183 tasing cases, found that alcohol and drug intoxication were present in 49.5% of the cases.²¹ Similarly, an October, 2011 report by the New York Civil Liberties Union found that 40% of Taser incidents in that state involved vulnerable

¹⁶ Braidwood Inquiry at 6-7.

¹⁷ "Study of Deaths Following Electro Muscular Disruption", NIJ Special Report, May 2011, at viii.

¹⁸ IACP National Law Enforcement Policy Center, *Electronic Control Weapons: Concepts and Issues Paper*, August, 2005, at 4.

¹⁹ NIJ Report at 18-20.

²⁰ NIJ Report at 20.

²¹ Bozeman, W. et al., Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects, *Ann. Emerg. Med.* (2008), at 4.

populations.²²

Various studies document not only the risks to life from Tasers, but also various injuries due to them, some being complications of pre-existing injuries and conditions, and many others due to the subject collapsing forward onto the embedded probes during the full-body muscle contraction. And there are also indications of Tasers causing cognitive deficits. An Illinois study of tased and non-tased police officers concluded: “Profile analyses compared neuropsychological performances and found significant differences in profiles of Tased and non-Tased participants for the domains of processing speed, attention, memory, and executive function.”²³

Most police encounters, and virtually all that occur in Montpelier, involve (as will be shown below) either intoxicated or mentally distressed persons, both being vulnerable populations. It can be said that Tasers are deemed relatively safe *except* with regard to the individuals on whom they are primarily used. The question of whether to acquire and deploy Tasers in Montpelier raises serious life and health concerns for the subjects in almost all cases that comprise Montpelier’s “typical force scenarios”.

2. The Widely-Recognized Dangers, Cautions and Limitations Pertaining To the Use of Tasers

The IACP policy, *supra*, sets out a further criterion in deciding whether to acquire a weapon: “A critical element of that decision-making process is an assessment of the limitations of each device or technique, and the potential for its abuse or failure.” Every report on the Taser, whether from law enforcement interests or from civil and human rights organizations or from the Taser company itself, recognizes the dangerousness of Tasers, and proscribes its use in certain situations and locations, against certain classes of individuals (“vulnerable populations” or “at risk” individuals), and on certain parts of the body. Barring an emergency where there is not other way to prevent death or serious bodily injury, it is forbidden to use a Taser on these individuals.²⁴

- elderly
- children
- physically frail or infirm
- alcohol- or drug-intoxicated
- serious mental disturbance
- hearing impairment or cognitive disability²⁵

²² “Taking Tasers Seriously”, available at http://www.nyclu.org/files/publications/nyclu_TaserFinal.pdf

²³ See Bagley, A., “The Neurological Effects Associated with Taser Administrations” (2008).

²⁴ This list of limitations is culled from the major studies of Tasers and from the company’s own warnings.

²⁵ The intoxicated and mentally ill are widely recognized among the populations especially vulnerable to death or serious bodily injury from Tasers. Tina Wood, a representative of Disability Rights Vermont, a non-profit designated by the governor of Vermont to assure compliance with the federal disability rights acts, made the important point to the Committee that many of the disabled are similarly vulnerable, due to conditions such as cognitive impairment, deafness, and language processing problems. The Committee agrees with the Coalition, and so includes the disabled among the categories of vulnerable populations.

- cardiac condition, pacemaker, seizures, sickle cell, pulmonary disease, or other significant disease; also osteopenia, osteoporosis, spinal injury, previous muscle, disc, ligament, joint, bone or tendon damage or surgery
- pregnant
- thin physique
- highly agitated (“excited delirium”)²⁶

Forbidden circumstances regarding a subject include:

- flight or running
- operating a motor vehicle or machinery
- near flammable substance
- in water or mud
- standing on a height (ledge, roof, etc.)
- restrained, handcuffed, incapacitated or immobilized

And most of the frontal area of the body is forbidden for targeting, including:

- head
- face
- neck
- chest
- groin and genitals

As a practical matter, these limitations and prohibitions leave only the belly (“lower center mass”) and legs as frontally targetable areas of the body. The back of an individual is considered a much safer target zone than the front. However, in light of the proscription against using a Taser on a running/fleeing person, it is highly unlikely that an officer would have the opportunity to discharge a Taser into the back of a stationary individual. A further limitation is that the device is not effective against a subject wearing heavy clothing.

Nor is this a precise weapon to aim. Unlike a firearm or a pepperball launcher, which fire a single projectile and can be aimed with a fair degree of precision, a normal Taser cartridge, with a 21-foot range, fires two darts that spread vertically at the rate of one foot for every seven feet of travel. Thus, following the universal warning not to aim above “lower body mass” (the belly), firing at a target fifteen feet away would create a two-foot spread of the probes where they hit the body. To expect an officer in the field, under difficult and perceptually challenging

²⁶ The American Medical Association describes “excited delirium” as follows: “Although not a validated diagnostic entity . . . , ‘excited delirium’ is a widely accepted entity in forensic pathology and is cited by medical examiners to explain the sudden in-custody deaths of individuals who are combative and in a highly agitated state. Excited delirium is broadly defined as a state of agitation, excitability, paranoia, aggression, and apparent immunity to pain, often associated with stimulant use and certain psychiatric disorders. The signs and symptoms typically ascribed to ‘excited delirium’ include bizarre or violent behavior, hyperactivity, hyperthermia, confusion, great strength, sweating and removal of clothing, and imperviousness to pain. Speculation about triggering factors includes sudden and intense activation of the sympathetic nervous system, with hyperthermia, and/or acidosis, which could trigger life-threatening arrhythmias in susceptible individuals. . . The intense pain associated with [Taser] exposure, the psychological distress of incapacitation, and hazards associated with various restraint methods also could contribute.” “Use of Tasers by Law Enforcement Agencies” (2009), pp. 6-7, available at http://www.policeone.com/policeone/data/pdfs/Taser_ecd_resolution.pdf

circumstances, to be able to reliably calculate his/her distance from the subject, as well as the spread of the darts at the point where they will hit the subject's body, all the while avoiding the chest and above while also trying to hit a leg but at the same time avoid the groin and genitals, is to expect too much. The Taser company has, since 2009, recognized as much. In its training alert of October 15, it called attention to "the reality that an arrest situation is fast moving and dynamic, and that exact shot placement in a preferred target zone is not always going to be possible. In addition, it may not even be possible to intentionally aim the ECD, but rather point and shoot."²⁷

Thus, the limitations on targetable body areas, coupled with the imprecision of the aim of the device, will mean that an officer deploying the weapon will do so with the substantial risk of hitting the subject in a proscribed area of the body, with an unacceptable risk of serious injury or death. Even more to the point, the company said, in an October 29, 2009 customer teleconference: "[T]his is not a precision aiming device. There will be many times when people are hit in head, chest, and eye"²⁸ [Emphasis added.]

When all the cautions, prohibitions and limitations are accounted for, it is apparent that a Taser may only be discharged against a healthy, sober, rational and clear-headed adult non-elderly subject who is not pregnant, running, nor in a dangerous environment, and that the device must be able to be reliably aimed at the abdomen ("lower center mass") or the back. The only exception to the limitations as to the subject and the surrounding circumstances occurs when there exists an imminent threat of death or serious bodily harm to someone. Overall, the extensive limitations on and imprecision in the use of the Taser render it a weapon of **extremely limited safe potential applicability**, as well as one that carries with it a **high potential for erroneous deployment** and potentially tragic consequences. That is because **an officer in the field, managing difficult circumstances, simply cannot know enough to know if it is safe to deploy the weapon**. He or she often cannot know, for instance, when someone has a heart condition, or is intoxicated, or mentally ill, or cognitively impaired, or pregnant, or subject to any of the host of other conditions that must be, but often cannot be, known before a deployment. As the Stanford Report notes:

[I]n most circumstances, an officer will find it nearly impossible to anticipate whether a subject suffers from any of the conditions listed. For example, except where pregnancy is fairly advanced, an officer is not likely to know a woman is pregnant. No officer would likely be able to discern that an individual suffers from a pre-existing injury or condition such as osteoporosis, osteopenia, spinal injuries, diverticulitis, or previous muscle, disc, ligament, or tendon damage. An officer is unlikely to know whether a subject suffers from a respiratory impairment such as asthma, or from a pre-existing cardiovascular condition.²⁹

²⁷ Taser Training Bulletin 15.0 Regarding Medical Research Update and Revised Warnings" at 2.

²⁸ Notes of the teleconference hosted by the company, which fielded clients' questions and concerns following the company's release of Training Bulletin 15.0.

²⁹ Stanford Report at 6.

Moreover, with respect to pregnancy, the Taser company warns against use of a Taser on a pregnant woman because of the risk that she would suffer from involuntary muscle contractions, thereby increasing the risk that she will fall and damage the fetus.³⁰

The Maryland Report sets out the unknowable features of a subject's serious mental illness:

Maryland mental health advocates urged in testimony to the Task Force that priority should be placed on integrating crisis intervention and de-escalation techniques into law enforcement use-of-force policies and procedures. Mental health experts noted that police are often called as first responders by family members to deal with emotionally disturbed individuals who display extreme behaviors. In such crisis situations, emotionally disturbed individuals are often at an impaired level of consciousness; they may not know who or where they are; they may be delusional, anxious, or frightened; and they may be unable to process or comply with an officer's commands. When police arrive, such individuals can become even more anxious and appear even more dangerous.

The unanimous position of mental health experts is that the best practice in such situations is to de-escalate the agitated suspect with a crisis intervention approach instead of a typical command-and-control approach. This type of crisis intervention approach is used safely and effectively in numerous police departments nationwide and a few Maryland jurisdictions.³¹

The Maryland Report further notes that this unknowability presents a police officer with a "unique and difficult conundrum":

[T]he challenge for law enforcement in avoiding ECW use against persons at heightened risk of injury is twofold. First, more research is needed to determine which populations are at a heightened risk of death or injury and the extent of that risk. Second, in many situations it may not be readily apparent to a law enforcement officer faced with a rapidly evolving situation whether an individual falls within one of these groups. . . . *[A] use-of-force option that normally is not deadly, may in some instances be lethal even where the officer had no intention of using lethal force, did not believe lethal force was necessary, and used the force tool in a manner that normally would not increase the risk of death.*³² [Emphasis added.]

It is for this reason that the Vermont State Police and Disability Rights Vermont, the organization named by the governor to oversee enforcement of the federal statutes protecting the developmentally disabled and the mentally ill, have just entered into an agreement following the

³⁰ *Id.*

³¹ Maryland Report at 40

³² Maryland Report at 37

tasing of a 23 year-old Vermont man with Downs Syndrome who pulled away from the police when they were trying to escort him to a new placement. The new police policy will recognize a higher deployment standard before a Taser is used against a disabled person, and will require that other reasonable options first be exhausted.³³

3. Studies Indicate That Tasers: 1) Do Not Cause A Reduction in the Use of Lethal Force, 2) Do Cause an Earlier Resort to Higher Levels of Force, and 3) Are Frequently Recklessly Deployed in Violation of Accepted Standards.

It is frequently asserted that the introduction of Tasers reduces the use of firearms by police. This is countered by the assertion that Tasers cause an earlier resort to a higher level of force than is necessary. As to the latter concern for premature deployment, common sense counsels that officers in the field will, on at least some occasions, reach for a Taser when it is on his/her belt in circumstances that would be better, and previously, handled by lower levels of force and by reliance on crisis intervention skills. For example, although all studies of Tasers require that they not be used as a “pain compliance” or general force tool, the Taser company acknowledged in 2003 that over one-third of cases of Taser use were simply for “verbal non-compliance”.³⁴

A June, 2011 study of police use of Tasers by the American Civil Liberties Union of Arizona (“the Arizona Report”), using data collected from twenty law enforcement agencies, showed that, with the introduction of Tasers, there was no reduction in the use of firearms, but there was an earlier resort to a greater level of force.

[T]he data revealed no relationship between the deployment of Tasers and the use of firearms. At the same time, officers began using Tasers as frequently as other non-lethal force techniques, so the deployment of a Taser became as routine as pepper spray and batons. The information provided by departments thus suggests that Tasers have been deployed in situations where lethal force would not be allowed, and where less severe uses of force are available.³⁵

In accord with this Arizona study is an analysis conducted by the Houston Chronicle of Taser use by that police force and reported January 14, 2007:

Since the Houston Police Department armed itself with Tasers, touted as a way to reduce deadly police shootings, officers have shot, wounded and killed as many people as before the widespread use of the stun guns . . . Officers have used their Tasers more than 1,000 times in the past two years, but in 95 percent of those cases they were not used to defuse situations in which suspects wielded weapons

³³ See “Vermont State Police to make revisions to Taser policy”, Burlington Free Press, October 22, 2011.

³⁴ Cited in Silverstein, “Tasers: evaluating claims of excessive force”, presented at the National Police Accountability Project Skills Seminar, October 19, 2006, at 4.

³⁵ “A Force to be Reckoned With”, American Civil Liberties Union of Arizona, at 17.

and deadly force clearly would have been justified. Instead, more than half of the Taser incidents escalated from relatively common police calls, such as traffic stops, disturbance and nuisance complaints, and reports of suspicious people. In more than 350 [of the 1000] cases, no crime was committed. No person was charged or the case was dropped by prosecutors or dismissed by judges and juries, according to the Houston Chronicle's analysis of the first 900 police Taser incidents, which occurred between December 2004 and August 2006. Of those people who were charged with crimes, most were accused of misdemeanors or nonviolent felonies.

Confirming the trend of this data is the just-released study of Tasers across New York State by the New York Civil Liberties Union, which found that nearly 60 percent of reported Taser incidents in that state did not meet expert-recommended criteria that limit the weapon's use to situations of the middle-range deployment standard.³⁶ The study also found:

- More than one-third of Taser incidents involved multiple or prolonged shocks, which experts link to an increased risk of injury and death.
- More than a quarter of Taser incidents involved shocks directly to subjects' chest area, despite explicit warnings by the weapon's manufacturer that targeting the chest can cause cardiac arrest.
- In 75 percent of incidents, no verbal warnings were reported, despite expert recommendations that verbal warnings precede Taser firings.
- 85 percent of documented Taser incidents involved people who were not armed or believed to be armed.

Thus, the available data indicate that Tasers do not result in a reduced resort to lethal force, but that they do cause an earlier resort to higher levels of force where less severe force would suffice, thereby exposing the citizenry to higher overall levels of force and attendant life and health dangers. The data also indicates an alarming lack of compliance with accepted standards governing the weapon's deployment. These data bear out the concern expressed in many studies, and in the testimony of numerous witnesses before the Committee, for the likelihood of "mission creep". As the New York report summarized its finding:

The pattern of misuse and overuse of Tasers fall into seven distinct categories: the use of Tasers where the suspect poses no demonstrated danger or risk of injury to any person; the administration of excessive numbers of or excessively long shocks; dangerous targeting of vulnerable areas of the body, such as the chest, neck or genitals; the failure to warn a subject prior to using a Taser; the over-reliance on drive-stun as opposed to probe mode; the use of Tasers on vulnerable populations or in dangerous situations; and the

³⁶ The broad range of threshold deployment standards among Taser studies and among jurisdictions is discussed *infra*, Section III(C).

disproportionate use of Tasers on people of color.³⁷

4. The Montpelier Use-of-Force Reports and Their Meaning

The Committee requested and received from Chief Facos documentation of police incidents in which force was used, from the latter part of 2008 through June of 2011.³⁸ These fifteen reports document any use of force on the police force continuum, which can range from as little as physical control or restraints at one end of the spectrum, to firearms at the other. What the reports reveal is that **no party – neither an officer nor a suspect – received a single serious injury in any of these incidents.** (See “Use-of-Force Reports, Summary”, separately submitted.) All fifteen incidents were well-handled by the police with the current force continuum at their disposal, which in these incidents included handcuffs, physical tactics such as armbars and pull-downs and bear hug, leg irons, pepperballs, pepper spray, a helmet, and the display of a firearm. There is no indication that a Taser would have been appropriate, prudent or necessary in any one of the incidents, especially since nearly all of the incidents involved intoxicated or mentally ill people, i.e., members of **vulnerable populations.** To the extent there were any injuries to officer or suspect in any of these Montpelier incidents, they were limited to superficial cuts and abrasions, a kick to an officer’s groin, along with one suspect sustaining a swollen eye. None of these incidents resulted in an officer injury causing lost work time, as shown in the workers compensation discussion *infra*. Digesting the use-of-force summary, we see:

- one incident involved a child at school showing indications of mental disturbance, who needed to be held and carried (5/26/10);
- five cases of fleeing subjects (11/01/08, 07/27/09, 11/17/09, 12/11/09, 03/20/10,);
- a case of a non-compliant female with an unknown medical condition (1/25/09) and a case of an elderly man with a heart condition and mechanical heart valve (10/29/10);
- at least five cases of intoxication (12/11/09, 03/05/10, 09/05/10, 05/23/11, 06/18/11);
- five cases where the subject evidenced serious mental disturbance requiring mental health screening (03/05/10, 03/20/10, 05/26/10, 07/20/10, 10/29/10), one of which (10/29/10) involved an elderly man with known schizoaffective disorder who was being served with an involuntary mental examination warrant.

What these reports show is that, of the fifteen reported cases over a three-year period in which some degree of force was used, twelve involved vulnerable populations or flight, in which use of a Taser would have been inappropriate except in the most extreme circumstances when no other force means could not have provided protection. Of the remaining three, one case involved the successful officer employment of an arm bar and handcuffs (11/01/09), and another, which

³⁷ New York Report at 17.

³⁸ These individual incident reports are submitted with this report.

involved a stolen vehicle, was managed successfully by the officer's display of a gun, use of an arm bar, and handcuffs (06/19/11). There was no officer injury in any of these three cases. There were minor cuts to the subjects in two of the three cases.

These police reports indicate that Montpelier does not have what the International Association of Chiefs of Police notes as being a critical criterion in assessing whether to acquire a non-deadly weapon, i.e., whether the "typical force scenarios faced by its police personnel" warrant the addition of the weapon. By all indications, the Montpelier police have been able to fully, competently and effectively manage its typical force scenarios with the array of skills and weaponry at hand. In fact, the police have effectively managed *all* its force scenarios with the skills and weaponry at hand.

5. The Montpelier Assault-on-Officer Reports and Their Implication

The Committee was initially informed by Chief Facos, as he had also informed the City Council, that Montpelier incurred the highest frequency of assaults on officers of any Vermont city or town that report this statistic. He represented that Montpelier sustained eight of the 64 such cases reported by Vermont cities and town for the year 2008. During Committee hearings he corrected that number to five. The Committee then requested and received from him the actual incident reports from 2008 to date.

It bears emphasizing that the Committee's perspective on what these incident reports reveal in no way indicates a lack of awareness on the Committee's part of the dangerousness of police work and the courage of officers who have to take risks in dealing with the public. Being a police officer is challenging, both from the potential and inherent dangers involved in contact with subjects, as well as from the spectrum of emotions that the public harbors toward the exercise of police authority, from praise and appreciation on the one hand, to suspicion and hostility on the other. The Committee's comments here and elsewhere in this report in no way diminish the members' deep appreciation for the difficult task that all police officers face on an almost daily basis in their effort to keep the public safe and secure. Rather, the Committee's analysis is aimed at casting an accurate light on the true officer safety record here in encounters with citizens.

Under Vermont law, "assault" has two forms, simple and aggravated. All of the reported incidents of assault on officers provided to the Committee were logged in as simple assaults, none as aggravated. Simple assault is statutorily defined as the intentional causing of "physical pain, illness or any impairment of physical condition". 13 V.S.A. §1023.

Of the 15 reports from 2009 to date that were submitted to the Committee as indicating assaults or attempted assaults on officers, four of the incidents involved no contact or injury whatsoever. Of the remaining 11, they included a possible thumb sprain, an incident of "sore testicles", a minor skin tear, and several instances of a kick, a scratch, or a punch. Here, as with the use-of-force reports previously discussed, the data strongly indicates that our typical scenarios involving aggression toward officers are in the nature of simple assaults causing pain and, in several instances, minor injuries. Many of these cases, as would be expected, are repeats

of the use-of-force incidents, set out above. *Every one* of these assault-on-officer cases involved individuals who were highly intoxicated, or mentally ill, or evidencing a serious medical condition, or known to have developmental disabilities, or a child – all being precisely the conditions and circumstances when a Taser should not be used unless lethal force would be justified. Furthermore, in virtually all of these cases the officer was in close proximity to a subject who exhibited a sudden aggressive movement – situations in which use of a Taser generally is not feasible. Finally, the officers were universally able to control the situations competently and adequately with the force options at hand, without serious injury to any party. Had Tasers been available, one would not have wanted their deployment in these cases. Rather, traditional law enforcement skills and devices were what were used, and what should have been used, resulting in no more than superficial injuries to both officer and arrestee, generally in the nature of abrasions and bruises.

6. Putting Our “Typical Force Scenarios” in a Taser Context

a) A Montpelier Case Example

To make further sense of these statistics for purposes of this “typical force scenarios” analysis, it is helpful to determine whether the use of a Taser would have been prudent in any or many of these reported incidents. (To some extent, this analysis depends on what are the generally recognized limitations on the allowable use of the weapon, as will be more fully discussed in other sections of this report.) Like the Use-of-Force summary document, the Assault-on-Officers summary document (separately submitted) shows that nearly all of these incidents involve precisely the types of scenarios in which Tasers are forbidden, i.e., situations involving “vulnerable populations”: youth, elderly, frail, drug or alcohol intoxicated, suffering from a heart condition, fleeing, evidencing mental disturbance, highly agitated, as well as situations where the officer and subject are in close range (and thus Taser deployment is not practical). There were but a couple of incidents among the fifteen provided the Committee in which the subject was not in one of these vulnerable populations, and these confrontations were not of an aggravated nature. The police handled each of them effectively and without injury with the currently available force continuum. These were not “Taser situations” by any stretch of the imagination.

An incident among the 15 reported helps illustrate the difference in view around the assessment of whether Montpelier needs Tasers. In our Committee hearings, Chief Facos frequently referred to one of these incidents as particularly exemplary of when the use of a Taser would have been beneficial and warranted. The incident in question occurred on 10/29/10, when Washington County Mental Health called for police assistance to serve a mental health examination warrant on an elderly patient living at home. The individual suffered from schizoaffective disorder, a serious cardiac condition and reliance on a mechanical heart valve. The patient was also non-compliant as to his medications, causing his psychiatrist enough concern to take out the involuntary mental examination warrant. The officers, aware of these facts, indicated in their incident report that they knew the subject was susceptible to a stress-related cardiac arrest, that his medical non-compliance was potentially life-threatening, and that he was “extremely agitated and appeared to be paranoid”. Upon entering his home without the

subject's permission to serve the warrant, the police found the man swinging a board "wildly" at them and running toward them.

If anyone would qualify as a member of a "vulnerable population" against whom Taser use is forbidden except in the most exigent circumstances when there is no alternative and lethal force is warranted, it was this man, being elderly, suffering from a serious mental disorder, and a patient with a life-threatening cardiac condition. For any one of these three health conditions, the research on Tasers, and the Taser company's own 2009 (and since) training alerts, caution the police not to use the device. Had the police at the scene had access to a Taser and used it as Chief Facos would have supported, there is a reasonable possibility that the incident could have ended in tragedy. Instead, the police used their skills and their current force options exactly as they should have – they partially retreated, they then subdued the individual with multiple rounds of pepperballs, they restrained him, and they safely transported him to the hospital.

Ironically, Chief Facos's own proposed Response to Resistance policy mandates that a Taser not be deployed under the circumstances of the above-discussed incident. Section (IV)(F)(b)(xxiv) mandates: "**Alternative tactics shall be utilized** where the officer has prior information that **the subject suffers from a disability** which would increase the danger to that person by using the Electronic Restraint Device, i.e., a person at the scene tells an officer that the subject has a heart condition." Here, the officers knew the subject suffered from not one, but three, such disabilities. Use of a Taser under these circumstances would have violated the mandatory language in the Chief's own proposed policy.

Chief Facos regarded this incident, as well as the incidents of December 11 and 12, 2009 (see incident reports), as ones in which Tasers could have been deployed. The Committee disagreed with him as to how to regard these three incidents. First, all three incidents (over a three and a half year period) involved subjects who were either elderly, intoxicated, mentally ill, or a combination of these – all at-risk subjects. Second, whether a potentially lethal weapon legitimately could have been deployed in a situation depends, of course, on whether a permissive or restrictive deployment standard controls as a matter of policy. If the Chief's proposed standard of "active resistance" – the lowest standard used anywhere – controls, then it follows that it will be quite easy to rationalize after the fact that use of a Taser was permitted in many instances where they were not necessary or prudent, i.e., where lower levels of force were sufficient. Third, and most important, the difference in perspective on that part of the Committee and the Chief highlights how he and the Committee were differently focused when finding the *meaning* of Montpelier's documented "typical force scenarios". The Chief framed his view with the question of whether an incident would have *allowed* the use of a Taser. The Committee was more concerned with whether a Taser was *necessary* to control a situation, or, put differently, *whether the police were able to gain control with the weaponry currently in their arsenal – which in all cases they were able to do, and without any significant injury to any party*. The Committee believes its framework, looking to the issue of *necessity*, is closer to the Council's charge that the Committee make an "assessment of need" for this additional weapon.

b) Comparing Montpelier to Some Other Vermont Communities

There is no rule of thumb regarding which cities and towns tend to adopt Tasers and which tend to decline them. But it is instructive to look at Vermont examples of each. For towns or cities that have declined to adopt Tasers, we looked to Bennington and Middlebury. For ones that have adopted them, we looked to Burlington and South Burlington.

From the standpoint of size and typical force scenarios, Middlebury and Bennington are, like Montpelier, medium-size communities by Vermont standards. Paul Doucette is the Chief of the Bennington Police Department, the fifth largest in the state. He was interviewed for the Committee by telephone. Doucette considered acquiring Tasers and underwent Taser training with the State Police. He believes the weapon has definite utility, but opted not to acquire it. Among his reasons were that Tasers are expensive, that they do not work all the time, and that the Bennington force has found that its use of pepper spray and pepperball launchers have been sufficient to cause people to comply with police demands. In considering Tasers, he said, “it’s a lot more than just buying the Taser itself”.

Thomas Hanley has been Chief of Police in Middlebury for the past twenty years, and related to the Committee the following, also by telephone interview. Middlebury crime statistics are “in the middle of Vermont communities”. The town experiences mostly property crime, “not a lot of violent crime”, and has a high number of cases involving mental health issues and substance abuse. It has not had a high level of officer workers compensation claims from violent encounters. To the extent there are such injuries, they are mostly in the nature of bites, lacerations, abrasions, punches, one broken hand bone. Officer injuries have thus been from close contact, and not requiring hospitalization. Chief Hanley posed the question to himself, in considering Tasers: “Is this a tool we need, or a gadget sitting on an officer’s belt. You’re not going to go into a high risk situation with Taser drawn, you’ll have your gun drawn. A Taser can give a false sense of security.”

In addition to that view and those crime and officer injury statistics, Chief Hanley added the concern that Tasers are expensive when one factors in not just the purchase price but also the attendant costs such as continual training, recurring costs for maintenance, and replacement costs. Instead, the Middlebury force has emphasized physical fitness, training, officer skills and pepper spray for handling difficult situations non-lethally. Based on these factors, Chief Hanley concluded: “We’re not seeing, day-to-day or historically, the need for Tasers. If I were in a more combative environment I might think twice about it.”

That “more combative environment” is better exemplified by Burlington and South Burlington, both of which have Tasers. Chief Facos highly recommended that the Committee hear from representatives from both of those forces. Deputy Chief Walter Decker of the Burlington force testified that he worked Tasers into their arsenal over a six-year period, to where there are now sixty units deployed. He appreciates them for being fast and immobilizing, and for decreasing officer injuries and time away from work, but also recognizes their potential for incorrect or malicious use. The Burlington force uses Tasers in conjunction with body cameras on the officers, because those are more effective at recording the entire incident than the Taser-mounted camera, which only records “the last part of the story”, i.e., the actual

deployment against an individual. He stated that for their written policy standard for Taser use, Burlington chose a “middle-range” standard, requiring that there be both “active aggression” on the part of the subject plus a “risk of harm”. He stated that Tasers have on occasion been used instead of a firearm, in surprising contrast to Chief Facos’s adamant opposition to using the device as a substitute for lethal force. Burlington’s incidents of use of force number 400-500 a year, dwarfing Montpelier’s statistics in this regard. And unlike Montpelier, he noted that there was no apparent community opposition to the introduction of Tasers in Burlington. Finally, Decker noted that Burlington has, unique among Vermont cities and towns, a Police Commission which stands ready to review use-of-force incidents.

Trevor Whipple, Chief of the South Burlington force and formerly chief of the Barre force, noted that Tasers were already present when he took over the force in 2006, but that he has heard there was no public opposition to them at the time they were acquired. They do not use cameras with Tasers. His officers receive a training in Taser use based on the Taser company’s curriculum, of six hours or less, with a yearly update. An officer warns a subject three times before deploying. Like Burlington, the South Burlington force does not use the model Response to Resistance policy which Chief Facos is proposing for Montpelier, and which was supplied by Montpelier’s insurer (see *infra*). Whipple recognizes the potential danger of the weapon, and relies on accountability, use of force reviews, and checks and balances to offset the danger, noting that, unlike Burlington, South Burlington requires a use of force report for *every* force incident. He guessed there were 50-60 use of force incidents in South Burlington yearly, and said while the brandishing of Tasers has gone down since 2008, actual deployments per year have remained steady at between four and six. He agrees that their deployment standard, in not requiring a risk of harm from the subject’s conduct, “sounds lower than Burlington’s”. Like Decker, Whipple was not able to compare his city’s typical force scenarios or data to Montpelier’s.

One sees, from the above, examples of two distinctly different views of Tasers in Vermont law enforcement. The larger cities of Burlington and South Burlington, with higher crime statistics and more aggravated law enforcement circumstances, favor the device. Middlebury, a smaller town with less violent crime and a low officer injury rate (like Montpelier), does not, and prefers to rely on traditional weaponry and crisis intervention skills, as does Bennington. The Committee saw more similarity between Montpelier and the Bennington-Middlebury profile, than that of our larger (and only) metropolitan area. Our use-of-force incidents are relatively few and effectively handled by the weapons and skills at hand. Our officer injury rate is small, and officer workers compensation claims from violent encounters virtually non-existent (see *infra*). Our community is, unlike those of Burlington and South Burlington, quite divided over the issue of Taser acquisition,

In summary, the data supplied the Committee by the Police Department reveals that Montpelier does not have the “typical force scenarios” that reasonably would justify the acquisition of this weapon. Neither the nature nor the frequency of our police-citizen confrontations calls for this additional force option. Our rate and degree of suspect and officer injury is low and minor. It is difficult not to believe that almost any city or town of Montpelier’s

size or larger would be happy to trade statistics and “typical force scenarios” with those of Montpelier.

7. The Community Views and the Police-Community Relationship

The IACP framework for the consideration of an additional non-deadly weapon, set out *supra*, also recommends cognizance of “the community in which it [the police force] operates”. While a scientific poll has not been conducted here on the issue of Tasers, a reasonably large sampling took place when the question appeared on the 2011 Town Meeting Day Poll, known as the Doyle Poll. Seven hundred residents responded to the question whether Tasers should be acquired here. The result was that 42% were opposed and 40% in favor.³⁹ Adding to that sense of the community is the fact that the large majority of speakers at both the City Council’s and the Committee’s public comment hearings spoke in opposition to acquiring the weapon.

The Committee believes the City Council should be especially cautious about authorizing this weapon in a community that appears deeply divided over it. Unquestionably, the police need adequate force options, including lethal force, in order to do their job effectively. But the heart of community safety lies not in weaponry beyond what has been shown to be sufficient for our local force scenarios, but rather in the police-community compact. Introducing a weapon so controversial and so opposed by a substantial proportion of the residents poses a prospect of weakening that compact. “The application of physical force may potentially have devastating consequences, not only for the suspect and the officer but also for the law-enforcement agency, the community, and police–community relations.”⁴⁰ In light of the highly questionable utility of the weapon here, the Montpelier police-community rapport is the far more important public safety element to preserve and protect.

8. The Workers Compensation Argument

The argument is made that Tasers lowers workers compensation claims, and it is an argument that Chief Facos raised in the Council and the Committee. To investigate that possibility, the Committee requested from him all statistics and documentation regarding workers compensation claims by department employees from 2008 to the present, and that he link any such claims to specific police-citizen confrontations, so that the Committee could also evaluate whether such incidents were ones in which a Taser, had it been present, would have been the preferred weapon to use. Chief Facos responded with his own summary (separately submitted) of five workers compensation claims since 2006 but declined to give the original workers compensation documentation, claiming they were statutorily protected.

Without the actual documented linkage of these incidents to specific events, the Committee was unable to do its own investigation of the relevance of these workers compensation claims to the issue of whether Tasers would have made a difference. It was clear, just on the face of Chief Facos’s summary, that Tasers would not have made a difference in at

³⁹ This result was in contrast to the poll results from most other Vermont towns, where majorities favored Tasers.

⁴⁰ White, M. and Ready, J., “Examining fatal and nonfatal incidents involving the Taser”, *Criminology and Public Policy*, Vol. 8, Issue 4, at 866.

least four of these five incidents. One incident entailed a foot injury during a foot pursuit, a situation that use of a Taser is strictly proscribed. Another incident involved a subject head-butting an officer, causing him a swollen lip, a situation of close proximity and unpredictable behavior that a Taser could not have prevented. Another involved restraining an intoxicated person – another circumstance where Taser use is proscribed. Another involved exposure to blood while arresting two subjects who had been cutting themselves and each other, i.e., a circumstance of likely mental impairment. (At any rate, exposure to blood is the inevitable circumstance for officers arriving at a scene where individuals have been engaged in cutting themselves.)

The Committee reiterated its request for the original documents, citing 1 VSA §318, upon which it received from the City Manager eighteen “First Report of Injury” documents pertaining to police incidents.⁴¹ (separately submitted). These reports show only minor injuries, and that in only one incident, occurring on 5/28/09, was there any loss of work time. That officer lost several days’ work due to stubbing a toe while walking from a roadway to a sidewalk. Chief Facos’s summary, and the subsequently-received “First Report of Injury” documents, show there is no significant, bona fide workers compensation factor to be weighed in favor of acquiring Tasers in Montpelier.

9. The Expansion of Municipal Liability Exposure

Since the 2008 and 2011 verdicts against the Taser company, it has embarked on a different, and more self-protective, course. As shown above, its 2009 and 2010 training alerts publicly acknowledged the more obvious dangers of the device and cautioned against using the device in certain circumstances and against certain populations, among them intoxicated persons and mentally ill persons, as well as against using it across a subject’s chest area and using it for too long a duration. The effect of this shift on the part of the Taser company is that municipalities are becoming the primary target of Taser-related lawsuits, which are being filed at the rate of about one per week nationally.⁴² This shift by the company is seen in language such as contained in its September 30, 2009 alert: “These warnings do not create a standard of care . . . Law enforcement agencies are force and force tool experts and are solely responsible for their own Guidance.” Buried in footnote 6 of the 2010 training alert is the note: “Law enforcement agencies, government entities, and Users are sophisticated purchasers, sophisticated users and learned intermediaries with respect to law enforcement weapons (including ECDs), force, force use, legality of force use, and reporting.” In an effort to remove potential for liability for its training of police in use of the weapon, the company states in footnote 5: “Law enforcement agencies are force and force tools experts and are solely responsible for their own Guidance. ‘Guidance’ includes but is not limited to policy, procedure, rule, order, directive, training, continuum, and standard. Taser has no power or authority to . . . establish standards of care or conduct.” Perhaps ludicrously, the company attempts a reassuring tone when it states that it is the subject, not officers and municipalities, who bears all the risks: “Resistance to law

⁴¹ These reports do not represent 18 separate incidents; some of the reports are from several officers at a single event.

⁴² Teleconference with John Burton, Pasadena, California, referenced *supra*.

enforcement action incurs substantial risk of death or serious injury and subjects who resist law enforcement assume all such risks of death or serious injury.”

Municipalities have always had liability exposure for Taser use alongside the manufacturer itself. But as the Taser company has taken measures to insulate itself from liability, it is city governments which now bear the increased exposure, both directly and through their insurance carriers, for allegations of injury and death from excessive force, negligent operation, and substandard training. “An officer may be liable for an unreasonable Taser use and municipalities may be liable for policies that promote Taser overuse or misuse, and for the failure to adequately supervise and train their officers.”⁴³ Municipalities will no longer, as in *Heston* and other cases, be able to settle as easily with plaintiffs who allege excessive force on the part of police, because the Taser company is no longer a “deep pocket” co-defendant who is vulnerable to the charge of negligent warnings. This isolation of municipalities as the sole litigation target for improper Taser deployment is a factor that weighs against whether to acquire the weapon, and all the more so in a community where the need for the weapon is not otherwise clearly shown.

10. A Realistic Appraisal of the True Total Costs

Chief Facos, in his application to the City Council for a budget line to purchase Tasers, represented that the cost to the City would be \$11,400. This is an accurate representation of the purchase price of fourteen units. The Committee was told that the Council raised a question of other, accompanying costs but did not receive a fuller estimate from the Chief. The Committee raised this issue on its own, asking Chief Facos to also calculate the costs of other items and measures (see below) that both the Committee and the Chief agreed were prudent should Tasers be introduced here. The Chief said he would produce a five-year estimate of all such costs, but did not do so. It is the Committee’s view that, should Tasers be acquired here, certain protective prerequisites would have to be implemented by the City, which would significantly raise costs above the purchase price of the Taser itself. The following are the additional costs that both the Chief and the Committee agreed were either necessary or prudent:

- Crisis Intervention Team (CIT) training
- Hiring of or certification of a Taser-approved trainer
- Replacement of the device (amortization of the cost)
- Maintenance of the device
- Replacement of the spent cartridges
- Body Cameras
- Data Storage
- Defibrillators in cruisers

The Committee was able to approximate some of these additional costs.

1. Training: Training should include Crisis Intervention Team training, described below in this report. Such training would have to take place in a nearby state, since Vermont does not

⁴³ New York Report at 12

conduct it in-state, and would require each officer to be away for the five-day course. The Committee on its own was not in a position to accurately assess the exact cost of such absence, but it estimates that each Montpelier officer's absence for a week would have to cost at least \$2000 (wages, overtime substitute coverage, transportation, room, board) plus the cost of the training itself. The Committee is uninformed as to the likely cost of CIT tuition.

2. Defibrillators: Chief Facos agreed that with an introduction of Tasers here, a defibrillator in each cruiser would be prudent, in light of the proven dangers of the device when deployed against vulnerable populations such as individuals with heart conditions or in high states of agitation.⁴⁴ The cost of a defibrillator is approximately \$1200-2400.

3. Body cameras: The Committee and Chief Facos agreed that cameras provide a video record of police-citizen confrontations for the legal protection of all parties involved and of the city itself. There are two types of police video cameras for Taser use, one that attaches to the camera itself, and one that the officer wears on his/her body. The body camera is far superior, in both the Chief's⁴⁵ and Committee's view, in that it records everything related to an incident, including the precursors to any Taser deployment. The Taser-mounted camera is inadequate in that it records only the event from the moment the safety on the device is taken off. The Taser-mounted camera is thus not able to preserve the most critical information pertaining to the justification for deployment. The Taser company body camera costs approximately \$3000 per unit. Less expensive brands include one manufactured by Viewue Corp., which costs \$899. The likely life of a body camera is unknown to the Committee.

4. Data storage: Storage of Taser's body camera data costs \$1200 per year. Chief Facos was not sure whether that cost was per camera or per department.

It is apparent that to acquire Tasers along with the recommended equipment and training would far exceed Chief Facos's submitted estimate for just the initial hardware. The Committee believes that if this device should be approved by City Council, that should only happen after a full and accurate calculation of all related costs, which would not only give both Council members and taxpayers a clear-eyed understanding of the proposal, but also put them in a better position to make an informed decision of whether Tasers are needed here in light of competing City needs and priorities.

III. The Police Department Has Not Proposed a Prudent and Protective Policy Regarding Tasers, Raising the Prospect of the Introduction into the

⁴⁴ In agreeing with the Committee's preference for defibrillators in cruisers, Chief Facos noted that they can be less effective when exposed to the coldest winter temperatures.

⁴⁵ While agreeing with the view that body cameras are valuable for their ability to record an event, the Chief expressed an uncertainty as to whether this community would accept them.

Community of a Poorly-Regulated New Weapon.

Chief Facos has the city's best interests in mind in recommending the acquisition of Tasers. The Committee does not doubt the sincerity of his dual motivations of protecting officers and subjects from potential injury. The Committee agrees with and supports those goals. The disagreement is over whether acquiring Tasers is the best, a safe-enough, and a necessary way to accomplish those goals.

Essential to the operation of a good police force is the adoption of thorough, deeply considered written policies that are tailored for the particular community – written policies which, while they can never entirely remove the element of discretion on the part of officers in the field, are nevertheless specific and binding in a manner that fully informs officers about specific requirements governing their conduct. Such policy-making inevitably entails a tension between a wish for vague and non-binding policy that allows the police to exercise maximum discretion with a minimum of interference, and on the other hand the more legitimate interest that the police, in whom tremendous, lethal and potentially oppressive power has been invested, be held accountable to specific standards of conduct. Ultimately, a clear and precise use-of-force policy is in everyone's interest. As stated by the International Association of Chiefs of Police:

Police administrators should not be hesitant to develop comprehensive, strong, and definitive policies and procedures for fear that they may prove prejudicial to a future court assessment of an officer's conduct. In fact, failure to adopt a use- of- force policy in clear and unequivocal terms will almost certainly have more serious consequences for the officer's agency and employing jurisdiction.⁴⁶

The need for clear, specific, binding and community-tailored policies is especially the case in Montpelier, where the police chief has, by law, nearly absolute autonomy in adopting policies and spending his budget, exercising his powers over law enforcement free of any advise and consent by another branch of government, i.e., free of the checks and balances that normally characterize our system of government. *See* 24 V.S.A. §1931(b). The unique exception to this in Vermont is the City of Burlington, which has by charter created a Police Commission which may subject actions of the police chief to concurrence or modification. Given the gravity of the decision whether to acquire Tasers, and the importance of well-considered and prudent written policies – especially regarding the use of weapons against members of the public – the Committee spent considerable time assessing both the current “Use of Force Policy” (separately submitted) of the Montpelier Police Department, as well as the one proposed by Chief Facos to replace it and to accompany the acquisition of Tasers, titled “Response to Resistance” (separately submitted). For the reasons set out below, this proposed policy is grossly inadequate to assure the safety of both police officers and the community.

The proposed policy, titled Resistance to Force, which Chief Facos submitted to City

⁴⁶ IACP National Law Enforcement Policy Center, “Use of Force”, February, 2006.

Council, is the exact policy given to him by the Vermont League of Cities and Towns (VLCT) – the document even bore the VLCT logo as well as that of the Legal and Risk Management Institute (LRMI) on its first page.⁴⁷ The VLCT, despite its organizational-sounding name, is a private insurance company that insures most Vermont cities and towns, including Montpelier. The company can be expected to operate with an understandable bias toward minimizing its own pecuniary exposure. The LRMI is also a private entity, owned by a former police chief. It contracts with various insurance companies, including the VLCT, to provide “model” written policies. The LRMI does this by way of working groups who prepare these suggested policies. Its police policy-making panel is composed solely of current and retired police chiefs and officers.

Given the interests of their creators, these model policies must be taken with a more than a pinch of salt. The VLCT’s own employee-underwriter, Joe Damiata, acknowledged that the vague, non-specific language of the Response to Resistance policy has a “c.y.a.” purpose, and that insurers and police organizations sometimes favor such vagueness in policy for that reason.⁴⁸ “Our ultimate goal is to reduce the exposure and liability of municipalities”. Mr. Damiata further acknowledged that he can understand how a committee such as this one might be concerned that the Response to Resistance policy, aimed at risk management for the insurer and municipality, might not weigh all the countervailing interests, such as citizen protection from low policy standards, or the interest that there not be too early a resort to a particular level of force due to a low deployment standard.

Perhaps most important was Mr. Damiata’s comment that, as to a model police policy such as Response to Resistance, “police departments should go through it and customize it, make sure it fits their department. We don’t tell them to take these and put them [directly] on the shelf.” Disturbingly, putting this insurance company-generated use-of-force policy directly on the shelf, unconsidered and untailored to this community, is precisely what happened here, which raises serious concerns about it, including the following.

A. The Introductory Language of the Proposed Policy Seeks to Make Its Provisions Legally Unenforceable By A Citizen Aggrieved By Police Use of Force.

The proposed Response to Resistance policy begins with the following disclaimer:

This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance

⁴⁷ The only amendment to the proposed Response to Resistance policy by Chief Facos occurred when the Committee pointed out to him that his proposed policy does not provide for Tasers. He then added a single entry regarding Tasers and removed the two aforementioned logos.

⁴⁸ Interview with Joe Damiata, VLCT employee-underwriter, in VLCT office, Montpelier, July 28, 2011.

with the laws governing employee discipline.

The Chief told the Committee he “can’t say why” that paragraph introduces his proposed policy. Mr. Damata conceded that this language purports to give no legal rights to citizens based on violations of the policy, and would have the effect of discouraging a citizen from believing he/she possessed any such rights under the policy. This attempt to insulate the insurer from liability does not serve the larger interests of the City – public safety and police accountability. If precise, protective and transparent policies are prudent and necessary, those policies are largely meaningless unless citizens are able to compel adherence to them and to seek legal redress if they are violated. A legally unenforceable policy would gravely undermine citizens’ security and the police-community relationship. It is for this reason that many cities and towns in Vermont, including Burlington, have no such disclaiming language in their policies. To adopt such a disclaimer here would ultimately make this a more dangerous environment for law enforcement and for the citizens.

B. The Proposed Policy Locates Tasers Dangerously Low on the Use of Force Continuum, Encouraging Early and Premature Resort to a Potentially Lethal Weapon.

Pages two⁴⁹ and four of the VLCT policy would place Tasers on “the same level of force as chemical spray”.⁵⁰ The Committee views this as a misguided and dangerous placement on the continuum, given that the Taser is a potentially lethal weapon, whereas pepper spray, though it comes with its own dangers to the subject, is not regarded as potentially as lethal as a Taser. To locate them as equivalents on the use of force continuum would have the effect of causing officers to resort to Tasers earlier than they otherwise would, and not necessarily resort to chemical spray even if it would be effective in gaining safety and control. This feature of the VLCT policy may serve insurance companies who have an eye on possible litigation, but does not serve the interest of the City in making sure this weapon would not be an early weapon of choice in the field. Such an outcome would only confirm the expressed fears by those opposed to Tasers regarding how they would be used, and confirm the findings of the Arizona Report that the introduction of Tasers cause an earlier use of a higher level of force. It should be noted that the current Use of Force policy, at page two, calls for resort to pepper spray before resorting to other less-lethal weapons on the continuum. The Chief’s proposed VLCT-sponsored policy

⁴⁹ The pages are not correctly and sequentially numbered. References are to the actual page rather than the number indicated at the bottom of each page.

⁵⁰ The proposed policy seeks to replace the traditional and still widely-used term “use of force continuum” with the new term “force options”. This is an obvious attempt by the VLCT to try to substitute a “tool kit” approach for the more protective “continuum” approach. The “tool kit” approach only vaguely lays out the force options, telling the officer to select what he/she believes appropriate under the circumstances. The “force continuum” approach gives the officer more precise guidance regarding the stepped increase in force. That the VLCT model policy still implicitly recognizes the escalation of the forms of force, but is attempting to make this less important by a change in nomenclature, is shown by the actual placement of the different force forms on pages two and three, beginning with “command presence” and “verbal commands”, moving through pepper spray and Tasers, and finally ending at the level of deadly force.

would eliminate that requirement and **effectively lower the standard for the use of potentially lethal force.**

C. The Proposed Policy Chooses A Vague and Dangerously Permissive Standard to Govern When Tasers May Be Used on Subjects.

In addition to where Tasers would fall on the use of force continuum, another critical issue is the standard for when it can be deployed. There is a range of such standards among research recommendations and among police forces themselves. This range includes:

1) The Maryland Attorney General Report:

“only when an individual poses an imminent threat of physical injury to themselves or others”, also called “significant injury”, with “physical injury” defined as “any impairment of physical condition excluding minor injuries”.

2) The Braidwood Inquiry (Canada):

causing or will imminently cause bodily harm AND no lesser force option has been or will be effective AND de-escalation and/or crisis intervention have not been/will not be effective in eliminating risk of imminent bodily harm. De-escalation and/or crisis intervention is required re: emotionally disturbed persons unless it will not be effective in eliminating risk.

3) The National Institute of Justice:

(makes no recommendation on a preferred deployment standard)

4) The ACLU of Northern California:

only where there is an imminent threat of serious physical harm to the officer or another individual”, and “[never] to simply gain compliance, even if the subject is being physically evasive or uncooperative”. “Passive resistance or non-threatening acts such as ‘tensing’ one’s arm to avoid being handcuffed, without more, should not justify CED [Taser] use.” Use only in “life-threatening situations”. The drive-stun mode should only be used in “exigent circumstances”. Warn before use, and brandish only when use is justified.

5) Amnesty International:

“imminent threat of death or serious (potentially life-threatening) injury which cannot be contained by less extreme options.” Tasers should only be deployed by “specialist officers”, and “never used as a general force tool”, but rather to “avoid the resort to lethal force or firearms”.

6) The Stanford Report:

“Tasers should be considered as a lethal force option on the use of force continuum . . . Tasers should be the preferred method of use of force in life-threatening situations, and should not be used otherwise.”

7) Police Executive Research Forum (PERF) Model Policy (2005):

where subject is “actively resisting or exhibiting active aggression, or to prevent

individuals from harming themselves or others”. “Active resistance” is defined as “physically evasive movements to defeat an officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody”. “Active aggression” is defined as “a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent”. “Aggravated active aggression” is a “deadly force encounter”.

8) **The International Association of Chiefs of Police (IACP) guidelines:**
to subdue “violent or potentially violent individuals”

9) **Barre, Vermont:**
“The suspect must be actively aggressive and/or resisting and presenting a risk of injury to the officer(s), him/herself or others.”

10) **Burlington, Vermont:**
“individuals who are posing a risk of injury to themselves or others”

11) **Montpelier:**
a) Current: The City’s **current Use of Force policy** does not state an actual deployment standard for any weapons, including Tasers. The policy does say, as a general matter, that officers should use “progressive” and “escalating” force along the continuum “to the extent possible”; that pepper spray is first of the less lethal weapons; and that less lethal weapons are in the family of “compliance techniques” which are meant “to counter the subject’s enhanced degree of resistance”, but no definition is provided. (pp 1-2)
b) Proposed: The **VLCT’s Response to Resistance policy proposed by Chief Facos** allows Tasers to be discharged where there is “[a]ctive resistance/active aggression”. (p. 4)

It is apparent, from the above, that there is a range of Taser deployment standards, from the permissive to the restrictive, as follows:

- active resistance
- active aggression
- imminent threat of harm
- imminent threat of physical injury, excluding superficial injury
- imminent threat of serious physical injury or death

In coining the standard of “active resistance/active aggression”, the proposed VLCT policy 1) confusingly merges two distinctly different use-of-force standards (“active resistance” and “active aggression”), having the practical effect of allowing deployment based on the lower of

those two (“active resistance”) while giving misleading reassurance that “active aggression” may be required; and 2) in so doing, would allow Taser use based on **the lowest standard found anywhere** in the research and literature on Tasers.

The PERF Model Policy referenced above defines the key terms. “Active resistance” is shown by “physically evasive movements to defeat an officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody”. This lowest of all standards can be satisfied by as little as a subject “stiffening” his/her arms, “hunching” or even “tensing”. It is a standard that requires virtually nothing to satisfy, and exceeds only the standard of “passive resistance”, which is found nowhere in the literature as sufficient for Taser deployment. “Active aggression” requires more. As defined by PERF, it is “a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent”. However, even this next-higher standard does not rule out simple assault causing no more than pain or superficial injury like a scratch or abrasion, which has been found inadequate by many of the studies and recommendations, such as the Maryland Report, which requires a threat of imminent harm greater than that of superficial injury.

The proposed VLCT policy tries to combine two distinctly different standards and thereby blur the distinction between them, with the result that Taser deployment would always be justified by the lower “active resistance” (“tensing”, “hunching”, “stiffening”) one. Chief Facos agreed in discussions with the Committee (August 2, 2011) that it is a “valid concern” that active resistance and active aggression are not defined in the proposed policy, and he agreed that he would want a higher standard than just, for example, the subject simply “stiffening” his/her body. He further stated he “likes” the Burlington policy requiring “a risk of injury to themselves or others”, but that he would not agree to the higher standard of “imminent threat of serious bodily injury”.⁵¹ Confusingly, the Chief’s written request to the City Council for Tasers was proposed as a helpful tool for “violent” encounters. This purpose is at odds with his proposed policy’s deployment standard at the lowest end of the spectrum. This contradiction, between how it was asked for and how it would be used added to the Committee’s concerns regarding whether this request by the Chief had been researched and proposed with the care and caution it deserves.

The Committee believes both the active resistance and active aggression standards are inadequate for this community. If Tasers are permitted here, their use should be governed by a **threat of imminent serious bodily injury or death** standard, otherwise known as a **lethal force standard**, such as is recommended by the Stanford Report, the Amnesty International Report,

⁵¹ Chief Facos further stated that if the Committee was unsatisfied with the proposed policy’s “active resistance/active aggression” standard, the Committee could propose its own standard. The Committee was perplexed, as to this matter and other policy matters that are mentioned in this report, why the Chief was proposing a policy that did not reflect his better judgment, and why he was not amending it to do so, rather than suggesting the Committee rewrite it. Here, as elsewhere, it appears the Chief had not adequately studied the VLCT policy and rewritten it to suit the needs of this particular community.

and the ACLU of Northern California.⁵² It is also the standard recommended by the several human rights-oriented attorney-witnesses who spoke to the Committee, including Allen Gilbert, Executive Director of the American Civil Liberties of Vermont; Dan Barrett, Staff Counsel of the same organization; Robert Appel, Executive Director of the Vermont Human Rights Commission; and Jack McCullough, Director of the Mental Health Law Project of Vermont Legal Aid.

One might argue for a deployment standard that only requires a simple “risk of harm” rather than a “threat of imminent serious bodily injury” standard, in order to give the police some “leeway”. The Committee sees a simple “risk of harm” standard as lax and unenforceable. It could be justified by almost any aggressive words or uncooperativeness reported by the officer. And, given the great deference afforded police officers’ assessments of situations in the field, it would be virtually impossible to question an officer’s claim of a simple “risk of harm”. It is a standard that would be an invitation to the very abusive deployment of the weapon that the public most fears, and would likely undermine the police-public relationship. Tasers are weapons which should be used only in the most exigent circumstances.

It is true that a “risk of serious injury” standard does not allow deployment in all situations in which an officer might find Tasers useful. But a “threat of imminent serious bodily injury” standard helps prevent a premature and abusive resort to the weapon; requires deployment of lower levels of force when they would be adequate for the situation; avoids Taser deployment in the relatively routine push or kick encounters; encourages greater reliance on an officer’s crisis intervention skills; pays heed to the unknowability of whether a subject is a member of a vulnerable population and in so doing prevents unnecessary serious injury or death from Tasers; and is mindful of the reluctance of a substantial portion of this community to add Tasers to the police arsenal.

D. A High Policy Standard Regarding the Deployment of Tasers is Especially Important for Public Protection, in Light of the Low Standard Used by the Federal Court Regarding Allegations of Excessive Force.

As the Committee learned from lawyers who testified before it, a state or municipality is always capable of creating a policy that is more protective than one found in the federal Constitution, so long as a local standard does not undermine the federal one. This ability to create a higher local excessive force standard underlies the national debate about a prudent standard for Taser deployment.

The federal Constitutional right not to be subject to excessive force derives from the Fourth Amendment protection against unreasonable searches and seizures, which has been

⁵² During discussions between the Committee and Chief Facos, it was proposed to him that an acceptable deployment standard for Montpelier, should Tasers be approved, could be, “where the subject has the means and intent to cause imminent serious bodily harm”. Chief Facos said he would consider and report back to the Committee about the acceptability of this proposed standard, but did not do so.

interpreted by the United States Supreme Court in the case of *Tennessee v. Garner* (1985) to require that government employ “objectively reasonable” force in light of the circumstances. In that case, deadly force was prohibited “unless it is necessary to prevent the escape and the officer has probably cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others”. In 1989, the Court revisited the issue of excessive force in *Graham v. Garner*, where it said the assessment of objective reasonableness “is not capable of precise definition or mechanical application”, but that the analysis should include consideration of the severity of the crime, whether the suspect posed an immediate threat to the safety of the officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight.

The broad principles mentioned in *Graham* are, like many constitutional standards, left to the lower courts to apply and further define, and it is left up to states and local government to create standards that more fully reflect local conditions and values. “Reasonable force” is only a litigation standard to assess when the police exceeded their authority. **It is not a standard for how a community wishes its police to use force and weaponry on a daily basis.** That is why virtually all research and recommendations regarding Tasers, and virtually all local police policies, are more explicit and descriptive of when lethal and potentially lethal force can be used.

All cases originating in Vermont that raise a federal excessive force issue are reviewed by the Second Circuit Court of Appeals, sitting in New York City. That Court has shown a disturbingly unprotective view of citizens who have been subject to tasings, exemplified in the recent Vermont case of *Crowell v. Kirkpatrick* (2010).⁵³ There, two entirely non-violent protestors at a commercial development site in Brattleboro were directed to leave by the police, and refused to do so. The police then sought to arrest them for the misdemeanors of trespass and resisting arrest. The two protestors had devised a method to make their removal more difficult – they chained themselves to a weighted barrel drum, and, though they had the means to unchain themselves from it, refused to do so. The chief of police, who was not present at the scene, instructed the police not to take extraordinary action. Nevertheless, the police on the scene warned the two protestors that they would be tased if they did not leave. Upon the protestors’ continued refusal to unchain themselves, the police tased them, using the device’s painful “drive stun” mode, upon which the two relented and were arrested.

The Vermont federal court found this use of force by the police to be reasonable. A unanimous panel of the Second Circuit Court of Appeals affirmed that decision, finding that the use of a Taser by the police was necessary to overcome the protestors’ “active resistance” and distinguishing it from “purely passive” resistance. It is important to note that this is the same “active resistance” standard found in Chief Facos’s proposed use-of-force policy. It is also significant that the City of Brattleboro retained an outside person to review the case, who concluded that the city had used excessive force in the incident.

⁵³ http://www.ca2.uscourts.gov/decisions/isysquery/b62220bf-a646-414a-abcd-b00b6ddab834/1/doc/09-4100-cv_so.pdf

Chief Facos, like the representatives of the Burlington and South Burlington forces who spoke to the Committee, and like the Vermont Attorney General, states that he disagreed with the decisions of the district and appellate courts in *Crowell*, and agreed that Tasers should not have been used under those circumstances. But it was also Chief Facos who answered the City Council's inquiries, at its Taser hearings last January, that his proposed "active resistance" use-of-force deployment standard posed no problem, because the legal issue of excessive force is easily and reassuringly handled by *Graham*'s nostrum that all force must be "objectively reasonable". In taking that position, the Chief confused, and continued in the Committee's hearings to confuse, a court-created legal standard to look back at a concluded event to decide whether a minimal federal Constitutional standard has been met, with a positive and locally-attuned standard – representing local scenarios and local values – for when potentially lethal force may be used. If *Graham* solved all use-of-force issues for local communities, as Chief Facos assured the Council and the Committee, we would not see the intense debate and the profusion of standards around the country for when lethal and potentially lethal weapons may be used.

The disheartening lesson of *Crowell* is that the federal appellate court that reviews Vermont cases will uphold the use of Tasers in all fact situations that involve conduct that is anything more than "going limp". This permissive and unprotective attitude by the court toward the use of Tasers makes it crucial that local community standards for Taser deployment be high, strict, and clear, so that the public has a greater margin of safety against improper Taser deployment, and that the public anxiety over the use of this weapon might be at least partially assuaged. Neither the paltry "active resistance" nor the unenforceable "risk of harm" standard meet that need. Only a standard requiring a "threat of imminent serious bodily injury" does that.

IV. In Light of the Lack of Objective Showing That Tasers Are Necessary Here, There are Better, More Productive Ways to Spend the Money To Advance Public Safety.

The Committee is aware of the difficult economic decisions facing the city and the City Council. The disrepair of city infrastructure, the deterioration of our tax base, and the budget constraints of our schools are causing the city to have to prioritize in new ways. Given that the evidence demonstrates a wish for Tasers based largely on hypothetical scenarios but not a real and present need for the device, the Committee believes any further expenditure for law enforcement should be directed toward more effective remedies. Two of those alternatives are described below

1. **Crisis Intervention Team training:** Thanks to Chief Facos's wisdom in the matter, all Montpelier police officers receive the six-hour elective "Act 80" training in mental health matters at the Vermont Police Academy. This is commendable, since not all Vermont departments make this course mandatory. But the attendance of police officers at this course is far from sufficient to reassure that they are trained well enough given the lethal and potentially lethal weapons they carry, and the given the difficult street encounters with which they have to deal. This is not just the Committee's view. Cindy Taylor-Patch, an Act 80 Task Force member

and the Police Academy trainer and curriculum developer for the mental health course, informed the Committee that the course “only scratches the surface” of the mental health issues relevant to police knowledge and conduct in the field. Chief Facos, in comments before the Committee, agreed with this appraisal of the training. Ms. Taylor-Patch further stated that the Police Academy course involves no testing or appraisal of an attendee’s knowledge of the course content, just the acknowledgment that an officer attended. In the words of Laurie Pontbriand of Washington County Mental Health and also an Act 80 Task Force member, with reference to the Police Academy course, some officers “get it”, others do not; and the Police Academy course does not deal extensively in crisis intervention. The Committee heard from many members of the mental health patient and advocacy communities with regard to both Tasers and CIT training:

- **Cindy Taylor-Patch**, with backgrounds in both mental health and law enforcement, is “ambivalent” about Tasers.

- **Mary Moulton**, Director of Intensive Care for Washington County Mental Health (WCMH), oversees the agency’s “screeners” who perform emergency mental health interventions, sometimes in conjunction with the police, with a typically twenty-minute lag time before WCMH screeners are able to respond to a police call. Moulton also expresses “ambivalence”. She believes the Montpelier police have handled these difficult situations well. Her ambivalence about Tasers stems from her belief that in a few situations there could have been police resort to a firearm, but she also recognizes that the major studies have recommended Tasers not be used on this population. If the proposed Taser money came to her agency instead, she would hire crisis intervention trainers to do cross-training with WCMH and the police in suicide risk assessment, hostage negotiation, better training about how people react to substances, stress reaction, and trauma. WCMH has applied for a grant for a Street Outreach Interventionist, who would be able to give a more immediate response to police calls than screeners are able to do, but such funding has not been approved. Burlington has such a position, funded through the Howard Center for Mental Health.

- **Gary Gordon**, the leader of a mobile crisis team for Washington County Mental Health, was the sole Committee witness in this field who appeared to clearly favor Tasers. He feels the Montpelier police do a good job de-escalating situations.

- **Jack McCullough**, Director of the Mental Health Law Project of Vermont Legal Aid, believes Tasers would be a “serious mistake”, in that police often cannot know if someone has an underlying mental or physical condition. He believes Tasers will lower the threshold for the use of force, and too often be used against uncooperative or “nuisance” subjects who pose no threat.

- **Mike Sabourin**, a patient advocate at the State Hospital and board member of Disabilities Vermont, finds no need for the device here given the other weapons in the police arsenal.

- **Steven Morgan**, the Director of Another Way, an organization serving psychiatric survivors and at-risk individuals here, opposes Tasers and supports the police using de-escalation techniques, much as the State Hospital uses “least restrictive means” to control difficult individuals. In his experience, outcomes are different if individuals expect aggression.

- **David Callahan** helped establish Another Way. He says Tasers would be a wrong step to take here, being, in his opinion, a tool of fear and subject to being easily abused. He believes that what the police need instead of Tasers is mediation skills, and that their ability to negotiate

will be worse if they have Tasers.

– **Laura Ziegler** is an Act 80 Task Force member who opposes Tasers here. She noted that the mentally ill cannot always understand or communicate with officers, and that they are especially prone to lack of impulse control. She also believes “when something is expedient, you resort to it, especially when it is billed as safe . . . People need to be subdued, it’s true, but not this way.” She also noted the combination of psychiatric or cognitive disabilities with intoxication can dangerously affect the heart and seizure activity.

– **Deb Sargent**, a local psychotherapist, would allow “a few” Tasers here, based on her experience of once having been stalked by a client.

Although there was not unanimity among these witnesses with expertise in the field about the wisdom of introducing Tasers, most found an insufficient showing of need for them in Montpelier. Beyond that question, every one of these witnesses who expressed an opinion about it – which was most of them – agreed that Crisis Intervention Team (CIT) training is what is critically missing in our police training, whether or not Tasers are adopted here. Unlike Vermont’s six-hour course in mental health matters, CIT training is an in-depth, 40-hour training that takes place in various places around the country (including Maine, Connecticut and New York), although not in Vermont.⁵⁴ Some in Vermont, like Taylor-Patch, have taken the training in Maine, and she, along with Mary Moulton and Laurie Pontbriand, have sought to find the funding to establish the training here. Other cities have implemented the training, and Memphis, Tennessee has created the highly-respected “Memphis Model” based on it, as an alternative to Tasers. This Model was created in 1988 when

. . . the Memphis Police Department joined in partnership with the Memphis Chapter of the National Alliance on Mental Illness (NAMI), mental health providers, and two local universities (the University of Memphis and the University of Tennessee) in organizing, training, and implementing a specialized [volunteer] unit. This unique and creative alliance was established for the purpose of developing a more intelligent, understandable, and safe approach to mental crisis events.⁵⁵

It is a model which the Federal Bureau of Investigations has endorsed: “Overall, research supports the use of a specialized law enforcement response to address the needs of persons with mental illness. In particular, the Memphis CIT model is functional, generally accepted by police departments, and, most important, effective.”⁵⁶

Chief Facos voiced support for CIT training (although he questioned whether the City

⁵⁴ A major national CIT training organization is Non Abusive Psychological and Physical Intervention (NAPPI) available at <http://www.nappi-training.com/index.cfm>.

⁵⁵ See Memphis Police Department’s website for this program, <http://www.memphispolice.org/Crisis%20Intervention.htm>.

⁵⁶ FBI Law Enforcement Bulletin, October, 2011, available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/october-2011/responding-to-persons-with-mental-illness>

Council would be willing to allocate money for his officers to receive it). As Laura Usher, a former Vermonter and the CIT Coordinator for the National Alliance on Mental Illness, informed the Committee, CIT training is, ideally and by design, a regional and multi-agency approach, but she and Taylor-Patch and others shared the opinion that even if funding for that kind of expansive regional program cannot yet be found here, individual officer CIT training is far superior to the Act 80 course at the Academy in educating officers to identify and deal with citizens' mental health conditions and crises.

As the police use-of-force reports clearly demonstrate, many of the difficult police-citizen encounters here involve subjects with serious mental health disturbances. The police cannot be expected to identify and non-violently intervene in such situations, nor to know when a potentially lethal weapon is warranted against these individuals, without having an in-depth understanding of mental health issues and an in-depth skill-set for de-escalating those encounters.

2. Police social worker: A different approach adopted by some cities has been the creation of a police force staff position of "police social worker". This position, especially relevant to law enforcement during nights and weekends, keeps at the ready a social worker highly trained in crisis intervention techniques, who could accompany officers to or be quickly called to the scene of a disturbance, and who could engage subjects in ways that could de-escalate a confrontational situation, making a violent outcome on either side less likely.

Both of the above alternatives are endorsed by the mental health professional community. Either of them would be a better choice than Tasers for enhancing public safety.

V. Should City Council Approve the Purchase of Tasers, The Following Preconditions To Their Purchase and Use Should Be Adopted.

Should the Council approve the purchase of Tasers notwithstanding the Committee's recommendation, it is critical that high standards, strict safety measures, extensive training, and vehicles for heightened police accountability be implemented before such purchase and deployment. The Committee believes the following, culled from the major studies of Tasers, are essential preconditions to Taser acquisition by the Montpelier Police Department.

1. Require Crisis Intervention Team training: No officer should be allowed to possess or use a Taser until he/she has successfully completed a 40-hour CIT training course. The Committee further recommends this training for our officers even if Tasers are not added to the police arsenal.

2. Create a police social worker position in the police force: A police social worker is not a substitute for CIT training, but in the absence of such training for the police force at large, a police social worker would provide the next-best level of crisis intervention and de-escalation skills in confrontational situations involving the police.

3. Require and develop in-depth police training in the use and dangers of Tasers:

When one reads the major research regarding Tasers, there is virtually universal skepticism regarding the company's assurances of its safety.⁵⁷ There is likewise a universal recommendation that local police forces not rely solely on the company's in-house training in the device, but rather supplement it with more in-depth and objectively arrived-at training standards. This is because the Taser company's materials "focus primarily on technical proficiency, but they do not provide use-of-force training. In addition, Taser International's materials have downplayed the risks of injury and death resulting from Taser use."⁵⁸

When presented with this fact, Chief Facos – who has not been trained in the use of the weapon and acknowledged only "scanning" the training materials – took the position that supplemental training would be no problem, in light of the training that Montpelier officers already undergo. This indicates a misunderstanding of the concept of "supplemental training" regarding Tasers, by which is meant training in the device itself, not just, more broadly, in the police practices in which our officers are already trained. Any presence of Tasers in this community must be in conjunction with in-depth training in the device that does not solely or primarily rely on the company's materials – and must be training that requires the officer not just to attend, but to be tested and evaluated, on a yearly basis, as to his/her competency with regard to the device. Officer certification in Taser use should include personal exposure to a full-force and full-duration (five-second) discharge.

4. Adopt an "imminent threat of serious bodily injury" deployment standard:

Should the City Council decide to purchase Tasers, it should do so only conditioned on a "threat of imminent serious bodily injury" deployment standard, putting Tasers on a par with firearms. This standard is endorsed by the Stanford Report, Amnesty International Report and the American Civil Liberties of Northern California Report, and is appropriate for this community. By Chief Facos's own admission, the "active resistance" standard is insufficient to the extent it requires only, for example, "stiffening" or "hunching" on the part of the subject. Some reports, such as the Braidwood Inquiry and the Burlington use of force policy (which Chief Facos approves of), purport to go further than "active resistance" by vaguely requiring there be a "risk of bodily injury" or "risk of harm" posed by the subject. The Maryland Report goes a step further by requiring a "risk of physical injury . . . excluding minor injuries". These standards, in the Committee's view, offer an illusory restraint on the use of the weapon, for what difficult encounter could not be rationalized afterwards as containing a "risk of harm"? The simple "risk of harm" standard is more atmospheric than substantive, and insufficiently protective of the public. Only a "threat of imminent serious bodily injury", akin to the lethal force standard for

⁵⁷ See Silverstein, *supra*, at 3-4, who reports that the Securities and Exchange Commission investigated allegedly deceptive statements by the company following reports in the Arizona Republic and the New York Times questioning its safety claims, company reliability studies, and marketing practices. The Taser company agreed to modify its "nonlethal" claims about the weapon, and in 2006 settled a stockholder lawsuit for \$20 million.

⁵⁸ "Conducted Energy Devices Guidelines and Limitations", American Civil Liberties Union of Northern California, at 2. Available at http://www.aclunc.org/docs/criminal_justice/police_practices/aclu_of_northern_california_conducted_energy_devices_guidelines_and_limitations.pdf.

In agreeing with this proposal, Chief Facos stated he believed

firearms, is meaningfully restrictive as to when this weapon may be used, and provides an enforceable restraint against abusive or premature deployment. It would prevent unfortunate Taser incidents that have occurred in Vermont, such as the groundless tasing of a homeless woman outside a convenience store in Barre, the tasing of a 23 year-old man with Downs Syndrome by the State Police for pulling away from an officer during an effort to escort him to a new placement, the tasing of the protesters in Brattleboro, and the tasing of a Fairlee man who was experiencing a seizure. None of these, and other incidents, should have happened, and they are far less likely to happen with a “serious bodily injury” standard of deployment.

5. Position Tasers immediately below firearms on the force continuum: The VLCT model policy that Chief Facos has proposed would place Tasers far down the use of force continuum, akin to pepper spray, and below canines, batons and physical measures. Such a placement on the continuum does not appreciate that this device is termed “less lethal” by its manufacturer because it can be lethal. Low placement on the continuum will only encourage the premature resort to the weapon when other, non-lethal weapons and methods would suffice to control a situation. For these reasons, Tasers should be placed immediately below firearms on the use of force continuum.

6. Equip officers with body cameras: Tasers should not be adopted without the concurrent adoption of body cameras, such as are used by many police forces, for the protection they offer to everyone involved in police-citizen encounters and to the City itself. Chief Facos told the Committee he had no objection to body cameras. And he agreed that, since body cameras make full recordings of such encounters, they were superior to Taser-mounted cameras, which only begin recording when the weapon’s safety is taken off, thereby offering no record that demonstrates the justification of a deployment. The deployment of body cameras must be with policy rules including that the cameras “on” at the beginning of all “street” encounters.

7. Carry defibrillators in cruisers and require officer training and competency in their use: Tasers are especially dangerous for individuals with heart conditions or who are highly agitated. Such agitation is often seen in incidents involving an intoxicated or mentally unbalanced individual. Heart complications, such as ventricular defibrillation, are a serious concern and a prominent suspect in Taser-related deaths. The Committee and Chief Facos agree with the wisdom of placing a defibrillator in every cruiser. Officers must be trained and shown competent in their use.

8. Collect and preserve data indefinitely: The VLCT-proposed policy would have Taser-related data kept for no more than 30 days unless an unnamed records employee in the police department determines, for unstated reasons, that some particular data should be kept longer. It is imperative that Taser data be preserved indefinitely. Chief Facos agrees with this.

9. Add pepper foam to the police arsenal, and consider other non- and less-lethal alternatives to Tasers: The Montpelier Police arsenal should include pepper foam. This weapon was specifically developed to offset one of the limitations of pepper spray, that it can give off gas that can be drawn into a ventilation system. While not a perfect answer to all pepper

spray concerns since even foam gives off some amount of gas, it nevertheless goes a long way to enlarge the capability of oleoresin capsicum to handle difficult encounters and prevent recourse to Tasers. The Committee believes pepper foam would be a wise addition to the police arsenal regardless of whether Tasers are acquired. It also recommends the police department investigate other less lethal and non lethal weapons such as projected bean bags, foam batons, and the newly-developed police devices that immobilize by means of intense light.

10. Create a Citizen Review Board: The Committee strongly recommends the creation of a Citizen Review Board to review use-of-force incidents, and Chief Facos agrees such a board could be beneficial.⁵⁹ Such a board would not only be a helpful investigatory tool for the city, but would also help maintain police-community relations, especially in light of the deep division of public opinion regarding Tasers. The Committee recommends a review board regardless of whether Tasers are acquired. Such a board would need sufficient resources, unrestricted access to information, and meaningful powers, for it to have credibility in the community.⁶⁰

11. Prohibit drive stun mode: Some reports on Tasers would recommend allowing the drive stun mode in exigent circumstances to prevent death or serious bodily injury. Other studies recommend this mode never be permitted, because in that mode the device does not immobilize, but only causes excruciating pain, which some subjects can “fight through”, with the result of the aggravation of the already-tense encounter. The Committee recommends the prohibition of the device in drive stun mode, to prevent both the aggravation of an encounter and to make less likely the potential for abusive deployment of the device.

12. Prohibit tasing a fleeing or running subject: All major studies prohibit deploying Tasers on fleeing or running subjects, due to the increased risk of injury or death.

13. Use specific, descriptive and mandatory language in written policy: The proposed VLCT policy is replete with suggestive, non-mandatory language that may suit the insurance company but does not protect the officer or the public. The policy makes continual use of “should”, “it is recommended”, “should consider”, and similar vague and non-mandatory language. Police officers must, by necessity, use their discretion in the field. But that discretion must be guided by policy that cabins discretion with mandates (“must”, “shall”) to the extent prudent and possible. The lack of such policy language is an invitation to municipal liability.

14. Include in any policy the current policy’s humane and cautious principles regarding an escalating use of force: Our current Use of Force policy, on page one, contains common-sense, humane and cautious principles that the proposed VLCT policy omits. They include:

- “[T]he degree of force employed should generally be in direct relationship to the amount of resistance employed by the person or the immediate threat the person poses to the officer or

⁵⁹ In agreeing with this proposal, Chief Facos stated he believed the members of a review board should be educated with regard to use-of-force matters. He also said he would need to consult with legal counsel about this proposal.

⁶⁰ A leading resource for understanding and creating citizen review boards is the National Association for Civilian Oversight of Law Enforcement (NACOLE), found at www.nacole.org.

others.

- “The use of force by officers of the department will generally be progressive in nature.”
- “Officers must weight the circumstances of each case and employ only that amount of force which is objectively reasonable to control the situation or persons.”
- “[T]hey shall, to the extent possible, utilize an escalating level of force”

These concepts are either missing or severely diluted in the proposed VLCT policy, and in so doing the proposed policy backs away from the injunctions that police use only the force necessary, and only in an escalating fashion to the extent possible. The omission of these principles increases danger to the public and liability to the city. Any Montpelier policy must embrace the principle that “[n]on-force options should be tried where feasible before using an ECW or other force options.”⁶¹

15. Fully specify all populations and circumstances relevant to limitations on Taser deployment: The proposed VLCT policy states: “Officers should consider the particular subject and any vulnerabilities they may have, such as: juveniles, pregnant women, persons who are small in stature, and the elderly. Alternative tactics shall be utilized where the officer has prior information that the subject suffers from a disability which would increase the danger to that person by using the Electronic Restraint Device, i.e., a person at the scene tells an officer that the subject has a heart condition.” (IV)(F)(b)(xxiii and xxiv). In light of the extensive prohibitions that have developed from the research, any written policy must **specify** the precise vulnerable population categories, as set out *supra*, and reiterate that Tasers may only be deployed against them in the extreme circumstance of a **threat of imminent serious bodily injury or death**.

As alarming as the policy’s lack of specification and guidance regarding vulnerable populations, is its treatment of a recognized one. Section (IV)(F)(b)(vi) states: “Multiple Electronic Control Device deployments against an individual may increase the likelihood of serious injury where the individual is suffering from other *[which?]* symptoms such as cocaine intoxication.” It leaves up to the officer to guess what other symptoms may fall under this section. But then it goes on: “Policy and training should encourage officers to minimize the successive number of discharges against an individual where possible.” In other words, officers are not instructed to refrain from deploying against these unspecified populations unless lethal force would be justified – rather, they are only told not to deploy *successive* discharges. This is at least negligence, if not recklessness, in policy development.

Many other situations and vulnerable populations and prohibited circumstances are unspecified in this policy, too numerous, and perhaps unnecessary, to point out. Suffice to say the itemization of these prohibitions, as set forth earlier in this report, *and including the cognitively disabled*, should be set out with specificity in any Montpelier use-of-force policy.

16. Require warnings when possible before deployment: The proposed VLCT policy states: “A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable.” (IV)(F)(b)(xvii)). This is insufficient guidance to the officer in the

⁶¹ Maryland Report at 69.

field, causes unnecessary danger, and invites liability. While pre-tasing warnings are not always possible in exigent circumstances, such warnings should be mandatory when they would not clearly jeopardize the law enforcement objective, and written policy should make this clear. (*Accord*: Maryland Report at 71)

17. Prohibit use of a Taser as a pain compliance weapon or general force tool. The proposed VLCT policy states: “Officers are prohibited from using the device as a punitive measure.” (IV)(F)(b)(xv). This is insufficient, in light of the view of the major reports on Tasers that go beyond punitive use, to also prohibiting use for compliance and as a general force tool.

18. Prohibit multiple shots and continuous or prolonged exposure except where lethal force would be justified: Taser shocks should be as brief as possible. Multiple shots against a subject are significantly associated with Taser-proximate fatalities, particularly if the subject was emotionally disturbed, drug intoxicated or showed continued resistance.⁶²

“An officer should only administer an additional ECW discharge after the initial discharge if the officer has reevaluated and concluded that the subject still poses an imminent threat of significant physical harm and other options are not appropriate. Repeated or prolonged (*i.e.*, beyond the 5-second standard cycle) discharges should be avoided whenever possible.” (Maryland Report at 71)

19. Prohibit Taser use on subjects in restraints except where lethal force would be justified. (*Accord*: ACLU of Northern California report at 4). The ability of a subject to cause a threat of harm while in restraints is not eliminated but is greatly reduced. Other forms of control must be used in this circumstance unless the subject poses an ongoing threat of causing imminent serious bodily injury.

20. Avoid impairment of respiration: Given the respiratory complications that are associated with Taser use, an officer must, following use of a Taser, not employ a restraint method that could impair a subject’s respiration.

21. Provide emergency medical care immediately after *all* Taser use: Emergency care should be provided immediately after all Taser deployments. The subject, who may be intoxicated or mentally ill, cannot be relied on to request or agree to such care. Medical care should be called in advance and on the scene if an officer believes use of a Taser is reasonably possible.

22. Monitor tased subject’s health closely while in custody: Studies indicate that the in-custody death rate rises after the introduction of Tasers. All tased people must be closely monitored while in custody, even after receiving medical care.

⁶² White and Ready, *supra*, at 863.

23. Reporting, supervision and monitoring: All Taser incidents must be reported on a use-of-force form detailing events leading up to and following the discharge. Data to be reported include but are not limited to: a detailed description of the subject's behavior, the facts and level of aggression presented by the subject, the officer's reasons for concluding there was a likelihood of imminent harm by the subject, the number of cycles and the duration of shock, the duration between shocks, all witnesses, the range, the mode used, the distance fired, the point of impact on the body, whether there was any indication that the subject was a member of any vulnerable population as described earlier in this report, the time and type of medical care provided, and any injuries suffered by any person.

24. Supervisors should respond to the scene of any Taser deployment as soon as possible: The quick presence at the scene of a deployment by a supervisor would both ensure to officer and the public the seriousness with which the police force and the city regard Taser deployment, and also assure an immediate assessment of the appropriateness of the deployment.

25. Conduct rigorous investigation following each deployment: A supervisory-level or higher inquiry must be conducted to determine the appropriateness of every deployment and whether there was strict adherence to policy and training. Such investigations should include interview of witnesses; review of video, photographic and data evidence, test results on the weapon; and other relevant information. Such investigation must also be conducted externally, by Citizen Review Board or otherwise, when a subject dies or is seriously injured, when there has been a substantial deviation from policy or training, and when the subject is a restrained or a vulnerable person as defined in this report.

26. Monitor Taser use by the agency: The police force should use a tracking database that is capable of maintaining detailed information as to each device and each deployment, can reveal the circumstances of every Taser deployment, and shows the extent to which officers are relying on the device compared to other forms and methods of control. This information and data must be available to the public.

Bibliography of materials

First author only is cited.

American Civil Liberties Union of Arizona. *ACLU of Arizona Report Shows TASERS Have Not Reduced Police Use of Lethal Force*. Press release June 28, 2011.

American Civil Liberties Union of Arizona. *A Force to be Reckoned With; Taser use and policies in 20 Arizona law enforcement agencies*. June 2011.

[www.acluaz.org/resources/publications]

American Civil Liberties Union of Massachusetts. *Less Lethal Force; Proposed Standards for Massachusetts Law Enforcement Agencies*. Post-2005.

American Civil Liberties Union of Northern California. *Conducted Energy Devices; Guidelines and Limitations*. About 2010. Available at

http://www.aclunc.org/docs/criminal_justice/police_practices/aclu_of_northern_california_conducted_energy_devices_guidelines_and_limitations.pdf.

American Civil Liberties Union of Northern California. *Stun Gun Fallacy; how the lack of Taser regulation endangers lives*. 2005.

Amnesty International. *Less Than Lethal? the use of stun guns in US law enforcement*. 2008.

[amnesty.org]

Azadani, P. et al. Research abstract presented at the 32nd annual Scientific Sessions of the Heart Rhythm Society. 2011.

Azadani, P. et al. *Funding source and author affiliation in TASER research are strongly associated with a conclusion of device safety*. American Heart Journal, September 2011.

Bagley, A. *The neuropsychological effects associated with Taser administrations*. Presented to satisfy in part the requirements for the degree of Doctor of Philosophy in Clinical Psychology at the Rosalind Franklin University of Medicine and Science, 2008.

" The current study was the first of its kind to examine the neuropsychological effects associated with Taser administrations. Profile analyses compared neuropsychological performances and found significant differences in profiles of Tased and non-Tased participants for the domains of processing speed, attention, memory, and executive function."

Baldwin, D. et al. *Myocardial infarction after Taser Exposure*. J La State Med Soc 162 Sept/Oct 2010.

Benedict, Claire. Email to Marilyn Mode. July 5, 2011.

She doesn't want Tasers because the potential for abuse is too high.

Bozeman, W. et al. *Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects*. Ann Emerg Med. vol 53; pp. 480-489; 2009.

Tasers can be used safely against healthy male adults.

Braidwood Inquiry 2010.

An inquiry into a case of the RMCP in Canada tasing a man who died within minutes, and the subsequent attempted coverup by the RMCP, with recommendations for policies on use of Tasers. [www.braidwoodinquiry.ca].

Bui, E. et al. *Generalized tonic-clonic seizure after a taser shot to the head*. CMAJ, 180(6) March 17, 2009.

Bulman, P. *Police Use of Force: The Impact of Less-Lethal Weapons and Tactics*. NIJ Journal, issue no. 267. 2011.

Bunker, Robert. *Should police departments develop specific training and policies governing the use of multiple TASER shocks against individuals who might be in vulnerable physiological states?* Criminology and Public Policy, 2009, 8(4), pp 893-901.

Burlington Free Press Staff. *Vermont State Police to make revisions to Taser policy.* Burlington Free Press, October 22, 2011.

Burlington Police Department. Press Release. *Regarding the Use of Taser Electronic Control Device.* Updated – November 16, 2009.

Burton, John. *Representing Clients Injured by TASER International Electrical Control Devices.* Civil Rights Litigation Handbook, chapter 3, pp 27-51. 2010.

Burton, John. Teleconference with him via Skype. Minutes of the Taser Committee on Sept 13, 2011.

Cao, M. et al. *Taser-Induced Rapid Ventricular Myocardial Capture Demonstrated by Pacemaker Intracardiac Electrograms.* J Cardiovasc Electrophysiol, 2007, 18, pp. 876-879.

This report describes the first human case of ventricular myocardial capture at a rapid rate resulting from a Taser application.

Chen, S. et al. *Perforating ocular injury by Taser.* Royal Australian and New Zealand College of Ophthalmologists, 2006, pp 378-380.

What happens when a Taser dart gets in the eye.

Chermak, Steven. *Conducted Energy Devices and Criminal Justice Policy.* Criminology and Public Policy, 2009, 8(4), pp 863-889.

Chicago Police Dept. Chicago Police Crisis Intervention Team.

Cochran, Sgt. Wade [MPD] *Taser Research, a survey of Vermont police agencies.*

http://montpelier.vt.granicus.com/MediaPlayer.php?view_id=2&clip_id=257&meta_id=10116

Connor, G. *Essential Elements in TASER Policy and Procedure Law and Order.* 2006.

<http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=236843>.

Council on Science and Public Health. *Use of Tasers by Law Enforcement Agencies.* June 2009.

[www.policeone.com/policeone/data/pdfs/Taser_ecd_resolution.pdf] (“AMA report”)

Crowell vs Kirkpatrick. Summary order from the US Court of Appeals for the Second Circuit.

www.ca2.uscourts.gov/decisions; docket number 09-4100-cv.

http://www.ca2.uscourts.gov/decisions/isysquery/b62220bf-a646-414a-abcd-b00b6ddab834/1/doc/09-4100-cv_so.pdf.

Curran, P. *Guns vs. Tasers debate reignites.* The Gazette June 9, 2011 [Montreal].

"[Montreal] Police even went so far as to describe the type of individual on whom Tasers were most likely to be used, particularly people under the influence of drugs or suffering from mental illness."

Donahue, Anne. Bill as introduced by Representative Donahue of Northfield. H31.

Any law enforcement officer who carries a Taser must have the Act 80 training.

Dworkin, Jeff. Summary of assaults on officers.

Dworkin, Jeff. Summary of a telephone interview with Cindy Taylor-Patch, Director of Training at the Vermont Police Academy. August 4, 2011.

She leads the mental health training at the academy.

Dworkin, Jeff. Summary of a telephone interview with Joe Damiata, Vermont League of Cities and Towns. July 28, 2011.

Joe is the manager of the League's safety and health programs, is an underwriter, and was familiar with the various VLCT model policies, including the one Tony Facos wants to adopt.

Dworkin, Jeff. Summary of a telephone interview with Thomas Hanley, Chief, Middlebury Police Department. August 9, 2011.

Middlebury decided they didn't need them.

Dworkin, Jeff. Summary of a telephone interview with Sam Hill, Sheriff, Washington County. August 2011.

"Sheriff Hill thinks stun guns are an excellent tool but that "we don't need them here.""

Dworkin, Jeff. Summary of use of force over four years of incident report data from the Montpelier Police Dept.

Eastman, A et al. *Conductive Electrical Devices: A Prospective, Population-Based Study of the Medical Safety of Law Enforcement Use*. J Trauma, 2008, 64, pp 1567–1572.

Ellerbe, Polly. *Safety of Tasers: an academic and review article summary; examples of negative effects*.

Dr Ellerbe went through all the articles [a couple of thousand plus] in the databases *Academic Onefile*, *Academic Search Premier*, and *Google Scholar* generated by using the search term "Taser," and limiting it to studies published after 2005. Tasers are probably non-lethal when used on healthy young men, but we know very much less on how they affect the populations they are most likely to be used on, or actually have been used on.

Facos, Anthony. First notes on worker's comp cases.

Facos, Anthony. LEOKA Report for 2010.

Facos, Anthony. Memorandum to William Fraser concerning the TASER request. Jan 7, 2011.

FBI Law Enforcement Bulletin. October, 2011. Available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/october-2011/responding-to-persons-with-mental-illness>.

Feeney, C. et al. *Acute Agitated Delirious State Associated With Taser Exposure*. Journal of The National Medical Association, 2010, 102(12).

" The occurrence of acute agitation and delirium in this patient without any prior psychiatric history or significant substance use suggests an association with Taser exposure. This case report is thought to be the first report demonstrating a temporal association between Taser exposure and an acute or delirious state."

Fernandez, Elizabeth. *Researchers Shocked: Tasers Cause Dramatic Rise of In-Custody Sudden Deaths*. Jan 24, 2009. San Francisco Chronicle.

Newspaper report of an article published in the American Journal of Cardiology.

Ferrell, Craig Jr. *What Every Police Chief Should Know About Electronic Control Devices* 1/3/2011. www.iacpnet.com.

Fisk, M. et al. *Taser Settled 10 of 52 Cases It Said Were Dismissed*. Bloomberg, Aug 2, 2007.

Fontenot v. TASER International, Inc., United States District Court for the Western District of North Carolina, Charlotte Division, Case No. 3:10-CV-125.

Fraser, W. Worker's comp data.

Hall, C. *Public Risk from tasers; unacceptably high or low enough to accept?* CJEM, 2009, pp 83-86.

Han, J. et al. *Ophthalmic injuries from a TASER*. CJEM, 2009, 11(1), pp 90-3.

"We describe a case in which ocular injuries were sustained by impalement with a TASER dart. Emergency physicians should be aware of the potential for serious ophthalmic injuries from TASERs and how such injuries should be managed."

Harris, D. *Taser use by law enforcement: report of the use of force working group of Allegheny County, Pennsylvania*. The University of Pittsburgh Law Review. Summer 2010.

" Tasers can be useful and safe weapons for police, as compared to other weapons, but only if they are used within the context of proper and well-developed policy, training, and supervision, and with accountability. The Working Group concludes that without any of these four important ingredients, the use of any weapon or tactic can do unnecessary damage and compromise the safety of the public and police officers."

Heightman, A.J. *Don't Be Shocked*. Editorial. JEMS | MAY 2005 p. 12 et al.

Taser death.

Heston v. Taser International, Inc. *Memorandum*. www.ca9.uscourts.gov/datastore/memoranda/2011/.../09-15327.pdf.

Ho, Jeffrey D. et al. *Echocardiographic Evaluation of a TASER-X26 Application in the Ideal Human Cardiac Axis* Academic Emerg. Med., 2008, 15, pp 838–844.

Ho is a Taser consultant, which he does not acknowledge in this article.

Ho, Jeffrey D. et al. Re: *Myocardial infarction after Taser Exposure*. J La State Med Soc, 2011, 163 March/April.

Ho is a Taser consultant, which he does not acknowledge in this letter.

International Association of Chiefs of Police (IACP). National Law Enforcement Policy Center *Use of Force Concepts and Issues Paper*. Originally Published: February 1989 Revised: December 1995; October 1998; April 1999; August 2001, February 2005, February 2006.

International Association of Chiefs of Police (IACP). *Electro-Muscular Disruption Technology*. 2008.

Jauchem, James R. et al. *Acidosis, lactate, electrolytes, muscle enzymes, and other factors in the blood of Sus scrofa following repeated TASER[R] exposures*. Forensic Science International, 2006, 20(11).

Jonsson, P. *Three deaths in one weekend puts Taser use by cops in crosshairs*. Christian Science Monitor. August 8, 2011.

Kaminski, Robert. *Research on Conducted Energy Devices; Findings, methods, and a possible alternative*. Criminology and Public Policy, 2009, 8(4), pp 903-913.

Kedir, S. *Stunning trends in shocking crimes*. J of Law and Health, 2006, 20, pp 357-384.

Tasers can prevent officer injuries, but can also get ahead of training, policies and regulations.

Khanna, Roma. *The Taser Effect*. Houston Chronicle, Jan 14, 2007.

" Since the Houston Police Department armed itself with Tasers, touted as a way to reduce deadly police shootings, officers have shot, wounded and killed as many people as before the widespread use of the stun guns, a Houston Chronicle analysis shows."

Kondro, W. *The 15% ruling*. Canadian Medical Association Journal, 2008, p 128.

Lee, B. *Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths*. Am J Cardiol, 2009, 103, pp 877–880.

" Taser deployment was associated with a substantial increase in in-custody sudden deaths in the early deployment period, with no decrease in firearm deaths or serious OIs [officer injuries]."

Li, J. *Catastrophic Globe Disruption As A Result Of A Taser Injury*. The Journal of Emergency Medicine, pp. 1–3, 2011.

They report a "case of a severe TASER-related ocular injury resulting in significant vision loss."

Lundquist, M. *A safe Taser dose: Evaluation of Taser-related in- custody deaths, with implications for law enforcement policy and training*. Mar 2007 APS abstract.

" The data on Taser-related in-custody human deaths collectively support a single-shock policy for LEAs (ideally, Taser use on people exhibiting physical exhaustion or any type of delirium, or who are taking drugs for mental health reasons, or are pregnant, is prohibited unless deadly force is justified), with a second shock permitted in emergencies only for people not in the foregoing "prohibited" category."

Mangus, B. *Taser and Taser Associated Injuries: a Case Series*. American Surgeon, 2008, 74(9), pp. pp 862-865.

Maryland Attorney General. *Report: Task Force On Electronic Weapons*. December 2009. www.oag.state.md.us/Reports/ECWReport.pdf

McCullough, John. Statement Regarding Tasers for the Montpelier Police Department. August 16, 2011.

His statement at that committee meeting.

McCullough, John. Statement on the city charter. Prepared Sept 18, 2011.

McDonald, Elizabeth. *A Shocking Defense*. Forbes.com, 10/31/2005.

Current and former cops got stock options in Taser in exchange for essentially endorsing its line of guns.

Means, R. et al. *TASER and the Ninth Circuit Decision*. April 2010.
www.ncjrs.gov/App/Publications/abstract.aspx?ID=252791.

Memphis Police Department. Information about the Crisis Intervention Team model Memphis uses instead of Tasers. The police department's website for this program is <http://www.memphispolice.org/Crisis%20Intervention.htm>. 2011.

Mode, Marilyn. Summary of a telephone interview with Laura Usher, CIT Coordinator, National Alliance on Mental Illness (NAMI), Arlington, VA. August 16, 2011.

Montpelier, City of. Data on worker's compensation claims.

Montpelier Police Department General Order: Use of Force. Date reviewed: October 7, 2009. Includes copies of the necessary paperwork.

Montpelier Police Dept. Log. Search results from the log for all officer assaults; 2008-6/24/2011.

Montpelier Police Dept. Use of force reports.

Morrison, G. *Conducted Energy weapons; Learning from operational discretion and encounter outcomes*. *Criminology and Public Policy*, 2009, 8(4), pp 915-925.

NAPPI. Non Abusive Psychological and Physical Intervention (NAPPI). The website is at <http://www.nappi-training.com/index.cfm>.

National Alliance on Mental Illness [www.nami.org]. These materials were given to the committee by Roberta Downey.

NAMI Board Adopts Policy on Less Lethal Weapons by Ron Honberg

NAMI policy platform section 8.9

Self-help manual: starting a CIT program

CIT toolkit by Michael Woody

CIT toolkit FAQ

National Association for Civilian Oversight of Law Enforcement (NACOLE). www.nacole.org.

National Council for Community Behavioral Healthcare. *Mental Health First Aid*. unknown date.

National Institute of Justice. Police Use of Force, Tasers and Other Less-Lethal Weapons. May 2011. www.nij.gov.

National Institute of Justice. *Study of Deaths Following Electro Muscular Disruption: Interim Report*. June 2008. www.ojp.usdoj.gov/nij

National Institute of Justice. *Study of Deaths Following Electro Muscular Disruption*. May 2011. www.ojp.usdoj.gov/nij

Naunheim, R. et al. *Ventricular fibrillation in a man shot with a Taser*. Emerg Med J, 2010, 27, pp 645-646.

The case history is presented of a young man who was shot in the chest by a Taser and presented to the emergency department in ventricular fibrillation.

New York Civil Liberties Union. *Taking Tasers Seriously*. October, 2011.

O'Brien, A. *Use of Tasers on people with mental illness: A New Zealand database study*. International Journal of Law and Psychiatry (2010).

"Introduction of Tasers into policing in New Zealand will disproportionately impact on people with mental illness. Guidelines are needed to manage the future use of Tasers in mental health emergencies."

Pasquier, M. et al. *Electronic Control Device Exposure: A Review of Morbidity and Mortality*. [Annals of Emergency Medicine](#) May 2011.

"A single exposure of an electronic control device on healthy individuals can be assumed to be generally safe, according to 23 prospective human experimental studies and numerous volunteer exposures. In case series, however, electronic control devices could have deleterious effects when used in the field, in particular if persons receive multiple exposures, are intoxicated, show signs of "excited delirium," or present with medical comorbidities."

Police Executive Research Forum [PERF]. *Electronic Control Weapon Guidelines*. 2011. San Francisco Police Commission. Hearing. Available at http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=21.

Summary of part of the San Francisco Police commission hearing, prepared by Polly Ellerbe

Silverstein, Mark. National Police Accountability Project Skills Seminar, October 19, 2006. Tasers: evaluating claims of excessive force.

Sleigh, David. Clarification of his statement at a Taser committee meeting.

A state or local government is always free, by law or ordinance or policy, to create a more protective standard than the minimal federal one, and when state or local government does that it need not justify it.

Sloane, C. *Thoracic Spine Compression Fracture After Taser Activation*. The Journal of Emergency Medicine, 2008, 34(3), pp. 283–285.

They saw a Tasered police officer with an acute thoracic vertebral compression fracture occurring after being tased in a training exercise.

Smith, M. *A Multi-Method Evaluation of Police Use of Force Outcomes, Executive Summary*. NIJ 231177. July 2010.

Sorrell, W. et al. *A study and report concerning the use of tasers and other less lethal means of force by Vermont law enforcement*. April 7, 2008.

South Burlington Police Department. General Order: PR 302. Use of Force.

Stanbrook, M. *Tasers in Medicine: an irreverent call for proposals*. May 1, 2008. Online at www.cmaj.ca.

Stanford Criminal Justice Center. *Use Of Tasers By Law Enforcement Agencies: Guidelines And Recommendations Prepared For The City Of Mountain View Human Relations Commission*.

"The use of Tasers by law enforcement officers is almost entirely unregulated." They provide recommendations. "The clear consensus of the research is that a one-time five-second shock does not seriously or permanently injure a healthy and sober young adult who is not pregnant. However, the few studies that have been conducted, as well as the anecdotal evidence, suggest that there are some serious health risks involved when individuals not falling within that category are tasered." www.Law.Stanford.Edu/Academic/Programs/Criminaljustice

Strote, J. et al. *Taser Use in Restraint-Related Deaths*. Prehospital Emergency Care, 2006, 10(4), pp 447-450.

"The findings are consistent with prior studies, suggesting a high frequency of restraint-related and excited delirium–related fatalities."

Strote J. et al. *Taser Safety Remains Unclear*. Annals of Emergency Medicine, 2008, 52(1) p. 84.

" Even if the relatively small physiologic changes seen in this study are tolerable, swine model studies have begun to suggest that multiple exposures could lead to much more impressive changes than those seen from a single discharge."

Strote J. et al. *Conducted Electrical Weapon Use by Law Enforcement: An Evaluation of Safety and Injury*. The Journal of Trauma, 2010, 68(5), p. 1239.

Sun, H. et al. *Estimating the probability that the Taser1 directly causes human ventricular fibrillation*. Journal of Medical Engineering & Technology, 2010, 34(3), pp 178–191.

Taser International. New warnings September 2009 and October 2010.
cardiac, acidosis, ventricular fibrillation, etc

Taser International. New training bulletin and FAQ October 2010.

Taser International. Risk management statistics. Prepared by Steve Tuttle, VP of Communications at Taser International.

Taser International. Summary of Taser International's phone call on the new warnings. October 23, 2009.

Taser International. Statistics showing number of Tasers bought by the general public and by police. Prepared by Steve Tuttle, VP of Communications at Taser International.

Taser International. TASER Device Liability and Litigation Risk. 2007.

Taser International. User courses.

Thomas, K. et al. *Conducted Energy Device Use in Municipal Policing*. Police Quarterly, 2010, 13, p 290. Online at <http://pqx.sagepub.com/content/13/3/290>.

Tucker, A.S. et al. *Responding to Persons with Mental Illness*. www.fbi.gov/stats-services/publications/law-enforcement-bulletin/october-2011/responding-to-persons-with-mental-illness.

Valentino, D. et al. *Taser X26 Discharges in Swine: Ventricular Rhythm Capture is Dependent on Discharge Vector*. The Journal of Trauma, 2008, December.

"For most transcardiac vectors, Taser X26 caused immediate ventricular rhythm capture. This usually reverted spontaneously to sinus rhythm but potentially fatal VF was seen with two vectors. "

Vermont League of Cities and Towns. *Response to Resistance*. 2010 [www.llrmi.com]

Vermont State Police. Rules and regulations/operational policies and procedures, section IV, chapter 1, Article IV. *Non-Lethal Use of Force*. Updated April 1, 1999.

Vermont State Police. Rules and regulations/operational policies and procedures, section V, chapter 9, Article XIV. *X26 Taser*.

Walter , R. et al. *TASER X26 Discharges in Swine Produce Potentially Fatal Ventricular Arrhythmias*. 2008 by the Society for Academic Emergency Medicine.

White, A. *Study Shows Tasers Pose Potential Risks for Pacemaker Patients*. Heart Rhythm Society 28th Annual Scientific Sessions.

" The study was the first human case to demonstrate how voltage in the weapon may be captured by the heart and speed up heart rates in pacemaker patients."

White, M. et al. *Examining fatal and nonfatal incidents involving the TASER*. Criminology and Public Policy, 2009, 8(4), pp 863-889.

White, M. *The Impact of the Taser on Suspect Resistance: Identifying Predictors of Effectiveness*. Crime and Delinquency, February 26, 2008.

Whitehead, S. *A rational response to Taser strikes*. JEMS | MAY 200

Wright, G., *17-year-old's family wins \$10 million in Taser verdict*. Charlotte Observer, Jul. 21, 2011.

Minority report for City Manager William Frasier and the City Council regarding the purchase and use of tasers by the Montpelier Police Department.

In April 2011 City Manager Frasier sent a memorandum to Mayor Hooper and the City Council regarding the appointment of a six person citizen committee to consider the following question: Under what circumstances would the use of tasers by the Montpelier Police Department be acceptable?

At the same time the manager's charge also asked the committee to consider and make recommendations concerning need, policy and standards, training requirements, and public accountability for use or display.

This was a lengthy, difficult process. In short, the majority of the committee is opposed to the purchase of tasers by the Montpelier Police Department, doesn't believe there is a need for tasers, and would prefer the city implement a Crisis Intervention Team approach to dealing with/de-escalate serious use of force situations.

A lot of time, effort and hard work went into the Majority Report and it's authors should be thanked for the research and detail that went into the document. I am not going to comment at length on a document that should speak for itself other than to say I disagree with several sections of the draft report and that the differences are such that I chose to write a minority report.

Some background: Beginning in the spring the committee held 17 meetings and two public hearings. We heard from a wide assortment of people who voiced a variety of opinions on tasers in general, their use and abuse by law enforcement professionals, and whether or not they should be used in Montpelier.

The committee reviewed hundreds of pages of documents and reports from a wide assortment of law enforcement, civil rights and advocacy organizations, including the Vermont Attorney General, the American Civil Liberties Union, Amnesty International, U.S. Department of Justice and the Maryland Attorney General's Task Force on Electronic Weapons.

Simply put there are no easy answers or magic solutions here. Advocates make strong arguments for taser use by law enforcement officials. Opponents make equally strong arguments against them. Ultimately the issue that the City Council must decide is are there any circumstances where the use of tasers in Montpelier are acceptable. In my judgement the answer is yes. I believe taser use should be acceptable in cases where police are dealing with situations where there is a threat of bodily harm to the general public, rescue personnel, or the police officer.

That said, the next issue is determining whether there is a need for tasers.

Reports by the Vermont Attorney General's report, the U.S. Justice Department, and the Maryland Attorney General's Task Force on Electronic Weapons all make arguments that can be

used to advocate for taser use. Since the arguments are similar I will only cite the Vermont attorney general who said, “less lethal means of force are and can be effective and efficient weapons available to Vermont law enforcement personnel in a use of force continuum. When used appropriately, they can save lives and greatly reduce injuries to law enforcement and rescue personnel, the general public, and to individuals who are subjects of police interventions.”

Over the past five months the committee heard from a wide assortment of well meaning people on the taser issue. Opposition has been voiced largely by lawyers and representatives of civil and human rights organizations and a number of young people whose concerns range from the appropriateness of the devices in Montpelier to the potential for their abuse. Support has come from law enforcement officials who argue they are an effective tool in de-escalating dangerous situations where there is a threat of injury to the general public, rescue personnel and police officers. Burlington and South Burlington police officials who testified before the committee reported a reduction in the number of injuries to officers and zero lost time when tasers are on the scene in combative situations. Montpelier Chief Facos cited three separate cases in recent years in Montpelier where taser use would have been appropriate.

The majority of the committee believes Chief Facos failed to adequately demonstrate a need for tasers arguing that the cases referenced by the chief were all handled with available tools and therefore tasers were not needed. The majority report questions the seriousness of injuries to Montpelier police officers based on the committee’s review of incident reports and workmen compensation claims, and uses those reports to argue against a need for tasers. The majority also argues that Montpelier doesn’t see the types of crime that occur in Burlington and South Burlington and use that argument to support their opposition to tasers.

I disagree with those arguments. In my judgement any time an officer is injured in the line of duty it is a serious matter regardless of the degree of injury. The city has a responsibility to protect its employees and to provide its employees with the tools necessary to do their jobs in a safe and efficient manner possible. I fully understand that being a police officer is a dangerous job with many hazards and high expectations from the public they protect and serve. But there is nothing in a Montpelier police officer’s job description that says they have to be a punching bag for some out of control individual.

I also disagree with the notion that Montpelier is immune from the types of crime that occur in Burlington and South Burlington. Vermont has become a mobile society and one has to be naive to ignore the fact that people from Chittenden County have been involved in a wide assortment of criminal activities in Montpelier and Washington County.

As I said earlier the committee heard powerful arguments for and against tasers. For me the difference was testimony presented by Mary Moulton and Gary Gordon, employees of Washington County Mental Health who have worked closely over the years with Montpelier police in a wide assortment of cases. While they did not directly advocate for tasers, they pointed out that they have both witnessed a number of situations that became violent because de-escalation efforts were not effective. “We have witnessed violent, physical take downs,” Gordon said. “Batons can break bones, that’s violent. Pepper spray can get into ventilation systems. Tasers may do a couple of things to ease a situation, they may not. If they (the police) have a taser and a gun, they might not use the gun. I would hate to see people shot.” Gordon added that while Montpelier police have been able to handle situations without tasers, there have been a couple of real close calls...a hair’s breath away from the use of a gun...within the past year.

I gave added weight to Moulton's and Gordon's testimony because of all the non law enforcement people who appeared before the committee they were the only two who have had actual in-field experience working with police in situations where there was a threat of bodily harm to the public, rescue personnel, or the police.

Law enforcement professionals follow a use of force continuum that includes several steps ranging from the visual appearance of a police officer to use of deadly force. The majority report would place tasers near the top of the use of force continuum, right below the use of a firearm. I disagree. In my judgement, when used properly, tasers should be more towards the center of the list, between chemical sprays and impact weapons such as pepper ball launchers and expandable batons.

The majority of the committee argues that tasers are potentially lethal and point to a number of cases where people have died after being tased. That, majority argues, is reason enough to place them near the top of the list of force options.

I would argue there are potential lethal issues with many of the less means of force options. Pepper spray is dangerous to people with asthma and other respiratory illnesses, gets into ventilation systems, and impacts anyone in the vicinity of the person being subdued. People have been killed when struck by pepper ball launchers. Batons have broken bones, caused serious head injuries and death.

Earlier I used the phrase "when used properly" to describe where I would place tasers in the use of force continuum. In my judgement it is important for the City Council to understand that tasers are a tool - - no more no less. Like with any tool, it is important for the city to provide the necessary training and to have in place the necessary policies and standards that clearly describe how and when the tool (tasers) are to be used.

State statute gives broad responsibilities and powers to police chiefs, particularly in the development of department policy. Clearly, by law, the responsibility to develop departmental policies regarding taser use reside with Chief Facos. The majority of the committee has expressed reservations about the proposed policy draft "Response to Resistance" submitted by Chief Facos and has outlined those concerns in detail. While I disagree with the majority report I have some concerns with the draft policy presented by Chief Facos.

In my judgement the City Council should work with the chief to include some common sense rules of thumb in what ever taser policy is implemented. They include:

- - Tasers should only be used in situations where someone is actively aggressive and there is a risk of bodily harm.
- - Tasers should NOT be used against passively resistant individuals who pose no danger to themselves or others.
- - Tasers should NEVER be used for pain compliance.
- - If a taser is used a use of force report must be filed and reviewed by senior staff other than the shift supervisor.
- - Records of taser use shall be maintained (for how long, I don't know).
- - All officers issued tasers must undergo training. Montpelier police should work with the Vermont State Police to develop training standards and continuing education programs regarding taser use.
- - An annual report should be made available to the public each year showing the number

of arrests, use of force incidents, the number of times tasers were shown, and the number of times tasers were used.

One of the main arguments used by the majority in their opposition to tasers is the notion of “vulnerable populations” - a list that includes the elderly, pregnant women, individuals who are intoxicated or high on drugs, person with mental illness, children and highly agitated individuals who are at “higher risk” of serious injury or death from the effects of a taser. As near as I can tell the “vulnerable population” list evolved in recent months through warnings from the manufacturer in the wake of law suits brought in cases where tasers were mis-used or abused.

A report by the US Department of Justice concludes. “There is no conclusive medical evidence in the current body of research literature that indicates a high risk of serious injury or death to humans from the direct or indirect cardiovascular or metabolic effect of short term CED (controlled electronic devices) exposure in healthy, normal, non-stressed, non-intoxicated persons.” The problem with the above statement is that history tells us this is not the population that tasers are most often used on. That is a concern.

The majority report uses the “vulnerable population” argument to counter many of the points made by taser proponents. That too is a concern because at the end of the day if a police officer finds themselves in a combative situation with a person brandishing a knife or swinging a two by four they have to use the tools available to resolve the problem regardless of whether the person involved in the incident is part of a “vulnerable population.” In my judgement a taser is a better option than a Glock 9 mm.

There was much discussion within the committee regarding investing in Crisis Intervention Training (CIT) as an alternative to purchasing tasers. CIT involves an intensive program that emphasizes human interaction techniques to de-escalate combative situations that police often find themselves in. To be effective it requires officers to be available 24/7 365 days a year. A key component behind the CIT philosophy is having officers volunteer for the program. The poster child for CIT advocates is the Memphis Police Department, and, in my judgement, therein lies the problem for CIT advocates in Montpelier and Vermont.

That’s because Memphis has more than 2,000 full time police officers of which 270 have volunteered to participate in its CIT program. Montpelier has a total of 17 officers to cover the three shifts utilized to provide 24/7 protection for the city. Simply put the numbers just don’t work.

Cindy Taylor-Patch, the director of training at the Vermont Police Academy, is a CIT advocate who has tried to get some form of a week long training program adopted by Vermont without success thus far. She noted that most Vermont police departments are not big enough to create or sustain a CIT team that enables them to have a CIT officer on 24/7. She has proposed creating regional CIT teams using officers from multiple small departments.

Personally I think training and staff development are good and should be ongoing in every workplace. On the surface CIT training sounds good and may be a solution IF the numbers could be made to work. But I believe setting up regional CIT teams would require some seed money from either the state or federal governments, and that would be an effort that extends well beyond the City Council.

Drafts of the majority report discussed the ethics of Taser International in selling and promoting

their products. That is not a path I chose to descend.

Recommendation:

In my judgement tasers are a tool that, when used properly, will assist police with a less than lethal option in resolving combative situations where there is a risk of harm to the general public, rescue personnel, and the officers themselves. Like any tool, tasers are subject to misuse and abuse, but at some point you have to have trust and faith that police officers will use the tools they are provided with properly.

In recent months Taser International has issued a series of warnings about the use of their products that are, in my judgement, designed to shift the liability for misuse and abuse of their products onto the municipalities and state departments that use tasers. That is a concern. As with any tool that is abused or misused there are liability issues that require attention and the City Council would be wise to look closely at potential changes in the costs associated with adding tasers to the city's tool box.

We are fortunate to have a very good police department in Montpelier with solid leadership and I am confident that the Council and Chief Facos can develop strong policies and training programs for taser use.

I would urge the City Council to take a close look at policies regarding taser use developed by Burlington, South Burlington, and the Vermont State Police and work closely with Chief Facos to develop a strong policy and training program for Montpelier. Until those policies and training programs are in place, I would recommend against authorizing the purchase of tasers.

Nick Marro
Montpelier

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: K. Mullen Date: 1/25/04 Case #: 12-11-04-355911

Supervisor's Name: E. Nordenson Date of Incident: 1/25/04

Time of incident: 1845 Status: On duty / ☒ off duty / ☐

Indoors: ☒ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: N/A - Cold and dark outside

Location of Incident: CVH - Sign

Information received prior to initial contact:

Had to go to CVH to PC [REDACTED]
MONTPELIER AMBULANCE HAD TRANSPORTED SUBJECT TO CVH EARLIER
IN DAY FOR UNKNOWN MEDICAL ISSUE.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☒ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age 42 Sex F

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age _____ Sex _____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

MEDICALLY CLEARED CP CVH PRIOR TO CONTACT

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

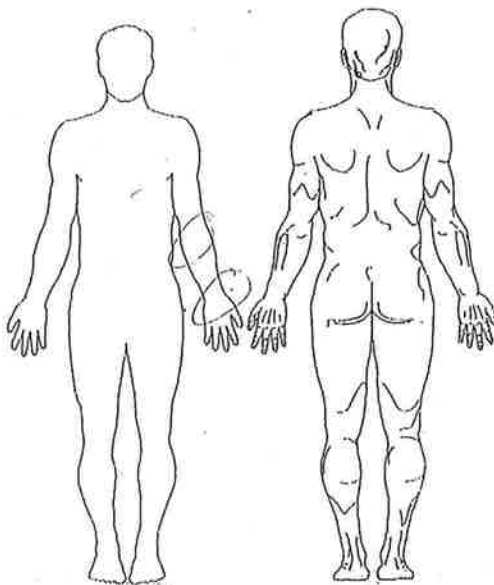
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: left wrist and elbow

Number of impact techniques used? 0 Which technique utilized? left wrist lock

Location of impact techniques:



Other:

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Went to cell to transport subject to BPPD for PC. Subject was very combative and non-compliant. She tried to leave hospital and stated she was not going with us that to restrain her to handcuffs. I utilized the rear wrist lock technique until she was handcuffed. I then held her by the handcuffs as she was non-compliant. When we got to the car she fell on the right leg and refused to get into the car. She had to be forced into the car. At BPPD she was not get out and had to be forced out and dragged into BPPD.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Kevin Mesthen Date: 3/20/10 Case #: 12-11-10-379331
Supervisor's Name: Cpl. William Jennings Date of Incident: 3/20/10
Time of incident: 2307 hours Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Cloudy & Cold
Location of Incident: Parking lot of Main Street Middle School

Information received prior to initial contact:

• dispatched to [redacted] street for [redacted] punching hole
in the wall. Parents wanted him removed

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☒ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: displayed OC

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age 25 Sex M

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☐ No ☒

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

- suspect had some scrapes on his knuckles, not sure if caused
by punching the walls or the struggle on the pavement

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☒ N ☐

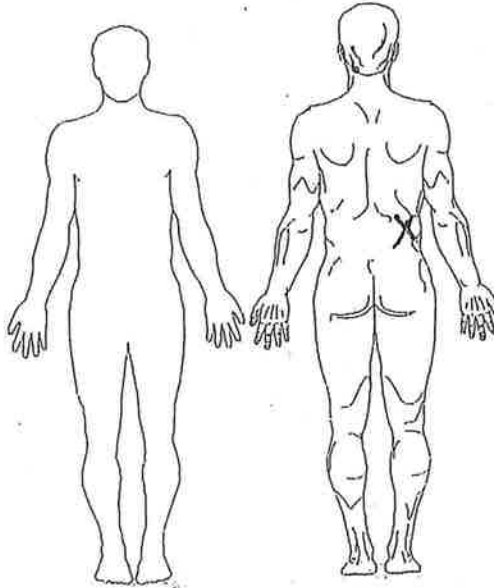
Control technique Y ☒ N ☐

Both Y ☒ N ☐

Targeted Area: Back of Neck & Right lower back

Number of impact techniques used? 2 Which technique utilized? Neck pull down & knee strikes

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Open armed I witnessed [redacted] on my right, came out of the house with a kitchen chair. Then began smashing the chair and then ran out. I began a foot pursuit and caught up with him as he fell over a fence. I told him to get on the ground or he would be sprayed with OC. He ran away and I caught him as he stopped and sprayed it with me. I used the chair to get him to the ground and 3 knee strikes to back as he was resisting.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐



Montpelier Police Department
 Chief Anthony Facos
 1 Pitkin Ct. Montpelier VT 05602
 phone 802-223-3445 fax 802-223-9518

OFFICERS FORMAL REPORT

Case#: 379331
 rpt date: 03/20/10 23:43 reported: SATURDAY 03/20/10 23:07
 ucr: 90C DISORDERLY CONDUCT *
 location: [REDACTED]
 follow up by: (N)ONE NEEDED case status: CLEARED/CLOSED NORMAL
 officer: rpt status: PRELIMINARY
 review officer:
 comp/vict notify: No sup review officer:
 cir/involve type:

complaint: SON PUNCHING HOLES IN WALL/WANT REMOVED

reporting officer: 52 P.O. MOULTON assignment: C car: 813
 second officer: 58 P.O. TRUHAN sup/back-up: 55 P.O. JENNINGS

*** NAMES ***					
type	mast#	name/add	phone	dob	ss#
DEFENDANT	004633	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

obtn: TMON037933101
 VICTIM 023103 SOCIETY,

COMPLAINT 008152 [REDACTED]

*** NARRATIVE ***

ON MARCH 20, 2010 AT APPROXIMATELY 2307 HOURS I WAS ON DUTY FOR THE MONTPELIER POLICE DEPARTMENT. AT THAT TIME I WAS DISPATCHED TO [REDACTED] STREET AS [REDACTED] WAS OUT OF CONTROL AND WAS PUNCHING HOLES IN THE WALL. DISPATCH ADVISED ME THE PARENTS WANTED HIM REMOVED FROM THE RESIDENCE.

UPON ARRIVAL TO THE SCENE I OBSERVED [REDACTED] EXIT THE REAR OF THE HOUSE WITH A KITCHEN CHAIR ABOVE HIS HEAD. [REDACTED] BEGAN SMASHING THE CHAIR ON THE GROUND AND THE STEPS. I APPROACHED AND ORDERED [REDACTED] TO STOP AND HE FLED ON FOOT. I PURSUED ALONG WITH OFFICER TRUHAN. [REDACTED] CAME TO A FENCE AND TRIED TO JUMP OVER AND FELL. AS I APPROACHED THE FENCE I PULLED OUT MY OC AND ORDERED MAX TO THE GROUND. [REDACTED] THEN RAN AWAY AGAIN. I JUMPED THE FENCE AND CAUGHT UP WITH MAX IN FRONT OF THE MAIN STREET MIDDLE SCHOOL. AS I NEARED HIM, [REDACTED] TURNED AND SQUARED OFF WITH ME. I BROUGHT [REDACTED] TO THE GROUND WITH THE NECK PULL DOWN. WHILE ON THE GROUND, [REDACTED] WAS RESISTANT AND WOULD NOT SURRENDER HIS ARMS. I STRUCK [REDACTED] WITH 3 KNEE STRIKES TO THE LOWER BACK AREA TO GAIN COMPLIANCE AND SECURE HIS ARMS WITH HANDCUFFS. OFFICER TRUHAN AND I WERE ABLE TO GAIN CONTROL AND CUFF MAX.

[REDACTED] WAS TRANSPORTED TO MPD FOR PROCESSING AND LATER BROUGHT TO CVMC FOR AN EVALUATION OF HIS MENTAL HEALTH. [REDACTED] WAS CITED AND RELEASED AT CVMC AND WCMH WAS PLACING HIM IN HOME INTERVENTION.

=====
 chief [] capt/oic [] cid [] traffic [] fire [] other []
 =====

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

2010

Officer's Name: *Off. Mark L. Noyes* Appendix A Date: *05/26/10* Case #: *383123*
Supervisor's Name: *Sgt. Eric Nordenton* Date of Incident: *05-26-10*
Time of incident: *1501* Status: On duty / ☒ off duty / ☐

Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☒ Artificial: ☐

Weather Conditions: *Sunny & Hot & Humid*

Location of Incident: *170 Main St., Main St. Middle School, Montpelier, VT 0560*

Information received prior to initial contact:

MO #
035521

juvenile female subject 10 years of age ran away from Union Elementary School to the middle school, very upset and refused calm down or stop running. Subject stated would commit suicide. I'll feel myself if you bring me home or back to school.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐

Necessary for Protective Custody: ☒ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒

Baton: ☐ for: control & restraint ☐ impact ☐ displayed ☐

Hand Restraints Body: ☒ for: control & restraint ☒ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: *Hand Restraint only (3 officers held limbs & supported body while child screamed and tried to kick, kneel)*

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age *10* Sex *F* *PINCH & Bite*

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age _____ Sex _____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☒ No ☐

Describe injuries to suspect, officer or third party: *NA*

Subject was transported to Police holding area - Mental Health Screener was called and responded - After screening & mother reported - Subject calmed down - Apologized. Access program through Mental Health plugged in to family - Ref. Released through Mental Health Screening.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

Control technique Y ☒ N ☐

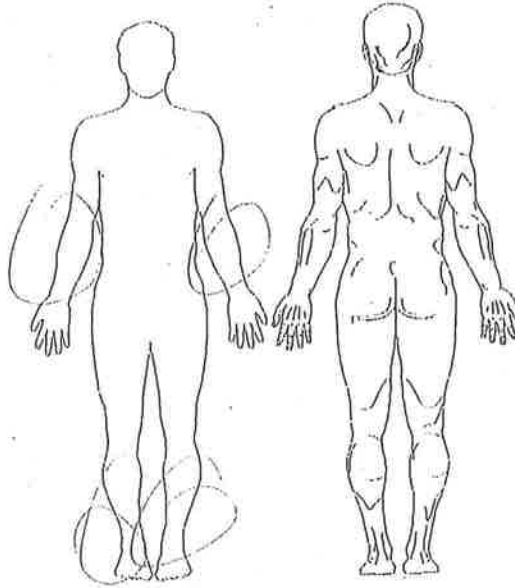
Both Y ☐ N ☐

Targeted Area: Arms, Legs, Body

Number of impact techniques used?

Which technique utilized?

Location of impact techniques:



Other: I held subject against wall + water cooler by both wrists + Body lean until back up. Arrived 804, 811, 817 and until Main street school children who were in an assembly left the area.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Back up Officer 804-811-817 arrived on scene. 804 (Nordman) 811 (Patterson) assisted carrying female subject out of gym area of the school. I had left area + supported her back. She was facing up. 804 had right arm + right leg. 811 had both feet and legs. We carried her struggling the better way from the gym to 817 and her cruiser just outside the gym door. 817 and 811 transported her to Montpelier Police Station where she was later seen by Mental Health Services and her mother. Paddy Danahy.

Michael R. Danahy
Involved Officer's Signature

Policy Compliance Yes ☐ No ☐

Supervisor's Signature

Chief
[Signature]

Policy Compliance Yes ☒ No ☐

06/02/10 12:13
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

78 353
F773

Shift: B

date: 05/26/10 WEDNESDAY

***** Q 590 JUVENILE MATTER-OTHER

15:01 * 170 MAIN ST MON

883123 * COMBATIVE FEMALE AT MSMS

* ID #: 2590 ALARM #: 326

: 806,

call-back# 225-8601

*** UNIT(S) ***

804 MON P SGT. NORDENSON

r> 15:01 d> 15:01 a> 15:04 c> 15:12 k>

806 * MON P CPL. MOODY

r> 15:01 d> 15:01 a> 15:01 c> 16:51 k>

811 MON P P.O. PONTBRIAND

r> 15:01 d> 15:01 a> 15:05 c> 15:18 k>

817 MON P P.O. TRUHAN

r> 15:01 d> 15:01 a> 15:07 c> 15:18 k>

*** COMMENTS ***

806 MON 15:01:00 CD-590-COMBATIVE FEMALE AT MSMS

811 MON 15:01:00 811, 804, 817 -76 TO MSMS

804 MON 15:04:00 804 -23

811 MON 15:05:00 811 -23

817 MON 15:07:00 817 -23

817 MON 15:17:00 AT 19/ EM/ 60113

806 MON 15:10:00 -21 TO WCMH SCREENERS

811 MON 15:11:00 -76 -19 SM-60112

804 MON 15:12:00 804 -8

817 MON 15:18:00 TALIA/WCMH SCREENERS/GVN 806

817 MON 15:18:00 -8 EM-60113

817 MON [REDACTED]

806 MON 15:39:21 DARLENE/WCMH SCREENERS -76 SHORTLY

806 MON 16:17:26 SCREENER NOW AT -19

806 MON 16:51:19 -42

806 MON

806 MON 806 ADVISED THAT THE WCMH WORKER MADE A REFERRAL TO THE

806 MON ACCESS PROGRAM FOR THE SANTAMOKES

806 MON

subject was [REDACTED]

officer's signature

date

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: CHAD BEAN Date: 06/19/11 Case #: 405233

Supervisor's Name: DAVID KACHASTAN Date of Incident: 06/19/11

Time of incident: 0015 Status: On duty / ☒ off duty / ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: CLEAR

Location of Incident: 89 Elm St. MONTPELIER, VT

Information received prior to initial contact:

STOLEN VEHICLE, VT REG FBH449, STOLEN FROM MONTPELIER
06/18/11

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☒ Necessary to defend self: ☐

Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☒ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☒ Displayed for compliance ☒ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age REFUSED Sex M

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐ Age Sex

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☐ No ☒

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

CUT ON FOREHEAD, SCRATCHES ON ARMS

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

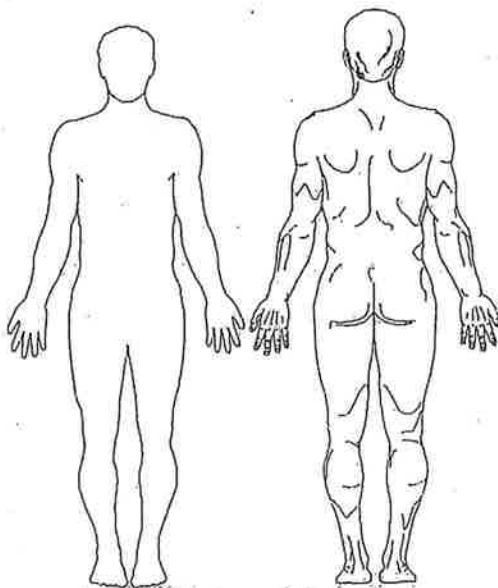
Control technique Y ☒ N ☐

Both Y ☐ N ☐

Targeted Area: ARM BAR

Number of impact techniques used? 1 Which technique utilized? ARM BAR TAKE DOWN

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

SUBJECT WAS LOCATED IN A REPORTED STOLEN VEHICLE. SUBJECT WAS ORDERED OUT OF VEHICLE WITH FIREARM DISPLAYED. AND TO PUT HIS HANDS UP. SUBJECT TRIED TO REACH IN HIS POCKETS. SUBJECT TAKEN TO GROUND WITH ARM BAR TAKE DOWN. AND ORDERED TO PUT HANDS BEHIND HIS BACK. SUBJECT ROLLED AROUND ON GROUND. I WAS ABLE TO SECURE A HAND PLACE IN HANDCUFF. AND ORDERED SUBJECT FOR OTHER HAND. SUBJECT PULLED AWAY. I WAS ABLE TO SECURE OTHER HAND AFTER SUBJECT PULSED AWAY AND HAND CUFF.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: W. JENNINGS Date: 6/20/11 Case #: _____

Supervisor's Name: SGT. W. COLEMAN Date of Incident: 6/18/11

Time of incident: 12/59 PM Status: On duty ☒ off duty ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: CLEAR

Location of Incident: RESIDENTIAL - 52 PERSPECT ST.

Information received prior to initial contact:

LOUD NOISE COMING FROM AN APT. - NEIGHBORHOOD DIST.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☐ Necessary to defend another: ☒

Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☐

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☐ No ☒

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

NO INJURIES

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

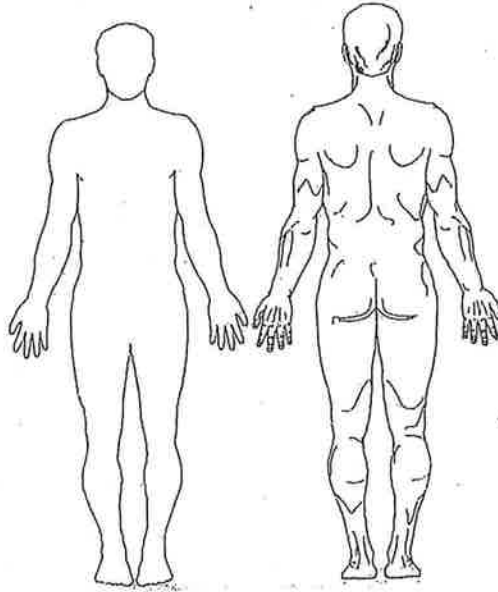
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: ARM - SHOULDER CONTROL

Number of impact techniques used? N/A Which technique utilized? _____

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

SEE AFFIDAVIT + INCIDENT REPORT

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Kevin Moulton Date: 12/11/09 Case #: 1211-09-373677

Supervisor's Name: Sgt Eric Anderson Date of Incident: 12/11/09

Time of incident: 2315 Status: On duty / ☒ off duty / ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Cloudy + Cold

Location of Incident: In front of Lendell Book 100 Main St. Montpelier, VT

Information received prior to initial contact:

- respond to a report of a male who had put his head
through a window @ Three Penny Tavern @ 108 Main Street
in Montpelier, VT

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☒ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 22 Sex M

Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age Sex

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

- Suspect had lacerations on hand and head from injury sustained from
breaking the glass

- officer - sustained exposure to large amounts of suspect's blood, including blood sprayed
into mouth and eyes. Injured left thumb and left cheek from strikes
from suspect

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☒ N ☐

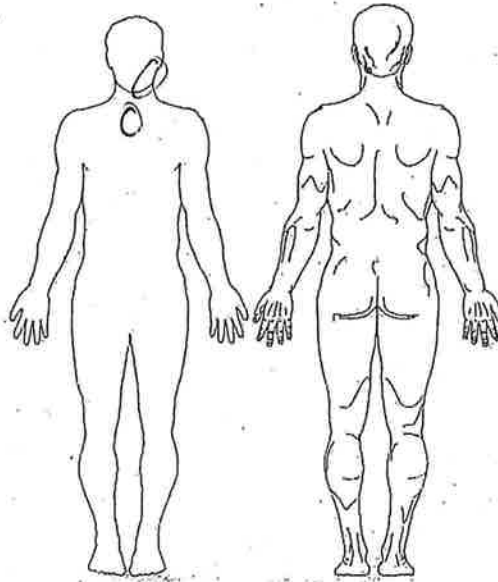
Control technique Y ☒ N ☐

Both Y ☒ N ☐

Targeted Area: Neck, Hand, and chest

Number of impact techniques used? 1 Which technique utilized? Forward punch

Location of impact techniques:



Other: used neck pull down to try and gain control of
belligerent suspect who became combative

Summary of Events:

(Note: summarize only attach officer report for complete details.)

responded to a call @ Three Penny Tavern for a male that put
his hand through a window. I located suspect who was belligerent
and disorderly. I offered assistance to suspect to get him
to the ambulance. Suspect became combative and physically assaultive.
I attempted bring suspect to the ground with neck pull down. Suspect
tackled me into a parked car and began striking me. I responded w/
3 forward punches to gain control myself and gain control of suspect

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Officer's Name: Christopher M. Tolen Date: 12-12-09 Case #: 1211-09-373677
Supervisor's Name: Sgt. Eric Nordenson Date of Incident: 12-11-09
Time of incident: 2:315 hrs Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☒

Weather Conditions: _____

Location of Incident: Main St by Langdon St

Information received prior to initial contact:

ambulance responding to a subject who fell through
a window at the Three Penny Tap Room

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☒
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐ for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒ for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☒ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐ *not checked for fit too chaotic*
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☒ No ☐ Age _____ Sex M
Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐
Was a Third Party Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age _____ Sex MX2 Fireman
Subject complied after force was enacted. Yes ☒ No ☐ EON/804
Subject resisted during the entire encounter. Yes ☒ No ☐ EON/804
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-
1. 50
2. 32
3. 37
4. 53
5. 33

subject had a head injury which was the cause of our response.
Fire men officers were exposed to the subjects blood, one man then
sustained an injury to a finger.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☒ No ☐

Pepperball Launcher: Yes ☐ No ☐

Both: Yes ☐ No ☐

Type of contamination used: Individual: ☒ Area: ☐ Both ☐

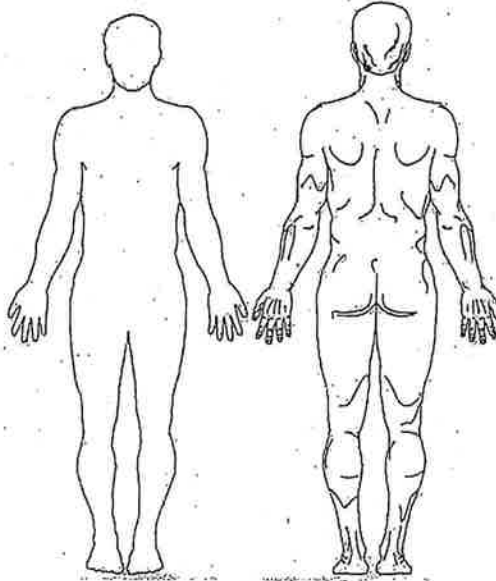
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☐ No ☐ if no *unknown*

explain: *taken away by fire department & brought to CUM.*

OC administrative warning read to suspect: Yes ☐ No ☒ *taken away by fire department*

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

I responded to the Three Penny Tap Room for the report of a subject who fell through a window. Upon my arrival, Officer Kevin Martin began to struggle with a subject. I assisted Officer Martin in struggling to control the subject by grabbing onto him. I then backed off & sprayed the subject in the face with my OC. I grabbed onto the subject again, helped to pull him to the ground & told him to stop resisting. We got the subject to the ground at which time I knelt on him & applied handcuffs on him with the assistance of others.

Involved Officer's Signature

[Signature]

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

[Signature]

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Corporal David Kachujian Date: 10/28/10 Case #: 392471

Supervisor's Name: Sgt. Eric Nordenson Date of Incident: 10/29/10

Time of incident: 21:30 Status: On duty / ☒ off duty / ☐

Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: Cloudy

Location of Incident: 8 Wilder Street Apt. 2 Montpelier, VT. 05602

Information received prior to initial contact:

Washington County Mental Health requested our assistance in serving a
mental health examination warrant on a subject by the name of Carlos A. Shaw,
Jr. A search warrant was later sought and granted to gain entry into the residence.

SUBJECT REFUSE
TO COME TO
DOOR &
THREATENED
RESPONDERS
ON INITIAL
ATTEMPT.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☒ Necessary to defend another: ☒

Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball Launcher: ☒ (type of projectile: water: ☐ O.C.: ☒ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 64 Sex M

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

The suspect may have sustained bruising from being hit with pepperballs from the
pepperball launcher.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☒ No ☐ Pepperball Launcher: Yes ☒ No ☐ Both: Yes ☒ No ☐

Type of contamination used: Individual: ☐ Area: ☐ Both ☒

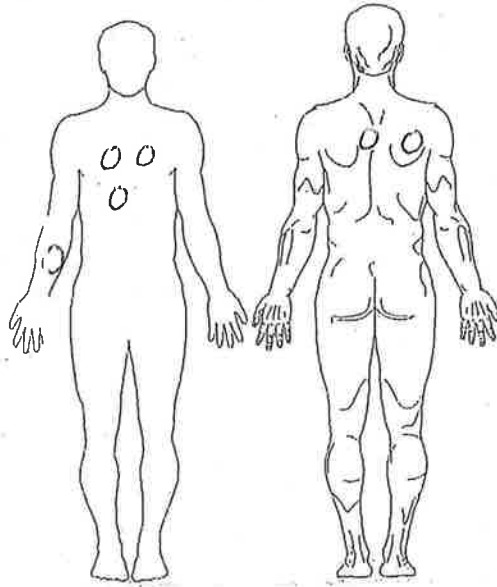
Number of pepperballs fired: Water: _____ OC: 11 Glassbreaker: _____ Total: 11

Suspect Decontaminated: Yes ☒ No ☐ if no

explain: Suspect was decontaminated at the hospital.

OC administrative warning read to suspect: Yes ☒ No ☐

Location of pepperball hits on suspect:



Other: Five pepperball rounds struck the frame of the door of the apartment while the suspect was attempting to exit with the beard in his hand.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

During the service of a search warrant on a subject that was arrested on a mental health warrant, the suspect armed himself with a three foot wooden board and attempted to assault Officer Medlen and I with it. I ordered the suspect to drop the weapon to which he refused to do so. Both pepper spray and pepper balls (11) were used to stop the suspect from striking us with the board. The O.C. Administrative Warning was later issued to the suspect at the Central Vermont Medical Center by Officer Medlen. The suspect was decontaminated at the hospital as well and didn't sustain any major injuries at this time except for some bruising.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Policy Compliance Yes ☒ No ☐

11/01/2010

Use of Force Report (Case #: 392471):

On October 29, 2010 at approximately 4:03 p.m. the Montpelier Police Department was contacted by Washington County Mental Health (WCMH) Case Worker Darlene Duff (DOB: 7/5/46) requesting that we assist her with serving an Emergency Psychiatric Examination Order on a subject by the name of Carlos A. Shaw, Jr. (DOB: 5/7/59) who resides at 8 Wilder Street/Apt. #2 in the City of Montpelier.

Ms. Duff advised me that Mr. Shaw is a client of WCMH and has not been taking his required prescription medication, Coumadin (also known as Warfarin, an anti-coagulant), which could pose a potentially life threatening incident for him if not taken as prescribed. Ms. Duff went on to tell me that she had obtained an Emergency Psychiatric Examination Order and currently had it in her possession. At this time I arranged to meet her at Mr. Shaw's residence in an attempt to have him voluntarily go to the hospital for treatment and/or an examination.

Upon arrival at 8 Wilder Street, I met with Ms. Duff, WCMH Case Worker Gary Gordon (DOB: 6/13/52), and Dr. Stuart Graves (M.D.) of WCHM. At this time I looked at the order that had been issued by Dr. Graves and read the statement given by Ms. Duff in the application of the order itself. According to Ms. Duff's statement on the order:

"Carlos Shaw is a 64 year old male who resides in an independent living situation in Montpelier. He is a CRT client of Washington County Mental Services-Diagnosed with Schizoaffective D/O. Carlos has a aggressive behavior and medication non-compliance. Today I received a call from Heather Griffin CRT Assit Supervisor) indicating concern that Carlos had not taken his medication (Warfarin) which presents a significant medical health risk. This clinician followed up w/Dr. Oraves and Julie Sullivan who contacted Dr. Curchin (clients PCP). According to Julie Sullivan, "Dr. Curchin reported that Carlos needs his Coumadin (Warfarin) for his mechanical heart valve and therefore recommends this emergency exam due to the potential health risk this poses". Dr. Graves, Gary Gordon and this writer went to Carlos apartment to convey the importance/medical risk of refusing his heart medication. Client refused to open his door

to speak w/us and refused to take medication. As mentioned above client presents with serious medical [unknown word] and is refusing to engage in treatment. For these reasons, it is the opinion of Dr. Graves, Dr. Graves, Dr. Curchin, and this clinician that client meets the criteria for this order of treatment".

After looking over the order, I entered the apartment building and went to the door of apartment # 2, where Mr. Shaw resides. I knocked on the door and heard someone yell "Who is it" from inside. I advised Mr. Shaw why I was there and tried to explain to him that the workers from WCMH and I were concerned about his wellbeing. When I asked Mr. Shaw if either I could come in or if he would come out so that we could speak with him, he refused. Mr. Shaw was extremely agitated and appeared to be paranoid from the statements he was making. After pleading for over fifteen minutes with Mr. Shaw to come out of his apartment, I asked him one more time to meet with us to which he replied, "If you come in your violating my rights and I'll defend myself with force".

At this time I went back downstairs and met with Ms. Duff, Mr. Gordon, and Dr. Graves. Officer Moulton of the Montpelier Police Department had arrived at this point to assist me and we discussed our options. It was agreed that we would apply for a search warrant for Mr. Shaw's apartment so that we could enter and take custody of him so that he could be treated.

Upon arrival back at the Montpelier Police Department, Officer Moulton completed an affidavit of probable cause and submitted an application for a search warrant to the honorable Judge Thomas Devine for Mr. Shaw's premises. Judge Devine subsequently issued the search warrant to Officer Moulton for 8 Wilder Street/Apt. # 2. Prior to serving the search warrant at the residence of Mr. Shaw, Officer Moulton and I discussed the incident with our shift supervisor, Sgt. Eric Nordenson. Sgt. Nordenson advised us that Mr. Shaw could be violent and had assaulted people in the past. Sgt. Nordenson also told us that Mr. Shaw had threatened to shoot police officers in the past as well when they had gone to his residence on prior incidents. When I asked WCMH if they had any knowledge of Mr. Shaw having any weapons in his possession, they indicated that they did not know.

At approximately 9:18 p.m. Sgt. Nordenson, Officer Dion, Officer Bean, Officer Moulton, and I arrived at 81 Wilder Street to serve the search warrant on Mr. Shaw's apartment. At 9:20 p.m. we entered the apartment building and went to the second floor where Mr. Shaw's apartment was located. At this time Officer Moulton knocked on the door and asked Mr. Shaw to come out to speak with us. Officer Moulton told Mr. Shaw that we wanted to make sure that he was taking his medications and that we wanted to make sure he was alright. Mr. Shaw yelled through the door to us that he wasn't coming out and that we only wanted to "Give him psychotropic drugs". We then heard Mr. Shaw say that he would defend himself with force if we tried to come into his apartment to get him. At this point Officer Moulton asked him if he had any weapons to which Mr. Shaw said, "I'm not telling you".

Due to the fact that Mr. Shaw may have been arming himself while inside of the apartment and due to the fact that we were worried that a prolonged standoff with him might cause the stress of the situation to cause him to have a cardiac arrest because of his not having taken his medications, we decided to enter the apartment. At this point, Sgt. Nordenson started to knock on the door to mask the sound of Officer Moulton trying to turn the key, which we received from WCMH, in the door lock. Once the door was unlocked, Officer Moulton pushed the door open, only to find that it was chained from inside. Officer Moulton immediately forced the door open with a ram and I went around him on his right side to enter the apartment.

As I entered the apartment, I immediately observed Mr. Shaw standing approximately six feet away from me holding a three foot wooden board over his head. When he saw me enter, he immediately began swinging the board at me wildly. I immediately backed out of the apartment as he was running towards me trying to hit me in the head with the board. As I was backing out, I was yelling to him to "Drop the weapon". When I reached the threshold of the door, I moved to the right and stepped down onto the narrow flight of stairs that led up to the second floor. At this point I observed the end of the board coming towards Officer Moulton, who had been standing just outside of the doorway behind me. Upon seeing the board being swung at Officer Moulton, I raised my department issued pepper ball launcher and shot five pepper ball

rounds at the doorway threshold in an attempt to stop Mr. Shaw from advancing any further towards Officer Moulton.

Even after I shot the five rounds, dispersing a cloud of pepper spray in front of Mr. Shaw, he continued to swing the board at Officer Moulton. At this time I moved slightly forward and shot two more pepper ball rounds at Mr. Shaw, who was now partially visible in the doorway. The rounds struck Mr. Shaw in the area of his shoulder/upper chest, but did not stop him. It was at this point that Officer Moulton took out his canister of pepper spray and sprayed it towards Mr. Shaw's face. After Mr. Shaw was sprayed in the face, he moved back into the apartment, but was still brandishing the board and swinging it violently towards us. After I rounded the corner from the stairs and into the apartment, I shot four more pepper balls at Mr. Shaw, hitting him twice in the chest and then twice in the shoulder as he turned. After getting hit with the last pepper ball, Mr. Shaw finally dropped the board and fell down onto the floor. After falling down to the floor, Mr. Shaw was handcuffed by Officer Dion (handcuffs double-locked and checked for tightness) and immediately removed from the apartment to an awaiting ambulance outside of the apartment building. Once on the ambulance stretcher, Mr. Shaw became compliant with our orders and/or commands. We continued to advise him that we only wanted to help him and were concerned for his mental and physical health.

Mr. Shaw was later transported to the Central Vermont Medical Center for a medical and/or psychiatric evaluation per the Emergency Examination Order we served on him. I was later advised by Sgt. Nordenson that Mr. Shaw told him at the hospital that the next time he deals with us he will, "Get us with a machine gun". Mr. Shaw was later transported to the State Hospital in Waterbury, Vermont for a psychiatric evaluation.

As a result of this incident, Mr. Shaw was served at the hospital by Sgt. Nordenson with a citation to appear in the Washington County District Court on December 2, 2010 at 12:30 p.m. to be arraigned on the charge of Attempted Aggravated Assault on a Law Enforcement Officer [Two Counts].

ARRESTEE NAME: Carlos Shaw DATE: 10/24/10 TIME: 2245

INTERVIEWING OFFICER: K. Mottin Initials: MM

O.C. ADMINISTRATIVE WARNING

TO BE GIVEN TO ANY PERSON EXPOSED TO O.C.

1. You have been contaminated with Oleoresin Capsicum (OC), a natural product derived from Cayenne Peppers. I am going to treat you to reduce the discomfort you are feeling, as long as you cooperate.

2. OC is non-toxic and the effects will dissipate in a short time. The effects of OC may however, mask or cover other medical conditions, including overdoses or toxic levels of drugs like Cocaine, Amphetamines, Barbiturates, PCP, Opiates, Heroin or Alcohol.

3. I am going to ask you 5 Questions for your own safety. Not answering my questions, withholding information or giving false or misleading answers could delay medical treatment and may seriously jeopardize your health and safety.

DO YOU UNDERSTAND EVERYTHING I HAVE TOLD YOU ?

QUESTION 1. Are you currently under the influence of Cocaine, Amphetamines, Barbiturates, PCP, Opiates, Heroin, or Alcohol?

- Answer -

Yes ☐ No ☒ Which One(s) _____ Date _____ Time _____ Initials _____
Refused to Answer ☐

*could not sign as he was restrained in
Hospital*

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Kerrin Mcullen Date: 10/29/10 Case #: 1211-10-392471
Supervisor's Name: Sgt. Eric Nordenson Date of Incident: 10/29/10
Time of incident: 2:20 hours Status: On duty / ☒ of duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: Cloudy + Cool
Location of Incident: 8' Wilbur Street Apartment 2

Information received prior to initial contact:

Mental Health advised of a subject not taking medication. WCMH
had Emergency Exam order. I had to get search warrant for
Mike as he refused access

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☒ Necessary to defend another: ☒
Necessary to restrain for subject's own safety: ☒ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☐for: control & restraint ☐ impact ☐ displayed ☐
O.C. Spray: ☒ Pepperball Launcher: ☒ (type of projectile: water: ☐ O.C.: ☒ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐ DONE BY RON DION
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☒ Displayed for compliance ☒ Discharged for compliance ☐ FIRE ARM DISPLAYED
Other: _____ BY ERIC NORDENSON + RON DION.

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 64 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☐ No ☒
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

INJURIES FROM BEING STRUCK BY PEPPER BALLS
INJURIES LIMITED TO BRUISING. ERN/SDH

BODY PHOTOGRAPHED @ CCH

Appendix A

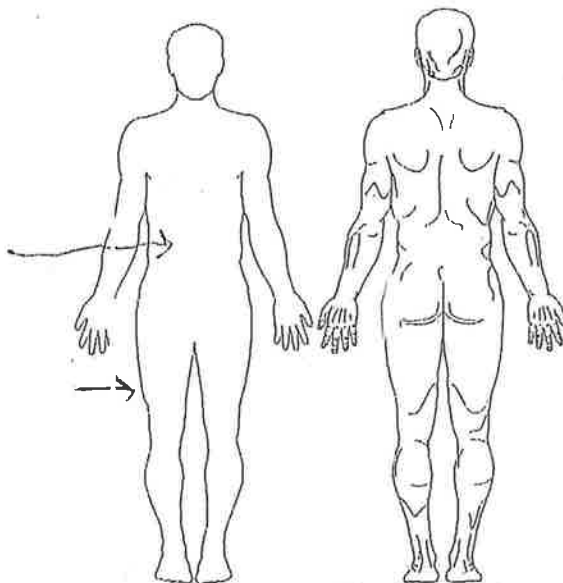
OC Spray: Yes ☒ No ☐ Pepperball Launcher: Yes ☒ No ☐ Both: Yes ☒ No ☐

Number of pepperballs fired: Water: (OC) Glassbreaker: Total:

explain: Brought to CPMC AND DECONTAMINATED UPON ARRIVAL.

OC administrative warning read to suspect: Yes ☒ No ☒

Location of pepperball hits or suspect:



Other: _____

(Note: summarize only attach officer report for complete details.)

-Went to residence to execute search warrant on suspect who has not been taking his medication. Suspect is client of mental health services. Suspect would not leave his residence nor allow us in. 2 lineups. Several times and spoke to suspect. He would not tell me if he had a weapon. Shouted entry by force and suspect began swinging a wood board at us. Suspect was struck with pepper balls and then OC.

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Ch:ef

Policy Compliance Yes ☒ No ☐

11/01/2010

11/01/10 11:47
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP9 -17

shift: C date: 10/29/10 FRIDAY org/1st

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
16:03 * 8 WILDER ST MON
*ibr: 1: 917
392471 * REQ. ASSIST TAKING CLIENT INTO CUSTODY AS HE
*

**rcv*clr*
917 13P
052110
707-17

: WCMH SCREENER, DARLENE
Def: SHAW JR, CARLOS A
8 WILDER ST MONTPELIER, VT 05602
call-back# 839-0333

07/05/46

*** UNIT(S) ***

804 MON P SGT. NORDENSON 722-722
r> 21:20 d> 21:20 a> 21:20 c> 23:52 k> h>
810 * MON P P.O.KACHAJIAN 707-722
r> 16:03 d> 16:03 a> 16:55 c> 21:39 k> h>
812 MON P P.O.KACHAJIAN 707-707
r> 17:09 d> 17:09 a> 17:09 c> 21:36 k> h>
813 MON P P.O. MOULTON 722-722
r> 16:58 d> 16:58 a> 16:58 c> 21:38 k> h>
MAS1 MON A 707-707
r> 21:18 d> 21:18 a> 21:20 c> 22:16 k> h>

*** COMMENTS ***

810 MON 16:03:00 CD-917-REQ. ASSIST TAKING CLIENT INTO CUSTODY AS HE 707-
810 MON IS REFUSING TO TAKE HIS HEART MEDICATIONS. 810 HAD SOME 707-
810 MON ADDITIONAL QUESTIONS ABOUT THIS CALL AND WILL CALL 707-
810 MON DARLENE ON HER CELL 839-0333. 707-
810 MON 16:11:53 -21 FROM DARLENE, THE ADDRESS IS # 8 WILDER 707-
810 MON 16:55:02 -23 8 WILDER ST. 707-
813 MON 16:58:08 -23 722-
813 MON 17:09:15 -8 HE IS REFUSING TO COME OUT/ -76 BACK TO 707-
813 MON 17:09:30 WRITE UP A SEARCH WARRANT. 707-
810 MON 17:11:32 -8 FOR NOW. WILL RETURN ONCE WARRANT IS 707-
813 MON 17:12:27 SIGNED. 707-
813 MON 19:04:47 -76 TO JUDGE DEVINES RES. 707-
MAS1 MON 21:18:18 12A1 STAGING ON WILDER. 707-
MAS1 MON 21:20:00 A1 O/S 722-
804 MON 21:20:00 -23 722-
804 MON 21:24:09 HAVE THAT MALE IN CUSTODY 722-
MAS1 MON 21:28:23 HE IS ON THE AMBULANCE NOW. 707-
MAS1 MON 21:28:58 12A1 ENROUTE TO CVH. 707-
MAS1 MON 21:35:48 12A1 ARRIVED CVH 707-
804 MON 21:36:08 804 -23 AT CVH 707-
812 MON 21:36:34 812 -8 707-
813 MON 21:38:08 -8 COPY OF WARRANT LEFT INSIDE THE RES. 722-
810 MON 21:38:52 -21 FROM NICOLE GOKEY 279-5419 707-
810 MON SHE HAS CONCERNS FOR HER ANIMALS THAT ARE IN HER APT. 707-
810 MON (APT 5) AS HER NEIGHBOR TOLD HER THE POLICE SPRAYED SOME 707-
810 MON TYPE OF CHEMICAL. 707-
MAS1 MON 22:09:58 12A1 R/Q 707-
MAS1 MON 22:16:57 12A1 BIQ. 707-
MAS1 MON 722-
810 MON CASE MADE 722-
810 MON INVESTIGATING OFFICER CPL KACHAJIAN 722-

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

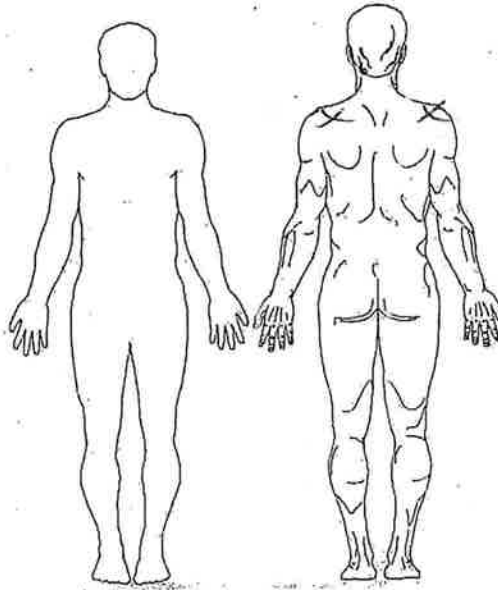
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: shoulders

Number of impact techniques used? 1 Which technique utilized? I just pulled him to the ground

Location of impact techniques:



Other: once on the ground I secured his left arm behind his back.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Off. Maitlen and I brought Brian Maynard to MPD for detox. While in the cell with him, etc. Maitlen began removing his handcuffs. When Maynard had only one hand cuffed on etc. Maitlen tried to remove it, but Maynard raised his hand and hit Maitlen a mark on his etc. Maitlen told him to settle down and I told him to put his hand down. He refused and I pulled him down to the ground. I then secured his left arm behind his back & etc. Maitlen reappplied the handcuffs.

Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: Christopher McTear Date: 03-05-10 Case #: 1211-10-378473
Supervisor's Name: William Jarrings Date of Incident: 03-05-10
Time of incident: _____ Status: On duty / ☒ off duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: N/A
Location of Incident: cell # 1

Information received prior to initial contact:

Subject Brian T. Maynard was brought to MPD by OTC Muller and J. Par detox.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☐ Necessary to defend another: ☒
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☒
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-
N/A

11/01/10 11:47
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTYP9 -17

shift: C

date: 10/29/10 FRIDAY

org/1st

*** COMMENTS ***

810	MON	SUPERVISOR SGT NORDENSON	722-
810	MON	SUSPECT: CARLOS SHAW	722-
810	MON	CHARGE: ATTEMPTED AGRAVATED ASSAULT	722-722
810	MON	CITED TO APPEAR IN COURT ON 12/2/10 @ 12:30 HOURS/WCDC	722-49
810	MON		722-
813	MON	22:55:00 -7 -8 WENT OVER THE OC WARNINGS W/MR SHAW	722-
813	MON		49 -
813	MON	SEE CASE FOLDER.	49 -

officer's signature

date

03/06/10 23:12
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP9 -58

shift: C

date: 03/05/10 FRIDAY

org/1st

***** Q 314 PUBLIC DRUNKENNESS

**rcv*clr*
145 314

23:25 * 62 BARRE ST MON

*ibr: 1: 145

378473 * CAN HEAR YELLING / SCREAMING NEXT DOOR

053100
707-58

*
: AGNT 240, (TIKI)

Invo: MAYNARD, BRIAN T

02/18/66 008-50-7668

70 BARRE ST MONTPELIER, VT 05602

call-back# 229-4109

*** UNIT(S) ***

813 * MON P P.O. MOULTON

707-707

r> 23:25 d> 23:25 a> 23:26 c> 23:59 k> h>

814 MON P P.O. JENNINGS

707-707

r> 23:28 d> 23:28 a> 23:28 c> 23:40 k> h>

818 MON P P.O. TRUHAN

707-707

r> 23:25 d> 23:25 a> 23:26 c> 23:59 k> h>

MAS2 MON A

707-707

r> 23:49 d> 23:49 a> 23:53 c> 23:59 k> h>

*** COMMENTS ***

813 MON 23:25:18 CD-145-CAN HEAR YELLING / SCREAMING NEXT DOOR

707-

813 MON 23:26:11 -23

707-

818 MON 23:27:04 OUT WITH AN INTOXICATED MALE ON THE PORCH.

707-

814 MON 23:28:18 -23

707-

818 MON 23:30:57 -99 61022236

707-

818 MON 23:33:45 -95 FOR PROTECTIVE CUSTODY.

707-

813 MON 23:39:51 76 TO 19/ CAR 6/ SM/ 26594/ 21 WCMH/SCREENER

9 -

818 MON 23:43:20 -21 FROM WCMH SCREENER/ -76

707-

MAS2 MON 23:49:31 REQ MAS RESPOND/ TONE GVN.

707-

MAS2 MON 23:53:31 12A2 ON SCENE. @ THE PD.

707-

MAS2 MON 00:12:00 10-81 .273

726-

MAS2 MON 00:25:00 MAS2 CLEAR RETURNING AND BIQ

726-

MAS2 MON 00:46:00 -76 TO BCPD WITH THAT MALE CAR 6 SM 26594

726-

818 MON A COMPLAINANT FROM 62 BARRE STREET REPORTED YELLING AND

58 -

818 MON SCREAMING FROM THE RESIDENCE NEXT DOOR. OFC. MOULTON AND I

58 -

818 MON RESPONDED AND I COULD HEAR A VOICE AS WE LOOKED FOR THE

58 -

818 MON RESIDENCE. WE FOUND THE SOURCE TO BE BRIAN MAYNARD, WHO WAS

58 -

818 MON ON HIS PORCH. HE WAS LOUD, VULGAR AND UNSTABLE ON HIS FEET.

58 -

818 MON HE HAD NO ONE TO WATCH HIM FOR THE NIGHT. WE TOOK HIM INTO

58 -

818 MON PROTECTIVE CUSTODY WITHOUT INCIDENT. I CHECKED THE HANDCUFFS

58 -58

818 MON FOR FIT AND DOUBLE LOCKED THEM. ONCE IN A CELL AT MPD,

58 -58

818 MON MAYNARD SPIT ON THE WALL. OFC. MOULTON WAS IN THE PROCESS

58 -58

818 MON OF REMOVING THE HANDCUFFS FROM MAYNARD AND GOT ONE OF THEM

58 -58

818 MON OFF. MAYNARD RAISED HIS HANDCUFFED ARM AND MADE A FIST.

58 -58

818 MON OFC. MOULTON TOLD HIM TO SETTLE DOWN AND I TOLD HIM TO PUT

58 -58

818 MON HIS HAND DOWN. HE REFUSED AND I PULLED HIM TO THE GROUND

58 -58

818 MON BY PULLING ON THE AREA ON THE BACK OF HIS SHOULDERS.

58 -58

818 MON ONCE ON THE I SECURED HIS LEFT ARM BEHIND HIS BACK AND

58 -58

818 MON OFC. MOULTON REAPPLIED THE HANDCUFFS. AFTERWARDS,

58 -58

818 MON WHILE MAYNARD WAS ALONE IN THE CELL, HE FELL AND INJURED

58 -58

818 MON HIS NOSE. HE WAS TREATED BY OFC. MOULTON AND MFD.

58 -

818 MON I ENDED UP PUTTING A HELMET ON MAYNARD. OFC. MOULTON GAVE

58 -58

818 MON MAYNARD A PBT, WHICH RESULTED IN A BAC OF .273%. HE WAS

58 -58

03/06/10 23:12
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTYP9 -58

shift: C

date: 03/05/10 FRIDAY

org/1st

*** COMMENTS ***

818 MON SCREENED BY WCMH AND LODGED AT BCPD FOR PROTECTIVE CUSTODY. 58 -

officer's signature

date

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: David Kachajian Date: 9/5/10 Case #: 382341
Supervisor's Name: Cpl. David Kachajian / Cpl. Matt Kachajian Date of Incident: 9/5/10
Time of incident: 16:43 Status: On duty / ☒ off duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: N/A

Location of Incident: Montpelier Police Department - Cell Block

Information received prior to initial contact:

Dispatch received a radio call from the Washington County Sheriff's Office (WCO) that there were three intoxicated males across from the DPW Complex on Day River Road. One male (Dery Simich) was taken into protective custody (RAC-32464)

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☐ Ordered: ☐
Baton: ☐ for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒ for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐ (Leg Irons)
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 42 Sex M
Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐ Age Sex N/A
Subject complied after force was enacted. Yes ☐ No ☒
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

The suspect sustained a contusion to his left eye area from falling against the edge of the cell block door. The officer received lacerations and/or bruising/scuffing to the back of the right hand.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

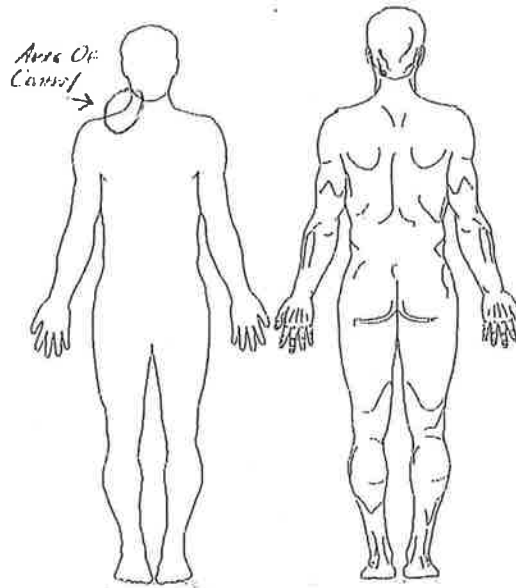
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: Shoulder/Left neck area

Number of impact techniques used? 0 Which technique utilized? nil

Location of impact techniques:



Other: Leg irons were later used to keep the suspect from reaching over the windows on my cruiser. The subject was also leg tied to prevent him from reaching the cruiser windows over while being transported to the hospital for treatment.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

See Attached narrative.

[Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief [Signature]

Policy Compliance Yes ☒ No ☐

Use of Force Report (Case #: 389341):

On September 5, 2010 at approximately 3:34 p.m. the Montpelier Police Department Dispatch Center was contacted by a deputy sheriff (W-14) from the Washington County Sheriff's Office advising that there were three intoxicated males lying in the grass across from the City of Montpelier Department of Public Works on Dog River Road.

At this time Corporal Knisley, Officer Jennings and I responded to the area to assist the deputy with the three parties. Upon arrival on scene we located the three males lying down on the ground in the woods across from the City of Montpelier Sewerage Treatment Plant. One of the males that we encountered, later identified as a party by the name of Joey Smith (DOB: 2/19/63), was extremely impaired and was so intoxicated that he defecated in his pants while we were speaking with him. A subsequent PBT test administered to Mr. Smith showed him to have a BAC of .324%.

Due to the fact that Mr. Smith was too intoxicated to take care of himself, we placed him into protective custody. Mr. Smith initially resisted being placed into custody and tried to prevent us from getting his hands/arms behind his back to handcuff him. After a very brief struggle; Officer Jennings and I were able to handcuff him behind his back (handcuffs double-locked and checked for tightness). Mr. Smith was transported back to the Montpelier Police Department by Officer Jennings and placed into a holding cell to await the arrival of a screener from Washington County Mental Health.

After Mr. Smith met with the screener and was advised that he would be taken to the Barre City Police Department lock up for detoxification, he started to become increasingly agitated. Mr. Smith began to scream and yell and then started to bang his head on the glass of the holding cell door (Note: Mr. Smith had been left handcuffed while in the holding cell because of his initial resistance to being handcuffed and because he kept threatening to assault us if we were to take the handcuffs off of him).

A short time later, Corporal Knisley, Officer Jennings and I entered the cell block and prepared to remove Mr. Smith from the cell so as to be transported to the Barre City Police Department. When we opened the cell door, both Officer Jennings and I asked Mr. Smith to please step out for us. Mr. Smith refused and

stated that we would need to come in to get him if we wanted him. I stated to Mr. Smith that we just wanted to take him over to the Barre Police Department so that he could detox and then asked him to not make this situation any more difficult than necessary. Mr. Smith began to yell and scream and was spitting as he spoke. He then suddenly lowered his body posture and charged out of the holding cell towards me with his head partially lowered.

Fearing that Mr. Smith was going to either strike me with a head butt and/or shoulder strike, I instinctively put my left hand up in front of me in an attempt to block him from hitting me. At this point, I was able to block his charge at me by placing my left hand on the right side of his neck in the area of his Trapezius Muscle and lower neck. I then stepped back and tried to push him away to my right side by grabbing his right arm with my right hand. As I pushed him away, I also attempted to direct him to the ground to prevent him from being able to continue to fight. As I tried to guide him down to the cell block floor, Mr. Smith struck the left edge of his head on the door jamb of the cell block door. At this time both Mr. Smith and I went down to the ground and in the process, my right hand was crushed between him and the cement floor. As a result, the back of my right hand was lacerated and began to swell. As a result of Mr. Smith's head hitting the edge of the door, he sustained a large bump to the area around his left eye. Mr. Smith's eye immediately began to swell and a small spot of blood was visible towards the top of the area that was swelling.

After we were able to get Mr. Smith somewhat under control, we were forced to pick him up off of the ground because he was still thrashing and kicking. After carrying him into the sally port area of the police department where our cruiser was located, we attempted to place Mr. Smith into the back seat for transport. Mr. Smith continued to actively resist us and attempted to kick both Officer Jennings and I several times while we were standing next to the right door jamb of the cruiser. To protect both us and Mr. Smith from injury, Officer Jennings placed leg irons on Mr. Smith. Mr. Smith continued yelling at me and made numerous threats towards me while we were placing him into the back of the cruiser. On several occasions he demanded that we take the handcuffs off of him and would as well threaten that he would "Take care of me" if we let him out of them. Once we were able to get him into the cruiser and shut the doors, Mr. Smith proceeded to try and kick the back windows of the car out. Because of this, we were forced to hobble/hogtie him using a nylon restraining lanyard.

Due to the injury he sustained to his head/eye orbit from hitting the edge of the door when he charged me, Officer Jennings and I transported him to the Central Vermont Medical Center for treatment. While at the hospital, Mr. Smith continued to threaten me and indicated on numerous occasions that he would "Take care of me" and "Get me" when he was released from custody. While Mr. Smith was being treated at the hospital, I also received treatment for my right hand injury. I was also advised by the attending physician that I would need to have my blood tested every four to six weeks for six months for the possible exposure to the suspect's blood due to the fact that Mr. Smith may be infected with blood borne diseases to include Hepatitis B (Note: Mr. Smith refused to have his blood tested at the hospital to confirm and/or deny this possibility).

After we were both treated and cleared from the hospital, with the assistance of Detective Corporal Nolan, I transported Mr. Smith to the St. Johnsbury Correctional Center for detox. Upon arrival at the correctional center, Mr. Smith was issued a citation to appear in the Washington County District Court on October 14, 2010 at 12:30 p.m. to be arraigned on the charge of Simple Assault on a Police Officer. Mr. Smith refused to sign the citation.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

386474

Officer's Name: Kevin Moulton Appendix A Date: 7/20/10 Case #: 1211-10-386474
Supervisor's Name: Sgt Eric Anderson Date of Incident: 7/20/10
Time of incident: 2020 hours Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☐
Weather Conditions: Warm + Clear
Location of Incident: Between 285 + 301 River Street
Information received prior to initial contact:
2 car 10-50 with Good Check involved

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☒ Necessary to defend self: ☒
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☐for: control & restraint ☐ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age 37 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☒
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

N/A

SUBJECT WENT TO CIVIL AND S.W.D.
TO BE SCREENED BY WCMH

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

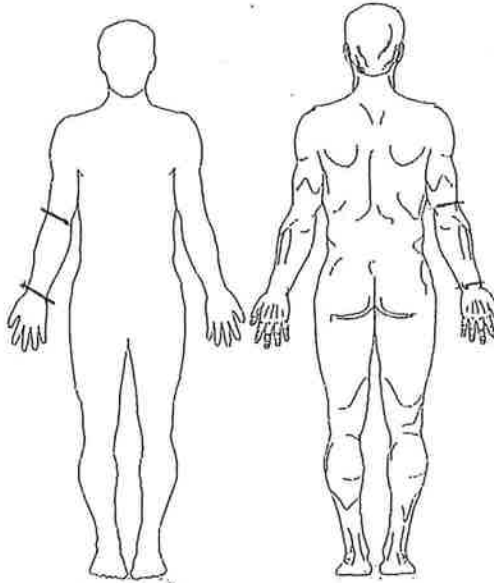
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: Right Wrist + Elbow

Number of impact techniques used? 0 Which technique utilized? Arm bar take down

Location of impact techniques:



Other:

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Upon arrival to scene I saw Brad Clark in an agitated state while speaking to Firefighter Bressette. Clark was in FF Bressette's face flailing his arms and appeared to be very aggressive. I ordered Clark to sit in his vehicle after several attempts to get him. Clark got in and slammed the door. Clark then began beating the dashboard and started yelling. Clark then jumped out and ran to the passenger side. I went to Clark and again ordered him back into the vehicle. Clark did not comply and tried to reach into the vehicle. At that time I ambushed Clark to the ground and placed him in handcuffs. Clark was released after investigating the -SC. Clark was in a highly agitated state throughout the encounter.

Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

07/23/2010

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: Cpl. David Kachajian Date: 12/18/08 Case #: 373992
Supervisor's Name: Cpl. David Kachajian Date of Incident: 12/18/08
Time of incident: 02:38 Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: Cold and clear
Location of Incident: 235 Elm Street / Vine Street

Information received prior to initial contact:

Responded to 235 Elm Street for a report of an underage drinking party / loud noise complaint.

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒
Necessary for Protective Custody: ☒ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age 19 Sex M
Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Officer (Cpl. Kachajian) sustained injury to his feet that (abrasion and scratches).
Suspect (Charles O'Regan) sustained a concussion and minor scratches from rolling to the ice on his left cheek.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

Control technique Y ☒ N ☐

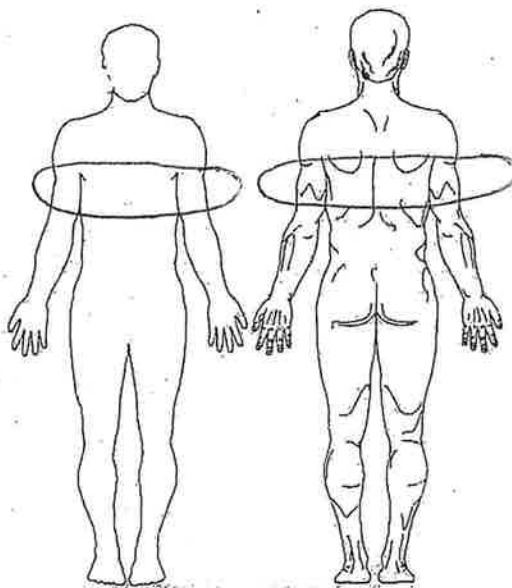
Both Y ☐ N ☐

Targeted Area: Upper body and arms.

Number of impact techniques used? 0 Which technique utilized? Brow hug / Tackle around upper torso.

Location of impact techniques:

C&R



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

During a foot pursuit of a suspect that fled from Officer Muever, I located the subject hiding behind a residence off of Vine Street. The suspect came at me after being told he was under arrest and to show me his hands. I got the subject into a front bear hug and at that time, we both went down to the ground on the ice and snow. After a brief struggle, I got the suspect's left arm behind his back and held him in the prone position until Officer Muever arrived to handcuff him. As a result of the struggle, I sustained minor lacerations and an abrasion to my left knee. The suspect sustained a minor contusion to his left chest along with some scratches from falling onto the ice.

[Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief [Signature]

Policy Compliance Yes ☒ No ☐

12/23/09

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Joshua Macera Date: 12/15/2009 Case #: 373992

Supervisor's Name: Cpl. Kachajian Date of Incident: 12/15/09

Time of incident: 2:38 Am Status: On duty / ☒ off duty / ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒

Weather Conditions: clear & cold

Location of Incident: 235 Elm St sidewalk 113

Information received prior to initial contact:

underage drinking party loud noise complaint

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☒

Necessary for Protective Custody: ☒ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☒ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐)

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age 19 Sex M

Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☐

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age Sex

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Scratches to suspects left cheek, Cpl. Kachajian sustained injuries to his left knee

MONTPELIER POLICE DEPARTMENT

USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☒ No ☐ Pepperball Launcher: Yes ☐ No ☒ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☒ Area: ☐ Both ☐

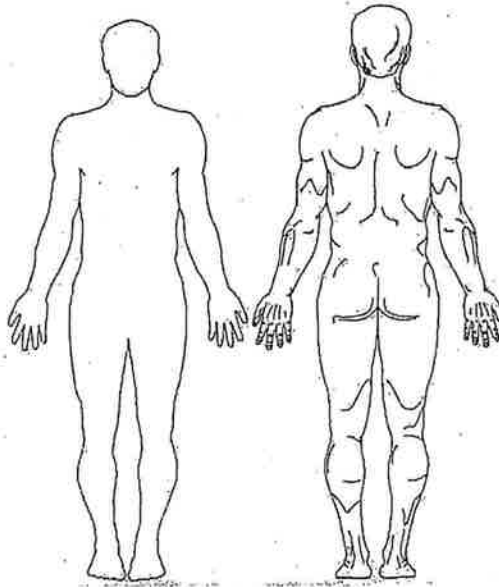
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☒ No ☐ if no

explain: Allowed to use face wash system in PD.

OC administrative warning read to suspect: Yes ☒ No ☐

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Attempted to place suspect in protective custody. Suspect refused to
comply. Attempted verbal commands to lay down suspect refused, used
front trip suspect went to ground got back up. Advised he would be
sprayed still refused to comply. Sprayed OC. Suspect took off on
foot located on vine st. Suspect was guided to ground and handcuffed.

Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☒ No ☐

Chief _____

Policy Compliance Yes ☒ No ☐

12/23/09

AFFIDAVIT

STATE OF VERMONT
Washington County, ss.

NOW COMES Joshua J. Macura, Affiant, duly sworn and on oath deposes and says he has probable cause to believe that Charles H. O'Regan DOB: 12/8/1990 has committed the offense of Larceny from the Person in Violation of Title 13 V.S.A. § 2503, Disorderly Conduct in violation of Title 13 § 1026, Assault of Law Enforcement Officer in Violation of Title 13 V.S.A. § 1028, Resisting Arrest in Violation of Title 13 V.S.A. § 3017, Possession of Malt Beverage in Violation of Title 7 V.S.A. § 657.

- 1) On December 18, 2009 at approximately 2:38 AM I responded to a report of a possible underage drinking party located at 235 Elm Street Montpelier, VT. When we arrived Corporal David Kachajian of the Montpelier Police Department spoke with the complainant located in the downstairs apartment. The complainant said for the last three hours youths had been going up and down the stairs and were being very loud. She said the youths were going into the apartment on the third floor and then into the basement of the building. The complainant said there was a room in the basement and knew the landlord had told the kids on a previous occasion that they were not allowed in the basement or to use the room.
- 2) After we spoke with the tenants in the third floor apartment Corporal Kachajian then went to investigate the basement while I secured some drug paraphernalia in the cruiser. I then returned to the basement where I found Corporal Kachajian conducting a search of the basement area. While conducting the search of the area we noticed an empty Long Trail beer bottle on the floor. We then located a room in the back of the basement with the door slightly open. I could see lights on inside the room and knocked on the door announcing "Montpelier Police is there anyone in here." As I began pushing the door open I noticed it was a furnished room with food, chairs, couches and a coffee table which contained several beer bottles on it. I also noticed a glass bong on the floor which is commonly used to smoke marijuana. I also noticed a dog in the corner of the room on a mattress and the outline of a body under a blanket on the same mattress.
- 3) I again announced "Montpelier Police wake up" towards the body. I observed no movement and noticed a sign which read "Happy Birthday Charlie" above the bed. I yelled "Charlie wake up" several times and then noticed the body move. While speaking with Charles H. O'Regan DOB: 12/8/1990 I noticed an odor of intoxicants and asked if he had been drinking alcohol. O'Regan said he had not. I then spoke with the landlord Gary Schy who advised no one was supposed to be living in the room and that he rents it out as an office space. Schy said O'Regan could stay at his residence for the night.
- 4) I then escorted O'Regan back out to my cruiser where I asked him for a sample of his breath. O'Regan advised me he wanted to speak with a lawyer and refused to take the breath test. I advised O'Regan because I felt he was under the influence of alcohol I was placing him in protective custody and would be transporting him back to the Montpelier Police Department where I would contact someone sober to come and pick him up. O'Regan refused to get in the cruiser and so I advised him I was going to be placing him in handcuffs. O'Regan then began to push against me to get into the cruiser and I advised him he needed to get out of the cruiser so I could place him in handcuffs.

5) O'Regan refused to comply after I advised him several times to exit the cruiser. I then was able to pull O'Regan from the cruiser where he began to push away from me again. I advised O'Regan to lie on the ground which he refused to do. I then conducted the forward trip on O'Regan and was able to get him on the ground. O'Regan then pushed back against me and was able to stand back up. After attempting this twice I advised O'Regan if he did not comply I would spray him with OC (Oleoresin Capsicum). I advised O'Regan this approximately five (5) times and then deployed the OC. While deploying the OC O'Regan reached up and took the OC from my hand. O'Regan then pushed away from me and began running south on Elm Street then west on Winter Street.

6) O'Regan was located by Corporal Kachajian on Vine Street alongside a building. Corporal Kachajian advised O'Regan he was under arrest and to show him his hands which he refused to do. Corporal Kachajian then began to attempt to gain control of O'Regan who still had the can of OC with him. During the struggle Corporal Kachajian sustained injuries to his left knee which consisted of scratches and an abrasion. Corporal Kachajian said on a scale from 1-10, 10 being the most pain he estimated his pain to be a three (3).

7) Court Clerk Paula Tremblay was contacted and the following conditions of release were set:

You must give the court bail as follows: C. A Surety Bond or cash in the amount of \$250.00.

1. You must come to court when you are told to.

2. You must give your attorney or the court clerk your address and phone number. If it changes you must tell them immediately.

3. You must not be charged with or have probable cause found for a new offense while this case is open.

12. You must NOT buy, have or drink any alcoholic beverage.

16. You must come to court on 12/18/2009 at 12:30 PM.

31. No release until blowing .000%.

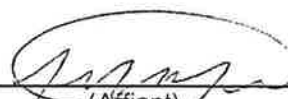
8) I advised O'Regan of the conditions and he said he had the money. I then asked him for a sample of his breath and he advised he wanted to speak with an attorney. I advised O'Regan before he could be released he needed to show his blood alcohol content was .000%. O'Regan refused to provide a sample of his breath. O'Regan was transported to Barre City Jail for not abiding by condition number 31.

Subscribed and Sworn to before me on

This 14th day of December, 2009


(Notary Public)

(Judicial Officer)


(Affiant)

12/18/2009
(Date)

SUPPLEMENTAL AFFIDAVIT

**MONTPELIER
POLICE DEPARTMENT
Case # 373992**

**STATE OF VERMONT
WASHINGTON COUNTY S.S.**

Now comes Corporal David Kachajian, affiant being duly sworn and on oath, deposes and says:

I am a certified law enforcement officer within the State of Vermont, and have been since 2005 when I was certified by the Vermont Criminal Justice Training Council. I am employed by the Montpelier Police Department as a full time Officer.

On December 18, 2009 at approximately 2:38 a.m. Officer Macura and I responded to 235 Elm Street for a report of a possible underage drinking party at the residence. Upon arrival on scene we met a female resident on the first floor of the residence who advised us that for the past 2 to 3 hours, there had been numerous people being loud and going in and out of the third floor apartment and the basement of the apartment building. The female also stated that it appeared that the people were underage and intoxicated.

At this time we went to the third floor of the residence and investigated the initial complaint concerning the underage drinking party. After speaking with the resident, Samuel Hildebrand (19 years of age), who voluntarily let us into his apartment, we were able to determine that he was not intoxicated. We were able to determine that he had some people over to his residence earlier and that there were signs that an underage drinking had taken place such as empty beer bottles and "keg cups" present throughout the apartment. The apartment also had a stale odor of what I recognized, through my training and experience to be, marijuana. There were also several glass "bongs" present in the apartment as well as a bong made out of a gas mask. No marijuana was located in the apartment itself.

After speaking with Mr. Hildebrand, we left the third floor apartment and exited the residence. While Officer Macura placed some drug paraphernalia we had been given by the resident into our cruiser that was parked in the front of the house, I walked to the right rear of the residence and located a partially open basement door with a light on inside. At this time I peered inside and could only see a small area from my vantage point. I entered the basement where the underage drinkers were reportedly located, and looked around to see if anyone was there. It was at this point that Officer Macura joined me inside. Upon checking the interior, which appeared to be an unfinished basement, we located an unlocked door at the end of room. When we cracked the door open, we announced that we were the Montpelier Police and at that time, observed purple light emanating from inside. It was at this point that Officer Macura observed a male, female, and a small dog underneath some blankets in the corner of the room. From our first observations of the room, it appeared to be an illegal apartment that had been set up in the basement.

Soon after rousing the occupants inside of the room, we were able to identify them as Charles Oregon (DOB: 12/8/90) and Jessica Novak (DOB: 4/1/87). Both parties appeared to have been drinking as there was a strong odor of intoxicants coming from both their breath and from their person. There was also two large water "bongs" lying on the floor next to the mattress that the parties had been laying on. Mr. Oregon and Ms. Novak

SUPPLEMENTAL AFFIDAVIT

**MONTPELIER
POLICE DEPARTMENT
Case # 373992**

**STATE OF VERMONT
WASHINGTON COUNTY S.S.**

denied having consumed any alcohol this evening and stated that they had not attended any party on the third floor of the apartment house. When we asked Mr. Oregon if he lived in the room we found him in, he stated to us that he lived there in exchange for working for the landlord, Gary Schy, and that he paid him \$50 a month for utilities.

While conducting our investigation, Officer Macura, contacted Mr. Schy to determine if Mr. Oregon was lawfully present where we located him inside of the apartment building. Mr. Schy would neither confirm nor deny that the room was an apartment and only stated that he rented it out as office space. After speaking with Mr. Schy, Officer Macura escorted Mr. Oregon outside and back to our cruiser to obtain a BAC on him because he was underage. A few minutes later, while I was still in the basement speaking with Ms. Novak, I heard Officer Macura calling for assistance on his portable radio. I also heard that Officer Macura was now in a foot pursuit with Mr. Oregon.

Upon exiting the residence I was able to make contact with Officer Macura via radio and learned that he had chased Mr. Oregon onto Vine Street and had lost sight of him in the area. Approximately one minute later I located Officer Macura on Vine Street, at which time he advised me that Mr. Oregon had fought with him beside his cruiser when he tried to place him into protective custody. Officer Macura went on to state that Mr. Oregon had been sprayed with pepper spray (OC) and that during the course of him spraying him, Mr. Oregon grabbed the can of spray away from him. It was at this point the Mr. Oregon fled from Officer Macura on foot.

At this time Officer Macura and I split up and searched the area. While checking the residences on the South side of Vine Street, I rounded the corner next to the rear of one of the homes and suddenly observed Mr. Oregon standing up against the side of the house holding his dog in his left arm. I immediately ordered Mr. Oregon to drop the dog, told him that he was under arrest, and then ordered him to show me his hands. Mr. Oregon refused to do so and started to move away from the house towards me. I immediately grabbed Mr. Oregon in a bear hug and tried to knock the dog from his arm so that it would not get injured from an impending struggle with the suspect. Mr. Oregon dropped the dog onto the snow and ice covered ground and then the both of us slipped and fell. As we fell, I observed the canister of pepper spray that the suspect had stolen from Officer Macura, go flying out and onto the ground from the area of Mr. Oregon's hands. After a brief struggle with the suspect, I was able to gain control of him and placed his left arm behind his back while restraining him face down on the ground. Officer Macura arrived a few seconds later and assisted me with handcuffing Mr. Oregon.

Mr. Oregon was handcuffed behind his back (handcuffs double-locked) and then escorted back to where our cruiser was parked. During the incident, Berlin Police Officer Edward Page arrived on scene to assist us and subsequently transported Mr. Oregon back to the Montpelier Police Department for processing.

SUPPLEMENTAL AFFIDAVIT

MONTPELIER
POLICE DEPARTMENT
Case # 373992

STATE OF VERMONT
WASHINGTON COUNTY S.S.

Subscribed and Sworn to before me on

This 18 day of December 2009



(Notary Public)



(Affiant)

12/18/09

(Date)

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: Christopher M. Truhan Date: 11-18-09 Case #: 1211-09-372421

Supervisor's Name: Wade Cochran Date of Incident: 11-17-09

Time of incident: 2147 hrs Status: On duty / ☒ off duty / ☐

Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☒

Weather Conditions: C / pcn

Location of Incident: College St

Information received prior to initial contact:

Name

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☒ Necessary to defend self: ☐

Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐)

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____

Subject complied after force was enacted. Yes ☒ No ☐

Subject resisted during the entire encounter. Yes ☐ No ☒

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

I think he had a cut on his hand

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

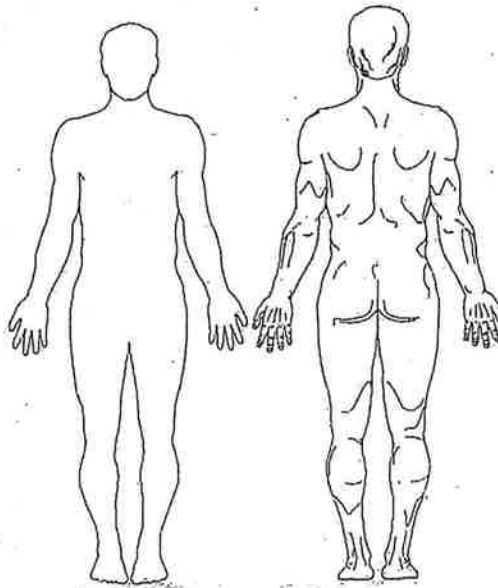
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: body, left arm

Number of impact techniques used? 0 Which technique utilized? _____

Location of impact techniques:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

suspect fled from car stop. suspect grabbed by back
of coat & thrown to ground. officer on suspect,
turned him over, secured left arm behind
his ~~left~~ back & placed into handcuffs.

Chris M. [Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief [Signature]

Policy Compliance Yes ☒ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Cpl. David Kochujian Date: 11/1/09 Case #: 371549
Supervisor's Name: Cpl. David Kochujian Date of Incident: 11/1/09
Time of incident: 05:27 Status: On duty / ☒ off duty / ☐
Indoors: ☒ Outdoors: ☐ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: Clear / 40° Fahrenheit

NOV 02 2009

Location of Incident: 42 Main Street and 1 Pitkin Court (at Police Station)

Information received prior to initial contact:

Intoxicated male was reported banging on windows on Main Street. Appeared to be very incapacitated and was staggering down the sidewalk.

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☒ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☒ Advised: ☒ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐ Arm bar take down.
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 24 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☐ No ☒
Subject resisted during the entire encounter. Yes ☒ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Suspect sustained bloody lip after being restrained against the wall next to the jail cell door. Very minor cut to what appeared to be the suspect's lower lip.

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

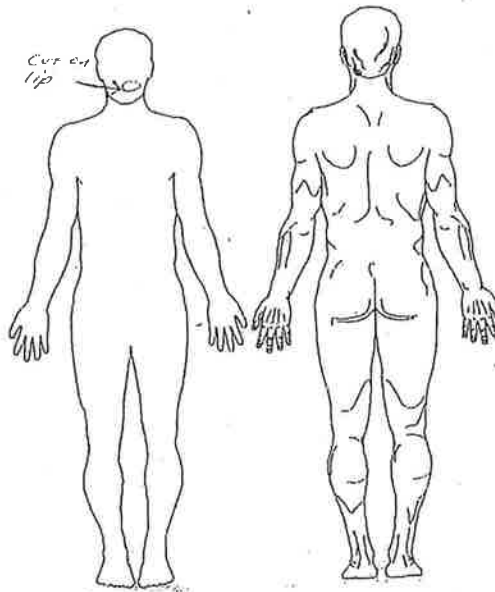
Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area: N/A

Number of impact techniques used? 0 Which technique utilized? Arm bar take down

Location of impact techniques:



Other: Arm bar was used to gain control of the suspect when he refused to go back into the cell. Handcuffs were also used to restrain the subject since when he refused to re-enter the cell and became combative. Handcuffs were secured and locked each time.

Summary of Events:

(Note: summarize only attach officer report for complete details.)

While bringing the prisoner into the cellblock, he refused to enter and he comply with having his belongings removed for both his safety and that of the officers. When Officer Brown and I attempted to get him into the holding cell, the subject became combative. Arm bars were used to take control of the subject. In the process of restraining the intoxicated male, we fell against the wall next to the holding cell and the subject sustained a minor cut to his lower lip. EMS was called to evaluate the injury. Long ceased treatment. The Correctional Center in St. Johnsbury was notified of the minor injury. Medical staff at the correctional center advised they would tend to the minor cut if necessary.

[Signature]
Involved Officer's Signature

[Signature]
Supervisor's Signature

Policy Compliance Yes ☒ No ☐

[Signature]
Chief

Policy Compliance Yes ☒ No ☐

11/04/09

POLICE OFFICER'S FORMAL REPORT
MONTPELIER POLICE DEPARTMENT

11/01/09 09:04
PAGE: 1
TTYP1 -49

Case#: 371549

rpt date: 11/01/09 08:42
ucr: 312 PC-TRANSPORT TO DETOX

reported: SUNDAY

11/01/09 05:27

location: 42 MAIN ST

follow up by: (N)ONE NEEDED
officer:

case status: CLEARED/CLOSED NORMAL

rpt status: COMPLETED

review officer: 49 P.O.KACHAJIAN

sup review officer:

comp/vict notify: No
cir/involve type:

complaint: MALE POSS -56 POUNDING ON STORE WINDOWS

reporting officer: 49 P.O.KACHAJIAN
second officer: 51 P.O. BEAN

assignment: A car: 810
sup/back-up:

*** NAMES ***

type	mast#	name/add	phone	dob	ss#
INVOLVED	022041	BRAYTON, CHRISTOPHER M			

*** NARRATIVE ***

Use of Force Form completed regarding this incident:

During the course of trying to get the subject into the holding cell, Mr. Brayton became very combative and refused to comply with our commands and requests. On several occasions, Mr. Brayton attempted to pull away from Officer Bean and I refused to go into his holding cell by placing his foot in the doorway to prevent the door from closing. Mr.. Brayton also attempted to leave the holding cell several times once he was placed inside and threatened to assault both Officer Bean and I if we didn't let him out. Arm Bar restraints were subsequently used to subdue and control Mr. Brayton because his resistance and/or non-compliance to our commands to get into his holding cell were not being followed. When we tried to escort him into the cell, he actively resisted us and tried to pull away while tensing his muscles. He also began to yell and scream at us. Mr. Brayton was finally restrained in the cell with the addition of having handcuffs being placed on him to prevent him from assaulting either Officer Bean or myself. The handcuffs were later removed when he calmed down, but had to be re-applied later on when he once again began to actively resist us when being told to go back into his holding cell. While in his cell, Mr. Brayton repeatedly kicked and punched the cell door with his hands and feet. As a

POLICE OFFICER'S FORMAL REPORT
MONTPELIER POLICE DEPARTMENT

11/01/09 09:04
PAGE: 2
TTYPl -49

Case#: 371549

*** NARRATIVE ***

result, fresh bruises were observed on his hands when the transport team was preparing to secure him for transport to the St. Johnsbury Correctional Center.

Prior to leaving the police facility, Mr. Brayton advised that he no longer wanted to go to CVH to have his already healed cut, that he had sustained the day before shaving, looked at. The correctional center was contacted regarding the minor laceration to Mr. Brayton's lip. The correctional center advised that the nurse at the facility would evaluate the injury to Mr. Brayton's lip and prior neck "laceration" from shaving and would provide any necessary treatment should it be deemed needed.

=====
chief [] capt/oic [] cid [] traffic [] fire [] other []
=====

I recommend this case be declared:

Unfounded() Not Cleared() Court Action() Cleared by Arrest()
Case Declared:

Active() Complete() Unfounded() Domestic Violence()

[Signature] *11/01/09*
Reporting Off's Sig. Date/Time

[Signature]
OIC Signature

11/01/09
Date/Time

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Officer's Name: JENNINGS Appendix A Date: 7/27/09 Case #: 366221
Supervisor's Name: CPL KACHAJIAN Date of Incident: 7/27/09
Time of incident: 01:05 Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☐
Weather Conditions: CLOUDY
Location of Incident: #137 MAIN ST - TRINITY CHURCH

Information received prior to initial contact:

SUBJECT WAS OBSERVED TO PULL A US FLAG
FROM A STREET LIGHT POLE ON STATE ST
AT ELM ST.

Reason for Use of Force

Necessary to effect an arrest: ☒ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☐ No: ☒
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☒
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-
NO INJURIES

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☐ N ☒

Control technique Y ☒ N ☐

Both Y ☐ N ☒

Targeted Area:

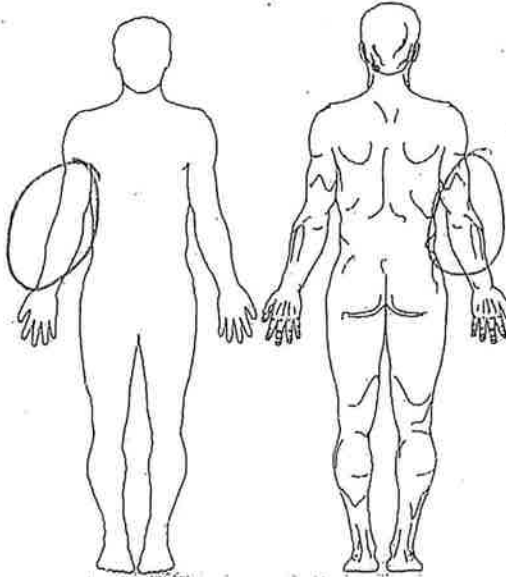
RIGHT ARM

Number of impact techniques used? _____ Which technique utilized? _____

AIRM BARE USED

Location of impact techniques:

NO IMPACT WEAPONS



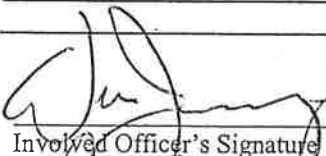
Other: _____

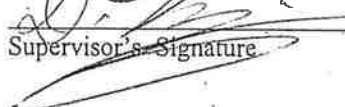
N/A

Summary of Events:

(Note: summarize only attach officer report for complete details.)

SEE ATTACHED DOCUMENT


Involved Officer's Signature


Supervisor's Signature

Policy Compliance Yes ☒ No ☐


Chief

Policy Compliance Yes ☒ No ☐

07/27/09

I Observed while on foot patrol a subject on State Street at Elm Street pull a US flag down from a street light pole (Unlawful Mischief). The bracket was damaged beyond repair. 817 Bouchard stopped the Gotavaskis at Elm Street and while interviewing Gotavaskis fled on foot up Elm to Langdon onto Hazen Court onto Main Street and down School Street. Bouchard pursued on foot I did so in his EQ. While circling Trinity Church Gotavaskis was stopped he refused to comply using verbal commands to lie-down issued by Officer Bouchard. I verbally commanded additional commands to lie-down. Gotavaskis refused and appeared to position himself so he could pass and continue to flee. I approached and continued to command Gotavaskis to lie on the ground he refused to comply and I found it necessary to use an arm bar to bring him to the ground (grass covered surface) in order to maintain control and handcuff the subject.

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: R. Moulton Date: 11/1/08 Case #: 351075
Supervisor's Name: R. Cleveland Date of Incident: 11/1/08
Time of incident: 0228 hours Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☐ Artificial: ☒
Weather Conditions: Cal
Location of Incident: School Street and Elm Street

Information received prior to initial contact:

Male subject appeared to be coming on TD Bandwidth
Drive-Thru

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☒ Necessary to defend self: ☐
Necessary for Protective Custody: ☐ Necessary to defend another: ☐
Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐
Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☐ Ordered: ☒
Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐
Body: ☒for: control & restraint ☒ impact ☐ displayed ☐
O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐
K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐
Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐
Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐
Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐
Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 19 Sex M
Was Officer Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒
Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☒ Age ____ Sex ____
Subject complied after force was enacted. Yes ☒ No ☐
Subject resisted during the entire encounter. Yes ☐ No ☐
Unable to control subject and take into custody. Yes ☐ No ☒
Describe injuries to suspect, officer or third party:-

Abusions to Right Cheek, Both hands + EThews

MONTPELIER POLICE DEPARTMENT

USE OF FORCE REPORT FORM

Appendix A

Firearm incident

Vest worn Y ☐ N ☐ Sights used Y ☐ N ☐ Flashlight used Y ☐ N ☐ Reload? Y / N

Shooting Position(s) Used: standing ☐ kneeling ☐ sitting ☐ other ☐

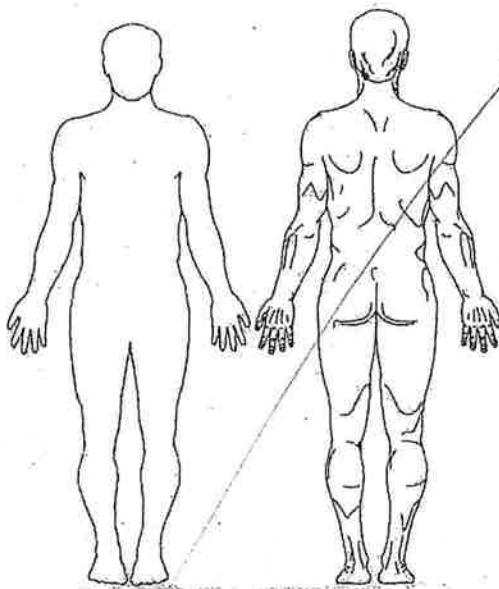
Who fired first?Officer: ☐ Suspect: ☐ Other: ☐

Number of shots?.....Officer: _____ Suspect: _____ Other: _____

Reason for discharge? Protect self: ☐ Citizen: ☐ Prisoner: ☐ Unintentional: ☐

Wounds received: Officer ☐ Suspect ☐ Other Party ☐ Property Damage by Stray Rounds ☐

Location of bullet hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Baton incident

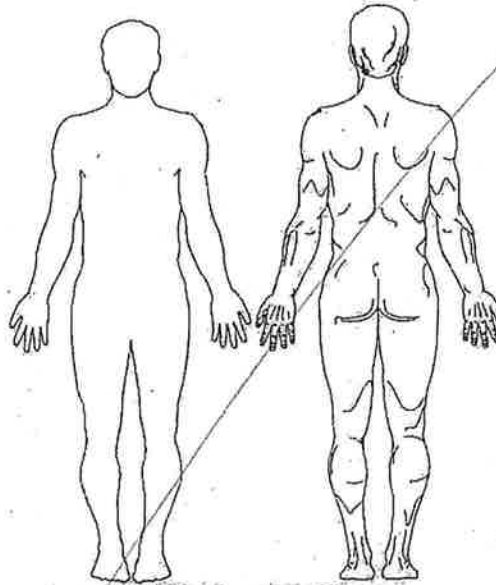
Straight Baton: ☐ Expandable Baton: ☐ Riot Baton: ☐ PR-24: ☐

Impact technique Y ☐ N ☐ Control technique Y ☐ N ☐ Both Y ☐ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? _____

Location of Strikes: _____



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Policy Compliance Yes ☐ No ☐

Supervisor's Signature _____

Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Controlled with body

Impact technique Y ☒ N ☒

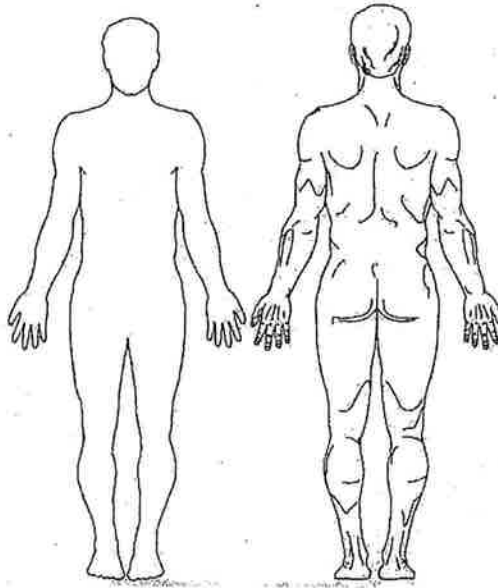
Control technique Y ☒ N ☐

Both Y ☒ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? Non-compliant Handcuffing

Location of impact techniques: _____



Other: Subject tripped and fell face first injuring
Hands, Elbow and face. I immediately gained control of
Subject and placed his arms on his back for handcuffing

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Subject was seen possibly wandering on building. I approached and asked Subject what he
was doing. Subject stated he was just walking. I asked him what he had done
due to the fact he could not speak very well. He said, "Nothing". I asked him
for his last name and he could only tell me his name was Isaac. I asked him to see his
ID and he ran away. I pursued on foot and Subject tripped as a
result of the uneven pavement and concrete. I quickly assumed the position
of Non-compliant Handcuffing until he was restrained.

Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☒ No ☐

Chief _____

Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Tire deflating spikes

Why violator fled: (if known) Avoid: arrest Y ☐ N ☐ Citation / VTC Y ☐ N ☐ Unknown Y ☐ N ☐

Number of South Burlington units in pursuit? _____ Other Agencies: _____

Deployment Strategy: hasty ☐ surprise ☐ obvious ☐ Method of Deployment: throw ☐ pull ☐

Results: subject drove around ☐ subject drove through ☐ Officer Vehicle spiked ☐

Distance traveled after spiked / injuries sustained: _____

(Use narrative for; Highway description, speed/direction of pursuit and traffic volume)

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's signature

Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT

USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☐ No ☐ Pepperball Launcher: Yes ☐ No ☐ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☐ Area: ☐ Both ☐

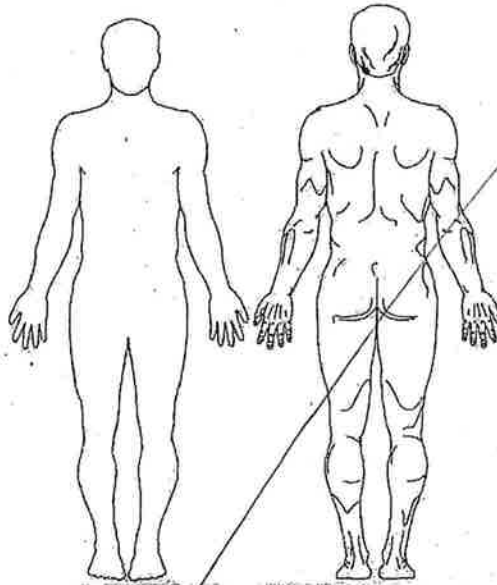
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☐ No ☐ if no

explain: _____

OC administrative warning read to suspect: Yes ☐ No ☐

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Supervisor's Signature _____

Policy Compliance Yes ☐ No ☐

Chief _____

Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM

Appendix A

Officer's Name: Macera Date: 6/8/11 Case #: 403576

Supervisor's Name: Sgt. Anderson Date of Incident: 5/23/11

Time of incident: 7:34 pm Status: On duty / ☒ off duty / ☐
Indoors: ☐ Outdoors: ☒ Lighting: Natural: ☒ Artificial: ☐

Weather Conditions: Clear

Location of Incident: Hubbard Park / Parkway ST.

Information received prior to initial contact:

None

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐
Necessary for Protective Custody: ☒ Necessary to defend another: ☒

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☒ N ☐ Asked: ☐ Advised: ☒ Ordered: ☒

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☒for: control & restraint ☒ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☒ Double locked and checked for proper fit: Yes: ☒ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☒ No ☐ Medical Attention? Yes ☒ No ☐ Age 22 Sex F

Was Officer Injured? Yes ☒ No ☐ Medical Attention? Yes ☐ No ☒

Was a Third Party Injured? Yes ☐ No ☒ Medical Attention? Yes ☐ No ☐ Age ____ Sex ____

Subject complied after force was enacted. Yes ☐ No ☒

Subject resisted during the entire encounter. Yes ☒ No ☐

Unable to control subject and take into custody. Yes ☐ No ☒

Describe injuries to suspect, officer or third party:-

Scrapes on arm & legs on suspect
left elbow on officer

Minor abrasions to

*MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A*

Controlled with body

Impact technique Y ☐ N ☒

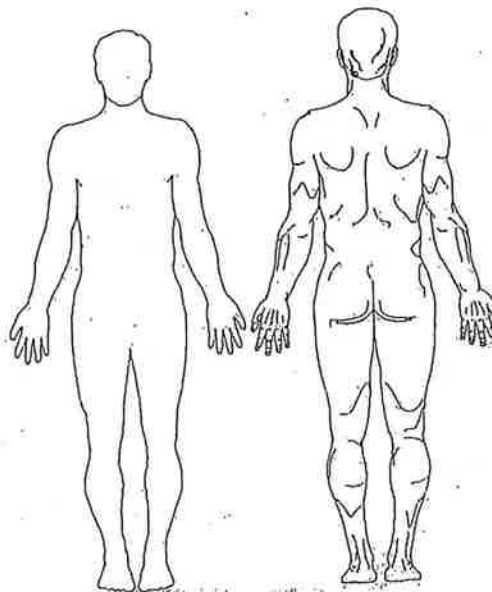
Control technique Y ☒ N ☐

Both, Y ☐ N ☒

Targeted Area: Plants & Logs

Number of impact techniques used? ____ Which technique utilized? Arm bar

Location of impact techniques:



Other:

Summary of Events:

(Note: summarize only attach officer report for complete details.)

See against

2.54
ALL ARREST DEFENDANT NOT COMPLIANT w/
OFFICERS OF EMS PERSON W/TO WAS ENTERING
HER WELFARE HIGHLY INTORIENTED SUSPECT

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☒ No ☐

Chief

Policy Compliance Yes ☒ No ☐

1211-11-403576
Montpelier
Police Department

AFFIDAVIT

STATE OF VERMONT
Washington COUNTY, ss.

Now comes Officer Joshua Macura, affiant, being duly sworn and on oath, deposes and says he has probable cause to believe that Brady L. Wood DOB: 09/12/1988 has committed the offense of Driving While Intoxicated a violation of Title 23 VSA § 1201 (a), Disorderly Conduct a violation of Title 13 VSA § 1026 and Assault of law enforcement officer, firefighter, emergency room personnel a violation of Title 13 VSA § 1028.

- 1) On May 23, 2011 at approximately 7:34 PM I was on patrol in the City of Montpelier, VT. I was driving west on Parkway Street Montpelier, VT which goes through Hubbard Park when I came across a one car crash. The vehicle was identified as a 2001 Volkswagen GTI bearing Vermont registration ESW469 registered to Brady L. Wood DOB: 09/12/1988. The vehicle was facing south and was partially off the roadway. I noticed the air bags had deployed in the vehicle and there was heavy front end damage to the vehicle. The vehicle appeared to have struck an approximately 10 inch thick tree breaking the top of the tree off which was lying on both sides of the roadway.
- 2) I found two females standing on the passenger side of the vehicle with the door open. I asked if everyone was alright and was informed they were but were very upset. I asked what happened and was not given an answer by either person. I then asked who was driving. While asking these questions I noticed Brady L. Wood DOB: 09/12/1988 was very unsteady on her feet and was using the car for support. Wood advised me "she was driving" indicating Hannah E. Blow DOB: 09/23/1988. I looked at Blow and asked if that was correct. Blow looked at Wood and reluctantly said yes. I advised Blow if she was lying to me it was going to be an issue and I wanted to know the truth. I received no response so I again asked who was really driving. I received no answer from Blow but again Wood said "she was driving." Again I asked Blow if that was correct and Blow advised me again, after looking at Wood, reluctantly advised me she was the one driving. I then asked Blow for her license, registration and proof of insurance. Blow gave me her license and said the vehicle was not hers and did not know where the registration and insurance was located. I then asked Wood for the same information. Wood appeared to be trying to find the information in the vehicle. I noticed while she was doing this she was very unsteady, her speech was slurred and she would stop often and I would have to remind her what she was looking for. Wood appeared very intoxicated during my interactions with her.
- 3) When Sergeant Nordenson arrived on scene he advised me this was the vehicle he was looking for earlier in the night. At approximately 17:52 hours Sergeant Nordenson was assigned incident number 403568. The incident was reported by a park visitor through a 911 call which was transferred to the Montpelier Police Department. Sergeant Nordenson advised me after receiving the call he checked the area of Parkway Street and Winter Street and found the vehicle unoccupied and parked near the pond. Sergeant Nordenson advised me the caller had reported there were two intoxicated females driving the vehicle erratically. The caller reported the vehicle was a green Volkswagen bearing VT registration ESW469.
- 4) Sergeant Nordenson then started speaking with Wood while I asked Blow to speak with me near my cruiser. I explained to Blow I wanted to know the truth about who was driving. I advised Blow if she was the one driving I would like her to tell me but if there was a different story I would also like her to tell me that also. Blow advised me she was not the one driving and that Wood had been driving. Blow advised me she had agreed she was the driver to keep Wood from getting in trouble. Blow said they had both consumed one beer and one mixed drink around 4 PM. I asked if she had seen Wood drink anything after the crash took place. Blow advised me

Wood had not had anything to drink after the crash. Blow advised the crash had taken place 20 minutes prior to my arrival.

5) While speaking with Blow I observed two males arrive on scene. It appeared they were not going to go around the scene and so I started walking towards them to ask them to not walk through the crash scene when Wood who was crying started running towards the male and then advised she was leaving with the male. I advised Wood she would need to stay on scene until we had figured everything out. At this time Dana Huoppi of the Montpelier Fire Department reached over and touched Wood on the arm at which time she began swinging her arms and hitting him. Officer Truhan of the Montpelier Police Department and I then grabbed Wood arms to prevent her from hitting Huoppi anymore. Wood refused to calm down and was trying to pull away and her arms were still moving. Wood refused to cooperate and during the incident was guided to the ground where she was placed in handcuffs for her safety and the safety of those on scene. While on the ground I advised Wood to stop resisting and relax but Wood continued to move around and kick her feet. Wood was placed in the back of the cruiser where she continued to yell and cry. While on scene the Montpelier Fire Department had the driver's side door open and was trying to locate the vehicles year off a sticker located on the door frame. While reading the information to the firemen I noticed three 16 ounce Rolling Rock beer cans in an open paper bag just behind the front driver's seat. I noticed the six pack carrying device was still attached to two of the three cans and one had come loose. Three of the 16 ounce beer cans were missing from the bag.

6) I transported Wood back to the Montpelier Police Department to collect further information about the incident. When I arrived at the police department I noticed Wood arm was bleeding and called to have the Montpelier Ambulance Service evaluate her. While waiting I explained to Wood she had been arrested on scene for attempting to assault the firefighter and for being disorderly. I also advised Woods I suspected she was intoxicated and was driving the vehicle. I attempted to conduct sobriety exercises with Wood but she refused to cooperate. While attempting to conduct the exercises I noticed Wood swayed while standing and used the wall for support. Wood speech was also slurred and she was unable to follow instructions during the HGN exercise. I noticed Wood eyes were bloodshot and watery. I asked Wood if she wanted to try any of the exercises and she advised me she did not. I explained to Wood I could read them to her and she could then decide but Wood advised she did not want to do any of them. I then asked for a sample of her breath and she also refused that. Based on my observations of Wood both at the crash scene and at the police department I believe she was under the influence of alcohol and advised Wood I would be processing her for suspicion of DUI.

7) Wood refused to answer any of my questions during the processing and advised me she did not want to speak with an attorney before deciding whether or not to submit to a breath test. At approximately 20:25 hours Wood changed her mind and asked to speak with a lawyer. The on call public defender Brian Marsicovetere was contacted and Wood spoke with him. At the completion of the conversation I asked Wood if she would submit to a breath test. At approximately 20:34 and again at 21:15 hours Wood refused to submit to a breath test.

8) During the processing the Montpelier Ambulance Service arrived to evaluate the cut on Wood arm. Upon their arrival Wood was fairly calm and so I left the room so they could evaluate her injuries. After a few moments I heard some chairs being pushed around in the room. When I arrived in the room where Huoppi and Wood were located I found Wood was being combative towards Huoppi. Wood was crying and yelling and again was flailing her arms. Officer Truhan and I placed Wood in handcuffs and then placed her in a locked holding cell. I finished the processing with Wood in the cell. During her time in the cell she continued to yell

and kick the steel door. A helmet was placed on Wood head to prevent any injuries since she was very unsteady and refused to stay seated on the bench. Wood removed the helmet eventually even though she was still handcuffed. When I would open the cell door Wood would push her way through the doorway and into me. Several times I had to push Wood back into the cell and at one point sustained a minor abrasion to my left elbow while trying to control Wood. Washington County Mental Health was contacted to evaluate Wood due to her highly intoxicated state. James Pugliese arrived and after conversing with Wood and I, deemed Wood incapacitated. Wood was then placed in protective custody and transported to the St. Johnsbury Correctional Facility. During the ride to the correctional facility I had to explain several times to Wood what was going on as she kept asking. Wood also continued to yell and cry during the transport.

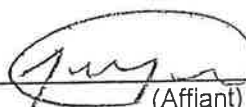
9) Blow completed a written statement which reads as follows: "We had lunch and a beer and went to Hubbard park. She went up around the corner to turn around and ended up hitting a tree."

10) Brady L. Wood DOB: 09/12/1988 was cited to appear in Washington Superior Court on 6/09/2011 at 12:30 PM to answer to the charge of Driving While Intoxicated a violation of Title 23 VSA § 1201 (a), Disorderly Conduct a violation of Title 13 VSA § 1026 and Assault of law enforcement officer, firefighter, emergency room personnel a violation of Title 13 VSA § 1028.

Subscribed and Sworn to before me on

This 1ST day of June, 2011

Charles H. Hild
(Notary Public) (Judicial Officer)


(Affiant)
6/1/11
(Date)

Response to Resistance	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes:	
CALEA Standard: 1.3.1, 1.3.2, 1.3.5, 1.3.6., 1.3.7, 1.3.8., 1.3.9, 1.3.10, 26.1.1	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to direct officers in the appropriate response to resistance.
- II. **Policy:** The policy of this department is to protect and serve all citizens while at the same time respecting the rights of suspects and balancing the need for officer safety in response to resistance events. It is the policy of this department that officers will use only reasonable force to bring an incident or event under control. Reasonable force is only that force which is necessary to accomplish lawful objectives. All responses to resistance must be objectively reasonable.
- III. **Definitions:**
 - A. **Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily harm or death.
 - B. **Non-Deadly Force:** All uses of force other than those that is likely to cause serious bodily harm or death.
 - C. **Imminent:** Impending or about to occur.
 - D. **Objectively Reasonable:** The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances that the officer using the force is presented with.
 - E. **Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person, believes that the prescribed facts exist.
 - F. **Serious Bodily Harm/Injury:** Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.
 - G. **Active resistance:** a subject actively resists when they take affirmative action to defeat an officer's ability to take them into custody.

- H. **Electronic Control Device:** Electronic Control Devices, TASER,TM or stun-guns (electronic control weapons) that disrupt the central nervous system of the body.

IV. Procedure:

- A. In determining the appropriate level of response to a subject's resistance an officer should consider:
- a. How serious is the offense the officer suspected at the time the particular force used?
 - b. What was the physical threat to the officer or others?
 - c. Was the subject actively resisting or attempting to evade arrest by flight?
- B. **Force Options:** Officers have several force options that will be dictated by the actions of the suspect upon the appearance of the police officer. Officers may be limited in their options due to the circumstances and actions of the subject. For example, an officer who immediately observes a subject with a firearm unjustifiably threatening another may immediately respond with deadly force without considering other force options.
- a. **Command Presence:** Visual appearance of officer where it is obvious to the subject due to the officer's uniform or identification that the officer has the authority of law.
 - b. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
 - c. **Soft Empty Hand Control:** Officer's use of hands on the subject to direct the subject's movement; Techniques that have a low potential of injury to the subject.
 - d. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporarily incapacitate the subject.
 - e. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject.
 - f. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
 - g. **Impact Weapons:** Batons, ASP/Expandable Batons may be utilized in cases where officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and failed or where, based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
 - h. **Canine:** Use of canine to bite and hold subject to prevent escape or to gain control of a subject who is actively aggressing toward officer(s). Prior to deployment of a canine, a warning in the form of an announcement shall be made.
 - i. **Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily harm or death
- C. **Deadly Force:** The use of deadly force is objectively reasonable when:

- a. The officer is faced with an imminent threat of serious bodily harm or death to him/herself, or some other person who is present, or;
 - b. To prevent the escape of an individual in cases where the officer has probable cause to believe that the subject has committed a violent felony involving the infliction or threatened infliction of serious bodily harm or death AND by the subject's escape they pose an imminent threat of serious bodily harm or death to another.
 - c. Officers should warn the subject prior to using deadly force where feasible.
- D. Once the subject's active resistance has ceased and control has been gained an officer is no longer authorized to use force. Officers should immediately provide any necessary medical assistance to the subject to the degree to which they are trained and provide for emergency medical response where needed.
- E. Discharge of Firearms Restrictions:
- a. Warning shots are prohibited.
 - b. Discharge of firearms is prohibited when the officer is presented with an unreasonable risk to innocent third parties.
 - c. When a moving vehicle is involved, use of deadly force by discharging a firearm is dangerous, can be ineffective, and should not occur when there is an unreasonable risk to the safety of persons other than the subject. Whenever possible, officers should avoid placing themselves in a position where use of deadly force is the only alternative.
 - d. Even when deadly force is justified, firearms shall not be discharged at a vehicle unless:
 - i. The officer has a reasonable belief that an occupant of the vehicle poses an imminent threat of death or serious physical injury to the officer or another person, or
 - ii. The officer has a reasonable belief that an occupant is using the vehicle in a manner that poses an imminent threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.
 - iii. Officers shall consider the potential threat to innocent third parties under such circumstances.
- F. **Less-Lethal Weapons/Tactics:** Prior to deployment of any less-lethal weapon, officers must be trained and certified in the proper use of the weapon from both the technical and legal aspects. All deployments must be consistent with departmental use of force training and policy.
- a. **Chemical Spray:**
- i. Chemical Spray shall not be deployed as a compliance technique for a person who is passively or verbally non-compliant. Active resistance/active aggression shall be required.
 - ii. Chemical Spray shall never be used as a punitive measure.
 - iii. Officers should never spray from a pressurized can directly into a subject's eyes from a close distance due to the potential for eye injury as a result of the

pressurized stream. Officers should never spray directly into a subject's eyes from closer than three feet or the distance recommended by the manufacturer of the spray (whichever is shorter) unless deadly force would be justified.

- iv. Officers shall consider alternatives to chemical spray when attempting to control a subject in a crowded-enclosed area due to the innocent over-spray that may cause the onset of panic.
- v. Officers shall consider alternatives to chemical spray when the event is inside a building, particularly where the building has a closed-ventilation system due to the potential impact on innocent persons who may have to be evacuated (temporarily) from the locations.
- vi. Once control is gained, officers should immediately provide for the decontamination of the subject.
- vii. If the person shows any signs of physical distress or does not recover in a reasonable amount of time, officers should immediately direct an emergency medical response and render first-aid at the degree for which they are trained.

b. Electronic Control Devices

- i. An electronic control device as a force option is the same level of force as chemical spray.
- ii. Electronic Control Device must be worn on the weak-side in either a weak-hand draw or cross-draw position.
- iii. Electronic Control Device deployment shall not be considered for the passively resistant subject. Active resistance/active aggression shall be required.
- iv. Flight from an officer, standing alone, is not a justification for the use of an electronic control device. Officers should consider the nature of the offense suspected, the level of suspicion with respect to the person fleeing, and the risk of danger to others if the person is not apprehended immediately.
- v. Officers must be trained concerning the ability of electrical charge to act as an ignition for combustible materials. (Note: Officers have been seriously injured and or killed after deploying a Electronic Control Device in the presence of open natural gas during suicidal person call).
- vi. Multiple Electronic Control Device deployments against an individual may increase the likelihood of serious injury where the individual is suffering from other symptoms such as cocaine intoxication. Policy and training should encourage officers to minimize the successive number of discharges against an individual where possible.
- vii. The agency recognizes however, particularly where back-up officers are unavailable, that multiple applications may be necessary to gain or maintain control of a combative individual.
- viii. No more than one officer should deploy an electronic control device against a single individual at the same time.
- ix. A contributing factor to serious injury or death is the level of a subject's exhaustion. Studies recommend that when an officer believes that control of

a subject will be necessary and met with resistance, deployment of the Electronic Control Device should be considered early on in the event so that the person has not reached a level of exhaustion prior to the Electronic Control Device's use.

- x. In cases where subject is actively resisting an officer's attempt to take them into custody but not threatening the officer with an assault, it is recommended that the Electronic Control Device be used in the "push stun mode."
- xi. The preferred targeting is the center mass of the subject's back, however it is recognized that it is not always possible to get behind the subject.
- xii. Where back-targeting is not possible, frontal targeting should be lower center mass; intentional deployments to the chest shall be avoided where possible.
- xiii. Officers who are aware that a female subject is pregnant shall not use the Electronic Control Device unless deadly force would be justified due to the danger created by the secondary impact or the possibility of muscle contractions leading to premature birth.
- xiv. Officers shall make all reasonable efforts to avoid striking persons in the head, neck, eyes or genitals.
- xv. Officers are prohibited from using the device as a punitive measure.
- xvi. Electronic Control Devices shall not be used against a person who is in physical control of a vehicle in motion unless deadly force would be justified based on an existing imminent threat.
- xvii. A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable. Model policies as well as courts have noted that giving a subject, who is assaultive toward the officer, a warning may enhance the danger to the officer and the subject by giving the subject time to avoid the deployment.
- xviii. Officers should warn other officers that a deployment is about to occur.
- xix. The device should not be used on a handcuffed person to force compliance unless the subject poses a threat to the officer through physical conduct or active resistance cannot otherwise be controlled.
- xx. Officers should consider the location and environment of the subject. i.e. Is the subject at the top of a stairwell such that when incapacitated by the Electronic Control Device they fall down the stairs causing a collateral injury. Officers shall avoid using Electronic Control Device in cases where the subject is elevated i.e. roof, fire escape, tree, bridge, stairwell, etc. etc. such that the secondary impact may cause serious injury
- xxi. Officers should be aware that a subject's heavy clothing may impact the effectiveness of the Electronic Control Device.
- xxii. Officers should consider whether the subject has been exposed to combustible elements that may be on their person such as gasoline. The use of an Electronic Control Device on such persons may cause an ignition and fire.
- xxiii. Officers should consider the particular subject and any vulnerabilities they

may have such as: juveniles, pregnant women, persons who are small in stature, and the elderly .

- xxiv.** Alternative tactics shall be utilized where the officer has prior information that the subject suffers from a disability which would increase the danger to that person by using the Electronic Restraint Device. i.e. A person at the scene tells an officer that the subject has a heart condition.
- xxv.** Deployed probes that have been removed from a suspect should be treated as a bio-hazard.
- xxvi.** Where EMS is available, their services may be utilized for the removal of darts that have penetrated the skin as long as such removal can be accomplished without causing further injury or pain to the subject.
- xxvii.** All persons who have been the subject of an Electronic Control Device deployment shall be cleared medically and monitored for a period of time with a focus on symptoms of physical distress. Any person who appears to be having any form of physical distress following the deployment of an ECD, shall be transported to a medical facility for a medical examination. It should be noted that studies indicate that persons who suffer from excited delirium may not be immediately impacted and the onset of difficulty may occur a period of time after the police control event.
- xxviii.** Mandatory Medical Clearance at Hospital:
 - (a)** Persons struck in a sensitive area-eyes, head, genitals, female breasts.
 - (b)** Where the probes have penetrated the skin and EMS cannot safely remove darts in accord with this policy.
 - (c)** Persons who do not appear to have fully recovered after a short period of time (Model Policies use a ten-minute time limit, however, officers who observe unusual physical distress should immediately call for medical assistance and should not wait the ten-minute recovery period recommended by some of the model policies)
 - (d)** Persons who fall into one of the vulnerable classes such as juveniles, pregnant women, persons who are small in stature, persons who officers become aware have a pre-existing medical condition that increases danger and the elderly.
 - (e)** Subjects who request medical assistance.
- xxix.** Additional Documentation:
 - (a)** All deployments of an Electronic Control Device shall be documented including those cases where a subject complies once threatened with such a device. By documenting the non-discharge uses, an agency establishes officer judgment and control as well as the deterrent effect of this tool. Documentation shall be done using the Response to Active Resistance (RAR) form detailed in this policy.
 - (b)** Photographs of the affected area should be taken following the removal of darts from the subject to document any injury.
 - (c)** Supervisory personnel shall be notified and shall review all Electronic

Control Device deployment for consistency with policy and training.

- (d) Darts/Cartridges shall be properly stored and maintained as evidence following a discharge.
- (e) Officers are required to complete a "response to active resistance form" which shall be reviewed by a supervisor following the ECD use.
- (f) All deployments shall be reviewed by the agency as well as training personnel.
- (g) Where there is any indication of lasting injury, claim or complaint, internal data from device shall be maintained. All ECD units will be audited monthly to ensure that all deployment/activations have been reported as required.

c. Impact Weapons: Batons, ASP/Expandable Baton

- i. Impact weapons may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control.
- ii. Examples would be where other options have been utilized and failed or where, based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
- iii. Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.
- iv. Impact tools as non-impact weapons: Officer may use impact tools for non-impact strike techniques such as come-alongs and restraint holds in accordance with agency training.

- d. Immediate measure of defense** - Where necessary an officer may take action or use any implement to defend the officer's life or safety, or the life or safety of another, with implements or devices not normally intended to be weapons or issued as public safety equipment.

V. Reporting Response to Active Resistance:

- A. Purpose:** It is the purpose of this policy to provide police employees and supervisors with guidelines for reporting response to active resistance. The department will develop a Response to Active Resistance (RAR) form to capture all required information described in this policy.
- B. Policy:** Police officers are given the authority to use force to overcome a subject's resistance to the officer's order to comply, effect arrest, defend against assault, and prohibit flight. This policy mandates that members of the Department accurately, completely and timely report subject control of active resistance and a supervisor conducts a prompt investigation and reports this investigation findings.

VI. Definitions:

- A. Reportable response to active resistance:** Verbal commands, soft-empty hand control, and handcuffing do not require a separate reporting form. The following are reportable force options when used by an officer to compel compliance from a subject in conformance with the officer's official duties, whether on or off duty or while employed in an off duty paid detail, include:

- a. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporarily incapacitate the subject.
- b. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject. (See additional documentation-ECD section)
- c. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
- d. **Impact Weapons:** Batons, ASP/Expandable Baton may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and failed or where based on the officer's perception at the time, the other options.
- e. **Impact Weapons:** Batons, ASP/Expandable baton may also be used for non-impact techniques such as come-alongs and restraints as trained by this agency.
- f. **Pointing of Firearms:** Any time an officer points a firearm at an individual, notwithstanding the fact that deadly force is not ultimately deployed. This does not include drawing a firearm and maintaining at the low-ready position.
- g. **Firearms discharges:** Any discharge of a firearm other than at the range or during qualification whether unintentional, for animal dispatch, or whether a subject is hit or not will be reported in a separate manner consistent with these policies.
- h. **Canine use:** Use of a police canine will be reported on a special form to capture any form of use whether there is contact with a subject or not.
- i. **Deadly Force:** Force that creates a substantial likelihood of causing serious bodily harm or death.

B. Procedures:

- a. Officers who become involved in an incident that required any reportable force option are required to immediately notify their supervisor. The involved officer will provide a detailed documentation of the use of force utilized in the official police report prepared for the incident involved.
- b. A Report of Response Active Resistance (RAR) form shall be prepared by a supervisor whenever an officer of this agency utilizes reportable force, as described in the definition of this policy, in the performance of their duties.
- c. The RAR form will be completed in detail including a narrative account of the following:
 - i. The actions of the subject that necessitated that use of force as a response to overcome the active resistance of the subject.
 - ii. The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
 - iii. Any injuries or complaint of injuries of either the subject or the officer and any medical treatment received.

C. Supervisory Responsibilities: Once notified of an incident in which an officer has utilized force, the supervisor, to the extent that one is available, will immediately respond to the scene to investigate the incident. If the involved officer's supervisor is not available to respond, another supervisor will be dispatched to complete the RAR. The supervisor will accomplish the following investigative steps in conducting the investigation:

- a. Interview the involved subject if they are cooperative, to determine their account of the incident. If they expressly indicate they have a complaint the supervisor shall complete a Public Service Report. If they have any type of injury, Internal Affairs or the designated departmental IA person will be notified. Additionally, should the supervisor determine that unreasonable force was utilized, the Internal Affairs designated investigator will be notified and assume control of the response to resistance investigation.
- b. If a crime scene exists, or police equipment exists, which may contain forensic evidence, the supervisor shall ensure that the scene and evidence is processed, photographed and preserved.
- c. Take photographs of the involved officer(s) and subject(s) depicting any potential injuries or documenting the lack of any injuries to the parties involved.
- d. Interview, preferably recorded, all witnesses to the incident and document their description of the event.
- e. Ensure that a qualified health care provider handles any injuries or other medical condition being experienced by the involved person.
- f. The supervisor shall review any video recording of the incident, if available, prior to the completion of the RAR and the approval of the officer's reports
- g. The supervisor investigating the use of reportable force shall be responsible for the review and approval of the officer's reports of the incident, when practicable.
- h. The supervisor will complete the RAR prior to completing their shift and submit it along with the officer's report to their chain of command for review.



RESPONSE TO RESISTANCE FORM

CASE # _____

DATE OF INCIDENT ____ / ____ / ____

INCIDENT LOCATION _____

TIME OF INCIDENT _____

- ! **SUPERVISOR** IS TO COMPLETE THIS FORM IN DETAIL
- ! **COPY** OF COMPLETED **INCIDENT REPORT** IS TO BE ATTACHED
- ! **ORIGINAL** (W/ATTACHMENTS) WILL BE FORWARDED TO THE **CHIEF'S OFFICE**, VIA CHAIN OF COMMAND

OFFICER / EMPLOYEE INFORMATION (FORM COMPILED FOR EACH OFFICER USING FORCE)	
NAME	ID# _____
YES* NO MEDICAL TREATMENT REQUIRED	INJURY/WORK COMP. PAPERWORK COMPLETED
*DESCRIBE INJURY	
TRANSPORTED ADMITTED TO HOSPITAL TREATED-RELEASED EMS OTHER	
MEDICAL FACILITY/TREATING PHYSICIAN	
☐ PHOTOGRAPHS TAKEN	
☐ DUTY STATUS	

SUBJECT / SUSPECT INFORMATION	
NAME	
DOB	RACE SEX
CRIMINAL CHARGE(S)	
☐ NO INJURY ☐ COMPLAINT OF INJURY ☐ VISIBLE INJURY ☐ MEDICAL ATTENTION ☐ REFUSED	
*DESCRIBE INJURY	
TRANSPORTED ADMITTED TO HOSPITAL TREATED/RELEASED EMS OTHER	
☐ PHOTOGRAPHS TAKEN	

DID ANYONE WITNESS THE RESPONSE TO RESISTANCE? YES NO
STATEMENT (S) TAKEN ☐ YES ☐ NO (INDICATE ON WITNESS LINE FOR EACH TAKEN)
IDENTIFY NAME, ADDRESS, PHONE
WITNESS #1
WITNESS #2
WITNESS#3

NARRATIVE (ARTICULATE SERIOUSNESS OF OFFENSE SUSPECTED AT TIME FORCE WAS USED/ PHYSICAL THREAT TO OFFICER OR OTHERS & SUBJECT'S ACTIVE RESISTANCE OR ATTEMPT TO FLEE)

[illegible]

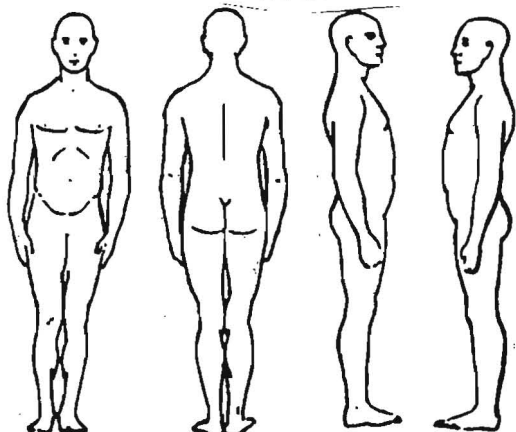
RESISTANCE			RESPONSE		
1	VERBAL		1	PRESENCE	
2	PASSIVE PHYSICAL		2	COMMUNICATION	
3	ACTIVE PHYSICAL		3	PHYSICAL CONTROL	
4	AGGRESSIVE PHYSICAL		4	INTERMEDIATE WEAPONS	
5	AGGRAVATED PHYSICAL		5	INCAPACITATION	
			6	DEADLY FORCE	
SUSPECT FACTORS:			SUSPECT WEAPONS:		
SEX	DRUG	YES NO	HANDS	FIREARM	
HEIGHT	ALCOHOL	YES NO	FEET	VEHICLE	
WEIGHT	UNKNOWN DRUG/ALC. ☐		IMPACT	CHEMICAL	
AGE			EDGED	Other	
OFFICER RESPONSES (CHECK ALL THAT APPLY)					
☐ COMMAND PRESENCE		☐ VERBAL COMMANDS		☐ SOFT EMPTY HAND CONTROL	
<u>RESTRAINT DEVICES</u> HANDCUFFS ☐ CHECK-FIT ☐ DOUBLE-LOCK LEG IRONS HOBBLE		<u>ESCORTS</u> FIELD BENT WRIST ☐ PRESSURE POINT FINGER LOCK SHOULDER LOCK HAMMER LOCK		<u>TAKE DOWNS</u> ARM BAR BENT WRIST FINGER LOCK SHOULDER LOCK HAMMER LOCK CALF STRIKE PULL DOWN	
				<u>STRIKES:</u> PUNCH PALM HEEL HAMMER FIST FORE ARM ELBOW KNEE STRIKE LEG KICK	
<u>BATON</u> FORE HAND STRIKE REVERSE STRIKE CLOSED BATON STRIKE		<u>CHEMICAL (OC OR OTHER)</u> (CIRCLE APPROPRIATE DEVICE) FULL INCAPACITATION PARTIAL INCAPACITATION NO APPARENT AFFECT		<u>BEAN BAG OR COMPATIBLE</u> ☐ FULL INCAPACITATION # ROUNDS _____ ☐ PARTIAL INCAPACITATION ☐ NO AFFECT DISTANCE _____ FEET	
<u>M26 / X26 TASER</u> (CIRCLE APPROPRIATE DEVICE) ☐ DEPLOYED ☐ DRIVE STUN DEPLOYMENT DISTANCE _____ FT NUMBER OF CYCLES _____ ☐ EFFECTIVE ☐ NON-EFFECTIVE ☐ M26 / X26 SERIAL # _____ ☐ CARTRIDGES(S) SERIAL #(S) _____ _____ _____			<u>FIREARM DISCHARGED OR POINTED</u> ☐ PISTOL ☐ SHOTGUN ☐ LONG GUN POINTED ONLY _____ COMPLIANCE ☐ YES ☐ NO NUMBER OF SHOTS _____ NUMBER OF HITS TO TARGET _____ SHOTS ACCOUNTED FOR _____ SHOTS UNACCOUNTED FOR _____ WEAPON SERIAL # _____		

RESPONSE TO RESISTANCE

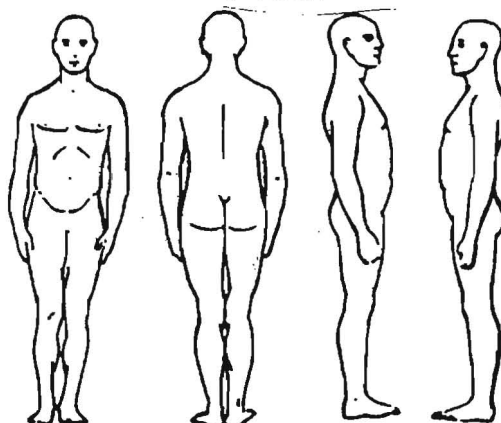
CASE # _____

DATE OF INCIDENT ____ / ____ / ____

CIRCLE THE AREA (S) OF IMPACT AND/OR INJURY
PHOTOGRAPHS OF INJURIES ... YES NO ... BY WHOM



SUSPECT



OFFICER

Video Review

☐ Video Available

☐ Video Reviewed by:

☐ Video Preserved

REVIEWED BY / SIGNATURE / COMMENTS	ID#	DATE
SUPERVISOR:		
ON-SCENE ☐ Yes ☐ No		
COMMENTS		
TRAINING OFFICER		
COMMENTS		

CONT'D

INTERNAL AFFAIRS

COMMENTS

CHIEF OF POLICE:

COMMENTS:

Montpelier Police Department General Order

USE OF FORCE

Date reviewed: October 7, 2009

This policy is for departmental use only and does not apply in any criminal or civil proceeding. This policy should not be considered as establishment of a higher legal standard or conduct for officers in case of third party claims. Violations of this policy will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and/or criminal sanctions in a recognized judicial setting.

General Policy

- A. Sworn officers of the Montpelier Police Department will use that force which is objectively reasonable to control a situation, effect an arrest or investigatory detention, overcome resistance to arrest, or defend themselves or others from harm.
- B. When the use of force is objectively reasonable the degree of force employed should generally be in direct relationship to the amount of resistance employed by the person or the immediate threat the person poses to the officer or others.
- C. The use of force by officers of the department will generally be progressive in nature. This force may be in the form of advice, warnings, persuasion, verbal encounters, passive control, use of chemical agents, physical contact, baton or other less-lethal weapons, or the use of deadly force.
- D. Officers must weigh the circumstances of each case and employ only that amount of force which is objectively reasonable to control the situation or persons.
- E. Officers shall not use techniques that restrict or stop the flow of blood to the brain except, when the use of deadly force is objectively reasonable.

Use of Force Continuum

The dynamics of all encounters are different, making it extremely difficult to attempt to categorize and define the levels of force appropriate in any given situation. It is, however, possible to categorize the levels of force that may be used, to various degrees, in any situation. When officers determine that the use of force is objectively reasonable they shall, to the extent possible, utilize an escalating level of force as described in the Use of Force Resistance/Response model contained in this policy. However, nothing in this order requires an officer to start at the bottom of the continuum. Officers must use a level of force that they feel will be effective and is objectively reasonable.

Officer Response(s) Categories

A. Cooperative Controls

The police officer arriving on the scene is the first use of force. The mere presence of a uniformed police officer will move on or break up a crowd; often that is all the force that is necessary. After arriving on the scene, you may have to move to the next level of force by trying to persuade the subject to comply with your commands. Telling the subject "Stand over there" or "Let me see your driver's license" are verbal commands. These also include controls designed to preserve officer safety and security (includes communications skills and handcuffing).

B. Contact Controls

Light subject control is considered a passive control measure. This is the first step in seeking compliance with your commands. Escorting an intoxicated subject out of a bar would be a good example of passive control. This may require some light inoffensive physical touching, compliant handcuffing, and compliant escort techniques (countermeasures designed to guide or direct the subject).

C. Compliance Techniques

Include resistant countermeasures designed to counter the subject's enhanced degree of resistance. Oleoresin Capsicum (herein after referred to as O.C.) weapons are generally the first less-lethal weapons used in the continuum. Neither will cause any injury or long lasting effect on the person. Consistent with department use of force training, this would also include unarmed control and restraint tactics (such as; Non-compliant Escort, Arm Bar takedowns, Wristlocks, etc.) and the impact weapon used for compliance.

D. Defensive Tactics

Impact weapon strikes, empty hand strikes designed to cease the subject's non-lethal assault on the officer or others, regain control, and assure continued compliance. (i.e. Blocks, Strikes, or Kicks, designed to have less-lethal effects)

E. Deadly Force

Countermeasures designed to cease an assault, which are lethal or could cause great bodily harm to the officer or others. These tactics could include; firearms, vehicles, neck restraint, impact weapons, or other techniques that have the likelihood of causing death or serious bodily injury.

1. The use of deadly force by officers of the Montpelier Police Department is prohibited except as follows:
 - a. When in defense of human life, including the officer's;
 - b. When an Officer has the objectively reasonable belief that the use of deadly force is in the defense of any person, including the officer, who is in immediate danger of death or serious bodily injury.

Training

- A. All sworn personnel shall be issued a copy of this policy, Use of Force, and receive classroom training on its contents prior to being authorized to carry a firearm or non-lethal weapon. This training will be conducted annually.
- B. Only officers demonstrating proficiency, as determined by the firearms training section, through a prescribed course of fire, in agency authorized firearms will be allowed to carry such firearms.
- C. All officers will qualify at least semi-annually with the firearms and ammunition they carry on or off duty. This training will be conducted by certified firearms instructors.
- D. Officers who fail to receive a passing score with their duty weapon(s) in accordance with department testing procedures shall be relieved of their police powers and immediately reassigned to non-enforcement duties. Remedial training will be given to the officer as soon as possible by the firearms training division. This remedial training will be documented in writing and kept by the firearms training division.
- E. An officer shall not be permitted to carry or use a weapon unless they have been trained and qualified in its proficient use as determined by training procedures. This training and qualification will be documented and kept by the supervisory firearms instructor for the Montpelier Police Department.
- F. An officer who has taken extended leave or suffered an illness or injury that could affect his firearms ability will be required to re-qualify before returning to full enforcement duties.
- G. An officer carrying an off-duty firearm must show proficiency by completing and passing a course of fire with the department's firearms training personnel.
- H. All officers will be trained and qualified in the use of O.C. spray and the extended range capsicum/impact delivery system known as the Pepperball Launcher and shall demonstrate their proficiency on an annual basis.

- I. All officers who elect to carry an expandable baton will be trained and certified in its proper use and shall demonstrate their proficiency on an annual basis.
- J. In the event that an officer is unable to certify or re-certify in the use of a less-lethal weapon, the officer will be unable to carry that weapon. The officer will undergo remedial training by an instructor of that weapon until the officer is able to certify and show proficiency in the use of that weapon.

Authorized Weapons

A weapon that is intended for use in the performance of duty by a trained and sworn officer of this department shall first be reviewed, inspected and approved for use prior to being carried by the officer. Inspections of less-lethal weapons will be done by a certified instructor or armorer for that weapon.

Firearms

A. On Duty

- 1. The firearms training personnel will recommend for the Chief's approval, types and calibers of firearms and ammunition, authorized for use by members of the Montpelier Police Department.

Effective February 2008, the approved and issued firearm to all MPD sworn personnel is the Glock model 22 in .40 S&W caliber. As part of the duty issued weapon system, all uniform personnel were also issued a Streamlight TLR-1 weapon light that shall remain affixed to the firearm when utilizing the holster designed for the firearm with light.

- 2. All officers will also be required to qualify with both the department's long-gun weapon systems which consist of the following:

- Remington model 870 pump-action shotgun (.12 gauge)
 - Colt and Bushmaster M-16/M-4 type firearms in .223 Rem. caliber

B. Off Duty

- 1. An officer carrying an off-duty firearm must show proficiency by completing and passing a course of fire with the department's firearms training personnel.
- 2. An officer carrying an off-duty firearm must also carry their department issued identification card and badge.

Less-Lethal

A. On Duty

1. Less-lethal weapons carried by officers will only be issued in accordance with the provisions of this policy and established department training standards.
2. All officers will be issued O.C. spray. All O.C. spray shall be Non-Flammable Electronic Immobilization Device compatible.
3. Montpelier Police Department less-lethal weapon systems consist of the expandable baton, O.C. spray, and the Pepperball Launcher.

Secondary / Personal Weapons

- A. Officers may only carry a Montpelier Police Department approved firearm for use as a personal secondary firearm provided they have satisfactorily qualified with that weapon by one of the department's firearms instructors.

The MPD approved secondary firearm (non-issued) is the Glock model 27 in .40 S&W caliber. Officers shall use departmental issue duty ammunition for use in a personal secondary weapon that will be carried on duty.

- B. Officers who carry a second defensive firearm in addition to the standard duty firearm must register his/her secondary weapon with the firearms training officer(s). The officer must qualify with that firearm prior to carrying it. This defensive firearm must be carried in a concealed manner and used only when the primary (duty) firearm is inaccessible.
- C. Officers are allowed to carry a small utility knife while on duty.

Prohibited Weapons

- A. Any firearm that has not been approved by the firearms training personnel or the Chief of Police shall be prohibited from being worn on duty.
- B. Any officer carrying a NON-APPROVED firearm while on off duty status will be considered a civilian and not an officer representing the Montpelier Police Department. Vermont State law permits any citizen to carry a concealed firearm. Officers with NON-APPROVED firearms are considered to be acting as private citizens not covered by Montpelier Police Department rules and regulations.

Less-Lethal

- A. Officers are only authorized to carry those less-lethal weapons that are issued and or approved by the department.

Handcuffing

- A. All officers of the Montpelier Police Department upon placing handcuffs on a subject will, as soon as reasonably possible, check the handcuffs for proper fit and double lock them for safety.

Safety / Restrictions

- A. Restrictions on the use of firearms:
 - 1. Warning - When officers are about to invoke deadly force, they will, when possible and/or practicable, issue a verbal warning to the suspect. In this warning, officers will identify themselves as police officers and instruct the suspect to cease or stop whatever action that has caused the officer to consider the use of deadly force.
 - 2. Shoot to Incapacitate - Officers will fire their weapons to stop and incapacitate an assailant from completing a potentially deadly act as described in this order.
 - 3. At or from moving vehicles - Officers will not discharge a firearm at or from a moving vehicle except when all other reasonable means have been exhausted and it is necessary for the defense of the officer's life or the life of another person, or the officer has probable cause to believe that the officer or others are in immediate danger of death or serious bodily injury.
 - 4. Risk to innocent bystanders - When officers are about to discharge their firearm, they will be cognizant of their field of fire and will not unnecessarily create a substantial risk of harm to innocent persons.
 - 5. Warning shots - Officers will not discharge their firearm for the purpose of a warning shot.
 - 6. While under the influence of alcohol or drugs - Officers will not carry or use any firearm while under the influence of alcohol or drugs.
 - 7. To destroy animals - The killing of an animal is justified for:
 - a. self defense

- b. to prevent substantial harm to the officer or others
 - c. when the animal is so sick or badly injured that humanity requires its relief from further suffering.
8. Domestic Violence Restriction - Officers who have a valid court order in effect against them shall not possess a firearm while off duty. The officer will be allowed to wear his firearm on duty. The firearm will be left at the station when the officer has completed his tour of duty.

Upon any conviction of a Domestic Violence offense, supervisor shall recover, from the officer involved, any issued firearm that he/she has in their control.

- B. Except for general maintenance, storage or authorized training, officers will not draw or exhibit their firearm unless circumstances create a strong suspicion to believe that it may be necessary to lawfully use the firearm in conformance with other sections of this policy.
- C. Officers will not point or direct their firearm at a person unless circumstances create the objectively reasonable belief that it may be necessary to lawfully use the firearm in conformance with other sections of this policy.
- D. Officers will secure and store firearms, on and off duty, in such a way as to insure no unauthorized person will have access to or gain control over the firearm.
- E. Officers may discharge their firearm for the purpose of practice on the police department or other established shooting range.
- F. Officers will exercise all normal safety precautions and obey all appropriate rules or directives while practicing on the department range or any other established range.

Inspections

- A. All firearms will be inspected on a periodic basis by the firearms training officers to insure that all firearms are in good working order. A firearm that is found to be defective will be taken out of service and sent to an armorer or the factory to be repaired. The officer will be issued another firearm of the same model and caliber as the one that is being repaired.
- B. All off-duty firearms and ammunition carried by an officer of the Montpelier Police Department must be inspected and registered by the firearms training division.
- C. Periodic inspections of less-lethal weapons shall be conducted by certified instructors for the particular weapon. Weapons found to be unsafe shall be

taken out of service immediately and, if department issued, replaced as soon as practical.

Reports

Firearms / Use of Force Continuum

- A. Officers are required to report, using a department report format, any discharge of their firearms.
1. The officer will report orally to the immediate supervisor, as soon as is practical, after the incident in which the weapon was fired.
 2. Provided that the officer is able, a preliminary written report will be submitted by the officer involved prior to the end of their shift.
 3. If the officer involved is injured or unable to submit a report, the officer's supervisor will submit a written report prior to going off duty for that shift.
 4. This report will be submitted to the Chief and will include the Use of Force Report, as well as a detailed account of the incident, explanation of what force was used, why it was used and the extent of injury (if any) that was inflicted or sustained. This rule does not apply to rounds fired on the range during training or regular practice unless an injury results from such discharge (or to the discharge of a weapon to destroy a sick or injured animal).
 5. In the event of an officer involved shooting incident, or a use of force incident that results in serious bodily injury or death the immediate supervisor will;
 - a. Relieve the officer involved from normal duty;
 - b. Take control of the firearm or weapon used, in a discreet manner and outside of public view so as not to cause embarrassment to the officer.
 - c. If practical, the firearm should be replaced with a firearm of the same make, caliber, and model.
 - d. Request assistance from the Vermont State Police Bureau of Criminal Investigation to provide an outside agency investigation of the incident.

The Chief will relieve the officer from normal duties, and assign the officer to administrative duties pending results of the formal investigation. The officer

will also be required to attend a psychological debriefing prior to reassignment to normal duties.

6. The above mentioned reports will be completed prior to the end of the shift, and forwarded to the Chief of Police.
- B. Officers are required to submit a Use of Force Form (Appendix A) whenever:
1. Their actions result in, or are alleged to have resulted in, injury or death of another person; and/or
 2. They apply force to a subject greater than step "B" (Contact Controls) of the Use of Force Continuum.
 3. They apply force through the use of the Tire Deflating Spike System (TDSS as outlined in the MPD Vehicular Pursuit General Order. The documentation for the use of the Tire Deflating Spike System shall be the form of the officer's report detailing the circumstances and reasons for the TDSS deployment. A copy of this report will be submitted to the supervisor on duty at the time of the TDSS deployment and to the Chief of Police.
 4. Use of force reports will be submitted to their immediate supervisor by the end of their shift. This report will be forwarded to the Chief of Police via the chain of command. Each level of the chain of command shall indicate on the form that it has been reviewed.
 5. In the event that the use of force is questionable, the Chief of Police will follow the guidelines set forth in this General Order. This report along with the officers' incident report will describe, in detail, the circumstances surrounding their use of force and the resulting injury or death, if any.

Vehicles

- A. Where police are involved with pursuing other vehicles, it will be considered a use of force. Whenever a pursuit occurs, officers will follow the guidelines as outlined in the MPD Vehicular Pursuit General Order.

Records

- A. The appropriately designated staff of the Montpelier Police Department is responsible for instituting and maintaining records pertaining to all department weapons, authorized ammunition, personal weapons carried by officers, firearms training, all firearms qualifications, and weapon certifications.

- B. The records of registered off duty firearms will be maintained by the firearms training division.
- C. The Chief of Police shall conduct an annual review of all of the Use of Force reports submitted. A review of these incidents may reveal a pattern or trend that may indicate that additional training or policy modifications need to be made.

Medical Aid

- A. In cases of injury to prisoners or bystanders, officers shall be responsible to ensure that appropriate medical aid is provided to the injured subject at the earliest possible opportunity.
 - 1. The shift supervisor shall be notified of all injuries incurred as a direct or indirect result of the use of force in an arrest situation.
 - 2. All injuries incurred by prisoners as a result of the use of force in an arrest situation shall be documented in the arrest report as well as in the Use of Force report.

Investigations / Review Board

- A. In the event of a complaint of an alleged or actual serious injury or death of another person caused by an officer's use of force, the Chief of Police shall:
 - 1. Appoint an Administrative Review Board consisting of one certified instructor (Defensive Tactics or Firearms), one Sergeant and one patrol officer. This review board shall investigate the circumstances surrounding the use of force. In determining justification for the use of force, the board may only consider the facts known to the officer at the time the force was used.
 - 2. The review board shall report their findings, in writing, to the Chief within five days of their being convened. The report shall include a recommendation for further action. The report will also include the relevant facts and circumstances surrounding the incident and whether the use of deadly and/or non-deadly force was consistent with department policies and/or State statutes. The five day limit may be waived by the Chief.

Definitions

- A. **Force:** Conduct on the part of a police officer that is designed to assist the officer in controlling a situation or the actions or behavior of a person or persons.
- B. **Progressive Force:** The escalation of force used by an officer in order to control a situation or the actions of persons. (pursuant to the use of force continuum).
- C. **Deadly Force:** Any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury.
- D. **Less-Lethal Weapon:** A weapon, other than a firearm, that is designed not to cause death or great bodily harm, used to control persons or defend oneself or others, from harm.
- E. **Serious Bodily Injury:** Means bodily injury which creates a substantial risk of death or which causes substantial loss or impairment of the function of any bodily member or organ or substantial impairment of health, or substantial disfigurement.

Approved by Anthony J. Facos, Chief of Police

Date of review: October 7, 2009

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Officer's Name: _____ Date: _____ Case #: _____

Supervisor's Name: _____ Date of Incident: _____

Time of incident: _____

Status: On duty / ☐ off duty / ☐

Indoors: ☐ Outdoors: ☐

Lighting: Natural: ☐ Artificial: ☐

Weather Conditions: _____

Location of Incident: _____

Information received prior to initial contact:

Reason for Use of Force

Necessary to effect an arrest: ☐ Necessary for Investigative Detention: ☐ Necessary to defend self: ☐

Necessary for Protective Custody: ☐ Necessary to defend another: ☐

Necessary to restrain for subject's own safety: ☐ Necessary to prevent violent forcible felony: ☐

Other: _____

Type of Force Used

Verbal Commands Used: Y ☐ N ☐ Asked: ☐ Advised: ☐ Ordered: ☐

Baton: ☐for: control & restraint ☐ impact ☐ displayed ☐

Body: ☐for: control & restraint ☐ impact ☐ displayed ☐

O.C. Spray: ☐ Pepperball launcher: ☐ (type of projectile: water: ☐ O.C.: ☐ Glass breaker: ☐)

K-9: ☐ Ankle Cuffs: ☐ Vehicle Leg Restraints: ☐

Hand Cuffs: ☐ Double locked and checked for proper fit: Yes: ☐ No: ☐

Taser: ☐ Laser display only ☐ Test Arc for Compliance ☐ Probe discharged for compliance ☐

Firearm: ☐ Displayed for compliance ☐ Discharged for compliance ☐

Other: _____

Results of Force Used

Was suspect injured? Yes ☐ No ☐ Medical Attention? Yes ☐ No ☐ Age ____ Sex ____

Was Officer Injured? Yes ☐ No ☐ Medical Attention? Yes ☐ No ☐

Was a Third Party Injured? Yes ☐ No ☐ Medical Attention? Yes ☐ No ☐ Age ____ Sex ____

Subject complied after force was enacted. Yes ☐ No ☐

Subject resisted during the entire encounter. Yes ☐ No ☐

Unable to control subject and take into custody. Yes ☐ No ☐

Describe injuries to suspect, officer or third party:-

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Firearm incident

Vest worn Y ☐ N ☐ Sights used Y ☐ N ☐ Flashlight used Y ☐ N ☐ Reload? Y / N

Shooting Position(s) Used: standing ☐ kneeling ☐ sitting ☐ other ☐

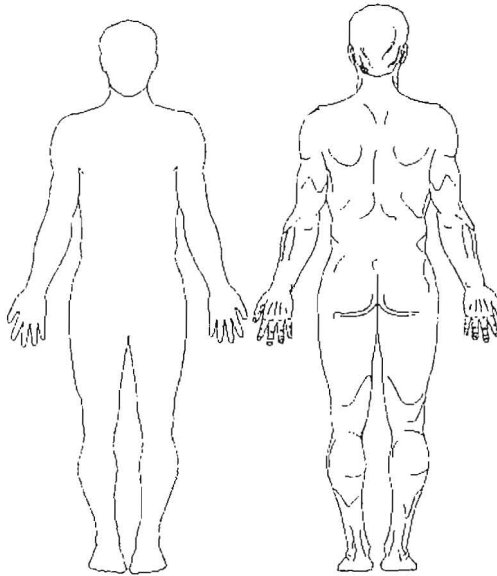
Who fired first?Officer: ☐ Suspect: ☐ Other: ☐

Number of shots?.....Officer: _____ Suspect: _____ Other: _____

Reason for discharge? Protect self: ☐ Citizen: ☐ Prisoner: ☐ Unintentional: ☐

Wounds received: Officer ☐ Suspect ☐ Other Party ☐ Property Damage by Stray Rounds ☐

Location of bullet hits on suspect:



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Baton incident

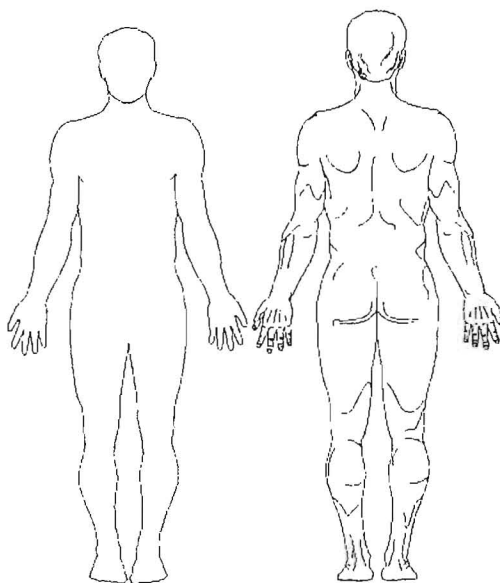
Straight Baton: ☐ Expandable Baton: ☐ Riot Baton: ☐ PR-24: ☐

Impact technique Y ☐ N ☐ Control technique Y ☐ N ☐ Both Y ☐ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? _____

Location of Strikes: _____



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Supervisor's Signature _____ Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

Controlled with body

Impact technique Y ☐ N ☐

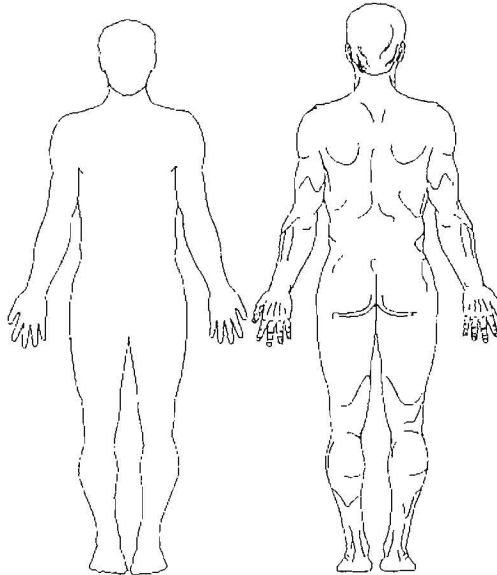
Control technique Y ☐ N ☐

Both Y ☐ N ☐

Targeted Area: _____

Number of impact techniques used? _____ Which technique utilized? _____

Location of impact techniques: _____



Other: _____

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☐ No ☐

Chief _____

Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

Tire deflating spikes

Why violator fled: (if known) Avoid: arrest Y ☐ N ☐ Citation / VTC Y ☐ N ☐ Unknown Y ☐ N ☐

Number of Montpelier PD units in pursuit? _____ Other Agencies: _____

Deployment Strategy: hasty ☐ surprise ☐ obvious ☐ Method of Deployment: throw ☐ pull ☐

Results: subject drove around ☐ subject drove through ☐ Officer Vehicle spiked ☐

Distance traveled after spiked / injuries sustained: _____
(Use narrative for; Highway description, speed/direction of pursuit and traffic volume)

Summary of Events:

(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature

Supervisor's signature

Policy Compliance Yes ☐ No ☐

Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE DEPARTMENT

USE OF FORCE REPORT FORM

Appendix A

OC Spray / Pepperball Launcher Incident

OC Spray: Yes ☐ No ☐ Pepperball Launcher: Yes ☐ No ☐ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☐ Area: ☐ Both ☐

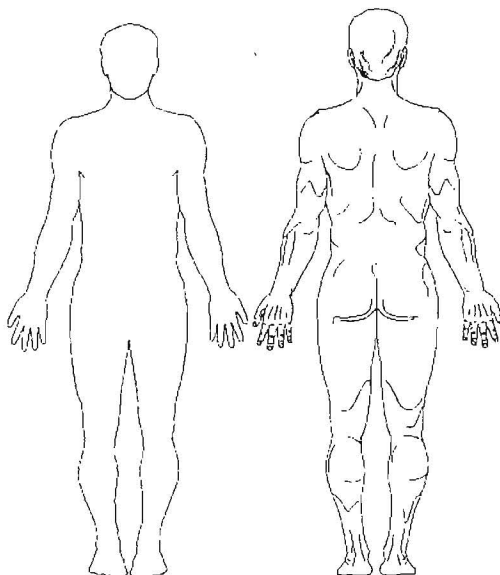
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

Suspect Decontaminated: Yes ☐ No ☐ if no

explain: _____

OC administrative warning read to suspect: Yes ☐ No ☐

Location of pepperball hits on suspect:



Other: _____

Summary of Events:

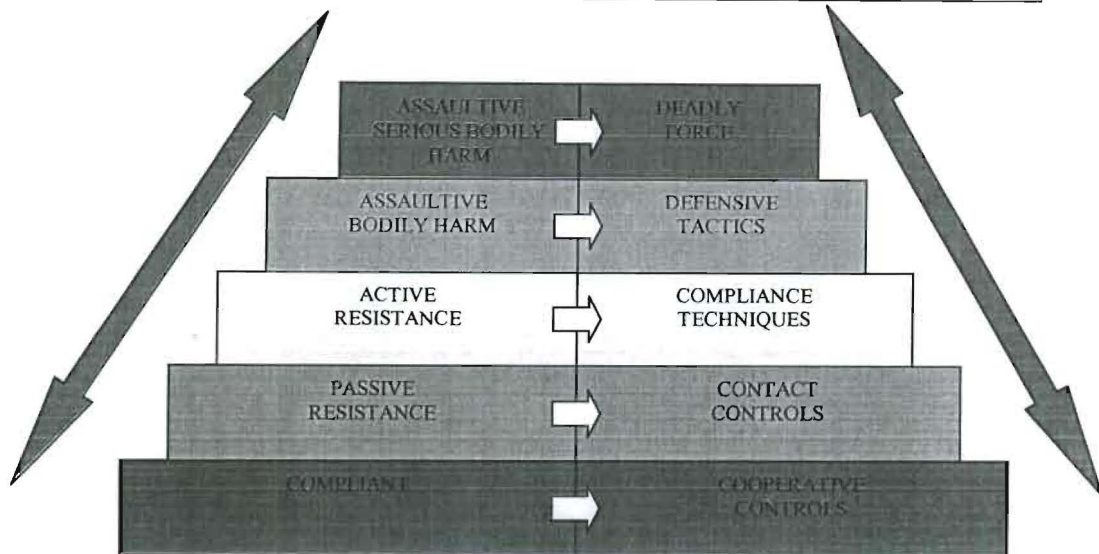
(Note: summarize only attach officer report for complete details.)

Involved Officer's Signature _____

Supervisor's Signature _____ Policy Compliance Yes ☐ No ☐

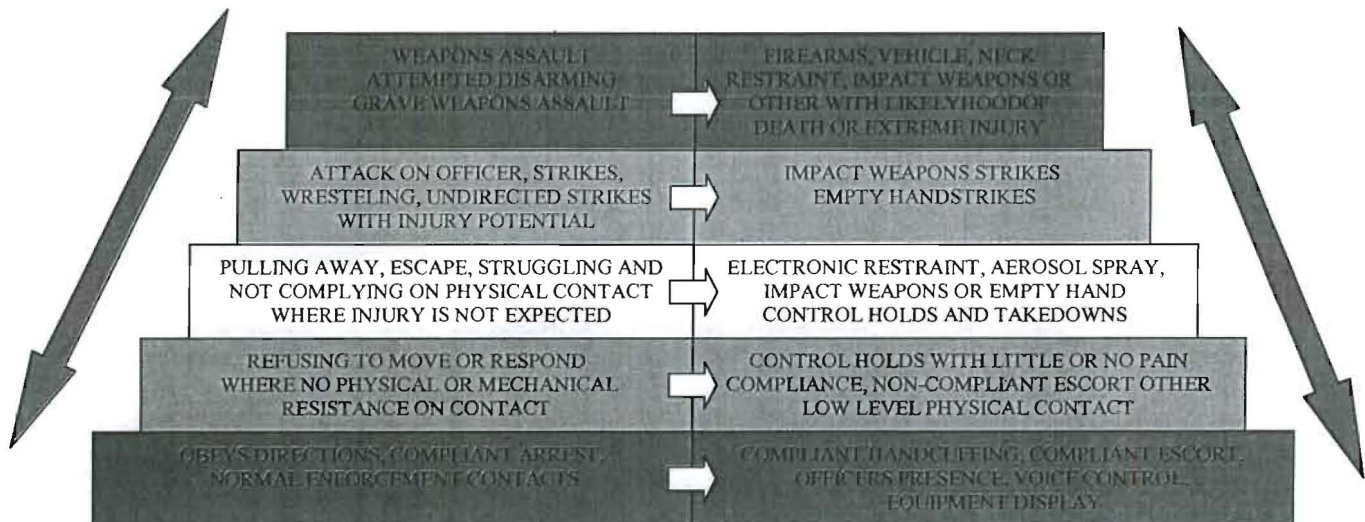
Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE USE OF FORCE CONTINUUM



REASONABLE OFFICER PERCEPTION

REASONABLE OFFICER RESPONSE



STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 4/96)
(Approved for use as OSHA 101)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E	1. Legal Name: CITY OF MONTPELIER		2. Business Name: MONTPELIER POLICE	
M	3. Mail Address: No. and Street 39 MAIN ST		City MONTPELIER	State VT
P			Zip 05602	
L	4. Location (if different from Mail Address): 1 PITKIN COURT		Federal ID No. 036000579	
O	5. Nature of Business (list principal products or service of concern): MUNICIPALITY - PUBLIC SAFETY		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
Y			Telephone No. 802 223-9514	
E	17. Date of Accident: 05-01-08		Hour a.m. p.m.	
R	18. Location of Accident: Town or City BARGE CITY, VERMONT (COURTHOUSE BLDG)		20. Machine or tool involved in the accident: BICYCLE	
A	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
C			22. Object or substance directly causing injury: BICYCLE HANDLE BARS	
C	23. Describe what employee was doing: EMPLOYEE WAS TRAINING AT EMPLOYER REQUEST AT MOUNTAIN		Was this the employee's regular occupation? ☐ No ☒ Yes	
I	24. How did accident occur? Describe events leading up to the accident. BIKE SCHOOL, LEARNING TECH. FOR NEGOTIATING STAIRS W/ BICYCLE FOR BIKE PATROL PURPOSES.			
D	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
E	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes EMPLOYER PROVIDED HELMET, GLOVES, SHOES			
N	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
T	28. If safety equipment was provided, was it being used? ☐ No ☒ Yes			
I	29. Describe the injury and the part of body injured. LEFT WRIST TORQUED WHILE RIDING BICYCLE DOWN STAIRS			
N	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began. N/A	Last date paid in full: N/A	31. Employee returned to work? ☐ No ☒ Yes
J				If yes, date returned. 05-02-08
U				At what weekly wage: \$
R	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death. N/A	33. If death, name and address of nearest relative. N/A	
Y	34. Name and Address of Physician N/A		Relationship N/A	
	35. Name and Address of Hospital N/A			
I	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.			
N	Name in full:		Policy No.	
S	Signed by: 		Title Chief of Police	
	Employer or Representative		Date 05/05/08	

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev 4/98)
(Approved for use as OSHA 101)

State File
No.

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <i>City of Montpelier</i>		2. Business Name: <i>Montpelier Police Dept</i>	
	3. Mail Address: <i>1 Pithin Court</i>		City <i>Montpelier</i>	State <i>VT</i>
	4. Location (if different from Mail Address):		Zip <i>05602</i>	
	5. Nature of Business (list principal products or service of concern): <i>Public Safety</i>		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
				Federal ID No. <i>03600579</i>
				Telephone No. <i>802 223-3445</i>
A C C I D E N T	17. Date of Accident: <i>09-11-2008</i>		Hour <i>12.18 a.m.</i>	20. Machine or tool involved in the accident: <i>NO</i>
	18. Location of Accident: Town or City <i>1 Pithin Court Montpelier, VT 05602</i>		21. Was it defective? ☐ No ☐ Yes If yes, describe how. <i>N/A</i>	
	19. On employer's premises? ☐ No ☒ Yes If yes, name of dept.: <i>1 Pithin Court</i>		22. Object or substance directly causing injury: <i>Head butting</i>	
	23. Describe what employee was doing: <i>Attempting to subdue subject</i>		Was this the employee's regular occupation? ☐ No ☒ Yes	
24. How did accident occur? Describe events leading up to the accident: <i>Subject head butted Patrol Officer in the mouth</i>				
25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.				
26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☐ Yes <i>N/A</i>				
27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")				
28. If safety equipment was provided, was it being used? ☐ No ☐ Yes <i>N/A</i>				
29. Describe the injury and the part of body injured: <i>Swollen upper lip and small cut on inside of mouth</i>				
I N J U R Y	30. Any Lost Time? ☒ No ☐ Yes		If yes, date disability began.	Last date paid in full.
	32. Did injury result in death? ☒ No ☐ Yes		If yes, date of death.	33. If death, name and address of nearest relative:
	34. Name and Address of Physician: <i>Brian Starns - Arcadia Family Health - Berlin, VT</i>		31. Employee returned to work? ☐ No ☐ Yes	
	35. Name and Address of Hospital: <i>N/A</i>		If yes, date returned.	
36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.				
I N S U R E	Name in full:			Policy No.
	Signed by: <i>[Signature]</i>			
	Employer or Representative			Title <i>Chief of Police</i>
			Date <i>09/16/08</i>	

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: 39 Main Street		City Montpelier	State VT
			Zip 05602	
	4. Location (if different from Mail Address):		Federal ID No. 03-6000579	
5. Nature of Business (list principal products or service of concern): Municipality	Do you regularly employ 10 or more employees? ☒ Yes ☐ No		Telephone No. 802.223.9514	
A C C I D E N T	17. Date of Accident: 06/02/2009	Accident time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City State 575 Stonecutters Way - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
C O N D I T I O N S	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: building contains PCB material
	23. Describe what employee was doing: responded to complaint of children skateboarding in the building			Was this the employee's regular occupation? ☐ No ☒ Yes
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident. responded to complaint			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N O T E	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. Employee reported he was exposed to PCB			
J U R Y	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	At what weekly wage: \$ 1081.20
I N S U R A N C E	34. Name and Address of Physician none			Relationship
	35. Name and Address of Hospital none			Remained overnight? Yes ☐ No ☒
I N S U R A N C E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT			Policy No.
S I G N E D	Signed by:			
	Employer or Representative Title Date			
Provided Form 8 Labor & Industry Ins. Co. Employer Employee				

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)
State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
	4. Location (if different from Mail Address):			Zip 05602
	5. Nature of Business (list principal products or service of concern): Municipality			Federal ID No. 03-6000579
	Do you regularly employ 10 or more employees? ☒ Yes ☐ No			Telephone No. 802.223.9514
A C C I D E N T	17. Date of Accident: 06/02/2009	Accident Time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: none
	18. Location of Accident: Town or City State 575 Stonecutters Way - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: building contains PCB material
	23. Describe what employee was doing: responded to complaint of children skate boarding in the building			Was this the employee's regular occupation? ☐ No ☒ Yes
	24. How did accident occur? Describe events leading up to the accident. responded to complaint			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I N J U R Y	29. Describe the injury and the part of body injured. employee reported he was exposed to PCB			
	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	At what weekly wage: \$ 780.80
	34. Name and Address of Physician none			Relationship
	35. Name and Address of Hospital none			Remained overnight? Yes ☐ No ☒
I N S U R E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT			Policy No.
	Signed by:			
	Employer or Representative		Title	Date
	Provided Form 8		Labor & Industry	Ins. Co.
			Employer	Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
			Zip 05602	
	4. Location (if different from Mail Address):		Federal ID No. 03-6000579	
E R	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
			Telephone No. 802.223.9514	
A C C I D E N T	17. Date of Accident: 06/06/2009	Accident Time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City 54 Main Street - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
I N J U R Y	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: general exposure to blood from two subjects	
	23. Describe what employee was doing: responded to 911 call, subsequently struggled with two subjects		Was this the employee's regular occupation? ☐ No ☒ Yes	
E M P L O Y E R	24. How did accident occur? Describe events leading up to the accident. struggled with two subjects with self inflicted lacerations			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N O T E	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. general exposure to blood - Confirmed HEP C			
I N J U R Y	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
I N J U R Y	34. Name and Address of Physician Concentra Medical			
	35. Name and Address of Hospital Concentra Medical			Remained overnight? Yes ☐ No ☒
I N J U R Y	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT		Policy No.	
I N J U R Y	Signed by:			
	Employer or Representative		Title	Date

____ Provided Form B ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT Zip 05602
	4. Location (if different from Mail Address):			
	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
A C C I D E N T	17. Date of Accident: 06/06/2009		Accident Time a.m. 3:59 p.m.	Began Shift 12:00 a.m. p.m.
	18. Location of Accident: Town or City State 54 Main Street Apt. 6 - Montpelier, Vermont		20. Machine or tool involved in the accident: none	
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
	22. Object or substance directly causing injury: exposure to blood, confirmed Hepatitis		23. Describe what employee was doing: Received call from 911 that there were people at 54 Main St whom had cut or been cut	
I N J U R Y	24. How did accident occur? Describe events leading up to the accident. See above		Was this the employee's regular ☒ Yes ☐ No	
	25. Can the employer prevent this type of accident? ☐ No ☒ Yes If yes, describe how. obtain Tasers			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful."). obtain Tasers			
I N S U R E	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. exposure to blood, confirmed Hepatitis			
	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
I N S U R E	At what weekly wage: \$ 861.60			
	Relationship			
	34. Name and Address of Physician None			
	35. Name and Address of Hospital None			
I N S U R E	Remained overnight? Yes ☐ No ☒			
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT		Policy No.	
	Signed by:			
Employer or Representative		Title		Date
Provided Form 8		Labor & Industry		Ins. Co.
		Employer		Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev 4/98)
(Approved for use as OSHA 101)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company. Give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <i>City of Montpelier</i>		2. Business Name: <i>Montpelier Police Department</i>	
	3. Mail Address: <i>1 Pitkin Court</i> No. and Street		City <i>Montpelier</i>	State <i>Vermont</i>
	4. Location (if different from Mail Address): <i>Montpelier</i>		State <i>Vermont</i>	Zip <i>05602</i>
	5. Nature of Business (list principal products or service of concern): <i>City Government - Law Enforcement</i>		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Federal ID No. <i>034000679</i> Telephone No. <i>(802) 223-3445</i>
A C C I D E N T	17. Date of Accident: <i>1/6/09</i>		Hour <i>2:00</i> <i>a.m.</i> p.m.	20. Machine or tool involved in the accident: <i>Police Cruiser - Prisoner Partition Release Lock</i>
	18. Location of Accident: Town or City <i>Montpelier</i> State <i>Vermont</i>		21. Was it defective? ☐ No ☒ Yes If yes, describe how. <i>Sharp edges present around lock release button</i>	
C O N D I T I O N S	19. On employer's premises? ☐ No ☒ Yes If yes, name of dept.: <i>Montpelier Police Department</i>		22. Object or substance directly causing injury: <i>Prisoner Partition Release Button</i>	
	23. Describe what employee was doing: <i>Dismissing button on prisoner screen release to raise it into the locked position.</i>		Was this the employee's regular occupation? ☐ No ☒ Yes	
D E S C R I B E	24. How did accident occur? Describe events leading up to this accident. <i>Sharp edge on side of release button avulsed the tip of right hand index finger pad.</i>			
	25. Can the employer prevent this type of accident? ☐ No ☒ Yes If yes, describe how. <i>Leave screens down. Guard down the sharp edge around release button.</i>			
N E E D S	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
T H E	28. If safety equipment was provided, was it being used? ☐ No ☐ Yes <i>N/A</i>			
	29. Describe the injury and the part of body injured. <i>Avulsed tip of right hand index finger.</i>			
I N J U R Y	30. Any Lost Time? ☒ No ☐ Yes If yes, date disability began. <i>N/A</i>		Last date paid in full: <i>N/A</i>	31. Employee returned to work? ☐ No ☒ Yes If yes, date returned. <i>1/6/09</i>
	32. Did injury result in death? ☒ No ☐ Yes If yes, date of death. <i>N/A</i>		33. If death, name and address of nearest relative. <i>N/A</i>	
Y O U R	34. Name and Address of Physician <i>N/A - No physician seen.</i>			
	35. Name and Address of Hospital <i>N/A - Treated injury by self. (Bandage)</i>			
I N S U R A N C E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.			
	Name in full: _____		Policy No. _____	
S I G N E D	Signed by: <i>[Signature]</i>			
	Employer or Representative		Title <i>Chief of Police</i>	Date <i>01/07/09</i>

Vermont

DEPARTMENT OF LABOR - ATTN: WORKERS' COMPENSATION
5 Green Mountain Drive, PO Box 488
Montpelier, VT 05601-0488

Form 1 (Rev. 7/08)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form and send original to the Commissioner of Labor within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to Employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <u>City of Montpelier, Police Dept</u>		2. Business Name: <u>City of Montpelier</u>	
	3. Mail Address: No. and Street <u>100 North Court</u> City <u>Montpelier, VT</u> State <u>VT</u> Zip <u>05602</u>		5. Federal ID No.	
	4. Location (if different from Mail Address):		7. Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
	6. Nature of Business (list principal products or service of concern): <u>Public Safety</u>		8. Telephone No. <u>802 223 3445</u>	
A C C I D E N T	22. Date of Accident: <u>02-10-09</u>	Accident time: <u>11:30</u> a.m. ☐ p.m.	Began shift: <u>8</u> a.m. <u>4</u> p.m.	23. Machine or tool involved in the accident: <u>N/A</u>
	24. Location of Accident: <u>Import Rd, Berlin, VT</u>	Town or City: <u>Berlin</u> State: <u>VT</u>	25. Was it defective? ☒ No ☐ Yes If yes, describe how.	
C O N D I T I O N S	26. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		27. Object or substance directly causing injury: <u>Falling down hole</u>	
	28. Describe what employee was doing: <u>He was playing for insurance - Fight in progress</u>		Was this the employee's regular occupation? ☒ No ☐ Yes	
D E S C R I B E	29. How did accident occur? Describe events leading up to the accident: <u>Fell down hole on floor - bent body</u>			
	30. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N O T E	31. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
	32. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
I N J U R Y	33. If safety equipment was provided, was it being used? ☐ No ☒ Yes			
	34. Describe the injury and the part of body injured: <u>Bruised Cartilage front Breast area</u>		35. Was this a first-aid only injury: ☐ Yes ☒ No	
R E S U L T	36. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	37. Employee returned to work? ☐ No ☐ Yes
	38. Did injury result in death? ☒ No ☐ Yes	If yes, date of death: <u>N/A</u>	39. If death, name and address of nearest relative: <u>N/A</u>	Relationship: <u>N/A</u>
I N S U R A N C E	40. Name and Address of Physician: <u>Dr. Daniel Webster - c/o Bethel VT Hospital Berlin, VT</u>		41. Name and Address of Hospital: <u>Bethel VT Hospital - Airport Rd - Berlin, VT</u>	
	42. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.		Remained overnight? Yes ☒ No ☐	
S I G N A T U R E	Name in full:		Policy No.	
	Signed by: <u>[Signature]</u>		Date: <u>02/11/09</u>	
Employer or Representative		Title: <u>Chief of Police</u>		Date: <u>02/11/09</u>

Provided Form 8

Dept. of Labor

Ins. Co.

Employer

Employee

Equal Opportunity is the Law

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City Of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
			Zip 05602	
	4. Location (if different from Mail Address):		Federal ID No. 03-6000579	
E R	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Telephone No. 802.223.9514
A C C I D E N T	6. Name: 17. Date of Accident: 05/28/2009	Accident Time: 9:10 a.m. p.m.	Began Shift: 8:00 a.m. p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City Main St Middle School - Montpelier, Vermont		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
C A U S E	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: curbing	
	23. Describe what employee was doing: walking from roadway onto sidewalk		Was this the employee's regular occupation? ☐ No ☒ Yes	
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident. stubbed toe on curbing, causing lower back strain			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N O T E	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. lower back strain			
I N S U R A N C E	30. Any Lost Time? ☐ No ☒ Yes	If yes, date disability began. 05/29/2009	Last date paid in full: 06/02/2009	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
I N S U R A N C E	34. Name and Address of Physician Thomas Kurchin and Rebecca Scholl		Relationship	
	35. Name and Address of Hospital n/a		Remained overnight? Yes ☐ No ☒	
I N S U R A N C E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT		Policy No.	
I N S U R A N C E	Signed by:			
	Employer or Representative		Title	Date

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier			2. Business Name: City of Montpelier		
	3. Mail Address: No. and Street 39 Main Street			City Montpelier	State VT	Zip 05602
A C C I D E N T	4. Location (If different from Mail Address):					Federal ID No. 03-6000579
	5. Nature of Business (list principal products or service of concern): Municipality				Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Telephone No. 802.223.9514
I N J U R Y	17. Date of Accident: 06/06/2009	Accident Time 11:39 a.m. p.m.	Began Shift 12:00 a.m. p.m.	20. Machine or tool involved in the accident: N/A		
	18. Location of Accident: Town or City State 54 Main Street - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.		
D E S C R I B E	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: exposure to large amounts of blood		
	23. Describe what employee was doing: responded to a call			Was this the employee's regular occupation? ☐ No ☒ Yes		
E M P L O Y E R	24. How did accident occur? Describe events leading up to the accident. man and woman stabbing/cutting themselves, struggled with both parties and subsequently exposed to					
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.					
N O T E	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes					
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").					
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes					
	29. Describe the injury and the part of body injured. exposed to large amounts of blood					
I N J U R Y	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes	If yes, date returned. 06/06/2009	At what weekly wage: \$ 780.80
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.			Relationship
I N J U R Y	34. Name and Address of Physician n/a					
	35. Name and Address of Hospital n/a				Remained overnight? Yes ☐ No ☒	
I N J U R Y	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT					
	Name in full: VLCT				Policy No.	
I N J U R Y	Signed by:					
	Employer or Representative		Title		Date	

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
O F F I C E	4. Location (if different from Mail Address):		Zip 05602	
	5. Nature of Business (list principal products or service of concern): Municipality		Federal ID No. 03-600579	
A C C I D E N T	6. Date of Accident: 12/11/2009		Accident Time a.m. 3:59 p.m.	Began Shift a.m. 4:00 p.m.
	7. Location of Accident: Town or City Main Street - Montpelier, Vermont		20. Machine or tool involved in the accident: n/a	
C A U S E	18. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
	22. Object or substance directly causing injury: blood and combative patient		23. Describe what employee was doing: escorting patient to ambulance	
I N J U R Y	24. How did accident occur? Describe events leading up to the accident. patient became combative and altercation took place.		Was this the employee's regular occupation? ☐ No ☒ Yes	
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.		26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes	
I N J U R Y	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful.") using safety equipment		28. If safety equipment was provided, was it being used? ☒ No ☐ Yes	
	29. Describe the injury and the part of body injured. thumb, face and blood sprayed into mouth and eyes		30. Any Lost Time? ☒ No ☐ Yes	
I N J U R Y	If yes, date disability began.		Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes		If yes, date returned: 12/11/2009	
I N J U R Y	33. If death, name and address of nearest relative.		At what weekly wage: \$ 782.80	
	34. Name and Address of Physician n/a		Relationship	
I N J U R Y	35. Name and Address of Hospital Central Vermont Hospital		Remained overnight? Yes ☐ No ☒	
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT		Policy No.	
I N J U R Y	Name in full: VLCT		Signed by:	
	Employer or Representative		Title	
Date				

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
M	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
P			Zip 05602	
L	4. Location (if different from Mail Address):			
O				
Y	5. Nature of Business (list principal products or service of concern): Municipality			Do you regularly employ 10 or more employees? ☒ Yes ☐ No
E				Federal ID No. 03-600579
R				Telephone No. 802.223.9514
A	17. Date of Accident: 12/11/2009	Accident Time a.m. 3:59 p.m.	Began Shift a.m. 4:00 p.m.	20. Machine or tool involved in the accident: n/a
C	18. Location of Accident: Town or City Main Street - Montpelier, Vermont		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
C	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: blood	
I	23. Describe what employee was doing: assisting other officers to subdue suspect			
D	24. How did accident occur? Describe events leading up to the accident. approached scene and observed two other officers struggling with suspect in front of bar.			
E	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
T	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful,").			
	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
I	29. Describe the injury and the part of body injured. face and hands exposed to blood			
J	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
U				If yes, date returned. 12/11/2009
R	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
Y	Relationship			
	34. Name and Address of Physician n/a			
	35. Name and Address of Hospital Central Vermont Hospital			Remained overnight? Yes ☐ No ☒
I	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
N	Name in full: VLCT			Policy No.
S	Signed by:			
	Employer or Representative		Title	Date

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
			Zip 05602	
	4. Location (if different from Mail Address):		Federal ID No. 03-6000579	
E R	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
			Telephone No. 802.223.9514	
A C C I D E N T	17. Date of Accident: 12/11/2009	Accident Time a.m. 3:59 p.m.	Began Shift a.m. 4:00 p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City Main Street - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
C A U S E	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: blood	
	23. Describe what employee was doing: responding to call - male fell through window		Was this the employee's regular occupation? ☐ No ☒ Yes	
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident. approaching scene, observed two other police officers struggling with suspect			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N E E D S	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful."). use safety equipment			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. face and hands			
I N S U R A N C E	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
I N S U R A N C E	34. Name and Address of Physician n/a		At what weekly wage: \$ 802.00	
	35. Name and Address of Hospital Central Vermont Hospital		Relationship	
I N S U R A N C E	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT		Policy No.	
I N S U R A N C E	Signed by:			
	Employer or Representative		Title	Date
Provided Form 8 _____ Labor & Industry _____ Ins. Co. _____ Employer _____ Employee				

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employer's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
O F F I C E	4. Location (if different from Mail Address):			Zip 05602
	5. Nature of Business (list principal products or service of concern): Municipality			Do you regularly employ 10 or more employees? ☒ Yes ☐ No
A C C I D E N T	17. Date of Accident: 12/11/2009	Accident Time a.m. 3:59 p.m.	Began Shift a.m. 4:00 p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City Main Street - Montpelier, Vermont			21. Was it defective? ☒ No ☐ Yes If yes, describe how.
I N J U R Y	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:			22. Object or substance directly causing injury: blood
	23. Describe what employee was doing: assisting another police officer			Was this the employee's regular occupation? ☐ No ☒ Yes
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident. arrived on scene, observed another police officer struggling with suspect			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
N O T E	26. Was safety equipment, such as goggles or guards, etc. provided? ☐ No ☒ Yes			
	27. Could the injured have prevented this type of accident? ☐ No ☒ Yes If yes, describe how (do not say, "By being more careful."), using safety equipment			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. head and hands exposed to blood			
I N J U R Y	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	
I N J U R Y	34. Name and Address of Physician n/a			Relationship
	35. Name and Address of Hospital Central Vermont Hospital			Remained overnight? Yes ☐ No ☒
I N J U R Y	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT			Policy No.
I N J U R Y	Signed by:			
	Employer or Representative Title Date			

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY
Drawer 20
Montpelier, VT 05620-3401

Form 1 (Rev. 1/02)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: City of Montpelier		2. Business Name: City of Montpelier	
	3. Mail Address: No. and Street 39 Main Street		City Montpelier	State VT
	4. Location (if different from Mail Address):		Zip 05602	
	5. Nature of Business (list principal products or service of concern): Municipality		Do you regularly employ 10 or more employees? ☒ Yes ☐ No	Federal ID No. 03-6000579 Telephone No. 802.223.9514
A C C I D E N T	17. Date of Accident: 12/15/2009	Accident Time a.m. 12:00 p.m.	Began Shift 8:00 a.m. p.m.	20. Machine or tool involved in the accident: n/a
	18. Location of Accident: Town or City State Main Street Middle School - Montpelier, Vermont		21. Was it defective? ☒ No ☐ Yes If yes, describe how.	
	19. On employer's premises? ☐ No ☒ Yes If yes, name of dept.: Main Street Middle School		22. Object or substance directly causing injury: n/a	
	23. Describe what employee was doing: leaving classroom, turned to left to respond to someone calling him		Was this the employee's regular occupation? ☐ No ☒ Yes	
I N J U R Y	24. How did accident occur? Describe events leading up to the accident. walking and turned to left to respond to someone calling him			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.").			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured. lower back			
	30. Any Lost Time? ☐ No ☒ Yes	If yes, date disability began. 12/15/2009	Last date paid in full: 12/17/2009	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	At what weekly wage: \$ 1026.80 Relationship
I N J U R Y	34. Name and Address of Physician Concentra Medical			
	35. Name and Address of Hospital n/a		Remained overnight? Yes ☐ No ☒	
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. VLCT			
	Name in full: VLCT		Policy No.	
I N J U R Y	Signed by:			
	Employer or Representative		Title	Date

____ Provided Form 8 ____ Labor & Industry ____ Ins. Co. ____ Employer ____ Employee

08/19/2010 10:54

8024832343

VT POLICE ACADEMY

PAGE 01

DEPARTMENT OF LABOR
 Drawer 20
 Montpelier, VT 05620-3401

Form 1 (Rev. 6/05)
 (Approved for use as OSHA 101 and 301)

State File No.



EMPLOYEE'S CLAIM AND EMPLOYER FIRST REPORT OF INJURY

Complete form in ink or typewriter and send original to the Commissioner of Labor and Industry within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee's Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <u>Montpelier Police Department</u>		2. Business Name: <u>City of Montpelier</u>	
	3. Mail Address: No. and Street <u>1 Pitkin Place</u>		City <u>Montpelier</u>	State <u>VT</u>
	4. Location (if different from Mail Address): <u>Montpelier</u>		Zip <u>05642</u>	Federal ID No. <u>036000579</u>
	5. Nature of Business (list principal products or service of concern): <u>Injury during Academy Training</u>		Do you regularly employ 10 or more employees? ☐ Yes ☒ No	
A C C I D E N T	17. Date of Accident: <u>08/12/10</u>	Accident Time <u>a.m. 16:40 p.m.</u>	Began Shift <u>0600 a.m.</u>	20. Machine or tool involved in the accident: <u>UNKNOWN</u>
	18. Location of Accident: <u>VCJTC</u>	Town or City <u>Pittsford</u>	State <u>VT</u>	21. Was it defective? ☒ No ☐ Yes If yes, describe how.
	19. On employer's premises? ☒ No ☐ Yes If yes, name of dept.:		22. Object or substance directly causing injury: <u>UNKNOWN</u>	
	23. Describe what employee was doing: <u>Physical Training</u>		Was this the employee's regular occupation? ☐ No ☒ Yes	
D E S C R I B E	24. How did accident occur? Describe events leading up to the accident: <u>UNKNOWN - Thought it was muscle fatigue.</u>			
	25. Can the employer prevent this type of accident? ☒ No ☐ Yes If yes, describe how.			
	26. Was safety equipment, such as goggles or guards, etc. provided? ☒ No ☐ Yes			
	27. Could the injured have prevented this type of accident? ☒ No ☐ Yes If yes, describe how (do not say, "By being more careful.")			
I N J U R Y	28. If safety equipment was provided, was it being used? ☒ No ☐ Yes			
	29. Describe the injury and the part of body injured: <u>PINCHED NERVE IN LOWER BACK.</u>			
	30. Any Lost Time? ☒ No ☐ Yes	If yes, date disability began.	Last date paid in full:	31. Employee returned to work? ☐ No ☒ Yes
	32. Did injury result in death? ☒ No ☐ Yes	If yes, date of death.	33. If death, name and address of nearest relative.	At what weekly wage: \$ Relationship
I N S U R A N C E	34. Name and Address of Physician: <u>CONVE-NIENT Medical Care</u>			
	35. Name and Address of Hospital: <u>25 NORTH MAIN ST.</u>			
	36. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name. <u>Vermont League of Cities + Towns</u>			
	Name in full:		Policy No. <u>2010</u>	
Signed by: <u>[Signature]</u> <u>Finance Director</u> <u>8/19/10</u>				
Employer or Representative Title Date				

Provided Form 6

Dept. of Labor

Ins. Co.

Employer.

Employee

Equal Opportunity is the Law



DEPARTMENT OF LABOR – ATTN: WORKERS' COMPENSATION
PO Box 488
Montpelier, VT 05601-0488

Form 1 (Rev. 2/09)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYER FIRST REPORT OF INJURY

Complete form and send original to the Commissioner of Labor within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: MPD		2. Business Name: MONTPELIER POLICE DEPT.				
	3. Mail Address: No. and Street 1 PITKIN COURT		City MONTPELIER	State Zip VERMONT 05602			
	4. Location (if different from Mail Address):		5. Federal ID No.: 03-6000579				
	6. Nature of Business (list principal products or service of concern): LAW ENFORCEMENT		7. Do you regularly employ 10 or more employees? ☒ Yes ☐ No				
A C C I D E N T	22. Date of Accident: 08/20/10		Accident Time: AM 1730	Began Shift: 8 AM	PM	23. Location of Accident: Town or City State MONTPELIER VT	8. Telephone No.: 802 223-3445
	24. Machine or tool involved in the accident:					25. Was it defective? ☐ Yes ☐ No	
	26. On employer's premises? ☐ Yes ☒ No If yes, name of department:					27. Object or substance directly causing injury: HUMAN BLOOD	
	28. Describe what employee was doing: RESPONDING TO SHOOTING INCIDENT					Was this the employee's regular occupation? ☒ Yes ☐ No	
	29. How did accident occur? Describe events leading up to the accident: ATTEMPTING TO PROVIDE MEDICAL CARE						
	30. Can the employer prevent this type of accident? ☐ Yes ☒ No					If yes, describe how.	
	31. Was safety equipment, such as goggles or guards, etc. provided? ☒ Yes ☐ No						
	32. Could the injured have prevented this type of accident? ☐ Yes ☒ No					If yes, describe how (do not say "By being more careful").	
	33. If safety equipment was provided, was it being used? ☐ Yes ☒ No						
	I N J U R Y	34. Describe the injury and the part of the body injured: EXPOSURE TO BLOOD TO SKIN					35. Was this a first-aid only injury: ☐ Yes ☐ No
36. Any Lost Time? ☐ Yes ☒ No		If yes, date disability began		Last date paid in full:			
38. Did injury result in death? ☐ Yes ☐ No		If yes, date of death.		39. If death, name and address of nearest relative.			
40. Name and address of Physician					Relationship		
41. Name and address of Hospital:					Remained Overnight ☐ Yes ☐ No		
42. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.							
I N S	Name in full: VLCT PACIF		Policy No. 2010				
	Signed by: [Signature]		Title: Finance Director		Date: 8/26/10		

___ Provided Form 8 ___ Dept. of Labor ___ Ins. Co. ___ Employer ___ Employee

Equal Opportunity is the Law



DEPARTMENT OF LABOR - ATTN: WORKERS' COMPENSATION
PO Box 488
Montpelier, VT 05601-0488

Form I (Rev. 2/09)
(Approved for use as OSHA 101 and 301)

State File No. _____

EMPLOYER FIRST REPORT OF INJURY

Complete form and send original to the Commissioner of Labor within 72 hours of accident. Send duplicate to your workers' compensation insurance company, give Employee's copy to employee and retain Employer's copy for your files. Answer every question fully and report promptly to avoid a penalty. Employer's Federal ID Number and Employee Social Security Number MUST be provided.

E M P L O Y E R	1. Legal Name: <u>City of Montpelier</u>		2. Business Name: <u>City of Montpelier Police Dept</u>	
	3. Mail Address: No. and Street <u>39 Main St</u>		City <u>Montpelier</u>	State <u>VT</u> Zip <u>05602</u>
	4. Location (if different from Mail Address):		5. Federal ID No.: <u>03-6000579</u>	
	6. Nature of Business (list principal products or service of concern): <u>City Law Enforcement</u>		7. Do you regularly employ 10 or more employees? ☒ Yes ☐ No	
A C C I D E N T	8. Telephone No.: <u>802-223-3449</u>		23. Location of Accident: Town or City <u>Montpelier</u> State <u>VT</u>	
	22. Date of Accident: <u>9/5/10</u>	Accident Time: <u>AM 4:43 PM</u>	Began Shift: <u>AM</u>	PM
	24. Machine or tool involved in the accident: <u>N/A</u>		25. Was it defective? ☐ Yes ☐ No	
	26. On employer's premises? ☒ Yes ☐ No If yes, name of department: <u>Police Dept</u>		27. Object or substance directly causing injury: <u>intoxicated male</u>	
I N J U R Y	28. Describe what employee was doing: <u>Restraining a prisoner</u>		Was this the employee's regular occupation? ☒ Yes ☐ No	
	29. How did accident occur? Describe events leading up to the accident: <u>Assaulted by an intoxicated male who charged while being handcuffed. Hand was slammed against the ground.</u>			
	30. Can the employer prevent this type of accident? ☐ Yes ☒ No		If yes, describe how:	
	31. Was safety equipment, such as goggles or guards, etc. provided? ☒ Yes ☐ No		32. Could the injured have prevented this type of accident? ☐ Yes ☒ No	
I N S	33. If safety equipment was provided, was it being used? ☒ Yes ☐ No		35. Was this a first-aid only injury: ☐ Yes ☒ No	
	34. Describe the injury and the part of the body injured: <u>Lacerations on back of right hand - swelling + bruising</u>		37. Employee returned to work? ☒ Yes ☐ No	
	36. Any Lost Time? ☐ Yes ☒ No	If yes, date disability began	Last date paid in full:	If yes, date
	38. Did injury result in death? ☐ Yes ☒ No	If yes, date of death:	39. If death, name and address of nearest relative.	
40. Name and address of Physician: <u>Dr. Matt Greenberg</u>		Relationship:		
41. Name and address of Hospital: <u>Central VT Medical Center</u>		Remained Overnight ☐ Yes ☒ No		
42. Workers' Compensation Insurance Carrier. Do NOT give your insurance agent's name.				
Name in full: <u>VLCT PACIF</u>		Policy No. <u>2010</u>		
Signed by: <u>[Signature]</u>		Title: <u>Finance Director</u> Date: <u>9/8/10</u>		
Employer or Representative		Title		

Provided Form 8 Dept. of Labor Ins. Co. Employer Employee

Equal Opportunity is the Law

Email from Chief Tony Facos about worker compensation claims made by police officers

September 2, 2011 4:55:14 PM EDT

Here is the worker's comp information from HR relating to MPD officers only (some situations have impact MFD personnel as well) that dealt with situations involving non-compliant for combative individuals:

2006—1 officer suffered a broken finger while struggling with a combative subject.
(pay out: \$0.00)

2007—1 officer suffered lacerations and abrasions to wrist while making arrest. (pay out: \$0.00)

1 officer tore Achilles tendon during foot pursuit. (pay out: \$39,430.54)

2008—1 officer was "head butted" and received injuries to lip and mouth. (pay out: \$0.00)

2009—3 officers exposed to large amounts of blood (confirmed hepatitis) while restraining two subjects. (pay out: \$900.00)

4 officers (1 of whom was physically assaulted) exposed to blood while making arrest. (pay out: \$6,000.00)

2010—1 officer lacerated his hand while restraining non-compliant intoxicated suspect.
(Pay out: \$2,000.00)

Chief Tony Facos

Summary of Taser company May 2010 warnings

From Taser International's bulletin Important ECD Product Safety and Health Information May 1, 2010, which supersede all previous bulletins. The items are copy-pasted from that bulletin; no wording has been changed. I did underline the titles. Not all warnings are listed here.

Minimize Repeated, Continuous, or Simultaneous Exposures

Reasonable efforts should be made to minimize the number of ECD exposures. ECD Users should use the lowest number of ECD exposures that are objectively reasonable to accomplish lawful objectives and should reassess the subject's resistance level before initiating or continuing the exposure.

Control and Restrain Immediately

Begin control and restraint procedures, including restraining the subject during ECD exposure, as soon as reasonably safe and practical to do so in order to minimize total ECD exposure. The ECD User, and those individuals assisting the User, should avoid touching the probes, wires, and the area between the probes to avoid accidental or unintended shock during ECD electrical discharge.

Sensitive Body Part Hazard

When possible, avoid intentionally targeting the ECD on sensitive areas of the body such as the head, throat, chest/breast, or known pre-existing injury areas without legal justification. The preferred target areas are the lower center mass (below chest) for front shots and below the neck area for back shots.

Incapacitation, Falling, and Startle Hazard

ECD Use may cause muscular contraction, Neuro Muscular Incapacitation ("NMI"), startling, and falling, which could result in death or serious injury

NMI and Secondary Injuries

An ECD may cause NMI if probes are within sufficient proximity to complete a circuit, with sufficient spread, and an adequate circuit is completed and maintained rendering the subject temporarily unable to control movement and may cause a fall. Also, ECD use may cause a startle response. This loss of control or startle may increase risk of death or serious injury resulting from loss of balance, fall, change in momentum, drowning, or loss of control of any mode of transportation, conveyance, or machinery. Especially at risk is a person who:

- Could fall and suffer impact injury to the head or other area;
- Is on an elevated or unstable surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, crane, dock, chair, bunk bed, or stair);
- Is less able to catch or protect self in a fall (e.g., restrained, handcuffed, incapacitated, or immobilized);
- Could fall on a sharp object (e.g., holding a knife or other edged weapon or sharp object on ground);
- Is running, in motion, or moving under momentum;
- Is operating or riding in or on any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, cart, train, or airplane), conveyance (e.g., escalator, moving walkway, elevator, skateboard, skates, or rollerblades), or machinery;
- Is located in water, mud, or marsh environment if the ability to move is restricted; or
- Is physically infirm, elderly, or pregnant.

Eye Injury Hazard

If a TASER probe, electrode, or electrical discharge contacts or comes into close proximity to an eye it could result in serious injury, including permanent vision loss. DO NOT intentionally aim an ECD at the eye of a person or animal without justification.

Laser Light Could Result in Serious Eye Injury

The ECD uses a LASER as a targeting aid. Avoid intentionally aiming the LASER at the eye of a person or animal without justification. NEVER aim the LASER at aircraft.

Fire and Explosion Hazard

ECD Use could result in a fire or explosion when flammable gases, fumes, vapors, liquids, or materials are present. An ECD can ignite explosive and flammable clothing or materials, liquids, fumes, gases, or vapors (e.g., gasoline, vapor or gas found in sewer lines or methamphetamine labs, butane-type lighters, or flammable hair gels). Do not knowingly Use an ECD in the presence of any explosive or flammable substance without legal justification. Note that some self-defense sprays use a flammable carrier, such as alcohol.

Muscle Contraction or Strain-Related Injury

ECDs can cause strong or moderate muscle contractions that may result in physical exertion, athletic, or sport-type injury, including, but not limited to, injury such as hernia, rupture, dislocation, tear, or other injury to soft tissue, organ, muscle, tendon, ligament, nerve, bone, or joint. Fracture to bone, including compression fracture to vertebrae, may occur. These injuries may be more serious and more likely to occur in people with pre-existing injuries, conditions or special susceptibilities, which include but are not limited to, known or unknown: pregnancy; osteopenia; osteoporosis; spinal injury; or previous muscle, disc, ligament, joint, bone, or tendon damage or surgery. Such injuries may also occur when a person reacts to the ECD deployment or discharge by making a rapid movement.

Physiologic or Metabolic Effects

The ECD can produce physiologic or metabolic effects which include, but are not limited to, changes in: acidosis; adrenergic states; blood pressure; calcium, creatine kinase ("CK"); electrolytes (including potassium), heart rate and rhythm; lactic acid; myoglobin; pH; respiration; stress hormones or other biochemical neuromodulators (e.g., catecholamines). Reasonable effort should be made to minimize the number of ECD exposures and resulting physiologic and metabolic effects. In human studies of electrical discharge from a single ECD of up to 15 seconds, these effects on acidosis, CK, electrolytes, stress hormones, and vital signs have been comparable to or less than changes expected from physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques. Adverse physiologic or metabolic effects may increase risk of death or serious injury.

Higher Risk Populations

ECD Use on a pregnant, infirm, elderly, small child, or low body-mass index (BMI) person could increase the risk of death or serious injury. ECD Use has not been scientifically tested on these populations. The ECD should not be Used on members of these populations unless the situation justifies possible higher risk of death or serious injury.

Physiologically or Metabolically Compromised Persons

Law enforcement personnel are called upon to deal with individuals in crises that are often physiologically or metabolically compromised and may be susceptible to arrest-related death ("ARD"). The factors that may increase susceptibility for an ARD have not been fully characterized but may include: a hypersympathetic state, autonomic dysregulation, capture myopathy, hyperthermia, altered electrolytes, severe acidosis, cardiac arrest, drug or alcohol effects (toxic withdrawal, sensitization to arrhythmias, etc), alterations in brain function (agitated or excited delirium), cardiac disease, pulmonary disease, sickle cell disease, and other pathologic conditions. These risks may exist prior to, during, or after law enforcement intervention or ECD Use, and the subject may already be at risk of death or serious injury as a result of pre-existing conditions, individual susceptibility, or other factors. In a physiologically or metabolically compromised person any physiologic or metabolic change may cause or contribute to death or serious injury. Follow your agency's Guidance when dealing with physiologically or metabolically compromised persons.

Neurocardiogenic Response (Fainting)

A person may experience an exaggerated response to an ECD exposure, or threatened exposure, which may result in a person fainting or falling with possible secondary injury.

Seizure

Repetitive stimuli (e.g., flashing light or electrical stimuli) can induce seizure in some people. This risk may be increased in a person with a seizure history or if electrical stimuli pass through the head area. This may also result in a person falling with a possible secondary injury.

Use-of-Force Reports, Summary

<u>DATE</u>	<u>SUBJECT</u>	<u>CIRCUM</u>	<u>FORCE USED</u>	<u>SUBJECT INJURY</u>	<u>OFFICER INJURY</u>
11/01/08	male, 19, urinating	flight, fell	handcuff	abrasions	none
01/25/09	female, 42	unk. med. condit, non-comply	wristlock, cuff, dragged	none	none
07/27/09	male	flight, non- comply	arm bar, cuff	none	none
11/01/09	male, 24	active resist	arm bar, cuff	slight cut	none
11/17/09	male	flight from vehicle	thrown down, cuff	hand cut?	none
12/11/09	male, 19	underage alc, foot pursuit intox'd	OC, bear hug, down, cuff	scratch	scratch
03/05/10	male, 44	Intox (.276 BAC), Protect. Cust. raised fist WCMH screener	cuff, pull-down	none	none
03/20/10	male, 25	punching wall, parents wanted him removed, flight, MH eval	neck pulldown 3 knee strikes cuff	scrape	none
05/26/10	female, 10	at school, WCMH screener	held, carried	none	none
07/20/10	male, 37	flailing, non-comply, highly agitated, cuff, WCMH screener	armbar to ground	none	none

09/05/10	male, 47	Intox (.324 BAC), Protect.Cust. active non-comply	cuff, leg irons and hog-tie transport	swollen eye	hand laceration
10/29/10	male, 64	WCMH request for assist. in serving mental health exam warrant (Schizoaffective pt.), not taking meds, also mech. heart valve, “wildly” waving board at p.o.	OC, pepperballs firearm displayed	bruising from pepperballs	none
05/23/11	female, 22	DUI, highly intox’d, hitting officer, Protect. Cust.	cuff, helmet abrasion	scrapes	
06/18/11	?	noise disturbance	cuff	none	none
06/19/11	male	stolen vehicle, tried to reach into pocket	arm bar, cuff	cut, scratches	none

2008

MPD PD.RLGS
v5.5n(8.7.1)
platoon: ALL

MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:22 PAGE 1
TTYPI -9

action code: 13P ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
geo code: ALL to: from: 01/01/2008 to: 12/31/2008
where: ALL string:
date/time s case# rep unit personnel #1 personnel #2 other per

(1)	04/27/08	B	339858	13P-		254 ELM ST VINE ST
(2)	06/19/08	C	343068	13P-	5336	1 PITKIN CT
(3)	07/04/08	A	343972	13P-	2424	9 SCHOOL ST
(4)	08/09/08	B	346173	13P-	2498	27 STATE ST
(5)	09/11/08	B	348171	13P-	5336	1 PITKIN CT

↓
348134

MPD PD.RALG
v5.5m

MONTPELIER POLICE DEPARTMENT
ARREST LOG by DATE

06/24/11 21:02 PAGE 2
TTYPI

from date: 01/01/08
to date: 12/31/08

from chg: 13B2
to chg: 13B2

from off: ALL off type
to off: (A
typ: ADULT

arrest/charge type: A

name t case# date statue desc off off

012306 VANSOLKEMA, BRADSHAW ALLAN 101 NORTHFIELD ST, MONTPELIER, VT
dob: 10/25/51 56 A 343056 06/19/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

036927 FOWLER, KEITH R 55 MERCHANTS ST, BARRE, VT
dob: 09/04/87 21 A 343753 06/30/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

037411 DURANLEAU, DANA JEAN 6 AVERILL ST, BARRE, VT
dob: 11/17/51 56 A 346173 08/09/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

023788 MAGANA, NICHOLAS JAY 132 MAIN ST, PLAINFIELD, VT
dob: 09/29/79 29 A 348138 09/11/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

348134

MPD PD.RALG
v5.5m

MONTPELIER POLICE DEPARTMENT
ARREST LOG by DATE

06/24/11 21:02 PAGE 1
TTYPI 9

from date: 01/01/08
to date: 12/31/08

from chg: 13B2
to chg: 13B2

from off: ALL Off type
to off: (A
typ: JUVENILE

arrest/charge type: A

name t case# date statue desc off off
----- -1- -2-

036646 COLLINS, KYLE

88 FRANKLIN ST, BARRE, VT

dob: 09/02/92 15 A 339858 04/27/08 13-VSA-1 SIMPLE ASSAULT (OFFICER)

2009

MPD PD.RLGS
v5.5n(8.7.1)

MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:22 PAGE 1
TTYPI 9

platoon: ALL
action code: 13P ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
geo code: ALL to: from: 01/01/2009 to: 12/31/2009
where: ALL string:
date/time s case# rep unit personnel #1 personnel #2 other per

(1)	01/12/09	B	355147	13P-		11 WEST ST NEW SCHOOL
(2)	02/24/09	C	357584	90C-	2421	44 MAIN ST
(3)	07/29/09	A	366344	90D-	2456	21 MAIN ST
(4)	08/16/09	A	367308	90D-		MEMORIAL DR I-89
(5)	08/16/09	C	367337	90D-	5420	X STATE ST ELM ST
(6)	10/03/09	C	369985	13P-	5397	X NORTHFIELD ST COLONIAL DR
(7)	12/11/09	C	373677	13P-	2591	108 MAIN ST

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE 1
TYPE

shift: B

date: 01/12/09 MONDAY

12/03/88

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A

**rcv*clr*

12:36 * 11 WEST ST and NEW SCHOOL MON

590 13P

*ibr: 1: 90C 2: 590

355147 * STUDENT IN CRISIS/ OUT OF CONTROL

MON

*

707-9

: LEMOGE, SUE

Def: LEFEBVRE, ALISON A

12/03/88 009-72-1120

645 BARTLETT HILL R BERLIN,VT 05602

*** UNIT(S) ***

801 MON P CHIEF FACOS

707-9

r> 12:43 d> 12:43 a> 12:43 c> 12:55 k>

h>

802 MON P SGT MARTEL

707-9

r> 12:42 d> 12:42 a> 12:42 c> 12:42 k>

h>

807 MON P DET. NOLAN

707-9

r> 14:07 d> 14:07 a> 14:07 c> 14:53 k>

h>

811 * MON P P.O PONTBRIAND

707-9

r> 12:36 d> 12:36 a> 12:37 c> 14:53 k>

h>

*** COMMENTS ***

811 MON 12:36:18 CD-590-STUDENT IN CRISIS/ OUT OF CONTROL

707-

811 MON 12:37:07 -23

707-

801 MON 12:43:52 -23 @ 11 WEST ST.

707-

801 MON 12:47:41 HAVE ONE -95

707-

811 MON 12:51:01 -76 -19 ONE FEMALE -95 CAR 6 SM 1733

707-

801 MON 12:55:36 @ -19 WITH HER.

707-

801 MON

707-

801 MON -21 TO WDC RE 1316-10-08WNCR & 656-6-08WNCR. BOTH CASES

707-

801 MON HAVE BEEN DISPOSED. -21 P&P, NO RECORD IN P&P.

707-

801 MON

707-

801 MON

707-

801 MON

707-

801 MON SUPERVISOR - SGT N MARTEL

707-

801 MON INV OFFICER - PTLMN J PONTBRIAND

707-

801 MON DEFENDANT - ALISON LEFEBVRE

707-

801 MON CHARGES - SAPO & DC.

707-

801 MON

707-

801 MON

707-

801 MON 12:55:00 10-8

9

811 MON 14:06:00 76 TO WDC W/ 10-95/ EQ 6/ SM 1733/ 21 COURT

9

811 MON TO LET THEM KNOW/ DONE/ 807 W/ 811

9

811 MON

9

807 MON 14:07:50 807 ASSISTING 811

9

811 MON 14:53:54 10-8/ EM WAS 1740

9

811 MON

14

807 MON WHILE ATTEMPTING TO PLACE LEFEBVRE IN THE REAR SEAT OF THE

14

807 MON CRUISER SHE WAS UNCOOPERATIVE AND SOMEWHAT COMBATIVE,

14

807 MON KICKING, ETC. ONCE ON THE REAR SEAT SHE ATTEMPTED TO KICK

14

807 MON THE RIGHT REAR WINDOW SO SHE WAS RESTRAINED WITH LEG

14

807 MON RESTRAINTS. EVEN AFTER THE RESTRAINTS WERE PLACED ON HER

14

807 MON LEGS, LEFEBVRE CONTINUED TO TRY TO KICK. AT COURT, LEFEBVRE

14

807 MON SPIT AT A WDCS DEPUTY AND SHE CONTINUED TO HOLD UP WITH

14

807 MON BEHAVIOR SIMILAR TO WHAT IS DESCRIBED ABOVE. LEFEBVRE

14

807 MON ULTIMATELY ENDED UP WITH HER HANDS SECURED IN FRONT (BELT)

14

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE 2
TTYPE

shift: B

date: 01/12/09 MONDAY

org/lst

*** COMMENTS ***

807 MON AND HER FEET WERE SHACKLED TO HER HANDS. A SPIT SOCK WAS
807 MON PLACED OVER HER HEAD.
807 MON
807 MON ON 03-10-2998 AT 11:40:00 HOURS ALISON LEFEBVRE'S GLASSES
807 MON WERE RETURNED TO ELIZABETH GUILFOYLE
807 MON

officer's signature

date

Montpelier Police Department

State Of Vermont
Washington County ss.



Affidavit
1211-08-342494

Now Comes **Officer James Pontbriand**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Alison Lefebvre, DOB 12/03/1988** has committed the offense(s) of **Disorderly Conduct and Simple Assault on a Police Officer** in violation of **Title 13, Vermont Statutes Annotated, Section 1026 and 1028(a)**.

Based on the following facts:

1. On Monday, January 12, 2009 at approximately 1245 hours the Montpelier Police Department received a call from the New School in Montpelier (11 West Street, Montpelier, Vermont). The New School is an alternative school for challenged youth(s). The caller indicated they had a student out of control and had to be restrained by staff at the school.
2. Chief Facos and I responded to the school where we were met by a staff member and directed to a room at the front of the building. I could hear a female yelling from the room and observed a female known to me as Alison Lefebvre (dob 12/03/1988) being restrained by three staff members. Alison is known to me from prior involvements from similar incidents.
3. I introduced myself to Alison and advised her that she had a chance to calm down and work things out with the school. Alison responded by stating "fuck you" and spitting on me. I again tried to calm Alison down and explain the situation to her with the help of the staff. Again Alison's response was to spit on me and use profanity.
4. The decision was made to place Alison under arrest for disorderly conduct and simple assault on a police officer. As the Chief and I attempted to get Alison to her feet she kicked Chief Facos several times. Although the Chief stated he did not feel pain as a result of the assault he did have to take defensive action to protect himself from injury.

Subscribed and sworn to before me on,
This 12th day of January, 2009

Charles H. Hurlbert
Notary Public

Affiant

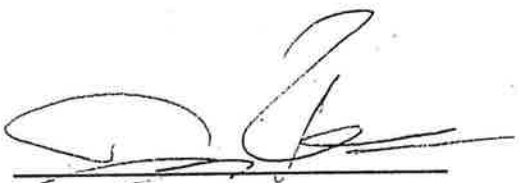
Date

1/12/09

5. Due to the Alison's combative and assaultive behavior she was not fingerprinted or photographed.
6. I contacted the Washington County District Court and was advised to transport Alison for immediately for arraignment.

Subscribed and sworn to before me on,
This 10th day of January, 2009

Cheryl Grant
Notary Public


Affiant
1/12/09
Date

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP: 3

shift: C

date: 02/24/09 TUESDAY

pre/lis

***** RQ 90C DISORDERLY CONDUCT *

**rev*lr*
186 90C

21:05 * 44 MAIN ST MON

*ibr: 1: 13P 2: 308 3: 186

357584 * EMPLOYEE FEELS LIGHT HEADED

* ID #: 2421

: WILL 911 A49,

Def: PONZIO, CHRISTOPHER J

02/13/76

3786 VERMONT ROUTE 1 WESTFIELD, VT 05874

call-back#

223-7070

*** UNIT(S) ***

805 MON P SGT. COCHRAN

r> 21:23 d> 21:23 a> 21:23 c> 23:31 k> h>

809 MON P P.O. MACURA

r> 21:23 d> 21:23 a> 21:23 c> 23:30 k> h>

813 MON P P.O. MOULTON

r> 21:19 d> 21:19 a> 21:19 c> 23:31 k> h>

MAS2 * MON A

r> 21:05 d> 21:05 a> 21:06 c> 22:28 k> h>

*** COMMENTS ***

MAS2 MON 21:05:27 CD-186-EMPLOYEE FEELS LIGHT HEADED

MAS2 MON 21:06:00 MAS1 OOO AND OS

MAS2 MON 21:19:50 K6 REQ PD RESP

813 MON 21:19:00 -76 AND -23

MAS2 MON 21:19:00 K6 ADV UN COOPERATIVE PT

805 MON 21:23:31 -23 WITH 813

813 MON 21:29:37 11-20, 11-21

805 MON 21:42:51 REQ -21 TO CVH TO MAKE SURE THEY HAVE AN

805 MON 21:42:00 OFFICER

MAS2 MON 21:52:00 MAS1 ENROUTE 2 CVH

805 MON 21:52:00 ADV 813 WILL ALSO NEED TO BE CHECKED AT CVH

813 MON 21:53:35 -8 FROM SCENE -76 TO CVH

MAS2 MON 21:59:37 MAS1 ARRIVING CVH

809 MON 22:08:14 -8 -76 BACK TO THE CITY

805 MON 22:12:39 REQ -21 TO 814 TO COME IN FOR COVERAGE -21 MADE

MAS2 MON 22:22:31 MAS1 CLEAR RETURNING

MAS2 MON 22:28:26 MAS1 BIQ

MAS2 MON

MAS2 MON

MAS2 MON CASE MADE-

MAS2 MON SUSPECT - CHRISTOPHER PONZIO

MAS2 MON INVESTIGATING OFFICER - PTLM MOULTON

MAS2 MON SUPERVISOR - SGT COCHRAN

MAS2 MON CHARGE - DISORDERLY CONDUCT, SAPO, RESISTING ARREST

MAS2 MON CITED - 04/09/2009

805 MON 22:59:21 -8 -76 TO -19

805 MON

805 MON ON FEBRUARY 24, 2009 AT APPROXIMATELY 2105 HOURS DISPATCH

805 MON ADVISED ME THAT THE MONTPELIER FIRE DEPARTMENT WAS

805 MON REQUESTING POLICE RESPONSE TO THE BLACK DOOR AS THEY WERE

805 MON DEALING WITH A COMBATIVE PATIENT.

805 MON

805 MON UPON ARRIVAL TO THE BLACK DOOR I MET LT. JAKE LARABEE OF

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 9

shift: C

date: 02/24/09 TUESDAY

one/le

*** COMMENTS ***

805 MON THE MONTPELIER FIRE DEPARTMENT WHO ADVISED THAT THE PATIENT
805 MON WAS BEING EXTREMELY COMBATIVE. THE PATIENT WAS IDENTIFIED
805 MON AS CHRISTOPHER PONZIO (DOB 2/13/76).

805 MON
805 MON I SPOKE TO PONZIO WHO WAS SEATED ON THE FLOOR IN THE
805 MON DOORWAY TO THE OWNER'S OFFICE. PONZIO ADVISED THAT HE JUST
805 MON NEEDED A MINUTE AND FOR US TO BE PATIENT. FIRE DEPARTMENT
805 MON PERSONNEL WERE TRYING TO GET INFORMATION FROM HIM AND HE
805 MON STARTED YELLING, "SHUT THE FUCK UP". I ADVISED PONZIO TO
805 MON SETTLE DOWN AND BE COOPERATIVE AND THAT WE WERE THERE TO
805 MON HELP HIM.

805 MON
805 MON AFTER APPROXIMATELY 15 MINUTES OF SPEAKING TO PONZIO AND
805 MON HIS EMOTIONAL STATE RISE AND FALL, PONZIO FELL OVER AND HIT
805 MON HIS HEAD ON THE PULL DOWN STAIRS TO THE ATTIC. MYSELF AND
805 MON A FIREFIGHTER TRIED TO HELP PONZIO UP WHEN HE BECAME
805 MON ENRAGED AND STARTED FIGHTING ME.

805 MON
805 MON PONZIO WAS EVENTUALLY RESTRAINED AND WE TRIED TO CALM HIM
805 MON DOWN SO THE FIRE DEPARTMENT COULD TRANSPORT HIM THE
805 MON HOSPITAL. I ADVISED PONZIO THAT WE WOULD BE PLACING HIM IN
805 MON A STAIR CHAIR TO TAKE HIM DOWN FROM THE 3RD FLOOR. PONZIO
805 MON STATED HE UNDERSTOOD. WHILE WE WERE TRYING TO HELP HIM IN
805 MON THE CHAIR HE BECAME ENRAGED AGAIN AND STARTED TO FIGHT AND
805 MON KICK. PONZIO KICKED A MONTPELIER FIREFIGHTER IN HIS HAND.
805 MON PONZIO AGAIN WAS RESTRAINED.

805 MON
805 MON WE TRIED TO MOVE PONZIO OUT OF THE OFFICE AND FOR THE THIRD
805 MON TIME HE STARTED FIGHTING AND RESISTING AGAIN. I YELLED AT
805 MON HIM TO STOP RESISTING. AT THAT TIME CORPORAL MACURA AND
805 MON SGT. COCHRAN WERE ABLE TO RESTRAIN HIM AND HE WAS
805 MON EVENTUALLY STRAPPED TO A BACKBOARD AND BOUGHT OUT TO THE
805 MON AMBULANCE.

805 MON
805 MON WHILE AT THE HOSPITAL PONZIO WAS YELLING, "YOU STUPID
805 MON MOTHER FUCKERS" AND "YOU ARE FUCKING ASSHOLES". PONZIO
805 MON STATED TO THE DOCTOR THAT HE WAS COHERENT AND LUCID AND
805 MON UNDERSTOOD WHAT WAS GOING ON.

805 MON
805 MON WHILE AT THE HOSPITAL I WAS TREATED FOR MY INJURIES AND
805 MON RELEASED. THE FIREFIGHTER WAS TREATED FOR HIS INJURY AND
805 MON AT THE TIME OF THIS REPORT WAS STILL IN THEIR CARE.

805 MON
805 MON I CITED PONZIO FOR DISORDERLY CONDUCT, SAPO, AND RESISTING
805 MON ARREST. WHILE EXPLAINING THE CITATION TO PONZIO HE STATED
805 MON THAT HE WOULD SEE ME IN COURT. PONZIO WAS UNABLE TO SIGN
813 MON THE CITATION AS HE WAS BEING RESTRAINED.

813 MON
813 MON SGT. MARK MONTEITH OF THE BERLIN POLICE DEPARTMENT CALLED
813 MON AND ADVISED SGT. COCHRAN THAT PONZIO AGAIN STATED HE WAS
813 MON COHERENT AND UNDERSTOOD WHAT WAS GOING ON.

813 MON

05/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 3
TTYPS -2

shift: C

date: 02/24/09 TUESDAY

01 2/18

*** COMMENTS ***

813 MON IT SHOULD BE NOTED THAT WHILE THE INITIAL STRUGGLE WITH
813 MON PONZIO WAS TAKING PLACE, HE GRABBED THE HANDLE OF MY DUTY
813 MON WEAPON AND SGT. COCHRAN WAS ABLE TO PLACE PONZIO IN A WRIST
813 MON LOCK AND KEEP HIM FROM GETTING MY GUN.

52 -
52 -
52 -
52 -

officer's signature

date



1211-09-357584

Affidavit

Montpelier Police Department

State Of Vermont

Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Christopher J. Ponzio DOB: 02/13/1976** has committed the offense of **Disorderly Conduct** in violation of Title 13, Vermont Statutes Annotated, Section **1026; Assault of Law Enforcement Officer** in violation of Title 13, Vermont Statutes Annotated, Section **1028; Assault of Fire Fighter** in violation of Title 13, Vermont Statutes Annotated, Section **1028; Resisting Arrest** in violation of Title 13, Vermont Statutes Annotated, Section **3017**.

Based on the following facts:

1. On February 24, 2009 at approximately 2105 hours I was on duty for the Montpelier Police Department. At that time the Montpelier Police Department's dispatch advised me that the Montpelier Fire Department was at The Black Door Restaurant with a male patient that was being combative. Dispatch advised me that the fire department personnel requested the assistance of the Montpelier Police Department. Dispatch also advised me that the male patient was complaining about being light headed.
2. I responded to The Black Door Restaurant located at 44 Main Street in the City of Montpelier, Vermont. Upon arrival I went to the third floor of the establishment and met with Lieutenant Jake Larrabee, Firefighter Nicholas Bresette, Firefighter Brian Farnham and Student Firefighter Jake Timian all of the Montpelier Fire Department. While speaking with Lieutenant Larrabee I observed the male patient who was identified as Christopher Ponzio (DOB 2/13/76) sitting in the doorway to the office of the restaurant owner Philip Gentile. Gentile was also present and was in the office. Lieutenant Larrabee advised me that Ponzio was very combative with the fire department personnel as they were trying to assist Ponzio with his medical issue.
3. I spoke with Ponzio who at that time was breathing as though he was hyper-ventilating. Ponzio asked who I was and I identified myself to him. I advised Ponzio that I was a police officer. While speaking with Ponzio he appeared to go through spells of extreme anger and then back to a somewhat calm manner. While Speaking to Ponzio he began yelling, "Shut the fuck up you fucking assholes." I spoke with Ponzio for approximately fifteen (15) minutes trying to get Ponzio to calm down so the fire department personnel could attend to his medical needs. During my conversation with Ponzio, Sergeant Wade Cochran and Corporal Josh Macura, both of the Montpelier Police Department, arrived at the scene.

Subscribed and sworn to before me on,

This 16 day of March, 2009


Notary Public

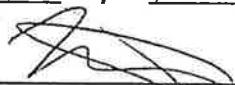

Affiant

3/16/09

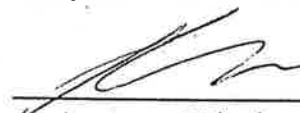
Date

4. While speaking to Ponzio, I told him that we were there to help him and that he needed to go to the hospital. Ponzio agreed by saying, "I know." Lieutenant Larrabee advised Ponzio several times that they were there to help him and described what he needed to do to get him to the hospital. Ponzio stated he understood and then began yelling, "Just be fucking patient."
5. While I was speaking to Ponzio he was sitting down in the doorway to the office. Firefighter Bresette was in the office near Ponzio's feet trying to gain information from Ponzio. Firefighter Farnham was in the office as well and was near Ponzio's right side. I was on Ponzio's left side in the doorway. After speaking to Ponzio for approximately fifteen (15) minutes, Ponzio appeared to faint and fall to his right side. I stepped in to help Ponzio up. I took Ponzio by his left arm while Firefighter Farnham took Ponzio by his right arm. Firefighter Farnham and I tried to sit Ponzio back up when Ponzio attacked me.
6. Ponzio lunged at me and knocked me to the floor. Ponzio grabbed my testicles and began squeezing as hard as he could. Ponzio also began striking me. Ponzio also was kicking at Firefighter Bresette striking him in the hand. I felt extreme pain during the altercation and on a scale of 1-10 I would rate the pain at a 10.
7. At that time I began to strike Ponzio using front punches. Sergeant Cochran and Corporal Macura came into the office and began to restrain Ponzio. During the altercation Sergeant Cochran ordered me to protect my duty weapon as Ponzio had his hand near my weapon and at one point was touching the magazine well to my duty weapon. Ponzio was restrained by Sergeant Cochran and Corporal Macura. Ponzio was then handcuffed.
8. With Ponzio in handcuffs he was advised by Lieutenant Larrabee that he was going to be transported from the third floor using a chair designed for emergency personnel to bring patients down stairs. Ponzio advised he understood and that he needed a minute. After a short time I advised Ponzio that we needed him to get in the chair. I advised Ponzio that we would help him into the chair. While trying to help Ponzio into the chair he became combative and started resisting. I advised Ponzio to stop resisting several times and he was put in the chair.
9. While Ponzio was in the chair he was wheeled out into the third floor hallway when he became combative again. Ponzio was yelling, "You guys are fucking assholes." Ponzio tried to stand up and tipped the chair over and Sergeant Cochran, Corporal Macura and I restrained Ponzio to the floor. I again ordered Ponzio to stop resisting, while Student Firefighter Timian retrieved a backboard from the ambulance. When the backboard arrived Ponzio was placed face down and strapped several times so he could not move or resist any further. Ponzio was then brought down to the ambulance and transported to the Central Vermont Medical Center. Sergeant Cochran asked me to go to the hospital to be treated for the injuries I sustained during the altercation.
10. The following pictures are accurate pictures of the injuries I sustained during the

Subscribed and sworn to before me on,
This 16 day of March, 2009



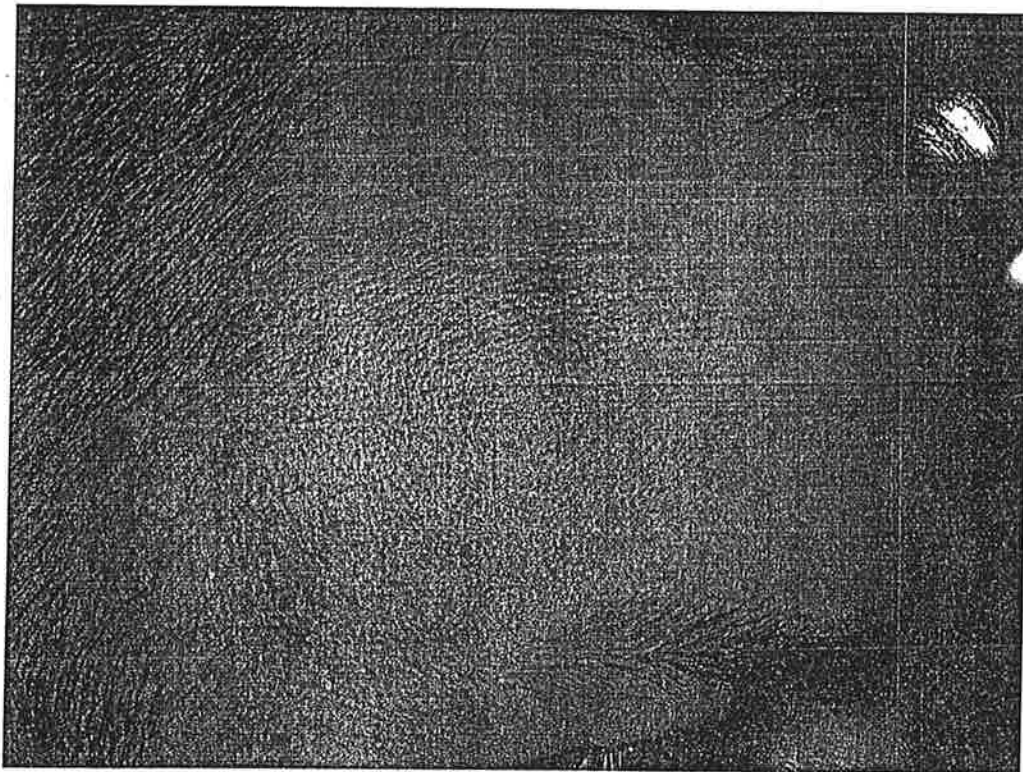
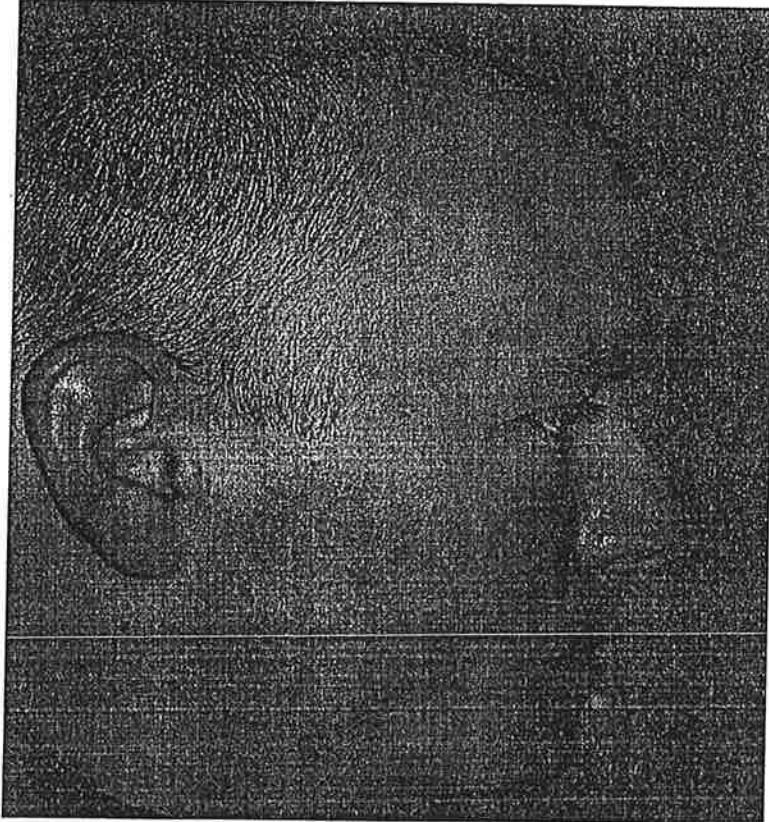
Notary Public



Affiant
3/16/09

Date

altercation with Ponzio.



Subscribed and sworn to before me on,
This 16 day of March, 2009

Notary Public

Affiant
3/16/09
Date



11. The injuries I sustained and was treated for during the altercation were a skin tear to my left ear, a bruise to my forehead and sore testicles. Firefighter Bresette was treated at the hospital as well for the injury he sustained to his left hand.
12. While at the hospital Ponzio had to be restrained to the bed. While I was being treated I could hear Ponzio yelling, "You're all fucking assholes." After being medically cleared by the doctor I went to where Ponzio was. I advised Ponzio that he was being issued a citation for the offenses he committed. Due to Ponzio being restrained and his violent outbursts Ponzio was unable to sign the citation. Ponzio did acknowledge that he understood he had to go to court. After I issued Ponzio his citation he began to spit on the walls and equipment in his area. A spit hood was then place on Ponzio's head.
13. While I was speaking with Sergeant Cochran in the nurse's station, Sergeant Mark Montecito of the Berlin Police Department advised me that Ponzio stated to him that Ponzio was coherent.
14. On March 2, 2009 I met with Philip Gentile (Owner of the Black Door). I asked Gentile to give a sworn written statement. In Gentile's sworn written statement which is attached and referenced as if fully set forth herein, he says the following:
"On Tuesday night February 24 at approximately 8:30 PM, an employee of mine at the Black Door, Chris Ponzio, left his position as bartender at the second floor bar and came up to my office on the third floor complaining of lightheadedness and shortness of breath."

Subscribed and sworn to before me on,
This 16 day of March, 2009


Notary Public

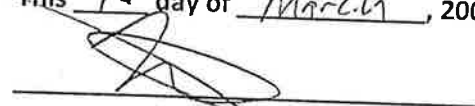

Affiant

3/16/09
Date

He then slumped to the floor leaning against my office door and requested I call 911 immediately for help. I did so while my chef offered Chris some water. We had him lie on his side with a pillow under his head while we awaited the EMT's. They did arrive just several minutes later. The EMT's encouraged Chris to tell them what was going on and how he was feeling. Chris could only articulate in-between his episodes of faintness, and much of what he was saying was incomplete. They offered him help getting into the chair for transport to the ambulance, but Chris became verbally abusive towards the technicians. He threatened them if they touched him, so the EMT crew called for help from the police. They arrived in less than 2 minutes and Officer Kevin Moulton tried reasoning with Chris. It appeared as if they knew one another beforehand. Chris refused to cooperate, verbally swearing then striking out at the officers and techs surrounding him in the office. They wrestled him to the ground, placed his arms behind his back, and placed handcuffs on him. They encouraged him into the chair and as he was exiting the office, he stood up and once again became combative. They wrestled him to the ground once again in the third floor hallway. The EMT's brought in a gurney which allowed them to strap Chris facedown for transport to the hospital. They exited the third floor backdoor, down the stairs to the awaiting ambulance. During this time Chris was awake and conversing."

15. Ponzio was cited to appear in Washington County District Court on April 9, 2009 to answer to the charges of Disorderly Conduct, Assault on Law Enforcement Officer, Assault on Fire Fighter and Resisting Arrest. Ponzio was not fingerprinted or photographed. At this time I would ask the court to have Ponzio appear at the Montpelier Police Department for the taking of his photograph and fingerprints.
16. Based upon the above facts and circumstances there is probable cause to believe that Christopher Ponzio committed the offenses of Disorderly Conduct, Assault on Law Enforcement Officer, Assault on Fire Fighter and Resisting Arrest.

Subscribed and sworn to before me on,
This 14 day of March, 2009



Notary Public



Affiant

3/16/09

Date



1211-09-357584

Supplemental Affidavit
Montpelier Police Department

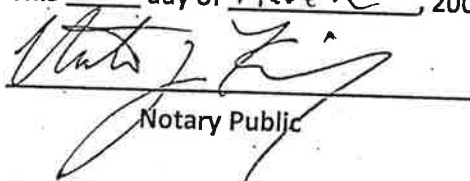
State Of Vermont
Washington County ss.

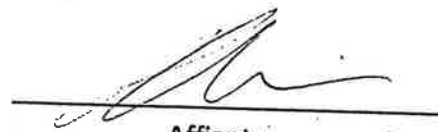
Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says the following:

1. On February 24, 2009 at approximately 2105 hours myself and Montpelier Fire Fighter Nicholas Bresette were involved in a physical altercation with Christopher Ponzio (DOB 2/13/76). Attached and referenced as if fully set forth here in, is the sworn written statement of Fire Fighter Bresette. In Fire Fighter Bresette's statement he says the following:

"On 2-24-09 around 2100 I responded to 44 Main St, The Black Door, for a male with lightheadedness. During assessment Mr. Ponzio became verbally abusive toward MFD crew. We told Mr. Ponzio that if he didn't stop with the abuse Montpelier Police would be called. Mr. Ponzio asked for PD to respond and Lt. Larrabee radioed this to dispatch. MPD showed up with 3 officers. While trying to calm the patient and assisting him off the floor he grabbed an officer around the head. While doing this Mr. Ponzio pushed me away causing me to fall on the ground crushing my left hand between the clipboard I was holding and the floor. After he was restrained with handcuffs by MPD he was standing up and with his back push another officer against the wall. While trying to restrain the patient he kicked his foot at me striking me in the left wrist/lower hand area. I immediately felt a sharp pinch in my left wrist and hand. PT was then restrained by being strapped to a backboard to avoid further injury to himself or others. Upon lifting the PT into the ambulance on the stretcher I instantly felt an even sharper pinch in my left hand causing me to be unable to make a fist. Another firefighter had to lift the patient in cause I was unable to do so. I told my Lt. of the problem I was having with my hand and wrist. He advised me to get evaluated at CVH once we dropped the patient off. PT was transported to CVH to be evaluated. Once I arrived at CVH and was evaluated and X-rays were taken. They showed a possible fracture in the second metacarpal. I was sent home in a splint and unable to work until further evaluation. A subsequent CT scan showed no fracture but damage to the muscle and bone. I missed the rest of my shift along with being unable to work 5 days after."

Subscribed and sworn to before me on,
This 31 day of March, 2009


Notary Public


Affiant
3/31/09
Date

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE:
TTYPS

shift: A

date: 07/29/09 WEDNESDAY

00:00/18

***** RQ 90D QUI-ALCOHOL OR DRUGS*

**rcv*clr*
910 90D

00:56 * 21 MAIN ST MON

*ibr: 1: 312 2: 13P

366344 * DOMESTIC IN PROGRESS

* ID #: 2456

Def: GORSHTein, DIANA

02/12/78

7 MARINERS BEND ERIELLE, NJ 08730-1251

Invo: DALTON, JONATHAN B

10/23/81

PO BOX 210 WASHINGTON, UT

call-back#

229-9043

*** UNIT(S) ***

804 MON P SGT. NORDENSON

r> 00:56 d> 00:56 a> 00:57 c> 04:25 k>

h>

809 * MON P P.O. MACURA

r> 00:56 d> 00:56 a> 00:56 c> 01:51 k>

h>

810 MON P P.O. KACHAJIAN

r> 00:56 d> 00:56 a> 00:57 c> 04:46 k>

h>

817 MON P P.O. BOUCHER

r> 00:56 d> 00:56 a> 00:56 c> 00:56 k>

h>

*** COMMENTS ***

809 MON 00:56:17 CD-910-DOMESTIC IN PROGRESS

804 MON 00:57:00 -23 W/809

809 MON 01:02:00 -99 CA JONATHAN DALTON DOB 11/09/81 OR 10/23/81

809 MON 01:02:00 NEG -99

804 MON 01:02:00 WITNESS VEH IS GOV G413430H.A

804 MON 01:02:00 SUSPECT VEH IS NJ SZK68G.A, VAL 2002 VOLVO

810 MON 01:05:00 HAVE THE FEMALE OPERATOR -95 FOR -55

810 MON 01:05:00 -99 DIANA GORSHTein, NEG -99, VAL IN NJ

804 MON 01:07:00 REQ -21 TO BOBS TO TOW THE NJ VEH -21 MADE

810 MON 01:08:00 -76 TO -19 WITH THAT FEMALE -95 ALSO -7 -19

804 MON 01:25:00 -8 FROM SCENE, BOBS HAS THE VEHICLE

804 MON 01:28:00 REQ -21 TO WCMH SCREENER, -21 MADE

809 MON 01:51:40 -8

809 MON MALE PBT WAS .135

810 MON 02:11:40 GARY THE WCMH SCREENER IS AT -19

810 MON 02:41:54 SCREENER CLEAR OF -19

809 MON 02:47:26 -76 TO BARRE CITY WITH MALE CAR 271 SM 41677

809 MON 03:07:00 -8 MALE AT BARRE CITY FOR DETOX

810 MON 04:13:23 -76 TO BCPD W/FEMALE CAR 276 SM 12217

810 MON 04:24:47 -7 BCPD EM 12223

804 MON 04:25:12 -8

810 MON 04:46:16 -8

810 MON CASE MADE

810 MON INVESTIGATING OFFICER - CPL KACHAJIAN

810 MON SUPERVISOR - SGT NORDENSON

810 MON SUSPECT - DIANA GORSHTein

810 MON CHARGE - DUI, ASSAULT ON AN OFFICER

810 MON CITED - 07/29/2009

AFFIDAVIT

STATE OF VERMONT
WASHINGTON COUNTY, ss.

NOW COMES Corporal David Kachajian, affiant(s), being duly sworn and on oath, deposes and says he has probable cause to believe that Diana Gorshtein (DOB: 2/12/78) has committed the offense(s) of Simple Assault on a Police Officer, a violation of 13, Vermont Statutes Annotated Section 1028 (a)(1).

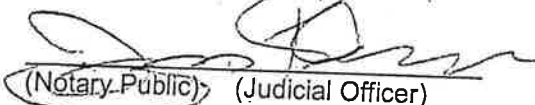
On July 29, 2009 at approximately 2:52 a.m. during the course of completing processing on a female for DUI, I had occasion to observe the suspect, DIANA GORSHTEIN (DOB: 2/12/78), cover up the surveillance camera in her holding cell with toilet paper.

At this point I went to the cell door, which was closed at the time, and asked Ms. Gorshtein several times to remove the toilet paper from the camera. Ms. Gorshtein refused to do so unless I let her smoke a cigarette. Upon her refusal to remove the paper, I entered the cell in order to move Ms. Gorshtein to another holding cell so that I could remove the toilet paper safely. I told Ms. Gorshtein to step out of the cell, which she refused. At this point I placed my hand on her arm and attempted to escort her from the cell. It was at this point that Ms. Gorshtein tried to pull away from me.

As this was happening, a brief struggle ensued between me and the suspect as I was trying to remove her from her cell. After finally moving her out of her cell, Ms. Gorshtein began to scream that I was breaking her arm and continued to struggle. As I attempted to put her into the adjoining cell, Ms. Gorshtein punched me with a closed fist in the right cheek, just underneath my eye. After I was hit, I attempted to get Ms. Gorshtein's arm behind her back so that I could handcuff her. Ms. Gorshtein continued to struggle with me and at that point, we fell down to the ground. As I got up from the floor, Ms. Gorshtein swung at me again and caught me in the right eye with her fingernails, causing my glasses to fly off my face and onto the cell block floor.

Subscribed and sworn to before me on

this 29 day of July, 09


(Notary Public)

(Judicial Officer)


(Affiant)

7/29/09
(Date)

It was at this time that Sgt. Nordenson arrived to assist me in getting Ms. Gorshtein into handcuffs. After a brief, continued struggle on the floor of the cell block, Ms. Gorshtein was handcuffed behind her back (handcuffs double-locked) and then placed back into a holding cell. Due to her assaultive behavior, the handcuffs were left on Ms. Gorshtein to prevent her from assaulting any other officers. As a result of getting struck by Ms. Gorshtein, I had considerable pain in both my left eye and on my right cheek, just below my right eye.

As a result of this incident, Ms. Gorshtein was issued a citation to appear in the Washington County District Court on August 29, 2009 at 12:30 p.m. to be arraigned for the crimes of Simple Assault on a Police Officer and DUI-Criminal Refusal. Bail was also requested on Ms. Gorshtein and was later granted by Court Clerk Paula Tremblay in the amount of \$1000.00. Conditions of release were also set by Ms. Tremblay. I respectfully request that the honorable court command Ms. Gorshtein, on her date of arraignment, as part of her conditions of release, to report to the Montpelier Police Department to be both fingerprinted and photographed. Due to her belligerent and potentially assaultive behavior at the time of his arrest, I did not feel that it would have been safe to attempt to obtain this processing information from the suspect.

Subscribed and sworn to before me on

this 29 day of July, 2009


(Notary Public) (Judicial Officer)


(Affiant)
7/29/09
(Date)

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY28 2

shift: A

date: 08/16/09 SUNDAY

08/16

***** RQ 90D OUI-ALCOHOL OR DRUGS*
00:01 * MEMORIAL DR and I-89 MON
*ibr: 1: 308 2: 13P 3: 312
367308 * 10-80 EPP103.A
*

rcv
176 90D

Invo: HAUGHTON, FRANK B 01/28/65
68 AHRICHBALD ST BURLINGTON, VT 05401
Def: JORDAN, CAROLANN P. 04/26/63
50 B ARCHIBALD ST BURLINGTON, VT 05401

*** UNIT(S) ***

805 MON P SGT. COCHRAN
r> 00:01 d> 00:01 a> 00:01 c> 03:41 k> h>
809 * MON P P.O. MACURA
r> 00:01 d> 00:01 a> 00:01 c> 03:41 k> h>
810 MON P P.O. KACHAJIAN
r> 00:32 d> 00:32 a> 00:32 c> 03:41 k> h>
814 MON P P.O. DION
r> 00:01 d> 00:01 a> 00:01 c> 01:58 k> h>
MAS2 MON A
r> 00:20 d> 00:20 a> 00:20 c> 00:54 k> h>

*** COMMENTS ***

809 MON 00:01:00 CD-176-10-80 EPP103.A
809 MON 00:03:00 VEH IS NOW STOPPED NEAR I-89 ON RAMP
805 MON 00:03:00 805,814 -76 HIS LOCATION
809 MON 00:07:00 -27 FEMALE RO, VAL REIN W/PRIORS
809 MON 00:07:58 BE OUT SCREENING
814 MON 00:13:05 -99 FRANK HAUGHTON DOE 01/28/1965, HE IS 99 IN
814 MON 00:14:00 BURLINGTON VT
805 MON 00:18:00 HAVE MR HAUGHTON -95 HE DOESN'T HAVE THE BAIL
805 MON 00:18:00 OF \$72
805 MON -21 TO BURLINGTON PD FOR COPY OF WARRANT, THE WARRANT IS
805 MON ACTUALLY FROM WINOOSKI AND IN CHITTENDEN COUNTY EACH PD IS
805 MON NOW THEIR OWN HOLDING STATION, BURLINGTON PD TRANSFERED
805 MON DISPATCH TO WINOOSKI, THEY CONFIRMED THE WARRANT AND FAXED
805 MON A COPY OF THE WARRANT
814 MON 00:20:00 REQ MAS RESP HAVE A FEMALE UNRESPONSIVE
814 MON 00:20:00 BREATHING
MAS2 MON 00:20:00 TONE FOR MAS
MAS2 MON 00:23:00 MAS2 RESP
814 MON 00:24:00 REQ -21 TO BOBS FOR VEHICLE
809 MON 00:28:00 HAVE THAT FEMALE -95 FOR -55 ALSO RESISTING AND
809 MON 00:28:00 SAPO
805 MON 00:30:00 ADV CAROLANN IS BEING COMBATATIVE TRY TO KICK OUT
805 MON 00:30:00 WINDOW IN EQ 276
809 MON 00:30:00 -76 TO -19 WITH THAT FEM CAROLANN -95 SM 12969
809 MON 00:32:00 -7 -19 EM 12970
810 MON 00:32:00 -7 -19 WITH 809
814 MON 00:32:00 -21 TO BOBS FOR TOW, THEY ARE -76
805 MON 00:32:00 FORM 356 SENT TO WINOOSKI FOR HAUGHTON WARRANT
814 MON 00:49:00 HAVE 2ND FEMALE -95 FOR PC-DETOX -81 .175
814 MON 00:49:00 -99 SUZANNE LEDUC BORN IN 1969 RAN FORM 221
814 MON 00:49:00 FOUND 1 SUZANNE LEDUC BORN IN 69 PID 61216421

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 9

shift: A

date: 08/16/09 SUNDAY

08/16/09

*** COMMENTS ***

814 MON 00:49:00 AND SHE IS NEG 99, -21 TO BARRE CITY
814 MON 00:49:00 TO SEE IF THEY HAVE ROOM, THEY DO, -21 TO WCMH
814 MON 00:49:00 FOR SCREENER, JIM IS -76 TO BCPD TO MEET 814
814 MON 00:52:00 -76 TO BARRE CITY SM 97883 CAR 275
MAS2 MON 00:52:00 MAS2 CLEAR RETURNING NO TRANSPORT
MAS2 MON 00:54:00 MAS2 BIQ
805 MON 00:55:00 -8 FRANK HAS BEEN DROPPED OFF AT BCPD
805 MON WARRANT PAPERWORK FILED IN PSW 09 FOLDER, WITH COPY OF Q
805 MON SHEET
814 MON 01:58:32 -8 SHE FEMALE SUZANNE HAS BEEN DROPPED OFF AT
814 MON 01:58:53 BARRE CITY
814 MON CASE MADE
814 MON INV OFFICER - PTLM MACURA
814 MON SUPERVISOR - SGT COCHRAN
814 MON SUSPECT - CAROLANN JORDAN
814 MON CHARGE - DUI, RESISTING ARREST, ASSAULTING AN OFFICER
814 MON CITED -
809 MON 02:45:34 -76 TO SAINT JOHNSBURY WITH CAROLANN
805 MON 02:46:25 -76 WITH 809
809 MON 03:41:10 -8 CAROLANN HAS BEEN DROPPED OFF AT ST JOHNSBUR
809 MON 03:41:31 JOHNSBURY CCC EM 13009
809 MON 04:20:51 -61
809 MON VIDEO REQUEST RECIEVED AND VIDEO'S MADE AND SUBMITTED TO
809 MON WCSA'S OFFICE ON 9/9/09.
809 MON
809 MON REQUEST FROM SA'S OFFICE FOR VIDEO OF PROCESSING. THEY
809 MON ADVISED THE PREVIOUS COPY DID NOT CONTAIN THE PROCESSING
809 MON VIDEO'S. NEW DVD MADE OF ALL THE VIDEOS'S FOR BOTH THE
809 MON SA'S OFFICE AND DEFENSE. THESE ALONG WITH DIRECTIONS ON HOW
809 MON TO VIEW THEM HAVE BEEN PLACED IN THE SA'S FOLDER.

officer's signature

date

1211-09-367308
Montpelier
Police Department

AFFIDAVIT

STATE OF VERMONT
Washington COUNTY, ss.

Now comes Officer Joshua Macura, affiant, being duly sworn and on oath, deposes and says he has probable cause to believe that Carolann P. Jordan DOB: 04/26/1963 has committed the offense of Driving While Intoxicated (3) a violation of Title 23 VSA § 1201 (a) (2), Resisting Arrest a violation of Title 13 VSA § 3017, Assault of Law Enforcement Officer a violation of Title 13 VSA § 1028, Contempt of Court a violation of Title 13 VSA § 7559e and Disorderly Conduct in violation of Title 13 § 1026.

1) On August 16, 2009 at approximately 12:01 AM while westbound on Memorial Drive I observed a 2004 Ford van bearing VT registration EPP103 travelling westbound in the left lane. The Ford van was the lead vehicle and was travelling at approximately 25 mph in the posted 35 mph speed zone. The road conditions were good but I noticed the van's right signal was on and was not changing lanes. After approximately 200 feet the van began to slowly change lanes and after approximately 150 feet moved into the right lane. After doing this one of the vehicles following the van continued in the left lane accelerating to the posted speed limit and passing the van. While following the van I noticed it was still being operated at approximately 25 mph and was weaving slightly in the lane. The van would start to cross the white line then move back into the lane slightly and then back towards the white line. I also noticed the right rear taillight lens was broken and was emitting white light rather than red light. I activated my blue lights at the start of the turn lane for Dog River Road and saw no indication that the driver was preparing to pull to the side of the roadway. I then activated my siren and after approximately thirty three (33) seconds the vehicle pulled to the side of the roadway. Memorial Drive is a public highway as defined in Title 23 and was open to the general flow of traffic at the time.

2) While speaking with the driver I noticed an odor of intoxicants and an open 24 ounce can of *"The Original Twisted Tea Hard Iced Tea"* containing 5% alcohol by volume on the front passenger seat floor. The can was in the upright position in the middle of the floor area and had nothing around it to hold it in place. The driver identified herself as Carolann P. Jordan. Later through a DMV check I was able to determine her DOB is 04/26/1963. Jordan advised me she had not consumed anything alcoholic that day. Jordan advised me she was coming from White River Junction. When I asked her what route she had taken she advised me she had used the "road" and was coming from the Friendly's Restaurant. I then asked Jordan for her license, registration and proof of insurance. Jordan began going through some paperwork in her glove box and handed me proof of insurance. Jordan began to apologize to me but I was unable to determine what she was sorry for. I again asked Jordan for her license and registration and she advised me I had her registration. I advised Jordan I had her proof of insurance. Jordan began looking through a bag and then advised me she did not have her license with her. I asked Jordan if she had any form of identification with her and she advised me, "what you don't believe me my name is Carolann Jordan." Jordan went on to advise me she did not have any identification with her.

3) Before returning to my car I asked Jordan if I could have the open hard iced tea can. Again Jordan apologized and handed me the can. I noticed the can was approximately 1/3 full. After conducting a records check I asked Jordan to exit the vehicle so I could conduct some field sobriety exercises with her. I conducted the HGN exercise and then was advised by Jordan after explaining the walk and turn and one leg stand exercise that she cannot perform them. While explaining the walk and turn exercise Jordan was unsteady and started the exercise before I advised her to begin. Jordan also used her arms for balance while standing in place and when she did start the exercise early did not touch heel to toe. I asked Jordan numerous times to stand at

the rear of her vehicle on the white line which I pointed to. Jordan failed to do this and numerous times started walking into the travel portion of the lane. I then asked Jordan if she can count and she advised me she couldn't. I next asked Jordan for a sample of her breath and she advised me she did not want to give one.

4) I then advised Jordan that she was under arrest for suspicion of driving under the influence. Corporal David Kachajian of the Montpelier Police Department and I placed Jordan in handcuffs which were double locked and checked for tightness. I asked Jordan if she had any knives, needles or anything that will hurt me on her. Jordan refused to answer. Moments after starting my search of Jordan, she began to get agitated and started to resist. Jordan was advised to stop resisting and to hold still. Jordan began to yell while twisting away from Corporal Kachajian and me and then kicked Corporal Kachajian in the left calf. Corporal Kachajian advised me on a scale from 1-10 10 being the worst pain he had ever felt he put the pain from the kick at a 4 and advised me "that really hurt".

5) Upon completing the search Jordan was escorted back to the cruiser. During the walk back to the cruiser Jordan continued to yell and twist from our grasp. Jordan was placed in the back seat of the cruiser and within a minute had positioned herself on her back and began yelling and kicking the back door glass window with both feet. I opened the back door and advised Jordan to stop kicking the window and that if she broke it additional charges would be filed. After shutting the door I began to prepare to transport Jordan back to the police department. While Jordan continued to yell she again began to kick the back door glass window with both feet. I exited the cruiser and opened the back door pulling Jordan towards me and away from the window. Jordan then began pushing with her feet against the seat eventually pushing herself out of the cruiser and onto the roadway. At this time traffic proceeding west bound came to a stop as Jordan had pushed her and me into the travel portion of the roadway. Jordan was then placed in leg shackles and placed back into the cruiser.

6) Upon arriving at the Montpelier Police Department I asked Jordan to exit the vehicle. Jordan refused to do this and so Corporal Kachajian and I removed Jordan from the cruiser. Jordan refused to stand up and so she was pulled into a holding cell. Jordan was read Miranda and advised me "I want a lawyer". When asked if she wanted to talk to me now Jordan advised me "I want my attorney". At approximately 1:11 AM I contacted the on call public defender Sarah Kouassi. At approximately 1:20 AM Jordan finished speaking with Kouassi. Jordan advised me she wanted to speak with her attorney Bud Allen but did not know his number. Corporal Kachajian was able to locate a phone number for Allen and a message was left at his office at approximately 1:22 AM. Jordan requested that I contact another attorney for her but she was unable to tell me the phone number to call. At approximately 1:46 AM I asked Jordan five (5) times if she would give me a sample of her breath as evidence. Jordan advised me I needed to read her rights to her and that she wanted her attorney. After the fifth (5) time I advised Jordan I would consider her not answering me as a refusal.

7) I then asked Jordan for her current mailing and residential address. Jordan advised me she wanted her lawyer. I then asked Jordan if she was currently on active duty in the armed forces and Jordan advised me yes. When asked for Jordan's Command Unit, Service Branch and Service Number Jordan advised me "a lady".

8) A review of Jordan's criminal history shows on 03/24/1992 a conviction for DWI 1 and on 11/8/2003 a conviction for DUI 2 and on 08/05/2009 a charge for DUI 3. Jordan's criminal history also shows 11 prior failure to appear charges, 1 assault on a police officer, 1 violation of conditions of release and 1 resisting arrest. Officer Ron Dion advised me while he was transporting one of the occupants from Jordan's vehicle he referred to Jordan as Nancy. At this

time I have not been able to positively identify Jordan. I have contacted four (4) different agencies (Lebanon NH PD, Burlington VT PD, VT Probation and Parole and Berlin VT PD) and have yet to obtain a photo of Jordan.

9) At approximately 2:00 AM I contacted Court Clerk Carolyn Hutchinson who set the following conditions:
You must give the court bail as follows: C. A secured appearance bond in the amount of \$1000.00.

1. You must come to court when you are told to.
 2. You must give your attorney or the court clerk your address and phone number. If it changes you must tell them immediately.
 3. You must not be charged with or have probable cause found for a new offense while this case is open.
 8. You cannot drive any motor vehicle, including a car, truck, or motorcycle unless you have a valid driver's license, one that is not suspended or expired or revoked.
 12. You must not buy, have or drink any alcoholic beverage.
 16. You must come to court on August 18, 2009 at 12:30 PM.
- Other Conditions: Hold until zeros or bail.

10. A review of Courts Online shows court conditions were set by the Honorable Patricia Zimmerman. The following conditions were set on 8/5/2009:

1. You must come to court when you are told to.
2. You must give your attorney or the court clerk your address and phone number. If it changes you must tell them immediately.
3. You must not be charged with or have probable cause found for a new offense while this case is open.
7. You cannot drive any motor vehicle, including a car, truck or motorcycle.
12. You must not buy, have or drink any alcoholic beverage.
31. Other Conditions Deft. To meet with Howard for an assessment on Friday 8/14 @ 1pm.

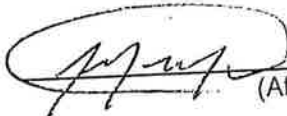
8) Carolann P. Jordan DOB: 04/26/1963 was transported to the St. Johnsbury Correctional Facility on 08/16/2009. Jordan was cited to appear in Washington District Court on August 18, 2009 at 12:30 PM to answer to the charges of Driving While Intoxicated, Resisting Arrest, Assault of Law Enforcement Officer, Contempt of Court and Disorderly Conduct.

9) On 08/17/2009 at approximately 7:40 PM the Honorable Kathleen M. Manley was contacted due to Jordan possibly being held at the St. Johnsbury Correctional Facility for more than 48 hours. The Honorable Kathleen M. Manley advised me she found probable cause to hold Jordan until her court date on 08/18/2009. St. Johnsbury Correctional Facility was contacted with this information and a copy of this affidavit was faxed to the facility. Due to Jordan's aggressive behavior fingerprints and a photograph have not yet been taken for this offense. Jordan also refused to provide any biographical information.

Subscribed and Sworn to before me on

This 18 day of August, 2009


(Notary Public) (Judicial Officer)


(Affiant)
8/18/09
(Date)

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 2

shift: C

date: 08/16/09 SUNDAY

***** RQ 90D OUI-ALCOHOL OR DRUGS*

**151 50D

20:59 * X STATE ST and ELM ST MON

*ibr: 1: 151 2: 13P 3: 308

367337 * ERRATIC OPERATIVE VEH TURNING ONTO ELM

56161

* ID #: 5420

48 -9

Def: HOLTER, GAYLE

04/26/59

10 CROSS ST MONTPELIER, VT 05602

Wit: SANCES, ZACHARY A

10/18/66

PO BOX 141 E MONTPELIER, VT 05651

call-back#

839-9674

*** UNIT(S) ***

805 MON P SGT. COCHRAN

48 -48

r> 21:21 d> 21:21 a> 21:22 c> 21:45 k> h>

809 MON P P.O. MACURA

48 -48

r> 20:59 d> 20:59 a> 20:59 c> 21:45 k> h>

813 * MON P P.O. MOULTON

48 -48

r> 20:59 d> 20:59 a> 20:59 c> 23:59 k> h>

814 MON P P.O. DION

48 -48

r> 23:35 d> 23:35 a> 23:35 c> 23:59 k> h>

MAS1 MON A

48 -48

r> 22:50 d> 22:50 a> 22:52 c> 23:52 k> h>

*** COMMENTS ***

813 MON 20:57:20 CD-151-ERRATIC OPERATING VEH TURNING ONTO ELM

48 -48

813 MON 20:57:34 GRAY VOLVO VT TEMP D32567 TURNED ONTO SCHOOL, THEN

48 -48

813 MON 20:57:49 ONTO MAIN, RAN STOP SIGN. TURNED ONTO LANGDON,

48 -48

813 MON 20:58:07 TRYING TO PARK, WAY UP ON CURB, TALKING WITH HER

48 -48

813 MON 20:58:17 COMP SAYS SEEMS REALLY INTOXICATED

48 -48

813 MON 20:59:28 -23

48 -48

813 MON 21:02:08 27/99 VT 92392821 NEG 99 SUSP CIVIL FOR "IP"

48 -48

809 MON 21:02:31 -23 WITH 813

48 -48

813 MON 21:03:26 27/99 92385361 VAL/NEG99 IS EX HUSBAND/WITNESS

48 -48

813 MON 21:06:08 OUT SCREENING

48 -48

809 MON 21:20:56 REQ ANOTHER UNIT 805 EN RT

48 -48

805 MON 21:21:03 -76

48 -48

805 MON 21:22:33 -23

48 -48

809 MON 21:23:33 1120/21

48 -48

813 MON 21:24:29 -76 W/HER 10-95 S/M 42698 EQ 271

48 -48

809 MON 21:26:51 -7 PD WITH HER

48 -48

813 MON 21:44:48 ON WITH PUB DEF BRIAN MARSCIVOTERE/MIC OFF

48 -48

813 MON 21:47:57 OFF PHONE WITH PUB DEF / MIC ON

48 -48

813 MON 22:04:29 BECOMING SLIGHTLY AGITATED DURING FINGERPRINTS

48 -48

813 MON 22:04:41 728 REQ 814 STAND BY IN CASE OF PROB/CALMED

48 -48

813 MON 22:21:36 BECAME COMBATIVE WHEN 809 ATTEMPTED TO MOVE

48 -48

813 MON 22:21:55 HER TO CELL AFTER SHE WAS GOING THROUGH DESK

48 -48

813 MON 22:22:09 IN INTERVIEW ROOM. NOW IN SECURE CELL, POUNDING

48 -48

813 MON 22:22:22 ON DOOR.

48 -48

813 MON 22:28:04 STILL SCREAMING, KICKING DOOR REPEATEDLY.

48 -48

813 MON 22:40:09 COVERING UP CELL VIDEO CAMERA AGAIN

48 -48

813 MON 22:46:30 805 AND 814 RESTRAINING HER TO KEEP HER FROM

48 -48

813 MON 22:46:46 CLIMBING UP ON THE BENCH AND COVERING THE

48 -48

813 MON 22:46:54 CAMERA, RESISTING, KICKING / SCREAMING

48 -48

813 MON 22:48:52 SHE REQ AMBULANCE / TONED MAS

48 -48

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TYPE

shift: C

date: 08/16/09 SUNDAY

*** COMMENTS ***

MAS1 MON 22:50:04 CREW EN RT ON FOOT / WILL TRANSPORT IF NEEDED

MAS1 MON 22:52:39 EMT ON SCN

MAS1 MON 22:57:28 MAS2 ON SCN

MAS1 MON 23:27:33 MAS2 CLR EN RT CVH

814 MON 23:30:31 EN RT TO CVH FOLLOWING MAS

MAS1 MON 23:35:30 ARR CVH

814 MON 23:35:42 OUT AT CVH W/MAS

MAS1 MON 23:52:07 CLR THIS CALL, RETURNING WITH TRANSPORT

814 MON 23:59:59 CLR END OF SHIFT

813 MON 23:59:59 CLR END OF SHIFT

813 MON

813 MON CASE MADE

813 MON INVESTIGATING OFFICER - PTLM MCULTON

813 MON SUPERVISOR - SGT COCHRAN

813 MON SUSPECT - GAYLE HOLTER

813 MON CHARGES - DUI, SIMPLE ASSAULT ON AN OFFICER, RESISTING

813 MON ARREST

813 MON CITED - TUES AUGUST 18TH 2009

813 MON

814 MON 01:13:00 -76 TO ST JOHNSBURY WITH THAT FEMALE FROM CVH

814 MON CAR 275 SM 97916 WITH 819 AND 2ND OFFICER

814 MON -8 EM 97956

814 MON

813 MON ON 9/9/09 I RECEIVED A REQUEST FROM ATTORNEY ROBERT

813 MON SHEFTMAN FOR VIDEOS RELATING TO THIS INCIDENT. COPIES WERE

813 MON MADE AND BURNED TO DISCS AT 0021 HOURS ON 9/9/09. THE

813 MON DISCS HAVE BEEN PLACED INTO THE SA'S FOLDER FOR DISCOVERY.

813 MON THE ENCLOSED CHECK WAS PLACED INTO LU ANN BROWNELL'S MAIL

813 MON BOX.

officer's signature

date



1211-09-367337
Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Gayle A. Holter** DOB: 04/26/1959 has committed the offense(s) of **Driving While Under the Influence** in violation of Title 23, Vermont Statutes Annotated, Section 1201 (a) (2); **Resisting Arrest** in violation of Title 13, Vermont Statutes Annotated, Section 3017 and **Simple Assault on a Law Enforcement Officer** in violation of Title 13, Vermont Statutes Annotated, Section 1028.

Based on the following facts:

1. On August 16, 2009 at 2057 hours I was on duty for the Montpelier Police Department. At that time the Montpelier Police Department's dispatch advised me of a vehicle that was being operated in an erratic manner. The complainant was identified as Coleen Austin (DOB 6/4/1967).
2. According to Austin, she and her husband Joel Austin (DOB 12/19/1967) were travelling West on Route 2 near Mekklesen's RV Center located at 2419 Route 2 in the Town of East Montpelier, Vermont. Austin advised that she observed a vehicle in the wrong lane of Route 2 and initially thought the operator had made a U-turn. Austin advised she was following the vehicle and observed it travel off the road surface several times and onto the dirt shoulder before the intersection of Route 2 and Towne Hill Road. Austin stated the vehicle turned right onto Towne Hill Road and again travelled off the right side of the roadway.
3. Austin further stated that as the vehicle continued travelling west on Towne Hill Road it crossed the center line into the other lane and then swerved back into the correct lane and then off the right side again. Austin claimed that they continued to follow the vehicle down Towne Hill Road and the vehicle almost struck a mailbox. Austin advised the vehicle did not stop for the stop sign at the intersection of Main Street and Towne Hill Road. Austin further stated that as they followed the vehicle down Main Street it almost struck a parked car.
4. Austin stated that they continued to follow the vehicle as she was on the phone with 9-1-1 advising them of the situation. Austin stated that the vehicle drove around the block and then pulled into Langdon Street where the vehicle pulled into a parking space. Austin advised that her husband pulled up next to the vehicle and spoke with the female operator. Austin advised that while her husband was speaking to the operator, the operator claimed that she needed help finding the light switch. Austin said, "It was obvious that she was impaired." Austin went on to say that at that time she saw the blue lights of my cruiser and they left the area.

Subscribed and sworn to before me on,
This 17 day of August, 2009



Notary Public



Affiant
8/17/09

Date

5. As I arrived at Langdon Street, I observed a 1985 Volvo 240 bearing Vermont (temporary) registration D32567 parked on the South side of Langdon Street in the City of Montpelier, Vermont. I observed a female sitting in the driver's seat. The female operator was identified by a suspended Vermont Operator's license as Gayle Holter (DOB 04/26/1959). All of the previously mentioned roads and streets are public highways and were open to the general flow and circulation of traffic at the time of the incident.
6. I advised Holter of the call we had received about her erratic operation. I asked Holter if she had any alcohol to drink and she stated she did not. I observed Holter's eyes to be watery and bloodshot. Holter's speech was also slurred. I detected a faint odor of intoxicants coming from Holter's person. At that time I asked Holter if she would perform field sobriety exercises and she consented.
7. The exercises were performed on the sidewalk. The exercises were performed in accordance with my training at the Vermont Police Academy. The results of the field sobriety tests are located on the DUI-Infrared affidavit.
8. Upon unsatisfactorily performing the field sobriety exercises, I asked Holter if she would submit to a preliminary breath test and she declined. I advised Holter that she was being placed under arrest for the suspicion of DUI. I asked Holter to turn around and place her hands behind her back. Holter began to walk away. I grabbed Holter's arm and told her that she was under arrest. Holter began to resist. I ordered Holter to stop resisting. At that time myself and Officer Josh Macura (of the Montpelier Police Department) were trying to gain control of Holter by using rear wrist locks. Holter continued to resist by swinging her arms and not letting me place her in handcuffs.
9. At that time, Holter was brought to the ground using an arm bar takedown. While Holter was on the ground she continued to resist and I repeatedly ordered her to stop resisting. I eventually was able to gain control of Holter and place her into handcuffs. The handcuffs were checked for proper fit and double locked. Officer Macura and I helped Holter to her feet and escorted her to my cruiser. When we got to the cruiser and opened the door, Holter began to resist further. Holter then kicked her foot at me and grazed my groin. I immediately felt the kick and on a scale of 1 -10 the pain I felt was at a level of 3. I advised Holter that I would also be charging her with Simple Assault on a Police Officer. After securing Holter in my cruiser I spoke to Holter's ex-husband Zachary Sances (DOB 10/18/1966). I asked Sances how much alcohol Holter had consumed. Sances advised that Holter had not consumed a lot of alcohol, but that what she did consume, mixed with the medications she was taking, was making her act like that.
10. Holter was then transported to the Montpelier Police Department for processing. While at the Montpelier Police Department Holter refused to give a sample of her breath as evidence. Holter signed the DUI-Infrared affidavit stating that she refused to speak to an attorney prior to making her decision to refuse the evidentiary test. At that time I contacted the on-call attorney anyways. The on-call attorney contacted was Brian Marsicovetere.

Subscribed and sworn to before me on,
This 17 day of August, 2009



Notary Public



Affiant
8/17/09

Date

11. I advised Holter that I had the on-call attorney on the phone for her to speak to. I asked Holter if she would like to talk to him. Holter agreed to talk to attorney Marsicovetere. After Holter spoke to attorney Marsicovetere, I asked her if she would give a sample of her breath as evidence. At that time Holter refused to submit to the evidentiary test.
12. Throughout my involvement with Holter I noticed her behavior to fluctuate from calm to extremely combative. Holter repeatedly advised me of her mental status stating that she suffers from an extreme Post Traumatic Stress Disorder. I advised Holter that I was doing everything I could to de-escalate the situation and keep her calm.
13. Holter was brought into the processing room from the interview room while I performed the infrared test that Holter refused. Holter was fingerprinted and photographed. Holter was then brought back into the interview room to complete the processing. While in the Interview Room Holter again became irate and was eventually moved into a cell. While in the cell Holter became out of control. Holter was climbing on the bench and beating on the door. For Holter's safety she was handcuffed to the bench.
14. Holter then asked for an ambulance. At that time I advised dispatch to have the Montpelier Fire Department respond to the police department for Holter. Holter was then transported to the Central Vermont Medical Center for treatment of her injuries she allegedly sustained while resisting arrest. Those injuries include abrasions to her elbow, knee, and a cut on her finger. Holter continually complained about the handcuffs being too tight. I advised Holter that the handcuffs were properly secured. I also advised Holter that I could fit my finger between her wrists and the handcuffs.
15. I called Washington County District Court clerk Paula Tremblay to have conditions and bail set for Holter. Tremblay set bail at \$500.00. Conditions set by Tremblay are the following:
1. *You must come to court when you are told to.*
 2. *You must give your attorney or the court clerk your address and phone number. If it changes, you must tell them immediately.*
 3. *You must not be charged with or have probable cause found for a new offense while this case is open.*
 12. *You must not buy, have or drink any alcoholic beverages.*
 16. *You must come to court on Tuesday August 18, 2009 at 12:30 PM.*
 31. *No release without blowing .000% BAC.*
16. Based upon the above facts and circumstances there is probable cause to believe that Gayle Holter committed the offenses of Driving While Under the Influence, Resisting Arrest, and Simple Assault on a Law Enforcement Officer.

Subscribed and sworn to before me on,
This 17 day of August, 2009



Notary Public



Affiant
8/17/09

Date

06/24/11 18:00
v5.5o

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 3

shift: C

date: 10/03/09 SATURDAY

01:13

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A

23:07 * X NORTHFIELD ST and COLONIAL DR MON

*ibr: 1: 176

369985 * 75 W/ ETB270/ NORTHFIELD & COLONIAL DR

* ID #: 5397

: 805,

Oper: KAMBEROVIC, AJDIN

11/08/87

98 CEDAR HILL MONTPELIER, VT 05602

*** UNIT(S) ***

805 * MON P SGT. COCHRAN

r> 23:07 d> 23:07 a> 23:07 c> 23:59 k> h>

809 MON P P.O. MACURA

r> 23:08 d> 23:08 a> 23:08 c> 23:59 k> h>

812 MON P P.O. BEAN

r> 23:22 d> 23:22 a> 23:22 c> 23:36 k> h>

*** COMMENTS ***

805 MON 23:07:38 CD-176-75 W/ ETB270/ NORTHFIELD & COLONIAL DR
805 MON 23:09:50 28/ EXPIRED SEPT 09/ 27/RO/SUSP/CIVIL
805 MON 23:08:00 27/MADELINE MILLER/NO LICENSE
805 MON 23:13:00 21 BOBS FOR TOW/ AWD SUBARU OUTBACK/21 MADE/76
809 MON 23:08:00 W/ 805
809 MON 23:14:00 PUT SOMETHING IN LEFT BOOT
809 MON 23:17:00 00/99 W/SUBJECT
812 MON 23:22:17 W/ 805 & 813/ STARTING 0099 WITH THE CAR
812 MON 23:36:45 10-8
805 MON 23:47:31 F IS 10-95 FOR ASSAULT ON PO/809
805 MON 23:50:00 10-8/ 76 TO 19
809 MON 23:50:00 76 TO 19 W/ 10-95/ EQ 276/ SM/ 15466
809 MON 23:53:00 AT 19 W/ 10-95/ EM/ 15467
809 MON 23:56:00 I/P MALE & OLDER F RE THIS CASE
809 MON 23:59:50 SEE CONTINUED
809 MON STOP WAS FOR DE/ TICKET ISSUED FOR OSC
809 MON
809 MON CASE MADE - SIMPLE ASSAULT ON POLICE OFFICER
809 MON INVESTIGATING OFFICER - PTLM MACURA
809 MON SUPERVISOR - SGT COCHRAN
809 MON SUSPECT - MADELINE MILLER
809 MON SEE CONTINUED 369986

officer's signature

date

**Montpelier Police Department Referral to
Montpelier Community Justice Center Restorative Justice Alternative**
Please fill in as much information as is known

Name: Madeline M. Miller _____ DOB: 09/11/1992 _____ Age: 17 _____

Address: 1556 Chandler Road West Berlin, VT 05663 _____

Phone: H 802-223-0005 _____ W _____ Cell: 802-272-7812 _____

Parent/Guardian (if minor): Grandparent (temp guardian) Betty Miller Mom is a WCMF patient _____

Address, if different from above _____

Phone: H- 802-272-7667 _____ W _____ Cell _____

Offense: Assault on a Police Officer, Possession of Regulated Drug Marijuana Date of Offense:
10/4/2009

Description of Offense (or attach affidavit): During a traffic stop Miller was advised her backpack was being seized but she refused to surrender it. Upon attempting to remove it she began to resist and Sgt. Cochran lost control of her right hand and she began to punch me in the chest. Miller was restrained and placed under arrest. A search of her backpack revealed 10 grams of marijuana. Miller admits that she is a recovering addict. From what I am told her drug of choice use to be heroine. Miller had tobacco in her bag along with Q-tips a spoon and a white plate along with water and lighters. All items are commonly used by drug users.

Has the person been informed of the referral? Yes X No _____ If so, date 10/4/2009 _____

Victim's Name: Society and Officer Macura _____ DOB NA _____ Age NA _____

What contact has your office had with the victim? 24 involvements and 2 arrests with Montpelier Police
Department _____

REFERRED BY Officer Macura _____ Phone 802-223-3445 Email jmacura@montpelier-vt.org

Date of Referral 10/4/2009 _____

Submit to: Montpelier Community Justice Center
39 Main Street, City Hall; Montpelier, VT 05602
ybyrd@montpelier-vt.org
FAX: 223-9529 Phone: 223-9606

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE 1
TTY: 1

shift: C

date: 12/11/09 FRIDAY

orig/ls

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
23:15 * 108 MAIN ST MON
*ibr: 1: 186
373677 * REPORT OF MALE THAT WENT THROUGH FRONT WINDOW
* ID #: 2591
Def: LEVI, MELCHIZEDEK

**rcv*clr*
186 13P

053 40

722 9

11/10/87

2541 E 73RD ST CHICAGO, IL 60649

call-back# (802) 223-8277

*** UNIT(S) ***

804 MON P SGT. NORDENSON

r> 23:26 d> 23:26 a> 23:26 c> 23:56 k> h>

809 MON P P.O. MACURA

r> 23:46 d> 23:46 a> 23:46 c> 23:46 k> h>

810 MON P P.O. KACHAJIAN

r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>

813 MON P P.O. MOULTON

r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>

814 MON P P.O. JENNINGS

r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>

818 MON P P.O. TRUHAN

r> 23:17 d> 23:17 a> 23:17 c> 23:56 k> h>

MAS1 * MON A

r> 23:15 d> 23:15 a> 23:17 c> 23:56 k> h>

MAS2 MON A

r> 23:26 d> 23:26 a> 23:32 c> 23:43 k> h>

*** COMMENTS ***

MAS1 MON 23:15:50 CD-13P-REPORT OF MALE THAT WENT THROUGH FRONT
MAS1 MON WINDOW, WENT HEAD FIRST THROUGH THE GLASS.

813 MON 23:17:21 -23

MAS1 MON 23:17:24 A1 O/S

818 MON 23:17:42 -23

810 MON 23:17:53 -23

MAS1 MON 23:23:31 ENROUTE TO CVH

810 MON 23:24:07 MALES IN CUSTODY, ALL UNITS WILL BE -76 TO

810 MON 23:25:38 BACK TO DECON.

810 MON 23:25:00 MAS ENROUTE TO THE PD FROM CVH.

804 MON 23:26:00 BE -76 TO CVH AS WELL, 814 IS IN THE AMBULANCE

804 MON 23:26:00 275 IS ON THE SIDE OF THE STREET.

MAS1 MON 23:29:00 12A1 ARRIVED CVH.

804 MON 23:30:23 OUT AT CVH

MAS2 MON 23:32:19 12A2 ON SCENE.

MAS2 MON 23:43:24 12A2 CLEAR AND BIQ.

809 MON 23:46:55 PICKED UP 275 AND BROUGHT IT BACK TO -19.

MAS1 MON 23:50:04 12A1 R/Q

804 MON 23:50:00 MALE SAYS HE'S LEVI SAMIR SALIM MELCHIZEDEK

804 MON 23:50:00 11/10/1987

804 MON 23:50:00 IL ID, 10055787320L, ERROR FROM IL,

804 MON 23:50:00 RAN BY NAME/DOB, NOT ON FILE

804 MON 23:50:00 NOTHING COURTS ONLINE/BCPD NO RECORD EITHER

MAS1 MON 23:56:46 12A1 BIQ.

MAS1 MON

MAS1 MON 12/14/2009 - 15:19 MR LEVI AT -19 FOR ITEMS, ALL ITEMS

06/24/11 18:00
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 49

shift: C

date: 12/11/09 FRIDAY

org/ls:

*** COMMENTS ***

MAS1 MON RETURNED TO HIM, HE CHECKED EVERYTHING AND SIGNED Q SHEET
MAS1 MON SIGNED Q SHEET PLACED IN MISC FOLDER

7:11
7:11 7:11

officer's signature

date



1211-09-373677

Affidavit

Montpelier Police Department

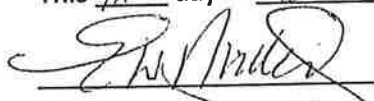
State Of Vermont
Washington County ss.

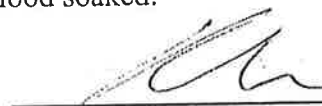
Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Melchizedek Levi** DOB: 11/10/1987 has committed the offense(s) of **Disorderly Conduct** in violation of Title 13, Vermont Statutes Annotated, Section 1026 and **Simple Assault on a Law Enforcement Officer** in violation of Title 13, Vermont Statutes Annotated, Section 1028.

Based on the following facts:

1. On December 11, 2009 at approximately 2315 hours I was on duty for the Montpelier Police Department. At that time the Montpelier Police Department's dispatch received a report of a male that went head first through a pane of glass at the "Three Penny Taproom" which is located at 108 Main Street in the City of Montpelier, Vermont.
2. At approximately 2317 hours I arrived at the scene. I parked my cruiser in the alley North of the "Three Penny Taproom". I walked to the front door of the "Three Penny Taproom" and observed the window to the front door was smashed. I asked some people in the doorway where the injured male was located. I was directed towards the entry way to Rivendell Books located at 100 Main Street.
3. As I approached the entry way to Rivendell Books I heard a male's voice yelling "Fuck You" repeatedly. I observed a male, who was later identified as Melchizedek Levi (DOB 11/10/1987), sitting in the entry way to Rivendell Books. Levi was holding a towel on his head. The towel was blood soaked. Also in the entry way were two (2) females. Levi continued to yell "Fuck You" to the females. At that time the male stood up. I approached Levi and told him I would bring him to the ambulance which was parked in the roadway. Levi stepped towards me and I held his right elbow to offer assistance to the waiting ambulance and to get him away from the two (2) females which he appeared to be upset with.
4. While walking towards the ambulance Levi jerked his arm away from me. Levi then squared off towards me and yelled, "Fuck you!" I reached for Levi's arm to escort him to the ambulance when he tackled me into a parked car. At that time I ordered Levi to get down on the ground. Levi continued to struggle with me and throw punches at me. I then struck Levi with three (3) forward punches. Officer Truhan of the Montpelier Police Department assisted me in getting Levi to the ground. Levi continued to fight and was subsequently sprayed with Oleoresin Capsicum by Officer Truhan. Levi was bleeding profusely from a head wound. Levi's continued belligerent behavior and resistance resulted in myself, Officer Truhan, Corporal Kachajian, Corporal Jennings, Firefighter Eggleston, and Lieutenant Huoppi being exposed to large amounts of blood. It was noted that each affected respondents uniforms were blood soaked.

Subscribed and sworn to before me on,
This 12th day of December, 2009


Notary Public


Affiant
12/12/09
Date

5. Levi was then restrained with handcuffs and brought to the waiting ambulance. Levi continued to struggle with officers and EMTs while on the stretcher and continually used loud vulgar language. While Levi continued to carry on, including calling us "White Trash" a crowd formed and observed his behavior. The crowd was estimated to be approximately 15 people. Levi was transported to the Central Vermont Medical Center for treatment of his injuries.
6. I returned to the Montpelier Police Department to decontaminate from the blood exposure and the Oleoresin Capsicum exposure.
7. While at the Montpelier Police Department I called Stan Brinkenhoff (DOB 2/25/1983). Brinkenhoff was a witness to struggle and captured part of the incident on video. I asked Brinkenhoff to come to the Montpelier Police Department to give a sworn written statement. Brinkenhoff arrived at the Montpelier Police Department and provided a sworn written statement. In Brinkenhoff's sworn written statement which is attached and referenced as if fully set forth here in, he says the following:

"On this evening I was at the three penny tavern. I walked in, and ordered a beer. After ordering a beer for a friend, we conversed near the entryway to the bar. I saw a dark skinned gentleman walk very hastily past me towards the door, the door opened and then I heard glass shatter. Looking over I saw the dark skinned gentleman covering his face, and the door smashed in. He was clearly bleeding profusely.

We finished our beers and were walking out when I saw the same gentleman "hugging" a police officer. The gentleman and the officer were on the edge of Main St. I did not see what caused them to become engaged, however they seemed calm. I.e. I just walked out and saw nothing to the contrary. The gentleman appeared to be upset, and was swinging at an officer. The officer appeared to take two or three punches to the face before responding with force including punches. Between the gentleman's punches and the officer's return punches the gentleman seemingly made belligerent remarks, though the exact terms are fleeing(sic). The gentleman was brought to the ground by two officers extremely professionally, and I began recording the incident at this time. The police and emt seemed to be all saying "we only want to help" whilst(sic) the individual restrained even while on the ambulance bed unit.

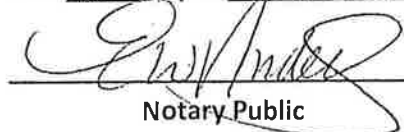
At no time this evening did I see any Montpelier Police Officer conduct himself in any manner other than absolutely professional. The officer I saw "hugging" the gentleman responded with minimal force, and nothing that seemed to be even closely in equality with the gentleman's "attacks".

Even after the officer responded with force and asked the gentleman to lay down, he seemingly continued to throw punches and resist assistance."

8. I asked Montpelier Firefighter Leon Eggleston and Montpelier Fire Lieutenant Dana Huoppi to provide me with sworn written statements. In Firefighter Eggleston's sworn written statement which is attached and referenced as if fully set forth here in, he says the following:

"On Dec 11th the Montpelier Fire Dept was called to treat a male who put his head through a window at the Three Penny Taproom on 108 Main Street. I with LT Huoppi arrived on scene to find the male seated on the steps of Rivendell Book Store on 100

Subscribed and sworn to before me on,
This 12th day of December, 2009


Notary Public

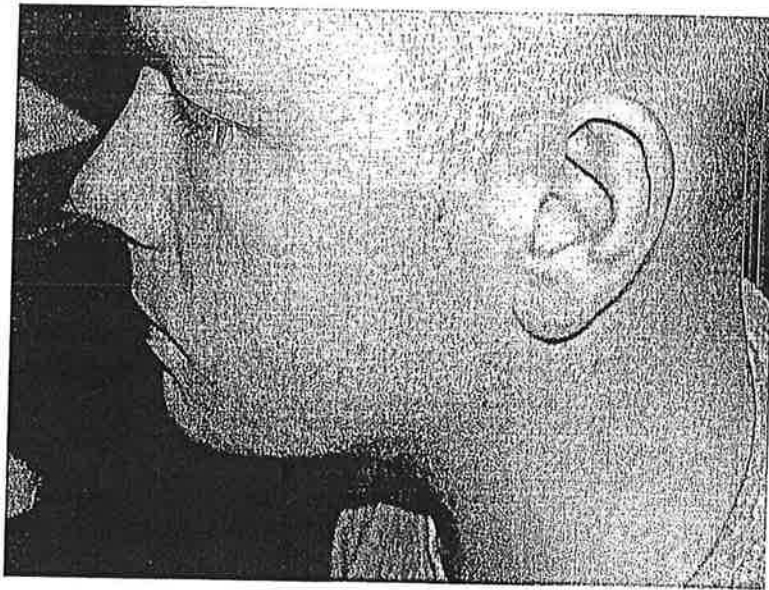

Affiant
12/12/09
Date

Main Street. Officer Moulton professionally offered assistance and began walking the male towards the ambulance. The male continued to act belligerent. A struggle began just off the sidewalk near a few parked cars in front of the bookstore. Officer Moulton and the other Montpelier Police Officers acted in the best interest of the nearby bystanders and Montpelier Fire Dept Emts."

9. In Lt. Huoppi's sworn written statement which is attached and referenced as if fully set forth here in, he says the following:

"I responded on an Ambulance call for the report of a man that had put his head thru a window. On scene the pt was yelling from the steps of the book store. Montpelier Police Officer was walk the pt to the Ambulance. The pt and the officer started to struggle. The officer lost his footing and the pt push him into a parked car folding the mirror. The officer punched the pt and they went to the ground the pt was yelling about a lawsuit and was not cooperative. The pt was handcuffed and moved to the Ambulance on a cot. The pt was transported to the Central Vt Hospital."

10. During the altercation with Levi my left thumb was injured. The pain I felt was about a five (5) on a scale of 1 - 10. I sought treatment at the Central Vermont Medical Center and was advised of a possible sprain to my left thumb. Also I was struck in the face during the altercation. I suffered some swelling and discoloration on my left cheek area. The following photograph is accurate and depicts the injury I sustained to my left cheek.



11. It should be noted that while at the Central Vermont Medical Center Levi submitted to a preliminary breath test. The result of the test was a .115.

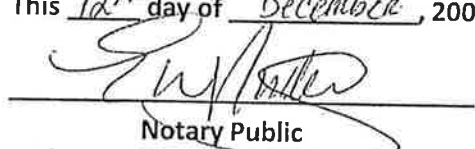
12. I contacted Court Clerk Paula Tremblay to set conditions and bail. Tremblay set the following bail and conditions.

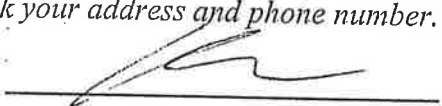
C. A Surety Bond or cash in the amount of \$1500.

1. You must come to court when you are told to.

2. You must give your attorney or the court clerk your address and phone number. If it

Subscribed and sworn to before me on,
This 12th day of December, 2009


Notary Public


Affiant

12/12/09
Date

changes, you must tell them immediately.

3. You must not be charged with or have probable cause found for a new offense while this case is open.

12. You must not buy, have or drink any alcoholic beverage.

15. You must NOT abuse or harass in any way Officer Moulton.

16. You must come to court on Monday December 14, 2009 at 12:20 PM.

31. No release until BAC of .000.

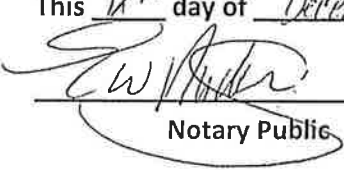
13. Levi was issued a citation to appear in Washington County District Court on December 14, 2009 to answer to the charges of Disorderly Conduct and Simple Assault on a Law Enforcement Officer.

14. Due to Levi's combative behavior, we were unable to obtain his fingerprints and photograph. I would ask the court to order Levi to appear at the Montpelier Police Department for the taking of his fingerprints and photographs.

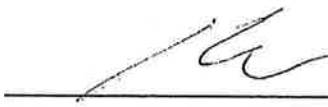
15. Levi was transported to the Barre City Police Department for lodging due to the lack of bail.

16. Based upon the above facts and circumstances there is probable cause to believe that Melchizedek Levi committed the offenses of Disorderly Conduct and Simple Assault of a Law Enforcement Officer.

Subscribed and sworn to before me on,
This 12th day of December, 2009



Notary Public



Affiant

12/12/09

Date



1211-09-373677
Supplemental Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says the following:

1. On December 12, 2009 at approximately 2339 hours I was on duty for the Montpelier Police Department. At that time I went to "Positive Pie 2" located at 20 State Street in the City of Montpelier, Vermont. I spoke with Amy Leventhal (DOB 3/15/1980) who advised she had witnessed the incident at the "Three Penny Taproom" on December 11, 2009. I asked Leventhal to give a sworn written Statement about what she observed. Leventhal agreed and asked to come over to the Montpelier Police Department on December 13, 2009.
2. At approximately 1804 hours on December 13, 2009 Leventhal arrived at the Montpelier Police Department. Leventhal filled out a sworn written statement. In Leventhal's sworn written statement which is attached and referenced as if fully set forth here in, she says the following:

"I was in Three Penny Tavern at 11:00ish pm Friday evening. There was a huge glass breaking noise. We were leaving anyway so continued to the door and saw that a kid had fallen into the glass. Blood was all over the snow. When we left, we saw that an EMT was holding his head and it was bleeding excessively. He was swearing and yelling and bleeding. The cops came, and an ambulance came. The bleeding kid stood up and threw a punch at one cop. The cop did not try to restrain him. He immediately began throwing punches. It looked like a bar fight. Finally other cops came over and they handcuffed him and took him away. I had just gotten off work that night and had only one glass of wine."

3. I was later contacted by Jordan Simons (DOB 2/24/1990) by telephone. I asked Simons to give a sworn written statement and she advised she was travelling to Maine and was not available to come in. I asked her to tell me of the events that occurred outside the "Three Penny Taproom" on December 11, 2009. Simons advised she was at the "Three Penny Taproom" having dinner and hanging out. According to Simons, she left the bar and went to visit her mother who was in town visiting. She continued by advising she was re-approaching the bar and all of a sudden heard glass breaking and Mel (Levi) was standing there confused.
4. I asked Simons if she knew Mel's full name and she said, "No." I asked Simons if she was Mel's girlfriend and she said, "We had been dating." I asked Simons to continue with her observations. Simons advised of Mel "gushing" blood and that she does not do well with blood. Simons stated that her mother ran into the bar and got a white compress. Simons advised of a huge crowd gathering around them and she then got sprayed with

Subscribed and sworn to before me on,
This 13 day of December, 2009

Notary Public

Affiant

Date

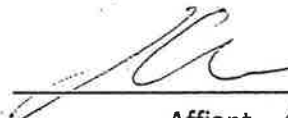
"pepper spray".

5. I asked Simons if she observed when the police arrived and she said, "No. I'm sorry." I asked Simons if she observed any of the altercation with the police. Simons said, "I can not recall any (pause)." Simons continued by saying, "there was a lot of blood and I was concentrating on wanting Mel to get in the frickin ambulance." I told Simons she was obviously there (at the scene of the altercation) if she was pepper sprayed. Simon's said, "I know I was there."
6. I contacted Lori Shapman of Farmington, Maine. Shapman is Simons' mother. I asked Shapman to recall what she had observed. Shapman stated she was at the scene of the altercation. Shapman stated the male (Levi) had broke the window and cut himself. She claims she went back inside the "Three Penny Taproom" to get napkins for the male. She came out and the male was yelling obscenities and arguing with an EMT. She further claims a police officer came up behind the male to stop the incident.
7. I spoke to Matt McCarthy and Scott Kerner; both are partners in owning the "Three Penny Taproom". Both McCarthy and Kerner advised they did not witness the altercation. McCarthy further claimed that all he knew was what people had told him.

Subscribed and sworn to before me on,
This 13 day of December, 2009



Notary Public



Affiant
12/13/09

Date

MPD PD.RLGS
v5.5n(8.7.1)

MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:24 PAGE 1
TTYPI 9

platoon: ALL
action code: 13P ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
geo code: ALL to: from: 01/01/2010 to: 12/31/2010
where: ALL string:
date/time s case# rep unit personnel #1 personnel #2 other per

(1) 08/01/10 A 387225 13P- 2593
(2) 08/11/10 B 387835 13P- 945
(3) 08/20/10 C 388388 13P- 4187
(4) 09/05/10 B 389341 13P- 2438
(5) 10/26/10 B 392299 13P- 2431
(6) 10/29/10 C 392471 13P-
(7) 11/09/10 B 393061 13P- 5336

156 MAIN ST SPRING ST
73 MAIN ST
16 BARRE ST
949 DOG RIVER RD
112 STATE ST → No Affidavit
8 WILDER ST
1 PITKIN CT

MPD PD.RALG
v5.5m

MONTPELIER POLICE DEPARTMENT
ARREST LOG by DATE

06/24/11 21:03 PAGE 1
TTYPl -9

from date: 01/01/10
to date: 12/31/10

from chg: 13B2
to chg: 13B2

from off: ALL Off type
to off: (A
typ: ADULT

arrest/charge type: A

name t case# date statue desc off off

004418 PALMER, CHRISTINE MELIA 440 CENTER RD, EAST MONTPELIER,
dob: 12/17/75 34 A 387225 08/01/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

007641 ROSATO, DAWN P 100 LCOMIS ST, MONTPELIER, VT
dob: 05/05/43 67 A 387836 08/10/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

006713 CAPLIN, JENNIFER M 118 BARRE ST, MONTPELIER, VT
dob: 01/10/80 30 A 388388 08/20/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

001637 SMITH, JOEY D 421 JUNCTION RD, BERLIN, VT
dob: 02/19/63 47 A 389341 09/05/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

029506 LEFEBVRE, ALISON ASHLEY 1763 MAIN ST, MONTPELIER, VT
dob: 12/03/88 21 A 392299 10/26/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

008121 SHAW JR, CARLOS A 8 WILDER ST, MONTPELIER, VT
dob: 07/05/46 64 A 392471 10/29/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

036927 FOWLER, KEITH R 55 MERCHANTS ST, BARRE, VT
dob: 04/04/87 23 A 392878 11/05/10 13-VSA-1 SIMPLE ASSAULT (OFFICER)

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 00

Shift: A

date: 08/01/10 SUNDAY

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
05:51 * 156 MAIN ST apt: X and SPRING ST MON
*ibr: 1: 150 2: 290 3: 312
387225 * POSS -56 FEMALE NEAR DENTIST OFFICE
* ID #: 2593

**mir*
150 13P

094600
726-9

: MALE AT -19,
Def: PALMER, CHRISTINE M
440 CENTER RD EAST MONTPELIER, VT 05602
223-4738

12/17/75 008 70-1051

call-back#

*** UNIT(S) ***

802 MON P SGT MARTEL h>
r> 08:27 d> 08:27 a> 08:27 c> 08:27 k>
810 MON P P.O. KACHAJIAN h>
r> 08:18 d> 08:18 a> 08:23 c> 10:12 k>
812 * MON P P.O. BEAN h>
r> 05:51 d> 05:51 a> 05:54 c> 08:00 k>
816 MON P P.O. TRUHAN h>
r> 08:05 d> 08:05 a> 08:05 c> 10:12 k>

726-707

707-707

726-707

707-707

*** COMMENTS ***

812 MON 05:51:37 CD-150-POSS -56 FEMALE NEAR DENTIST OFFICE
812 MON 05:54:21 -23 THE AREA
802 MON 05:55:32 -23 THE AREA
802 MON 05:57:50 -27 FL PID 0354075742060, NO RECORD
812 MON 06:02:00 FEMALE IS CHRISTINE PALMER, NEG 99
812 MON 06:05:00 -76 TO -19 WITH HER, CAR 1 SM 64242
812 MON 06:07:51 -7 -19 EM 64243
812 MON 06:16:08 REQ -21 TO WCMH, -21 MADE, ANDREW IS -76
812 MON 07:06:26 REQ -21 TO SAINT JOHNSBURY, THEY HAVE ROOM
812 MON 07:53:42 ALL BELONGINGS PLACED IN PURSE AT FRONT WINDOW
802 MON 08:01:30 -8
816 MON 08:05:16 -76 ST J CCC CAR 1 SM 64243.
816 MON 08:18:17 -76 BACK WITH HER, SHE WAS ABLE TO GET
816 MON 08:18:37 OUT OF ONE CUFF AND HIT 816.
810 MON 08:18:00 810 -76 FROM HERE WILL MEET TOWNE HILL & RT 2.
810 MON 08:23:56 -23 W/ 816 TOWNE HILL BY HAWKINS FARM.
810 MON 08:27:08 SHE HAS BEEN RESECURED/ 810 WILL BE
816 MON 08:27:27 ASSISTING ON THE TRANSPORT.

726-

726-

726-

726-

726-

726-

726-

726-

726-

726-

726-

707-

707-

707-

707-

707-

707-

707-

707-

707-

707-

707-

707-

707-

707-

707-

707-

58

816 MON SUPERVISOR - SGT N MARTEL
816 MON INV OFFICER - PTLMN C TRUHAN
816 MON CHARGE - UNLAWFUL MISCHIEF, ATTEMPTED SIMPLE ASSAULT ON
816 MON A POLICE OFFICER.
816 MON CITED - TO APPEAR ON COURT ON SEPTEMBER 23, 2010
816 MON
816 MON
810 MON 10:12:05 -61
810 MON SEE NARRATIVE AND CASE FILE FOR REPORT.



1211-10-387285
Affidavit
Montpelier Police Department

State of Vermont
Washington County ss.

Now comes Officer Christopher M. Truhan, affiant, being duly sworn and on oath, states that he has probable cause to believe that Christine M. Palmer DOB: 12-17-75, has committed the offenses of Assault on a Law Enforcement Officer and Attempted Unlawful Mischief, violations of Title 13, Vermont Statutes Annotated sections 1028 and 3701.

On 08-01-10, at approximately 0801 hours, I transported Christine M. Palmer DOB: 12-17-75, from the Montpelier Police Department to the Northeast Regional Correctional Facility in St. Johnsbury to be held in protective custody for intoxication. The trip was recorded via the in-car video system. Palmer was taken into custody by Officer Chad Bean of the Montpelier Police Department on Main Street in Montpelier at approximately 0604 hours.

While en route to the correctional facility, it appeared Palmer took her seat belt off and was lying across the back seat. Palmer also began kicking one of the back windows. In the video, she can be seen kicking near the area of the door panel as well. I pulled into the parking lot of a convenience store in Plainfield so I could put her seatbelt back on. I discovered Palmer's left hand wasn't handcuffed. I secured her left arm behind her back and tried to get her right arm behind her back, but she refused to give it to me. Her right arm was positioned such that her right hand wasn't visible to me. While trying to secure her, she struck me on the left side of my face with the handcuffs. I left her in the backseat and closed the door. She can then be seen in the video kicking the partition between the back and front seats, as well as the passenger-side, rear window. I notified dispatch of the situation and headed back to Montpelier for assistance in getting her secured. I met with Sgt. Neil Martel and Corporal David Kachajian of the Montpelier Police Department on Towne Hill Road in East Montpelier and we were able to secure her. Corporal Kachajian rode with me to the correctional facility from that point on.

During the second attempt to drive her to the correctional facility, she again tried to kick the window out. Palmer was successfully transported to the correctional facility. Afterwards, I observed tread prints from a shoe on the passenger-side, rear window and door, which I photographed. Palmer was issued a citation to appear in Washington District Court to answer to the charges of Attempted Assault on a Law Enforcement Officer and Attempted Unlawful Mischief.

Subscribed and sworn to before me on
this 2 day of August 2010.


Notary Public


Affiant
08-12-10
Date

MONTPELIER POLICE DEPARTMENT
LOG REPORT

6/24/11 18:20
v5.5c

org/1st

date: 08/11/10 WEDNESDAY

Shift: A

rev
813 813
055510
725-9

***** Q 813 CONTINUING INVESTIGATION
00:00 * 73 MAIN ST apt: APT 56 MON
387839 * CONTINUATION OF CASE # 387836
* ID #: 945 ALARM #: 307
Comp: BLAKELY, DAVID W
73 MAIN MONTPELIER, VT 05602
Invo: ROSATO, DAWN P
100 LOOMIS ST MONTPELIER, VT 05602
229-0345
call-back#

07/24/52
05/05/43

*** UNIT(S) ***

803 MON F SGT. CLEVELAND h>
r> 00:00 d> 00:00 a> 00:05 c> 01:11 k>
805 * MON F SGT. COCHRAN h>
r> 00:00 d> 00:00 a> 00:00 c> 03:00 k>
813 MON F P.O. MOULTON h>
r> 00:00 d> 00:00 a> 00:00 c> 04:27 k>

725-725
725-725
725-725

*** COMMENTS ***

805 MON 00:00:00 CD-813-CONTINUATION OF CASE # 387836
805 MON 00:03:00 805 REQ 803 AS FEM HAS A KNIFE AND WILL NOT
805 MON 00:03:00 TURN IT OVER AND PUT DOWN
813 MON 00:03:00 803 COPIED DIRECT -76
803 MON 00:05:00 -23
805 MON 00:10:00 805 HAVE FEM -95
805 MON 00:18:00 SCREENER AT -19

725-
725-
725-
725-
725-
725-
725-
725-

813 MON CASE MADE -
813 MON INVESTIGATING OFFICER - PTLM MOULTON
813 MON SUPERVISOR - SGT COCHRAN
813 MON SUSPECT - DAWN ROSATO
813 MON CHARGES - SIMPLE ASSAULT ON PO, RESISTING ARREST, DISORDERLY
813 MON CONDUCT

725-9
725-9
725-9
725-9
725-9
725-9
725-9
725-9

803 MON 01:11:01 CLEAR OF THIS CALL
805 MON 01:46:00 -76 TO ST JAY WITH FEMALE, CAR 6 SM 38741
805 MON 02:37:00 813 ADV ST JAY REQ SHE BE TAKEN TO HOSPITAL TO
805 MON BE SCREENED FOR POSS MEDICAL PROBLEMS, -76 TO THEIR WITH
805 MON CAR 6 NOW
805 MON 03:00:00 -42
813 MON 04:15:00 -8 SHE HAS BEEN LODGED AT SAINT JAY, CLEARED BY
813 MON HOSPITAL

725-
725-
725-
725-
725-
725-
725-
725-

officer's signature

date

6/24/11 18:19
v5.5a

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP5 -9

org/1st

shift: C

date: 08/10/10 TUESDAY

**rcv*clr*
150 90C

055910
44 -9

07/24/52

05/05/43

45 -725

45 -725

45 -

725-

726-

726-

726-

726-

officer's signature

date

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP5

shift: B

date: 08/11/10 WEDNESDAY

org/123

***** R 13P ASSAULT-OFFICER ASSAULTED *13A
15:56 * 73 MAIN ST MON
387887 * FOR NIBRS - SEE CASE FOLDER 387836
* ID #: 945 ALARM #: 307
Def: ROSATO, DAWN P
100 LOOMIS MONTPELIER, VT 05602
Vic: MOULTON, KEVIN T
1 PITKIN CT MONTPELIER, VT 05602

***cvn:lr*

3P 13P

055:10

9 -9

05/05/43 440-44-3484

03/31/76

*** UNIT(S) ***

813 * MON P P.O. MOULTON

r> 15:56 d> 15:56 a> 15:56 c> 15:56 k>

h>

*** COMMENTS ***

813 MON 15:56:57 CD-13P-FOR NIBRS - SEE CASE FOLDER 387836

officer's signature

date



1211-10-387836
Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes Officer Kevin Moulton, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that Dawn Rosato DOB: 05/05/1943 has committed the offense(s) of Disorderly Conduct in violation of Title 13, Vermont Statutes Annotated, Section 1026; Simple Assault on a Police Officer in violation of Title 13, Vermont Statutes Annotated, Section 1028; Resisting Arrest in violation of Title 13, Vermont Statutes Annotated, Section 3017.

Based on the following facts:

1. On August 10, 2010 at approximately 2358 hours I was on duty for the Montpelier Police Department. At that time I was dispatched to 73 Main Street Apartment 56 in the City of Montpelier, Vermont for the report of a female guest acting erratically. The complainant was identified as David Blakely (DOB 7/24/52). Dispatch advised the female was holding a knife and making Blakely uncomfortable. Dispatch further advised the female was holding the knife and pointing it at Blakely while she was twisting it.
2. Sergeant Wade Cochran (of the Montpelier Police Department) and I responded to the area. Upon arrival to apartment number 56, we knocked on the door several times. Sgt. Cochran knocked harder and the door opened. I then noticed Dawn Rosato (DOB 5/5/43) sitting on the couch holding a knife. I know Rosato through professional involvements. Sgt. Cochran ordered Rosato to drop the knife and she would not comply.
3. I drew my firearm and Sgt. Cochran displayed his OC (Oleoresin Capsicum). Upon multiple times ordering Rosato to drop the knife she would not comply. Sgt. Cochran requested additional units to respond. While waiting for back up to arrive, Sgt. Cochran had me blind Rosato with the flashlight on my firearm. With Rosato blinded and distracted, Sgt. Cochran was able to grab the knife from Rosato's grasp. Rosato began to struggle with Sgt. Cochran and she was eventually brought to the floor. While we were trying to secure Rosato with handcuffs she continued to struggle. Sgt. Cochran ordered Rosato to stop resisting and she did not comply. Rosato was eventually secured with handcuffs.
4. While trying to bring Rosato to the ground floor she continued to struggle. While in the elevator Rosato stomped on my left foot. On a scale of 1 - 10 with 10 being the highest level of pain, I was at a level 1 when Rosato stomped on my foot. Rosato was eventually brought outside. Rosato was placed into my cruiser and transported to the Montpelier Police Department.
5. While at the Montpelier Police Department I called Washington County Court Clerk Paula Tremblay to set bail and conditions of release on Rosato. The following bail and conditions of release were ordered by Court Clerk Tremblay.

Subscribed and sworn to before me on,
This 11 day of August, 2010

Notary Public

Affiant
8/10/10
Date

c. A Surety Bond or Cash in the amount of \$1500.00.

1. You must come to court when you are told to.

2. You must give your attorney or the court clerk your address and phone number. If it changes, you must tell them immediately.

3. You must not be charged with or have probable cause found for a new offense while this case is open.

13. You must NOT buy, have use any dangerous/deadly weapons.

14. You must NOT have contact with David Blakely, which includes in person, in writing, by telephone, by email or through a third person.

15. You must NOT abuse or harass in any way David Blakely.

16. You must come to court on Wednesday August 11, 2010 at 12:30 AM/PM.

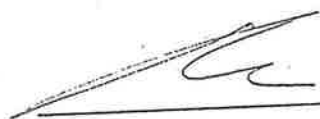
6. Due to Rosato's inability to produce bail, she was lodged at the Northeast Regional Correctional Facility in Saint Johnsbury, Vermont.

7. It should be noted that the Montpelier Police Department had numerous involvements with Rosato acting oddly in the past month. Rosato has been reported to be acting incoherently and has appeared that her emotional state has escalated in recent encounters. It is believed she possibly suffers from an unknown mental condition.

8. Based upon the above facts and circumstances there is probable cause to believe that Rosato has committed the offenses of Disorderly Conduct, Unlawful trespass and Resisting Arrest.

Subscribed and sworn to before me on,
This 11 day of August, 2010


Notary Public


Affiant
8/11/10
Date

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 09

date: 08/20/10 FRIDAY

shift: C

**rcv*clr*
910 13P

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
22:51 * 16 BARRE ST MON
*ibr: 1: 917 2: 497
388388 * OUT W/ JEN CAPLIN BY ST AUGUSTINES/ 10-56
* ID #: 4187
: 809,813,
Def: CAPLIN-SURRELL, JENNIFER M
118 BARRE ST MONTPELIER, VT 05602

01/10/80 009 80-13P

*** UNIT(S) ***

809 * MON P P.O. MACURA
r> 22:51 d> 22:51 a> 22:51 c> 23:10 k>
813 MON P P.O. MOULTON
r> 22:51 d> 22:51 a> 22:51 c> 23:10 k>

h>

h>

*** COMMENTS ***

809 MON 22:51:11 CD-910-OUT W/ JEN CAPLIN BY ST AUGUSTINES/ 10-56
813 MON 22:52:36 21 FSU/ 21 MADE
813 MON 22:54:18 FSU ADV 76/ ETA 10 MIN
813 MON 23:10:34 10-8/ FSU HAS HER
813 MON CASE MADE
813 MON INVESTIGATING OFFICER: PATROLMAN MOULTON
813 MON SUPERVISOR: CORPORAL KNISLEY
813 MON CHARGE: SIMPLE ASSAULT / ASSAULT ON A CORRECTIONS OFFICER
813 MON CITED:

officer's signature

date



1211-10-388388
Affidavit
Montpelier Police Department

State Of Vermont
Washington County ss.

Now Comes **Officer Kevin Moulton**, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that **Jennifer Caplin** DOB: 01/10/80 has committed the offense of **Assault on a Correctional Officer** in violation of Title 13, Vermont Statutes Annotated, Section 1028 (a) (1).

Based on the following facts:

1. On August 20, 2010 at approximately 2251 hours I was on duty for the Montpelier Police Department. At that time I was on bicycle patrol with Officer Josh Macura (Montpelier Police Department). Officer Macura and I were in the area of St. Augustine's Church located at 16 Barre Street in the City of Montpelier, Vermont. Shortly before going to Barre Street I was approached by a concerned citizen who stated there was an intoxicated female walking in the center of Barre Street and arguing with a male.
2. Officer Macura located Jennifer Caplin (DOB 1/10/80) sitting on the ground on the east side of St. Augustine's church. I approached Caplin with Officer Macura. I know Caplin through multiple professional involvements. While speaking to Caplin it became immediately clear that Caplin was highly intoxicated. Caplin could not speak clearly as her words were extremely slurred. Caplin was also unsteady as she was sitting on the ground. Caplin was swaying from side to side as she was seated.
3. Officer Macura continued to speak to Caplin. I stepped away and called dispatch to advise them of the situation. I asked dispatch to contact the Barre Field Supervisory Unit (FSU) of the Department of Corrections. Through my many involvements with Caplin I knew she was being supervised by FSU. I asked dispatch to advise FSU that Caplin was highly intoxicated. Dispatch stated that FSU was in the area and en-route to the Montpelier Police Department to pick up Caplin. I asked that FSU pick up Caplin from our location as she was so intoxicated and we were on bicycles and unable to transport her. Due to being on bicycle patrol I was unable to have Caplin submit to a preliminary breath test.
4. FSU Correctional Officers Matt Andrus and Jamie Benneig arrived shortly after being called. I showed CO Andrus and CO Benneig where Caplin was located. When CO Andrus spoke to Caplin she quickly became angered and starting yelling obscenities at us. CO Andrus told Caplin to get up. Caplin had a difficult time getting to her feet and was very unsteady as she walked. I also was able to detect the odor of intoxicants coming from her person while trying to help her to the FSU vehicle.
5. While at the FSU vehicle CO Benneig secured Caplin with handcuffs. CO Benneig then placed Caplin in the rear seat of their vehicle. While Caplin was in the vehicle Officer Macura and I were explaining the situation to CO Andrus and CO Benneig. At that time CO Andrus noticed some movement from where Caplin was sitting. CO Andrus looked inside the vehicle and noticed Caplin was lying on the seat and had unfastened her seatbelt. CO Andrus opened the door and Caplin tried to get out of the vehicle. CO Andrus tried to keep Caplin inside the vehicle and Caplin became combative. Caplin had managed to free herself from the handcuffs and started fighting with CO Andrus. CO Benneig began to assist CO Andrus as Caplin was fighting. I went to the other side of the vehicle and opened the door. I got into the vehicle and pulled

Subscribed and sworn to before me on,
This 3 day of October, 2010

Notary Public

Affiant
10/3/10
Date

Caplin back into the vehicle. Caplin was brought under control by CO Andrus and CO Benneig. Caplin was re-secured with handcuffs and leg irons were placed on her as well.

6. After Caplin was again secured in the vehicle I spoke to CO Andrus about the situation. CO Andrus advised that Caplin hit him in the face. I shined my flashlight on CO Andrus' face and noticed a scratch which was bleeding on his right cheek. Officer Jeff Pearson (Montpelier Police Department) had arrived shortly before the altercation. Officer Pearson took a picture of the scratch on CO Andrus' face. The following picture is accurate and depicts the injury sustained to CO Andrus' face.



7. CO Andrus provided me with an affidavit. In Andrus' affidavit which is attached and referenced as if fully set forth herein, he says the following:
"A Montpelier PD officer advised me that I was bleeding from a scratch on my face. It was where Ms. Caplin hit me in the face. The pain resulting from this was on a scale of 1-10 and it was a 2."
8. Caplin was then transported to the Northwest State Correctional Facility in Swanton, Vermont. Caplin was later cited by the Franklin County Sheriff's Department to appear in Washington County Superior Court on October 28, 2010. Caplin has not been fingerprinted or photographed. I would ask the court to order Caplin to appear at the Montpelier Police Department for the taking of her fingerprints and photograph.
9. Based upon the above facts and circumstances there is probable cause to believe that Jennifer Caplin committed the offense Assault on a Correctional Officer.

Subscribed and sworn to before me on,
This 5 day of October, 2010

[Signature]
Notary Public

[Signature]
Affiant
10/3/10
Date

2/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 9

date: 09/05/10 SUNDAY

09/18

ift: B

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
15:34 * 949 DOG RIVER RD MON
*ibr: 1: 312 2: 314
389341 * -56 MALE AT ROAD SIDE
* ID #: 2438 ALARM #: 210
: W14,
Def: SMITH, JOEY D
29 COURT ST MONTPELIER, VT 05602
call-back# 223-9511

02/19/63 008-48-3663

*** UNIT(S) ***

807 MON P DET. NOLAN h>
r> 17:35 d> 17:35 a> 17:35 c> 20:12 k>
808 MON P P.O. KNISLEY h>
r> 17:32 d> 17:32 a> 17:32 c> 17:32 k>
810 MON P P.O. KACHAJIAN h>
r> 15:34 d> 15:34 a> 15:39 c> 20:12 k>
819 MON P A. APGAR h>
r> 17:45 d> 17:45 a> 17:45 c> 18:03 k>
821 * MON P P.T. POJENNINGS h>
r> 15:34 d> 15:34 a> 15:39 c> 18:03 k>

*** COMMENTS ***

821 MON 15:34:00 CD-314--56 MALE AT ROAD SIDE
821 MON 15:39:33 -23
821 MON 15:42:27 -99 BUBAR, DEAN G 06/16/1962
810 MON 15:43:39 -99 MARDEN, MATTHEW 01/18/1961
810 MON 15:43:57 -99 SMITH, JOEY 02/19/1963
821 MON 15:50:03 BUBAR IS A .306 AT THIS TIME.
821 MON 15:58:13 SMITH IS A .324/ HAVE HIM -95 FOR PC
821 MON 15:58:32 UNIT 276 SM 40218
810 MON 15:58:45 GIVING BUBAR RIDE TO RES 45 BARRE ST
810 MON 15:59:01 BELIEVE THERE IS SOMEONE THERE TO CARE FOR HIM
810 MON 15:59:16 MARDEN IS NOT -56/ LEAVING ON HIS BICYCLE.
810 MON 16:00:05 -76 CAR 271 SM 66439.
821 MON 16:01:33 EM 40219 @ -19
810 MON 16:03:00 E/M 66440
810 MON 16:24:29 -8 WITH HIM, LANDLORD WILL KEEP EYE ON HIM
810 MON 16:43:45 -76 ER, HE WAS HEAD BUTTING CELL, COMBATIVE,
810 MON 16:44:00 HAS SHINER BY HIS EYE, ADV CVH OF THIS, ADV
810 MON 16:47:57 BARRE CITY, ADV VSP DISP REQ A BERLIN UNIT IF
810 MON 16:48:09 AVAILABLE
810 MON 16:48:51 -7 CVH EM 40222
821 MON 16:50:12 VSP DISP ADV BERLIN UNIT -76
808 MON 17:32:03 -7/8 FROM THE ER -25 WITH 810 AND 821
810 MON 17:32:18 WILL BE CHARGING SMITH WITH SAPO, 10/14 CITE
810 MON 17:32:39 810 GETTING BLOOD TEST, POSSIBLE HEP B EXPOSURE
807 MON 17:35:00 807 -41 EN RT TO CVH
810 MON 17:42:43 ADV ST. J OF THIS DETOX
819 MON 17:45:00 SPO POULIN -41 AS 819. EMAIL TO 729 TO ADVISE.
821 MON 18:03:56 -8 THE CASE, BACK ON PATROL
810 MON 18:22:33 -8 FROM CVH EN RT ST J SM 40272 EQ1
807 MON 20:09:27 BACK IN AREA
807 MON 20:12:19 -8

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TYPE: 9

shift: B

date: 09/05/10 SUNDAY

*** COMMENTS ***

810	MON	CASE MADE: SIMPLE ASSAULT ON A POLICE OFFICER:	45
810	MON	SUSPECT: JOEY D SMITH 02/19/63	45
810	MON	INVESTIGATING OFFICER: CPL DAVID KACHAJIAN M810	45
810	MON	ASSISTING OFFICERS: CPL MATTHEW KNISLEY M808	45
810	MON	OFC WILLIAM JENNINGS M821	45
810	MON	TRANSPORT OFFICER: INV STEVE NOLAN M807	45
810	MON	CITED: 10/14/10 VT DISTRICT COURT, BARRE, WASHINGTON CO.	45
810	MON	LODGED: DETOX AT ST. JOHNSBURY CORRECTIONS	703-
810	MON	09/09/2010	703-
810	MON	10:46:00 JOEY SMITH IP FOR HIS BELONGINGS, RELEASED BY 811.	703-

officer's signature

date

AFFIDAVIT

MONTPELIER
POLICE DEPARTMENT

STATE OF VERMONT
WASHINGTON COUNTY S.S.

NOW COMES Corporal David Kachajian, being duly shown and on oath, deposes and says he has probable cause to believe that Joey Smith (DOB: 2/19/63) has committed the offense(s) of Simple Assault on a Police Officer, a violation of Title 13, Vermont Statutes Annotated Section 1028 (a)(1).

On September 5, 2010 at approximately 3:34 p.m. the Montpelier Police Department Dispatch Center was contacted by a deputy sheriff (W-14) from the Washington County Sheriff's Office advising that there were three intoxicated males lying in the grass across from the City of Montpelier Department of Public Works on Dog River Road.

At this time Corporal Knisley, Officer Jennings and I responded to the area to assist the deputy with the three individuals. Upon arrival on scene we located the three males lying down on the ground in the woods across from the City of Montpelier Sewerage Treatment Plant. One of the males that we encountered, later identified as a party by the name of Joey Smith (DOB: 2/19/63), was extremely impaired and was so intoxicated that he defecated in his pants while we were speaking with him. A subsequent PBT test administered to Mr. Smith showed him to have a BAC of .324%.

Due to the fact that Mr. Smith was too intoxicated to take care of himself, we placed him into protective custody. Mr. Smith initially resisted being placed into custody and after a very brief struggle; Officer Jennings and I were able to handcuff him behind his back (handcuffs double-locked and checked for tightness). Mr. Smith was transported back to the Montpelier Police Department by Officer Jennings and placed into a holding cell to await the arrival of a screener from Washington County Mental Health.

Subscribed and sworn to before me on

This 6th day of September 20 10

Thomas M. Courtemar
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/6/10
(Date)

After Mr. Smith met with the screener and was advised that he would be taken to the Barre City Police Department lock up for detoxification, he started to become increasingly agitated. Mr. Smith began to scream and yell and then started to bang his head on the glass of the holding cell door (Note: Mr. Smith had been left handcuffed while in the holding cell because of his initial resistance to being handcuffed and because he kept threatening to assault us if we were to take the handcuffs off of him).

A short time later, Corporal Knisley, Officer Jennings and I entered the cell block and prepared to remove Mr. Smith from the cell so as to be transported to the Barre City Police Department. When we opened the cell door, both Officer Jennings and I asked Mr. Smith to please step out for us. Mr. Smith refused and stated that we would need to come in to get him if we wanted him. I stated to Mr. Smith that we just wanted to take him over to the Barre Police Department so that he could detox and then asked him to not make this situation any more difficult than necessary. Mr. Smith began to yell and scream and was spitting as he spoke. He then suddenly lowered his body posture and charged out of the holding cell towards me with his head partially lowered.

Fearing that Mr. Smith was going to either strike me with a head butt and/or shoulder strike, I instinctively put my left hand up in front of me in an attempt to block him from hitting me. At this point, I was able to block his charge at me by placing my left hand on the right side of his neck in the area of his Trapezius muscle and lower neck. I then stepped back and tried to push him away to my right side by grabbing his right arm with my right hand. As I pushed him away, I also attempted to direct him to the ground to prevent him from being able to continue to fight. As I tried to guide him down to the cell block floor, Mr. Smith struck the left edge of his head on the door jamb of the cell block door. At this time both Mr. Smith and I went down to the ground and in the process, my right hand was crushed between him and the cement floor. As a result, the back of my right hand was lacerated and began to swell. On a scale of 1-10, 1 being no pain and 10 being the most painful injury I have ever sustained, the pain I was now feeling in my hand was a 4. As a result of Mr. Smith's head hitting the edge

Subscribed and sworn to before me on

This 6th day of September 2010

Thomas Connerman
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/6/10
(Date)

of the door, he sustained a large bump to the area around the top of his left eye. Mr. Smith's eye immediately began to swell and a small spot of blood was visible towards the top of the area that was swelling.

After we were able to get Mr. Smith somewhat under control, we were forced to pick him up off of the ground because he was still thrashing and kicking. After carrying him into the sally port area of the police department where our cruiser was located, we attempted to place Mr. Smith into the back seat for transport. Mr. Smith continued to actively resist us and attempted to kick both Officer Jennings and I several times while we were standing next to the right door jamb of the cruiser. To protect both us and Mr. Smith from injury, Officer Jennings placed leg irons on Mr. Smith. Mr. Smith kept yelling at me and made numerous threats towards me while we were placing him into the back of the cruiser. On several occasions he demanded that we take the handcuffs off of him and would as well threaten that he would "Take care of me" if we let him out of them. Once we were able to get him into the cruiser and shut the doors, Mr. Smith proceeded to try and kick the back windows of the car out. Because of this, we were forced to hobble/hogtie him using a nylon restraining lanyard.

Due to the injury Mr. Smith sustained to his head/eye orbit from hitting the edge of the door when he charged me, Officer Jennings and I transported him to the Central Vermont Medical Center for treatment. While at the hospital, Mr. Smith continued to threaten me and indicated on numerous occasions that he would "Take care of me" and "Get me" when he was released from custody. While Mr. Smith was being treated at the hospital, I also received treatment for my right hand injury. I was also advised by the attending physician that I would need to have my blood tested every four to six weeks for six months for the possible exposure to the suspect's blood due to the fact that Mr. Smith may be infected with blood borne diseases to include Hepatitis B (Note: Mr. Smith refused to have his blood taken/tested at the hospital to confirm and/or deny this possibility).

Subscribed and sworn to before me on

This 6th day of September 2010

Thomas M. Carpenter
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/6/10
(Date)

After we were both treated and cleared from the hospital, with the assistance of Detective Corporal Nolan, I transported Mr. Smith to the St. Johnsbury Correctional Center for detox. Upon arrival at the correctional center, Mr. Smith was issued a citation to appear in the Washington County District Court on October 14, 2010 at 12:30 p.m. to be arraigned on the charge of Simple Assault on a Police Officer. Mr. Smith refused to sign the citation.

Due to the fact that Mr. Smith was very combative and assaultive on the date he was taken into custody, I respectfully request that the honorable court order Mr. Smith, on his date of arraignment and as a part of his conditions of release, to report to the Montpelier Police Department to be both fingerprinted and photographed. I also respectfully ask that the court make it a condition of his release that Mr. Smith attends mandatory alcohol treatment due to his obvious severe alcohol problem.

Subscribed and sworn to before me on

This 6th day of September 2010

Thomas M. Connerman
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
9/6/10
(Date)

MONTPELIER POLICE DEPARTMENT
LOG REPORT

1/24/11 18:01
v5.50

date: 10/26/10 TUESDAY

CRP/ls:

ift: B

MONTPELIER
217 2P

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A
09:14 * 112 STATE ST MON
*ibr: 1: 917
392299 * CASE WORKER REQ. ASSISTANCE WITH OUT OF CONTROL
* ID #: 2431 ALARM #: 203
: AGNT 43,
Def: LEFEBVRE, ALISON A
1763 MAIN ST MONTPELIER, VT 05602
477-2329
call-back#

12/03/88 009-72-2120

*** UNIT(S) ***

804 * MON P SGT. NORDENSON
r> 09:14 d> 09:14 a> 09:18 c> 10:32 k> h>
814 MON P P.O. PEARSON
r> 09:14 d> 09:14 a> 09:18 c> 10:32 k> h>

*** COMMENTS ***

804 MON 09:14:04 CD-917-CASE WORKER REQ. ASSISTANCE WITH OUT OF CONT
804 MON 09:18:00 -23/ DEPT. HEAD FROM NEW SCHOOL IS ON SCENE
804 MON CALL CAME VIA 911 FROM EILEEN 477-2329. ANOTHER WORKER
804 MON HILLARY LEONARD, IS WITH LEFEBVRE BACK OF THE CHIT. BANK
804 MON IN MONTPELIER. LEFEBVRE HAS PULLED HER HAIR AND SPIT ON
804 MON HER. CALLER ADV. LEONARD HAS LOCKED HERSELF IN HER CAR.
804 MON WHICH IS A BLACK JEEP.
804 MON
804 MON
804 MON 09:23:00 -95 / -76 -19 CAR 271 SM 69597.
814 MON 804 ADV. -28 ON HILARY LEONARDS VEH IS DCT846.A
814 MON 09:27:20 @ -19 WITH HER.
814 MON 09:28:07 814 EM-69598
814 MON 09:32:23 -21 MADE TO SCREENERS.
814 MON
814 MON CASE MADE:
814 MON SUPERVISOR/INV OFFICER - SGT E NORDENSON
814 MON CHARGE - SAPO
814 MON CITED - NO CHARGES FILED PER 804
814 MON
814 MON 09:37:00 DARLENE/WCMH SCREENERS/-76
814 MON 09:52:00 AL FROM THE FRANCIS FOUNDATION IS AT -19
814 MON 09:59:04 DARLENE/SCREENERS/IP TO SEE ALISON
814 MON 10:02:00 APPROX. TIME WCMH SCREENER ARRIVED @ -19
814 MON 10:32:00 -8
804 MON
804 MON ON 10-26-2010 AT APPROXIMATELY 0914 HOURS THE MONTPELIER
804 MON POLICE DEPARTMENT RECEIVED AN EMERGENCY 911 CALL REPORTING
804 MON AN OUT OF CONTROL FEMALE IDENTIFIED AS ALISON LEFEBVRE
804 MON DOB 12-03-1988. LEFEBVRE IS KNOWN TO ME AS A CLIENT OF
804 MON THE FRANCIS FOUNDATION.
804 MON
804 MON UPON ARRIVAL I OBSERVED TWO FRANCIS FOUNDATION EMPLOYEES
804 MON SPEAKING WITH LEFEBVRE (HILARY AND AL)

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTTPS

shift: B

date: 10/26/10 TUESDAY

on: 10/26/10

*** COMMENTS ***

804 MON I APPROACHED AND SAID HELLO TO LEFEBVRE WHO IMMEDIATELY
804 MON YELLED AT ME AND APPROACHED ME. SHE THEN PLACED TWO HANDS
804 MON ON MY SHOULDERS AND PUSHED ME ALONG WITH KICKING ME TWICE
804 MON IN THE LEFT SHIN ABOVE THE BOOT.
804 MON OFFICER PEARSON ARRIVED AND WE PLACED LEFEBVRE ON THE
804 MON GROUND IN HANDCUFFS AND TOOK HER INTO CUSTODY.
804 MON THE HANDCUFFS WERE CHECKED FOR TIGHTNESS AND DOUBLE
804 MON LOCKED.
804 MON LEFEBVRE WAS PLACED INTO THE POLICE CAR AND TRANSPORTED TO
804 MON THE MONTPELIER POLICE DEPARTMENT WHERE SHE WAS THREATENING
804 MON SUICIDE.
804 MON WASHINGTON COUNTY MENTAL HEALTH WAS CONTACTED AND SCREENED
804 MON LEFEBVRE. SHE WAS DEEMED TO NO LONGER BE A THREAT TO
804 MON HERSELF OR OTHERS AND WAS RELEASED WITHOUT CITATION
804 MON TO THE FRANCIS FOUNDATION (AL).

officer's signature

date

MONTPELIER POLICE DEPARTMENT
LOG REPORT

012/191.

date: 10/29/10 FRIDAY

rcvclr*
 017 13P

052. 10
700-9

07/05/46

722-722

707-723

707-708

722-723

707-713

452

7310

700

J. L. J.

729

722
122

797

707

2007

797

757

724

722

711

7/11

74

No

17. 18.

70

70

70

70

730

78

72

73

24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TTY: 9

shift: C

date: 10/29/10 FRIDAY

one/18

*** COMMENTS ***

810 MON SUPERVISOR SGT NORDENSON
810 MON SUSPECT: CARLOS SHAW
810 MON CHARGE: ATTEMPTED AGGRAVATED ASSAULT
810 MON CITED TO APPEAR IN COURT ON 12/2/10 @ 12:30 HOURS/WCDC
810 MON 22:55:00 -7 -8 WENT OVER THE OC WARNINGS W/MR SHAW
813 MON SEE CASE FOLDER.
813 MON SEE 396251 WHERE CARLOS SHAW COMES IN FOR FINGER PRINTING.

122-
722-
722-722-
122-49
722-
722-
49-
49-
722-
722-

officer's signature

date

AFFIDAVIT

STATE OF VERMONT
WASHINGTON COUNTY, ss.

NOW COMES Corporal David Kachajian, affiant(s), being duly sworn and on oath, deposes and says he has probable cause to believe that Carlos A. Shaw, Jr. (DOB: 7/5/46) has committed the offense(s) of Attempted Aggravated Assault on a Law Enforcement Officer (Two Counts), a violation of Title 13, Vermont Statutes Annotated Section 1024.

On October 29, 2010 at approximately 4:03 p.m. the Montpelier Police Department was contacted by Washington County Mental Health (WCMH) Case Worker Darlene Duff (DOB: 7/5/46) requesting that we assist her with serving an Emergency Psychiatric Examination Order on a subject by the name of Carlos A. Shaw, Jr. (DOB: 5/7/59) who resides at 8 Wilder Street/Apt. #2 in the City of Montpelier.

Ms. Duff advised me that Mr. Shaw is a client of WCMH and has not been taking his required prescription medication, Coumadin (also known as Warfarin, an anti-coagulant), which could pose a potentially life threatening incident for him if not taken as prescribed. Ms. Duff went on to tell me that she had obtained an Emergency Psychiatric Examination Order and currently had it in her possession. At this time I arranged to meet her at Mr. Shaw's residence in an attempt to have him voluntarily go to the hospital for treatment and/or an examination.

Upon arrival at 8 Wilder Street, I met with Ms. Duff, WCMH Case Worker Gary Gordon (DOB: 6/13/52), and Dr. Stuart Graves (M.D.) of WCHM. At this time I looked at the order that had been issued by Dr. Graves and read the statement given by Ms. Duff in the application of the order itself. According to Ms. Duff's statement on the order:

"Carlos Shaw is a 64 year old male who resides in an independent living situation in Montpelier. He is a CRT client of Washington County Mental Services-Diagnosed

Subscribed and sworn to before me on

this 31st day of October, 2010

[Signature]
(Notary Public) (Judicial Officer)

[Signature]
(Affiant)
10/29/10
(Date)

with Schizoaffective D/O. Carlos has a aggressive behavior and medication non-compliance. Today I received a call from Heather Griffin CRT Assit Supervisor) indicating concern that Carlos had not taken his medication (Warfarin) which presents a significant medical health risk. This clinician followed up w/Dr. Oraves and Julie Sullivan who contacted Dr. Curchin (clients PCP). According to Julie Sullivan, "Dr. Curchin reported that Carlos needs his Coumadin (Warfarin) for his mechanical heart valve and therefore recommends this emergency exam due to the potential health risk this poses". Dr. Graves, Gary Gordon and this writer went to Carlos apartment to convey the importance/medical risk of refusing his heart medication. Client refused to open his door to speak w/us and refused to take medication. As mentioned above client presents with serious medical [unknown word] and is refusing to engage in treatment. For these reasons, it is the opinion of Dr. Graves, Dr. Graves, Dr. Curchin, and this clinician that client meets the criteria for this order of treatment".

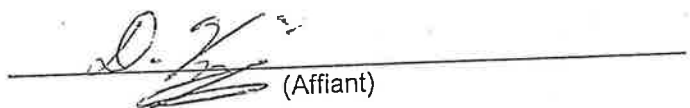
After looking over the order, I entered the apartment building and went to the door of apartment # 2, where Mr. Shaw resides. I knocked on the door and heard someone yell "Who is it" from inside. I advised Mr. Shaw why I was there and tried to explain to him that the workers from WCMH and I were concerned about his wellbeing. When I asked Mr. Shaw if either I could come in or if he would come out so that we could speak with him, he refused. Mr. Shaw was extremely agitated and appeared to be paranoid from the statements he was making. After pleading for over fifteen minutes with Mr. Shaw to come out of his apartment, I asked him one more time to meet with us to which he replied, "If you come in your violating my rights and I'll defend myself with force".

At this time I went back downstairs and met with Ms. Duff, Mr. Gordon, and Dr. Graves. Officer Moulton of the Montpelier Police Department had arrived at this point to assist me and we discussed our options. It was agreed that we would apply for a search warrant for Mr. Shaw's apartment so that we could enter and take custody of him so that he could be treated.

Subscribed and sworn to before me on
this 31st day of October, 2010


(Notary Public)

(Judicial Officer)


(Affiant)
10/31/10
(Date)

Upon arrival back at the Montpelier Police Department, Officer Moulton completed an affidavit of probable cause and submitted an application for a search warrant to the honorable Judge Thomas Devine for Mr. Shaw's premises. Judge Devine subsequently issued the search warrant to Officer Moulton for 8 Wilder Street/Apt. # 2. Prior to serving the search warrant at the residence of Mr. Shaw, Officer Moulton and I discussed the incident with our shift supervisor, Sgt. Eric Nordenson. Sgt. Nordenson advised us that Mr. Shaw could be violent and had assaulted people in the past. Sgt. Nordenson also told us that Mr. Shaw had threatened to shoot police officers in the past as well when they had gone to his residence on prior incidents. When I asked WCMH if they had any knowledge of Mr. Shaw having any weapons in his possession, they indicated that they did not know.

At approximately 9:18 p.m. Sgt. Nordenson, Officer Dion, Officer Bean, Officer Moulton, and I arrived at 8 Wilder Street to serve the search warrant on Mr. Shaw's apartment. At 9:20 p.m. we entered the apartment building and went to the second floor where Mr. Shaw's apartment was located. At this time Officer Moulton knocked on the door and asked Mr. Shaw to come out to speak with us. Officer Moulton told Mr. Shaw that we wanted to make sure that he was taking his medications and that we wanted to make sure he was alright. Mr. Shaw yelled through the door to us that he wasn't coming out and that we only wanted to "Give him psychotropic drugs". We then heard Mr. Shaw say that he would defend himself with force if we tried to come into his apartment to get him. At this point Officer Moulton asked him if he had any weapons to which Mr. Shaw said, "I'm not telling you".

Due to the fact that Mr. Shaw may have been arming himself while inside of the apartment and due to the fact that we were worried that a prolonged standoff with him might cause the stress of the situation to cause him to have a cardiac arrest because of his not having taken his medications, we decided to enter the apartment. At this point, Sgt. Nordenson started to knock on the door to mask the sound of Officer Moulton trying to turn the key, which we received from WCMH, in the door lock. Once the door was

Subscribed and sworn to before me on

this 31st day of October, 2010


(Notary Public) (Judicial Officer)


(Affiant)
10/31/10
(Date)

unlocked, Officer Moulton pushed the door open, only to find that it was chained from inside. Officer Moulton immediately forced the door open with a ram and I went around him on his right side to enter the apartment.

As I entered the apartment, I immediately observed Mr. Shaw standing approximately six feet away from me holding a three foot wooden board over his head. When he saw me enter, he immediately began swinging the board at my wildly. I immediately backed out of the apartment as he was running towards me trying to hit me in the head with the board. As I was backing out, I was yelling to him to "Drop the weapon". When I reached the threshold of the door, I moved to the right and stepped down onto the narrow flight of stairs that led up to the second floor. At this point I observed the end of the board coming towards Officer Moulton, who had been standing just outside of the doorway behind me. Upon seeing the board being swung at Officer Moulton, I raised my department issued pepper ball launcher and shot five pepper ball rounds at the doorway threshold in an attempt to stop Mr. Shaw from advancing any further towards Officer Moulton.

Even after I shot the five rounds, dispersing a cloud of pepper spray in front of Mr. Shaw, he continued to swing the board at Officer Moulton. At this time I moved slightly forward and shot two more pepper ball rounds at Mr. Shaw, who was now partially visible in the doorway. The rounds struck Mr. Shaw in the area of his shoulder/upper chest, but did not stop him. It was at this point that Officer Moulton took out his canister of pepper spray and sprayed it towards Mr. Shaw's face. After Mr. Shaw was sprayed in the face, he moved back into the apartment, but was still brandishing the board and swinging it violently towards us. After I rounded the corner from the stairs and into the apartment, I shot four more pepper balls at Mr. Shaw, hitting him twice in the chest and then twice in the shoulder as he turned. After getting hit with the last pepper ball, Mr. Shaw finally dropped the board and fell down onto the floor. After falling down to the floor, Mr. Shaw was handcuffed by Officer Dion (handcuffs double-locked and checked for tightness) and immediately removed from the apartment

Subscribed and sworn to before me on
this 31st day of October, 2010


(Notary Public)

(Judicial Officer)


(Affiant)


(Date)

to an awaiting ambulance outside of the apartment building. Once on the ambulance stretcher, Mr. Shaw became compliant with our orders and/or commands. We continued to advise him that we only wanted to help him and were concerned for his mental and physical health.

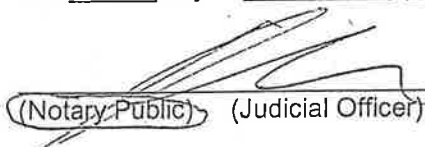
Mr. Shaw was later transported to the Central Vermont Medical Center for a medical and/or psychiatric evaluation per the Emergency Examination Order we served on him. I was later advised by Sgt. Nordenson that Mr. Shaw told him at the hospital that the next time he deals with us he will, "Get us with a machine gun". Mr. Shaw was later transported to the State Hospital in Waterbury, Vermont for a psychiatric evaluation.

As a result of this incident, Mr. Shaw was served at the hospital by Sgt. Nordenson with a citation to appear in the Washington County District Court on December 2, 2010 at 12:30 p.m. to be arraigned on the charge of Attempted Aggravated Assault on a Law Enforcement Officer [Two Counts].

I respectfully request that the honorable court order Mr. Shaw, on his date of arraignment and as a condition of his release, to report to the Montpelier Police Department at a later date to be both fingerprinted and photographed. Due to Mr. Shaw's physical and mental wellbeing being a priority on the date he was taken into custody as well as his obvious violent actions towards the officers on scene, he was not processed at the time.

Subscribed and sworn to before me on

this 31st day of October, 2010


(Notary Public)

(Judicial Officer)


(Affiant)
10/31/10
(Date)

06/24/11 18:22
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTYP5 +9

shift: C

date: 11/05/10 FRIDAY

old/lsc

***** RO 90C DISORDERLY CONDUCT *

**rev#air*
314 90C

20:22 * 1 PITKIN CT MON

*ibr: 1: 314 2: 308.

39287E * INTOX. MALE WANDERING AROUND DOWNTOWN

56520
707-9

* ID #: 5336 ALARM #: 800

: 2JUVENILES,

Def: FOWLER, KEITH R

04/04/87 008-70-3040

MONTPELIER, VT 05602

call-back#

223-3445

*** UNIT(S) ***

810 MON P P.O. KACHAJIAN

707-707

r> 20:22 d> 20:22 a> 20:22 c> 21:10 k>

h>

707-707

811 MON P P.O. BEAN

r> 20:24 d> 20:24 a> 20:24 c> 20:27 k>

h>

707-707

820 * MON P P.T. P.O. OFFIC

r> 20:22 d> 20:22 a> 20:22 c> 21:10 k>

h>

*** COMMENTS ***

820 MON 20:22:00 CD-314-INTOX. MALE WANDERING AROUND DOWNTOWN

707-707

820 MON FOLLOWED TWO JUV COMPLAINTS TO -19. IS OUT FRONT.

707-

820 MON DUNSCO MN#044506 & JOHALE MN#041225.

707-

820 MON 20:24:00 OFFICERS OUT FRONT TRYING TO TAKE HIM INTO CUST

707-707

810 MON 20:26:00 HAVE HIM -95/ OUT AT -19

707-707

810 MON -21 TO FSU.

707-

810 MON (CORRECT TIME FOR THIS INCIDENT SHEET IS 20:22:00)

707-707

810 MON SUPERVISOR - SGT E NORDENSON

707-

810 MON INV OFFICER - CPL D KACHAJIAN

707-

810 MON CHARGE - DISORDERLY CONDUCT / RESISTING ARREST

707-

810 MON ATTEMPTED SIMPLE ASSAULT ON A POLICE OFFICER.

707-

810 MON CITED - DEC. 16, 2010 12:30.

707-707

810 MON

707-

810 MON 21:02:00 FSU AT -19

707-

810 MON 21:10:00 FSU HAS HIM

707-

810 MON

810 MON SEE 393061 FOR NIBRS PURPOSES FOR ATTEMPTED ASSAULT ON PO

810 MON

officer's signature

date

06/24/11 18:01
v5.50

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 1
TTY: 2

shift: B

date: 11/09/10 TUESDAY

***** R 13P ASSAULT-OFFICER ASSAULTED *13A
14:42 * 1 PITKIN CT MON
393061 * FOR NIBRS PURPOSES-SEE CASE 392878
* ID #: 5336 ALARM #: 800
Def: FOWLER, KEITH R
MONTPELIER, VT 05602
Vic: KACHAJIAN, DAVID W
1 PITKIN CT MONTPELIER, VT 05602
call-back# 223-3445

***svrclr*
13F 13P
56520
9 -9

04/04/87 003 70-3040

06/02/72 013-52-248

*** UNIT(S) ***

810 * MON P P.O.KACHAJIAN

r> 14:42 d> 14:42 a> 14:42 c> 14:42 k> h>

*** COMMENTS ***

810 MON 14:42:27 CD-13P-FOR NIBRS PURPOSES-SEE CASE 392878

officer's signature

date

AFFIDAVIT

STATE OF VERMONT
WASHINGTON COUNTY, ss.

NOW COMES David Kachajian, affiant(s), being duly sworn and on oath, deposes and says he has probable cause to believe that Keith Fowler (DOB: 4/4/87) has committed the offense(s) of Attempted Simple Assault on a Police Officer, Disorderly Conduct, Resisting Arrest, a violation of Title 13, Vermont Statutes Annotated Section 1028, 1026, 3017.

On November 5, 2010 at approximately 8:22 p.m. while at the Montpelier Police Department I was notified by Dispatch that two young males had just come into the front lobby of the police station and were complaining that an intoxicated male was following them. Dispatch also advised that the male was now standing outside of the police station between the Montpelier City Hall and the steps of the police department.

At this time Officer Dion and I walked out the side door of the police station and went to the front of the building. When we arrived at the front of the building we observed a male subject, later identified as Keith Fowler (DOB: 4/4/87), staggering around near the front of the police station. When we approached the male, he immediately began to walk away from us. It was immediately apparent to both Officer Dion and I that this male was intoxicated as we observed him barely able to walk and could smell an extremely strong odor of intoxicants coming from his person. When we asked the male who he was and where he lived, he didn't answer us and continued to stagger away. Because we were in a busy parking lot with a lot of vehicle traffic coming through and because we believed that due to his intoxicated state that Mr. Fowler could possibly injure himself or someone else, we decided to place him into protective custody.

At this point Officer Dion and I each took hold of one of Mr. Fowler's arms and attempted to handcuff him. We also advised him that we were placing him into protective custody. As we were trying to handcuff him, Mr. Fowler started to yell and scream and began to actively resist us by refusing to put his hands behind his back and kicking his feet at both of our legs. After struggling with Mr. Fowler for about a minute, we were finally able to get him handcuffed behind his back. Mr. Fowler continued to struggle and refused to walk when we tried to walk him over to the sally port entrance to the police station. He also proceeded to spit at us and again tried to

Subscribed and sworn to before me on

this 5th day of Nov, 10


(Notary Public) (Judicial Officer)


(Affiant)
11/5/10
(Date)

kick us in the shins. When we arrived at the sally port garage, we radioed Dispatch and asked them to open the door so that we could bring Mr. Fowler into the building. As the door was opening, Mr. Fowler tried to step on my foot. I told him to stop trying to kick me and at that point he raised his right leg up and attempted to kick me in the left knee. At this time I grabbed a hold of his right pant leg cuff and pulled his leg backwards to prevent him from trying to strike me.

As I was pulling his leg back, Officer Dion and Officer Bean, who had just arrived to assist us, grabbed his arms and escorted him down to the floor of the sally port on his stomach. Mr. Fowler continued to struggle and fight with us by kicking and twisting his body. He also continued to spit at us. Upon entrance into the holding cell area of the police station, Mr. Fowler was shackled with leg irons and the handcuffs we had originally placed on him were double locked. For his safety as well as officer safety, he was placed on the floor, face down, to prevent him from trying to kick us again and to prevent him from falling down and injuring himself.

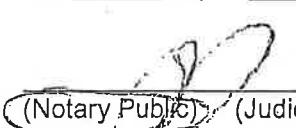
After bringing Mr. Fowler into the police station, we learned that he was currently under supervision with FSU. FSU was contacted and subsequently took custody of Mr. Fowler.

As a result of this incident, Mr. Fowler was issued a citation to appear in the Washington County District Court on December 16, 2010 at 12:30 p.m. to be arraigned on the charges of Disorder Conduct, Resisting Arrest, and Attempted Simple Assault on a Police Officer. Due to his intoxicated state and assaultive behavior, Mr. Fowler did not sign his citation. The citation was handed over to FSU Officer Al George to give to Mr. Fowler when he is no longer intoxicated.

I respectfully request that the honorable court order Mr. Fowler, on his date of arraignment and as part of his conditions of release, to report to the Montpelier Police Department to be both fingerprinted and photographed.

Subscribed and sworn to before me on

this 5th day of Nov, 10


(Notary Public)

(Judicial Officer)


(Affiant)

11/5/10
(Date)

2011

MPD PD.RLGS
v5.5n(8.7.1)

MONTPELIER POLICE DEPARTMENT
LOG SEARCH REPORT

06/24/11 17:24 PAGE
TTYP1

platoon: ALL
action code: 13P ASSAULT-OFFICER ASSA grp: ALL off: ALL unit: ALL
geo code: ALL to: from: 01/01/2011 to: 06/24/2011
where: ALL string:
date/time s case# rep unit personnel #1 personnel #2 other per

(: 1) 06/18/11 C 405226 13P- 786 52 PROSPECT ST

MPD PD.RALG
v5.5m

MONTPELIER POLICE DEPARTMENT
ARREST LOG by DATE

06/24/11 21:04 PAGE 1
TTYPI -2

from date: 01/01/11
to date: 06/24/11

from chg: 13B2
to chg: 13B2

from off: ALL off type
to off: (A)
typ: ADULT

arrest/charge type: A

name t case# date statue desc off off
----- -1- -2-

009711 JONES, ADAM MICHAEL 52 PROSPECT ST, MONTPELIER, VT
dob: 10/27/80 30 A 405226 06/18/11 13-VSA-1 SIMPLE ASSAULT (OFFICER)

55

06/24/11 18:01
v5.50

2011

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TYPE: 2

shift: C

date: 06/18/11 SATURDAY

org/180

***** RQ 13P ASSAULT-OFFICER ASSAULTED *13A

rcvlr*
10 3F

21:14 * 52 PROSPECT ST MON

*ibr: 1: 145 2: 312

405226 * LOUD MUSIC COMING FROM HOUSE ACROSS THE STREET

054210

* ID #: 786

730-9

Def: JONES, ADAM M

10/27/80

52 PROSPECT ST MONTPELIER, VT 05602

Invo: COLLINS, DENNIS M

07/23/72 018-60-2966

52 PROSPECT ST MONTPELIER, VT 05602

call-back#

223-7534

*** UNIT(S) ***

805 MON P SGT. COCHRAN

r> 21:48 d> 21:48 a> 21:52 c> 23:42 k>

h>

812 MON P P.O. MOULTON

r> 22:01 d> 22:01 a> 22:01 c> 22:09 k>

h>

816 MON P P.O. ADAMS

r> 22:03 d> 22:03 a> 22:03 c> 22:06 k>

h>

821 * MON P P.T. POJENNINGS

r> 21:48 d> 21:48 a> 21:52 c> 23:42 k>

h>

*** COMMENTS ***

821 MON 21:14:18 CD-910-LOUD MUSIC COMING FROM HOUSE ACROSS THE STRE

821 MON 21:17:49 ON ASSIGNMENT- WILL BE -76 WHEN FINISHED

805 MON 21:48:05 -76

805 MON 21:52:05 -23

821 MON 21:52:09 -23

805 MON 22:00:44 REQUESTING ANOTHER UNIT, MULTIPLE UNITS RESP

805 MON 22:01:21 NOW

821 MON 22:01:34 821 ADV THEY ARE 1121

812 MON 22:01:41 -23

805 MON 22:02:48 805 ADV TO NOTIFY ALL UNITS THEY ARE ALL SET

816 MON 22:03:25 -23 PROSPECT ST

805 MON 22:04:40 W6 X PORTING MALE TO -19

805 MON 22:04:58 MALE -95 FOR DISORDERLY CONDUCT, FAILURE TO ID

805 MON 22:04:00 AND ASSUALT ON A PO

816 MON 22:06:18 -8

805 MON 22:05:00 -99 CHECK ON MA 018602966/ NEG IN VT- NO EX MA

805 MON 22:07:48 W6 -23 AT -19 W/ MALE

812 MON 22:09:41 -8, LIST DENNIS MURTAGH/DIANE MURTAUGH AS WITNESSES

821 MON 22:12:04 -8

805 MON 22:13:56 W6 LEFT -19

805 MON 22:18:55 BAC .242

805 MON

805 MON

805 MON CASE MADE

805 MON INVESTIGATING OFFICER; 821- PT WILLIAM JENNINGS

805 MON SUPERVISING OFFICER; 805- SGT WADE COCHRAN

805 MON ASSISTING OFFICER; W6- MARC POULIN

805 MON CHARGE; DISORDERLY CONDUCT, ASSAULT ON A

805 MON POLICE OFFICER

805 MON CITED;

805 MON

805 MON 22:27:40 -21 FROM GARY ETA 20-30 MINS

C 4/11 18:01
v5.5c

MONTPELIER POLICE DEPARTMENT
LOG REPORT

PAGE: 2
TYPE

shift: C

date: 06/18/11 SATURDAY

06/18/11

*** COMMENTS ***

805 MON 22:54:00 GARY NOW AT -19
821 MON 22:58:00 -21 FROM FSU- NOT ON W/ THEM
805 MON 23:14:43 805,821 -76 TO BCPD CAR 6 SM 58659
805 MON 23:28:00 OUT AT BCPD EM 56666
805 MON 23:42:00 -8

723-
730-
730-
730-
730-

officer's signature

date



1211-11-405226

Affidavit

Montpelier Police Department

State Of Vermont

Washington County ss.

Now Comes Officer William M. Jennings, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that Adam M. Jones DOB:102780 has committed the offenses of Disorderly Conduct and Assault on a Police Officer all in violation of Title 13, Vermont Statutes Annotated, 1026 & 1028.

Synopsis:

Montpelier Police Dispatch received a reported complaint of loud music at an apartment. Upon arrival on-scene officers attempted to speak with the parties involved. While conversing with the subject, he refused to identify himself became extremely upset and aggressive, shouting in a loud voice obscenities and at one point spat in the face of one of the police officers on-scene. It should be noted this address is in a residential neighborhood. During this incident several of the residents were noted to be watching the incident unfold.

Based on the following facts:

On June 18, 2011 at approximately 21:14 hours Montpelier Police dispatch received the report of loud music coming from a residence at 52 Prospect Street, Montpelier, Vermont. Police units were unable initially to respond due to volume of calls.

At approximately 21:52 hours myself and Sergeant W. Cochran arrived on-scene. We could detect voices and other audible sounds (slapping sounds – possibly hand to skin contact) coming from the residence. We initially attempted to gain access by knocking on a second floor exterior door. We were advised that the entrance was located off of the front of the apartment building. We were met at this entrance by Adam M. Jones DOB: 10/27/80. While conversing with Sergeant Cochran it was evident that he was becoming more and more upset. His voice began to elevate to shouting and using profanities. Sergeant Cochran was attempting to gather the identity and renter of the apartment information. It was apparent that Jones was becoming more agitated. Jones would not comply with the simplest of requests. Sergeant Cochran brought Jones forward off the front porch. I assisted with Jones being placed into restraints (hand cuffs). A second male later identified as Dennis Collins DOB 07/23/72 came to the door and was conversing with

Subscribed and sworn to before me on,
This 23 day of June, 2011

Notary Public

Affiant

Date

Sergeant Cochran. Jones continued to shout loudly, using profanities and was attempting to push off/shove me. At one point he notably gathered saliva and mucous material spitting this material attempting to strike me in the face. I turned slightly, bladed Jones in a defensive position. The discharge sprayed my face and was noted latter while at the police department to have collected/pooled material on my right sleeve in the bicep area. I brought Jones to the ground on the lawn to gather further control and avoid any further activity. Jones throughout my contact at the scene was aggressive, verbally abusive and would not comply with any request. I attempted throughout my contact with Jones to speak in a controlled low volume.

A second police unit (WCSD W-6 Poulin) was requested, with Jones being transported to the Montpelier police department.

While on scene Dennis Collins advised that he was at the Jones apartment listening to music, etc. That Jones had consumed approximately three alcoholic beverages. Collins advised on several occasions that Jones was out of control (acting out) and appeared to be unsure why. Collins advised that Jones should not have acted as he did – spitting, etc.

Officer K. Moulton while on-scene advised that he had spoken with David Murtagh of 51 Prospect Street. Mr. Murtagh advised he had witnessed the incident.

Jones was transported to the police department, where he was evaluated for intoxication. An Alco-meter was administered with the results being .242 BAC. Washington County Mental Health screened Jones and determined that he should be held at Barre City's holding facility until his BAC level was reduced.

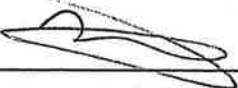
A citation was issued for Adam Jones to appear in Washington District Court on July 14, 2011 for the violations of Disorderly Conduct and Assault on a Police Officer.

On June 22, 2011 I met with Mr. Murtagh at his residence (51 Prospect Street-across the street from the incident location). He initially gave me a brief verbal statement; I requested he complete a written statement.

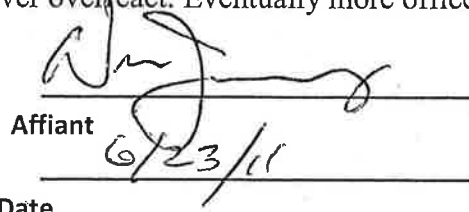
The following is the statement received.

On Friday nite June 17th about 10 PM I noticed a light being shined at the building across the street at 52 Prospect, when I went to the door to see what it was, I noticed two police officers at the upstairs apartment door and they were talking to one of the occupants and they were asking him for identification and the occupant would not cooperate with the police and started to get very belligerent and started swearing at the police officers. The more the officers talked to him the worse he became. Then the occupant started to spit at the officer, who then wrestled him to the ground and handcuffed him and all the while the occupant kept swearing and getting more and more verbally aggressive toward the two officers, who to my amazement were being very restrained in there attitude and never once did they ever overreact. Eventually more officers

Subscribed and sworn to before me on,
This 23 day of June, 2011



Notary Public



Affiant

Date

arrived and put a covering over the occupant's mouth to prevent him from spitting and he was taken away in one of the police cruisers.

End of statement:

Mr. Murtagh gave a very similar verbal statement. He did advise "He had not heard swearing like that since being in the navy".

Subscribed and sworn to before me on,
This 23 day of June, 2011



Notary Public



Affiant

6/23/11

Date

Assault-on-Officers Cases, Summary

Vermont statutory definition of Simple Assault, in 13 V.S.A. Section 1023, is: Causing or attempting to cause “bodily injury”. “Bodily injury” is defined in Section 3251(5) as “physical pain, illness or any impairment of physical condition”.

All assaults for these three years were logged as simple assaults or attempted simple assault on officer. There was no aggravated assault.

2008

5 reported, no supporting documents provided to Committee.

2009

7 reported.

DESCRIPTION OF INCIDENT	NATURE OF ASSAULT
01/12/09: “challenged” female student “out of control/in crisis”, previously known to police department	Spitting, kicking. No injury.
02/24/09: combative male subject light-headed, hyper-ventilating, fainted and fell, medical issue, extreme anger alternating with calm, incoherent, p.o. trying to take him to hospital	Sore testicles, spitting and “striking”: bruise to forehead, left ear skin tear, pain to pinched left hand
07/29/09: DUI, female, in holding cell, officer escorting her by her arm to different cell	punch to cheek, scratch in eye area

DESCRIPTION OF INCIDENT	NATURE OF ASSAULT
08/16/09: DUI, intoxicated female, agitated	kick to calf, pain
08/16/09: DUI, intoxicated female, combative-to-calm fluctuation, advised she suffers PTSD	her kick "grazed my groin"
10/04/09: female, 17, officer lost control of her right hand	she punched his chest
12/11 or 12/09: male, 22, BAC .115, fell through barroom glass door, subject punched officer, officer punched subject to ground; large amounts of blood, agitated, OC deployed, being escorted to ambulance, officer lost footing, struggle on ground	possible sprain to left thumb with pain, swollen left cheek

2010

7 reported.

08/01/10: female, 24, intoxicated, protective custody, being cuffed, struck officer	struck officer in face with handcuffs during transport
08/10/10: female, previously known to police dept., Erratic behavior, holding knife, disarmed, handcuffed.	stomped on officer's foot; pain

DESCRIPTION OF INCIDENT	NATURE OF ASSAULT
08/20/10: female, "highly intox'd", previously known to the police dept., cuffed, combative, leg irons added.	hit officer on face; scratch on face
09/05/10: male, "extremely impaired", defecated in pants, BAC .324, protective custody, "very brief struggle", officer's hand between suspect and ground as they fell, leg irons added, hogtied for transport	attempted to kick laceration back of right hand, pain
10/26/10: "out of control" client of Frances Foundation (mental health and developmental disabilities), screeners called, subject released w/o citation to Foundation	kicked officer twice in shin
10/29/10: police dept. called by WCMH caseworker to assist serving Emerg. Psych. Exam. Order on 64 yr-old WCMH client who was not taking psych meds and has mechanical heart valve. Living in Indep. Living situation. Schizoaffective Disorder. Swung wooden board over his head wildly.	threat, no contact
11/05/10: male, intox'd, on foot, need for protective custody. Kicking while cuffed.	Subject spat and tried to kick

2011

DESCRIPTION OF INCIDENT

NATURE OF ASSAULT

1 reported.

06/18/11: male, loud music complaint, agitated,
BAC .242, hood place over head.

spat, attempted to punch officer,
no physical contact, no injury

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: August 4, 2011
RE: Interview with Cindy Taylor-Patch

I interviewed Cindy Taylor-Patch by phone on August 2, 2011. She is the Director of Training at the Vermont Police Academy, and has worked at the Academy the past ten years. She leads the mental health training, and is the only one on staff who teaches it. She has a masters degree in forensic psychology, with a police work concentration. Her previous work was as a screener for Addison County and Rutland, also as a case manager. Cindy related the following.

Mental health training is not mandatory for currently certified police, but all new full-time police trainees get it at the Academy. New part-time trainees do not receive the training. Full-time police general training is 6 weeks (with possible options to extend it an additional 3 weeks). Part-time training is one week or 58 hours. Part-time police elect 60 hours of electives training during the next year. Part-time police get provisional certification, which means they cannot work alone for the first year till they finish the additional electives and some field training.

The mental health training is 8 hours at the academy. Alternatively, if it is received locally as an in-service training, it is 6 hours, as part of yearly supplemental training of 30 hours for part-time and 20 hours for full-time officers.

The week-long Crisis Intervention Training, which Cindy received in Maine, emphasizes human interaction, local facilities visits and meetings, and teamwork. It uses role playing, and goes more in depth regarding topics that “we’re only scratching the surface on” in Vermont’s own 8-hour training. It brings in psychiatrists to instruct about medications and compliance, and addicts who speak about their experience. There’s more human connection in the week-long course.

Vermont’s one-day course “is ok for basic awareness, but doesn’t give the awareness of the longer course.”

Cindy and others have tried to have the week-long CIT training adopted by Vermont, but “we need more people to buy into it, like the Memphis and other CIT programs were able to get”. She has proposed county-wide CIT teams for Vermont, just like agencies that share canine units.

These CIT teams have a different approach than screeners, who often aren’t called or wanted by the police at encounter scenes for safety reasons. Members of the CIT teams are usually law enforcement personnel. The data that has been collected from the CIT approach has shown a reductions of injuries, and also a saving of officer time because the CIT personnel are trusted by both emergency room personnel and screeners. The CIT approach has also shown a reduction of liability. And it provides extra training for the employees that a police force already has, because they observe the CIT team on the scene.

Cindy said the police social worker model is a “very exciting” model, both for handling difficult situations and for officers learning from the police staff social worker. It may be possible to do this on a county-wide basis.

She regards both the CIT and the police social worker approach as “critical” elements for a force.

As to stun guns, she takes no position. She is in the middle of the law enforcement and mental health worlds. She noted that Vermont does not provide taser training, TASER International does that.

She will see if it’s possible to provide us both the Vermont curriculum and the CIT curriculum. She might be able to speak to us if we felt more from her were necessary, but Tuesday evenings are not possible, we would have to meet on another evening.

END

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: July 28, 2011
RE: Interview with Joe Damiata, Vermont League of Cities and Towns

I interviewed Mr. Damiata this date at the VLCT offices in Montpelier. Joe is the manager of the League's safety and health programs, is an underwriter, and was familiar with the various VLCT model policies, including the one titled "Response to Resistance" that Chief Facos is proposing to adopt. Joe has worked with Chief Facos in various contexts, and has high respect for him.

The purpose of the League is to insure member towns and cities in Vermont. VLCT has distributed to its clients a collection of model policies created by the Legal and Risk Management Institute, a national company owned by a former police chief, and whose policy-making panel is composed solely of current and retired law enforcement personnel. "Our ultimate goal is to reduce the exposure and liability of municipalities," Joe stated.

As to the Response to Resistance policy, he stated that "police departments should go through it and customize it, make sure it fits their department. We don't tell them to take these and put them [directly] on the shelf."

During the course of our conversation, Joe made the following additional comments:

1. Complete training at the Vermont Police Academy for full-time officers is 16 weeks plus another 4 if certain special training is added, such as DUI. Part-time police, however, receive only one week's training.
2. The adoption of tasers does not affect the amount of a city's insurance premium.
3. He agreed that the introductory paragraph of the Response to Resistance policy purports to give no legal rights sounds like the policy is legally unenforceable in a court of law. He also conceded that this language would have the effect of discouraging a citizen from believing the policy was legally enforceable.
4. In being written from a motivation to minimize legal exposure of a city or town, Joe said he can understand how a citizen panel such as ours might be concerned that the Response to Resistance policy, aimed at risk management, might not weigh all countervailing interests, such as citizen protection from low policy standards, or the interest that there not be a too-early resort to a particular level of force due to a low deployment standard. (These two examples were mine.)
5. Joe acknowledged the presence of vague terms in some policies, such as the example I pointed out to him on page one of the Response to Resistance model policy on page one, being the definition of "reasonable belief". He said police policy organizations such as the

International Association of Chiefs of Police, as well as insurance companies, sometimes favor vague policy terms.

6. Even though cameras can sometimes capture events that increase exposure to liability, Joe stated that, on balance, from a risk management standpoint, “cameras are better than no cameras”, and that body cameras capture the full event.

7. “Our main goal”, he concluded, “is to protect [cities and towns] from liability.”

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: August 9, 2011
RE: Interview with Thomas Hanley, Chief, Middlebury Police Department

I interviewed Chief Hanley today by telephone. Hanley has been chief of the Middlebury force for the past twenty years, having previously been in law enforcement in Connecticut. He stated the following.

“We’re not so wrapped with officer injuries that we felt we needed tasers. And it’s expensive. There’s purchase, training, replacement, recurring costs, constant training, etc.” In a cost-benefit analysis, we decided we didn’t need them.

Middlebury’s crime statistics “are about in the middle of Vermont communities. We don’t have a lot of violent crime, it’s mostly property crime. We’re not seeing day-to-day or historical evidence of the need for tasers. If I were in a more combative environment, I might think twice about it.”

Middlebury has not had a lot of workers comp claims by officers. Most of our officer injuries are close contact injuries, like punches, bites, lacerations and abrasions. No injuries that have required hospitalization. Our most severe injury was a broken hand once.

Hanley has not had requests from his officers to get tasers tasers, just occasional queries about whether they need them. Nor has the town exerted pressure on the force to get tasers.

The Middlebury force emphasizes officer fitness, training and personal skills in dealing with confrontational situations. Beyond that, they rely on pepper spray, which has been a “pretty effective tool” in most instances.

Hanley’s decision not to seek tasers comes from his question: “Is this a tool we need, or a gadget sitting on the officer’s belt? You’re not going to go into a high risk situation with a taser drawn, you’re going to have your gun drawn. A taser can give the officer a false sense of safety or security.”

Many of the Middlebury officers have gone through the 6-hour Academy mental health training, and the local mental health office has done supplemental in-service training for them. Middlebury, as a town with mental health facilities, has a large number of mental health-challenged individuals, as well as its fair share of substance abuse cases.

END

MEMORANDUM

FROM: Jeff Dworkin
TO: Taser Committee members
DATE: August 3, 2011
RE: Interview with Sam Hill, Sheriff, Washington County

I interviewed Washington County Sheriff Sam Hill by phone on July 14, 2011.

Sheriff Hill thinks stun guns are an excellent tool but that “we don’t need them here”. He said that’s because “we’re not front-line officers”. However, the Sheriff’s routine citizen contacts do include vehicle stops for various infractions including Driving Under the Influence; transporting juveniles and people in some stage of mental health commitment proceedings; and also in being the agency that transports prisoners between prisons and courts.

Hill stated that his office does not incur many work-related injuries, and none have been major. Some of the injuries that have occurred have been while transporting prisoners. His officers rely on batons, pepper spray and physical restraint.

Some of his officers have requested stun guns. Hill has no interest in acquiring them.