



**CITY OF
MONTPELIER
MONTPELIER,
VERMONT**

Agenda for City
Council Meeting
(Auto-Generated
Trim Backup)

Wednesday, January
12, 2011
07:00 P.M.

- 1) Call to Order by the Mayor
- 2) 11-012. General Business and Appearances
- 3) 11-013. Consideration of the Consent Agenda:
 - a) Consideration of Minutes from the November 17th, 2010 City Council Meeting.
 - b) Consideration of granting a permanent access easement to Bryndle, LLC for the construction of a driveway and bridge across a portion of the City of Montpelier's land on City Dump Road. Bryndle, LLC, represented by William Field, Esq., submitted a request to formalize a longstanding access arrangement through the conveyance of an easement to formally connect a parcel with the public highway known as City Dump Road. A recent survey revealed that the Bryndle property is separated from City Dump Road by a 30' +/- wide strip of land owned by the City of Montpelier as part of the so-called "Stump Dump" parcel. In response to a subdivision application submitted by Doug Hill, DBA, Bryndle, LLC, the Public Works Department consulted with the City Attorney to verify that City Dump Road is considered a Class 4 public highway. As a Class 4 public highway, the City may allow a private party to upgrade the road to a Class 3 highway for four-season use. The Public Works Department has reviewed the request and submitted a memorandum to the City Manager which includes a recommendation to grant the easement and to permit the developer to undertake the necessary physical road modifications to achieve four-season public travel. The formal statutory

process for the reclassification of a public highway will be presented at a later date for consideration when the work has been satisfactorily completed.

Recommendation: Review the Public Works memo, legal correspondence and project plans; discussion; grant the permanent easement to Bryndle, LLC with conditions. Grant preliminary approval to allow City Dump Road to be upgraded and reclassified as a Class 3 public highway as recommended by the Public Works Director. Designate the City Manager as the duly authorized agent to execute the easement documents on behalf of the City Council.

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

- 1. Application for a Catering Permit from Valley Bowl, Inc., for a Legislative Reception scheduled to be held on Tuesday, January 18th, 2011 from 5:00 to 8:00 P.M. at the Vermont State Employees' Association Office Building, 155 State Street.

- c) Payroll and Bills

4) 11-014. Appointments to Montpelier's Business Loan Fund Committee

- a) Two seats became vacant as of January 10th, 2011; staff advertised and the following individuals responded: Beth Boutin (seeking reappointment) Claude Stone (seeking reappointment)

- b) Recommendation: Appointments; both are 2-year terms.

8) 11-018. Taser Policy Discussion

- a) Police Chief will provide information and answer questions from Council Members and concerned citizens.

- b) Recommendation: Discussion; possible direction to staff.

5) 11-015. Conduct First Public Hearing on Proposed FY12 Municipal Budget

- a) The City Manager presented a recommended budget on December 8th, 2010.
 - b) The Council conducted "budget workshops" as part of their meetings held on December 8th, December 15th, and December 22nd, 2010; and January 5th, 2011.
 - c) The proposed budget requires a two cent increase in the municipal tax rate (one cent for Capital Improvements and one cent for Equipment Purchases).
 - d) Recommendation: Present budget to public; conduct public hearing; provide direction to staff as necessary.
- 5) 11-015. Conduct First Public Hearing on Proposed FY12 Municipal Budget
- 6) 11-016. Conduct First Public Hearing on Warning for March 1, 2011 Annual City Meeting
- a) A draft warning of ballot items for the Annual City Meeting is being prepared and will be available in advance of the meeting.
 - b) Recommendation: Conduct Public Hearing; provide direction to staff as necessary.
- 7) 11-017. Set Date and Time for Annual City Meeting
- a) Recommendation: Set date for the Annual City Meeting on Tuesday, March 1, 2011, from 7:00 A.M. to 7:00 P.M.
- 7) 11-017. Set Date and Time for Annual City Meeting
- 9) 11-019. Reports by City Council
- 10) 11-020. Mayor's Report
- 11) 11-021. Report by the City Clerk-Treasurer

- 12) 11-022. Status Reports by the City Manager
- 13) 11-023. Agenda Reports by the City Manager
- 12) 11-022. Status Reports by the City Manager

Adjournment

BURLINGTON POLICE DEPARTMENT

One North Avenue
Burlington, Vermont 05401
Michael E. Schirling
Chief of Police
Phone (802) 658-2704
Fax (802) 865-7579
TTY/TDD (802) 658-2700

Information / Press Release

Regarding the Use of Taser Electronic Control Device

Initial Release Date -July 26, 2007

Updated – November 16, 2009

Purpose

In light of ongoing inquiries regarding the use of Taser electronic control devices by law enforcement Burlington Police feel it is prudent to issue information regarding our Taser use to the Burlington community. We release this information, not in direct response to specific events, but rather to provide important and timely information for the citizens of our community.

Summary

Our initial analysis shows that we have significantly reduced injuries to officers and the number of physical confrontations with offenders by utilizing this tool.

History

After a full year of research and policy development, which included empanelling an advisory group consisting of Department members, members of the emergency medical community, physicians, and members of the Burlington Police Commission representing the public, the Burlington Police Department began using Tasers in May of 2006.

Tasers are generally used within what is called a Use of Force Continuum, which is a sliding scale of lawful force that can be used to gain compliance with legal/lawful instructions given to a person to stop a dangerous course of behavior or to effectuate an arrest. Other uses of force on the continuum include but are not limited to the use or aerosol sprays such as pepper spray or “cap stun,” the use of impact devices such as batons, hand to hand grappling, and simple verbal orders. Of course, the use of force is always a last resort if reasonable communication with unruly or combative subjects is

unsuccessful. It is important to note that, in some cases, verbal commands are immediately passed over and force deployed, depending on the threat perceived by the officer.

immediately passed over and force deployed, depending on the threat perceived by the officer.

Since initial deployment, we have slowly grown the number of Taser Units deployed for use from 10 to approximately 60. Tasers have been unholstered and displayed in anticipation of being used 221 times. They have been fired to gain compliance with a combative or resistive subject 76 times to date. As you can see the mere display of the device often creates the desired effect of gaining compliance with lawful order by combative subjects.

Historically, we have averaged about one half dozen incidents per year in which a physical confrontation between the subject and an officer or officers escalates to a level where officers are injured and often lose time from work as a result of an assault. These losses can range from a few hours being evaluated and treated at the hospital to months of work loss injury to significant joint, orthopedic, or other injuries. Since deploying Taser, 182 weeks prior to this document's last update, the Department has not suffered injuries resulting in lost officer time to involving struggles with combative subjects during events at which a Taser was present.

As important, we have seen no incidents in which persons subjected to the deployment or firing of a Taser have been injured or suffered any lasting effects from the encounter. In short, our initial information indicates that Tasers have made the number of physical confrontations diminish and have mitigated the severity of those confrontations.

During their training, many officers are subjected to the deployment of a Taser which enhances their respect for and understanding of the effectiveness, uses, and limitations of the tool.

Ongoing Assessment

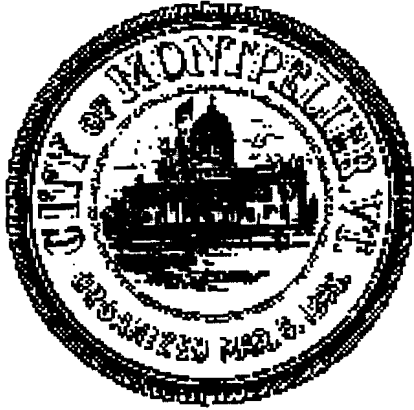
As with any new tool or method of operation, we will continue to monitor the use of these devices, their impact both locally and elsewhere, and adapt based on the needs of our community.

For Additional Information

For further information about the Taser device please visit www.taser.com.

For questions regarding this release may be directed to Deputy Chief Walter Decker at

802-540-2156. Anyone interested in obtaining a copy of our comprehensive Use of Force Policy should e-mail gdumas@bpdvt.org.



*Office of the City Manager
City Hall - 39 Main Street, Montpelier, VT 05602
(802) 223-9502*

December 21, 2010

The Times-Argus
Att: Classifieds

Please include this ad with City of Montpelier notices on Thursday, December 23rd; and Monday, January 3rd, 2011. Thank you!

MONTPELIER BUSINESS LOAN FUND COMMITTEE VACANCIES

The City of Montpelier is seeking individuals interested in serving on the Montpelier Loan Fund Committee. The Montpelier Loan Fund Committee assists Montpelier's Community Development Agency in the administration of several different loan programs. Two seats will be vacant as of January 10, 2011; both are 2-year terms. Persons knowledgeable in the areas of banking, law, financial management, business management, or other related fields are encouraged to submit a letter of interest and/or a resume by noon on Thursday, January 6th. The Council will make these appointments at their January 12th meeting; applicants are encouraged to attend. All meeting rooms and facilities in City Hall are handicapped accessible. Questions should be directed to the Department of Planning and Development, 223-9506.

William J. Fraser
City Manager

Sandy Pitonyak

From: Boutin, Beth [Beth.Boutin@state.vt.us]
Sent: Friday, December 17, 2010 2:29 PM
To: Sandy Pitonyak
Subject: RE: Business Loan Fund Committee

✓ I would like to be reappointed for another term to the Business Loan Fund Committee, thanks Sandy.

Regards,
Beth Boutin

Sandy Pitonyak

From: claude@morsefarm.com
Sent: Wednesday, January 05, 2011 4:05 PM
To: Sandy Pitonyak
Subject: RE: Testing ... testing!
Attachments: image001.gif

Sandy I certainly did get this message.

✓ Yes, I would like to continue to serve on the Business Finance Committee. I thank the council for giving me the opportunity to serve.
Claude

-----Original Message-----

From: "Sandy Pitonyak" <SPitonyak@montpelier-vt.org>
Sent: Wednesday, January 5, 2011 3:56pm
To: claude@morsefarm.com
Subject: Testing ... testing!

Sandy Pitonyak

Administrative Assistant to the City Manager
City Hall - 39 Main Street
Montpelier, VT 05602
Telephone: (802) 223-9502
FAX: (802) 223-9519
spitonyak@montpelier-vt.org

**Request to Cater Malt and
Vinous Beverages &
Spirituos Liquors**

Caterer's Permit Number 5838-001-catr-01

APPROVED

DISAPPROVED

Date: _____

Reason: _____

(for department use only)

To: Board of Selectmen/Alderman at catered location and Vermont Liquor Control Board.

From: Licensee name: Valley Bowl Inc

d/b/a: Valley Bowl Inc

Street: 12 Prince Street Suite 5

Town/City: Montpelier

Contact name and phone number: Wayne F. Warner 802-728-4525

Email or Fax # valleybowlinc@myfairpoint.net

BE SURE TO READ INSTRUCTIONS BELOW, BEFORE COMPLETING APPLICATION.

(Each catered affair must have a recommendation from the local Board of Selectman or Alderman acting in their capacity as local control commissioners and must have the approval of the State Liquor Control Board.)

Please answer the following questions:

1. Describe type of party to be catered: Legislative Reception

2. Location of catered party (street, town or city; if no address, describe location): _____
155 state street at the Vermont State Employees Association Office Building

3. Date of catered party (not more than five days, unless specifically authorized: January 18, 2011)

4. Hours of operation: Beginning 5pm hrs. Ending 8pm hrs. No. of Persons 100

Signed: Wayne F. Warner Date: January 5, 2011
(caterer)

We recommend: approval ☐ disapproved ☐

If you recommend disapproval, please state reason(s): _____

Town/City Clerk's signature
Of CATERED location.

Town/City

Date

Fax Number or email address: _____

SUBMIT AT LEAST 5 DAYS PRIOR TO DATE OF FUNCTION

Submit to Town/City Clerk for recommendation.

Town/City Clerk will email, fax or mail to Vermont Liquor Control Board, 13 Green Mountain Drive, Montpelier, VT 05602 email address: { HYPERLINK "mailto:DLC-Licensing@state.vt.us" } Fax number is 802-828-1031

LIQUOR CONTROL BOARD'S PROCEDURAL REQUIREMENTS FOR CATERER'S PERMIT HOLDERS:

1. All liquor control laws and regulations that apply to 1st and 3rd class licenses also apply to caterer's permits.
2. Before a catered event is approved in any open area, the following requirements must be fulfilled:
 - a) A defined area, for serving and consumption of alcohol beverages, designated with physical barriers.
 - b) Separate toilet and lavatory facilities available for both men and women.

City of Montpelier
Department of Public Works
Memorandum

To: William Fraser, City Manager

From: Thomas McArdle, Assistant Director 

Date: January 5, 2011

Subject: Access Easement - City Dump Road (City of Montpelier to Bryndle, LLC)
Preliminary approval to reclassify City Dump Road as a Class 3 town highway.

This memorandum transmits a proposal from William B. Field, Esq., of Valsangiacomo, Detora & McQuesten, PC, on behalf of Doug Hill, Bryndle, LLC, to acquire an access easement across lands of the City of Montpelier. The access easement will serve Lot #2 of a two lot subdivision located on City Dump Road with Lot #1 of this two-lot subdivision to be served from Elm Street. The subdivision application was heard by the Development Review Board in August, 2010 ("Sketch Plan") but has not yet advanced to final approval consideration because resolution of access to City Dump Road must first be secured and confirmed before the application can be considered.

The subject property has for many years utilized a private bridge crossing a stream considered to be the northerly boundary of the City's so-called "Stump Dump" property. Historically, the bridge served as the primary access to the property for agricultural and forest product access and other purposes. Records indicate that a bridge was constructed by the City (DPW) as part of a stream relocation project in the 1970's. A recent survey of the right-of-way boundary of City Dump Road revealed a narrow strip of land belonging to the City and lying between the Stump Dump's boundary and the public road right-of-way. Therefore, technically speaking, the Bryndle property does not have frontage on the public highway, although access to the property has been continuously accommodated.

City Dump Road is considered a Class IV town highway and has been gated for many years near the Elm Street intersection. A gate key was provided to Doug Hill and an adjoining land owner and their predecessors for property access. This arrangement was considered reasonable while the land was unoccupied and also ensured appropriate security for the Stump Dump. The subdivision proposal will result in the development of one or more homes in the future, thus necessitating the opening of the road for unrestricted use.

In 2005, City Attorney Paul Giuliani provided an opinion of the road's legal status as a public highway, offering suggestions regarding access and the assignment of road improvement responsibility (see attached). As Paul mentions, the City is under no obligation to provide access to the property or upgrade the road for year round travel "...but it certainly has the power to do so voluntarily."

As a condition of access, the applicant (or his assigns) will be required to relocate the gate and provide other upgrades necessary for public travel under Class III road standards. The proposed modifications have been approved by our office and are now depicted on the project plans. When completed, the Stump Dump access will become a driveway served by City Dump Road. The existing road structure is suitable for four-season usage and no changes are necessary to accommodate this access request.

City Assessor Steve Twombly provided an opinion of value for the easement parcel (see

attached). Considering the historical yet informal access the property has enjoyed over the years, the appraised value is minimal.

It is our recommendation that the easement be granted as requested. We further recommend payment to the City in the amount of \$72.00 for the property, and that the easement recording fees should also be borne by the property owner. Physical modifications necessary to accommodate the access are to be in accordance with the "Lot 1 Access Improvement Detail" (copy attached) as depicted on the approved plans entitled "Bryndle, LLC (Douglas Hill), Two Lot Subdivision Off Elm St." prepared by Brad M. Ruderman & Assoc., Inc. dated June, 2010, as revised November, 2010 (shots 1-4). In brief, the work consists of installing a security gate, road widening, and various drainage alterations.

The City Council should also be asked to grant preliminary approval of the reclassification of the road as a Class 3 Town Highway to allow unimpeded four-season access. Paul Giuliani advised that there is a statutory reclassification process to follow and additional guidance will be provided when this step is ready to be taken.

Enclosures: William B. Field letter (with deed & PTR) – 11/12/10
Paul Giuliani letter – 6/22/05
Twombly's Appraisal opinion – 12/21/10
Plan Detail

C: Todd Law, P.E., Director of Public Works
Steve Twombly, City Assessor
J. Paul Giuliani, City Attorney
Clancy DeSmet, Administrative Officer
William B. Field, Esq., Valsangiacomo, Detora & McQuesten, P.C.

Valsangiacomo, Detora & McQuesten, P. C.

Attorneys at Law

www.vdmlaw.com

Oreste V. Valsangiacomo, Jr.
Leighton C. Detora
Gary D. McQuesten
William B. Field
L. Brooke Dingleline
Jon D. Valsangiacomo



**PLEASE RESPOND TO
BARRE OFFICE**

172 North Main Street
P.O. Box 625
Barre, VT 05641
Telephone: (802) 476-4181
Facsimile: (802) 476-4184

431 Pine Street, Suite 210
Burlington, VT 05402
Telephone: (802) 658-7444
Facsimile: (802) 658-1093

November 12, 2010

Todd Law
Director of Public Works
City of Montpelier
39 Main Street
Montpelier, VT 05602

Re: Bryndle, LLC

Dear Mr. Law:

Enclosed is a deed and property transfer tax return for conveyance by the City to Doug Hill (d/b/a Bryndle, LLC) who I represent. This is based upon the survey of City Dump Road prepared by John H. Thetford and Associates, Inc. This easement/right-of-way formalizes an existing access point for the land owned by Bryndle. That access point has been used by the present owner and previous owners since at least 1971 when it appears on a map prepared by the City Engineering Department in connection with relocation of a brook to the property line and construction by the City of a bridge over the relocated brook to allow the then owners continued access to their property at that point from the City Dump Road. A copy of my September 2009 letter on that subject is attached.

We believe the grant of this easement reflects the property owner's existing legal rights relative to access to his property at that point. Accordingly, we would ask that you recommend to the City Council for approval of the easement.

I believe that the work done by the landowner in preparation for this action is of significant and considerable value to the City; specifically, the preparation of a detailed survey of the City Dump Road from the westerly side of Elm Street. That survey shows the improvements to the road way and the survey work included marking the corners of the road right-of-way. I believe the City Attorney has approved this deed but we will be happy to make further changes to improve the language or, if there are additional issues, to deal with them.

Todd Law
November 12, 2010
Page Two

If any further information is required, please let me know.

Sincerely yours,

VALSANGIACOMO, DETORA
& McQUESTEN, P.C.

William B. Field jm

William B. Field, Attorney
802-476-4181 Extension 306

WBF/jm

Enc.

cc: J. Paul Giuliani, Esq.
Paul McCardle
Brad Ruderman
Doug Hill



*From the Office of the
City Assessor . . .*

To: Tom McArdle, Assistant Director of Public Works

From: Stephen Twombly, City Assessor 

Date: December 21, 2010

Subject: Value Estimate for Bryndle, LLC "bridge parcel"
City Dump Road

Proposed conveyance of 30x40' +/- parcel situated at the bridge from City Dump Road to Bryndle, LLC parcel. Since the property owner has clear access rights across the existing bridge, this conveyance has minimal value.

Based on the assessed values of the Bryndle, LLC parcel and other large parcels in the area, the value of the 1200 square foot conveyance is estimated to be \$0.06 per square foot.

Value of parcel: 1,200 square feet x \$0.06 = \$72.00

ST

McKEE, GIULIANI & CLEVELAND

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P.O. BOX 1455

MONTPELIER, VERMONT 05601-1455

J. PAUL GIULIANI
FREDERICK G. CLEVELAND
GEORGIANA O. MIRANDA (NY AND VT)
GLORIA K. RICE
JOHN P. RILEY
GLENN C. HOWLAND

ELIZABETH H. MAGILL

TELEPHONE: (802) 223-3479

FAX (802) 223-0247

OF COUNSEL
PETER GIULIANI (1907-1998)
W. EDSON McKEE (1923-1999)
ALDEN GUILD (RET.)

OFFICES AT:
THE BANKNORTH BUILDING
94 MAIN STREET
MONTPELIER, VT 05602

June 22, 2005

Thomas J. McArdle, Assistant Director
Montpelier Department of Public Works
39 Main Street
Montpelier, VT 05602

Re: City Dump Road

Dear Tom:

I think it is safe to assume that City Dump Road is a Class 4 highway, at least that part thereof that is passable to the point where it branches out along internal roadways of recent vintage. From its point of intersection with Elm Street to the point where continuous historical use can be established, City Dump Road can be treated as a public highway.

I don't attach much relevance to the absence or presence of formal action by the City Council in laying out and establishing City Dump Road as a public highway. For years, the City has acquiesced in the roadway being used for public travel (albeit limited because of the nature of its destination). The City has exercised exclusive dominion and control over the road, providing periodic maintenance, drainage and some limited improvements. Acceptance through use is sufficient to regard the road as a public highway.

Also, remember that the City has fee ownership over the land upon which City Dump Road is located. In either its governmental capacity as municipality or in a proprietary capacity as landowner, the City controls the roadway and its uses. For this reason, I don't think it would be productive or useful to spend a lot of time on researching the City's title to the subject property or trying to determine what action, if any, the City Council took to set out City Dump Road as a public highway. To the extent an adjoining property owner

Thomas J. McArdle, Assistant Director

June 22, 2005

Page 2

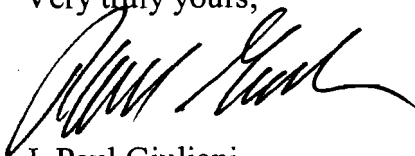
claims an access right over the Dump property, it is up to that person to present sufficient evidence to the City Council to support the claim. I understand that no such claim has been asserted.

Incidentally, the existence of an appurtenant access easement to the Lague property really isn't dispositive or relevant to the issue at hand. In other words, a different adjoiner can't point to the Lague easement as support for an access easement on different property. It is also important to keep in mind that a court will not create an implied easement or an easement of necessity over the lands of a person whose actions did not create an access problem. That is, it wasn't a subdivision or partitioning of real estate by the City that created the Nies parcel. The City is not obligated to "fix" the problem, but it certainly has the power to do so voluntarily. I understand that the Nies parcel is not landlocked, but topography suggests that City Dump Road is the most desirable means of ingress and egress.

If we treat City Dump Road as a Class 4 highway, the City is under no obligation to improve or reclassify it to support normal vehicular travel "for all seasons of the year", to quote the statute. It is within the City Council's authority to require a person seeking to use a Class 4 highway as access to adjoining property to bring the same up to Class 2 or Class 3 standards as a condition of use. If we ignore classification entirely, and focus on the City's fee ownership of the land upon which the road is located, the City in a proprietary capacity can impose whatever other conditions the Council deems reasonable in consideration of the right of a third party to cross City property.

In conclusion, the City Council has a fair degree of flexibility in accommodating an adjoining landowner. At this point, the discussion is more policy than law. I think the issues could be brought into clearer focus if we had a concrete proposal in hand, as well as the benefit of any research on the title to the adjoining property seeking the benefit of access over City Dump Road.

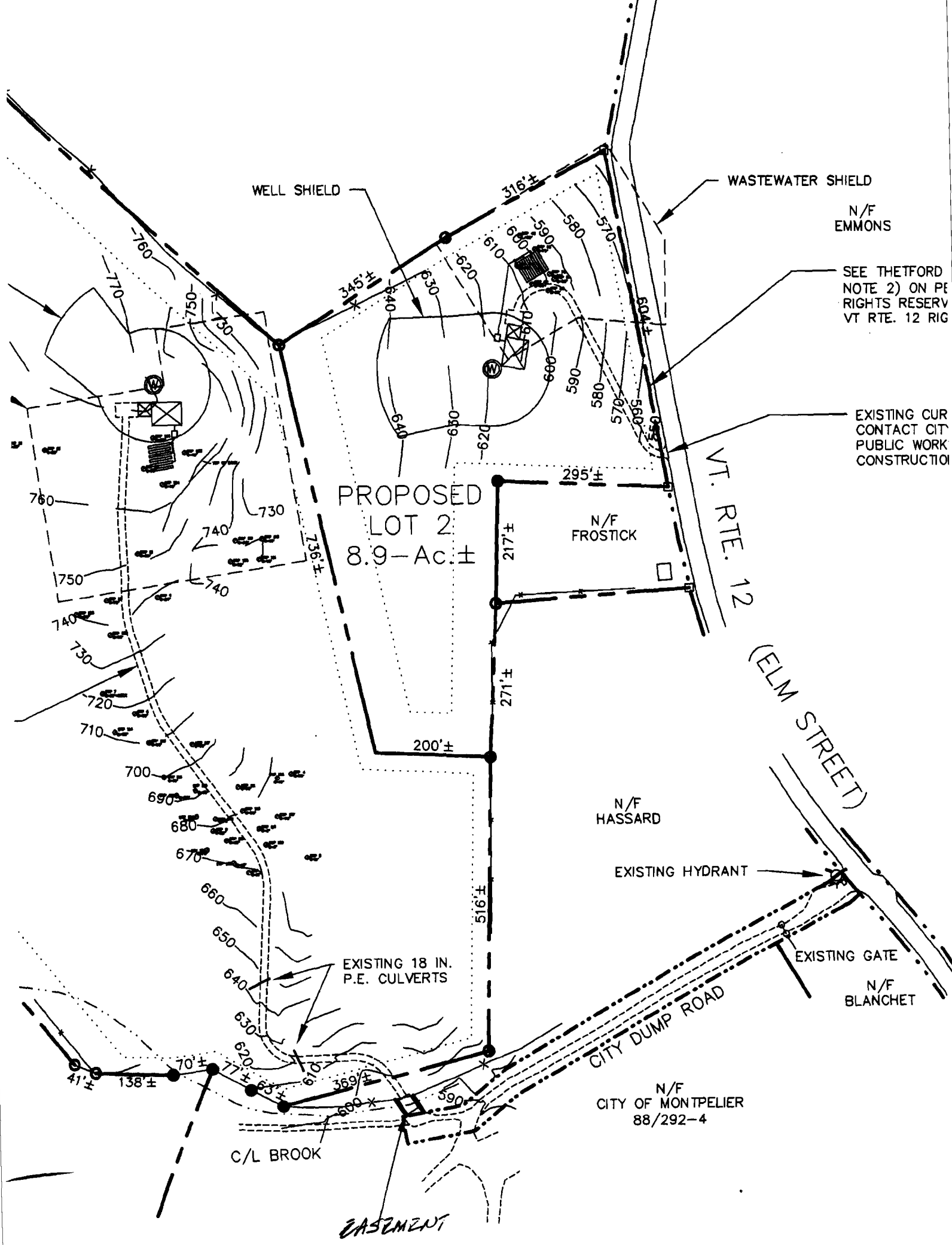
Very truly yours,

A handwritten signature in black ink, appearing to read "J. Paul Giuliani", written over a horizontal line.

J. Paul Giuliani

JPG:sg

[8881-159]



PROPOSED
LOT 2
8.9-Ac.±

VT. RTE. 12
(ELM STREET)

CITY DUMP ROAD

C/L BROOK

EASEMENT

WELL SHIELD

WASTEWATER SHIELD

N/F
EMMONS

SEE THETFORD
NOTE 2) ON PE
RIGHTS RESERV
VT RTE. 12 RIG

EXISTING CUR
CONTACT CITY
PUBLIC WORK
CONSTRUCTION

N/F
FROSTICK

N/F
HASSARD

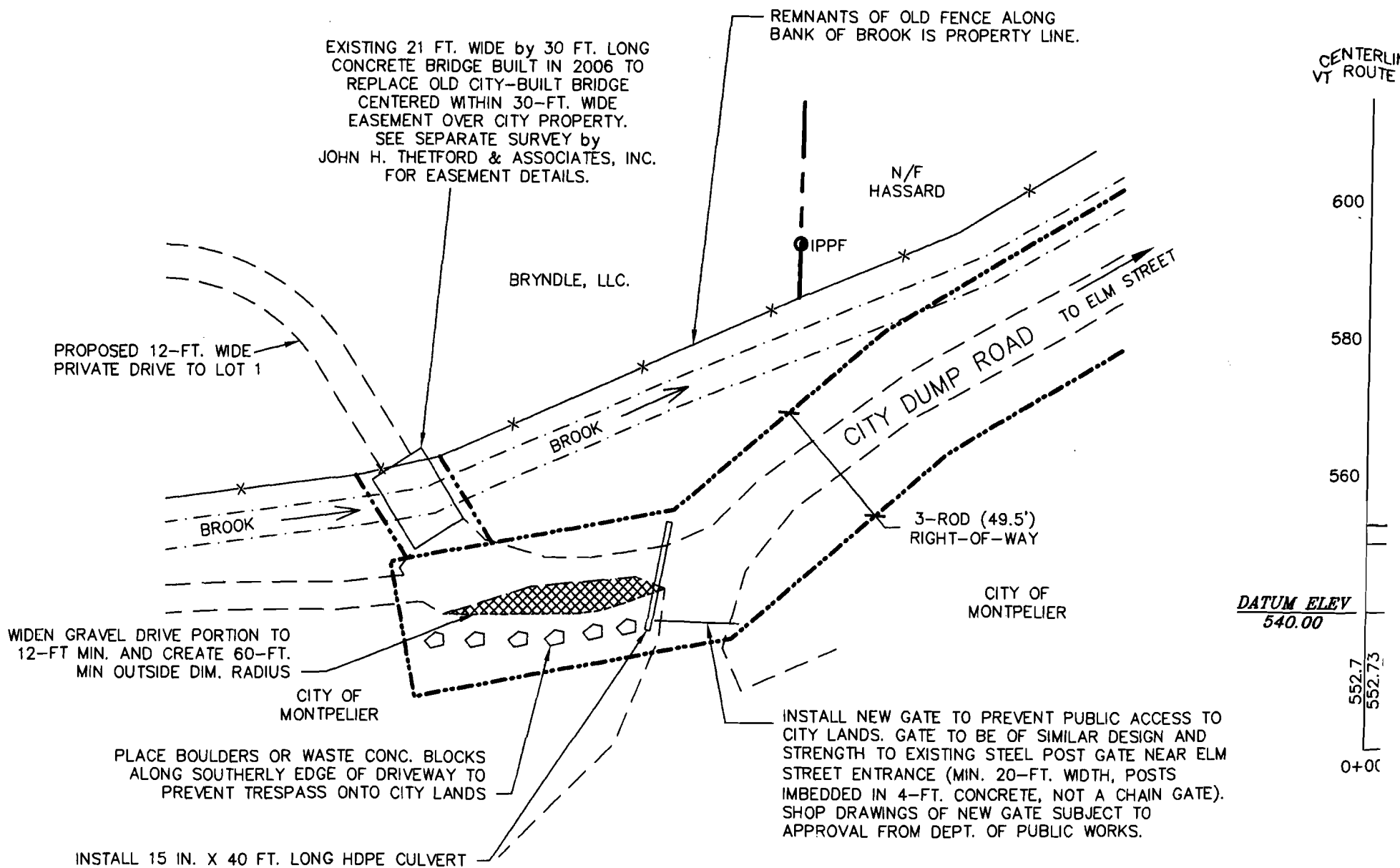
EXISTING HYDRANT

EXISTING GATE

N/F
BLANCHET

N/F
CITY OF MONTPELIER
88/292-4

OF LOT 1
WAY AND
NG AREA



LOT 1 ACCESS IMPROVEMENTS DETAIL

1"=50'

N
A

**CITY MEETING WARNING
FOR
MARCH 1, 2011**

The legal voters of the City of Montpelier, in City Meeting in Montpelier, in the County of Washington and the State of Vermont, are hereby warned to meet in the City Hall Auditorium, in said Montpelier, on the first Tuesday in March, March 1, 2011, at seven o'clock in the forenoon, and there and then to cast their ballot for the election of officers, matters that by law must be determined by ballot, and other matters as directed by the Council. The polls will be opened at 7:00 A.M. and shall be closed and the voting machine sealed at 7:00 P.M.

ARTICLE 1. To elect two auditors for an unexpired term of one years; one commissioner for the Green Mount Cemetery for a term of five years; one park commissioner for a term of five years; two school commissioners, each for a term of three years; one council member from each district, for a term of two years. .

ARTICLE 2. Shall the voters appropriate the sum of \$_____ for the payment of debts and current expenses of the City for carrying out any of the purposes of the Charter, plus payment of all state and county taxes and obligations imposed upon the City by law to finance the fiscal year July 1, 2011 to June 30, 2012? (Requested by the City Council)

ARTICLE 3. Shall the voters appropriate the sum of \$_____ necessary for the support of the public school system for the fiscal year July 1, 2011 to June 30, 2012? (Local budget of \$_____ plus grant budget of \$_____, for a total school budget of \$_____) (Requested by the School Board)

ARTICLE 4. Shall the voters appropriate the sum of \$605,230 for the support of the Recreation Department for the fiscal year July 1, 2011 to June 30, 2012? (Requested by the School Board)

ARTICLE 5. Shall the voters appropriate the sum of \$125,707 for the support of the Senior Citizens Activity Center for the fiscal year July 1, 2011 to June 30, 2012? (Requested by the City Council)

ARTICLE 6. Shall the voters appropriate the sum of \$2,700 as compensation to the Mayor for services for the fiscal year July 1, 2011 to June 30, 2012? (Requested by the City Council)

ARTICLE 7. Shall the voters appropriate the sum of \$6,000 (\$1,000 each) as compensation to the Council Members for their services for the fiscal year July 1, 2011 to June 30, 2012? (Requested by the City Council)

ARTICLE 8. Shall the voters appropriate the sum of \$7,300 (Chair \$1,300; others \$1,000 each) as compensation to the School Commissioners for their services for the fiscal year July 1, 2011 to June 30, 2012? (Requested by the School Board)

ARTICLE 9. Shall the voters authorize the Board of School Commissioners to hold any audited fund balance as of June 30, 2011 in a reserve fund to be expended under the control and direction of the Board of School Commissioners for the purpose of operating the school? (Requested by the School Board)

ARTICLE 10. Shall the voters appropriate the sum of \$293,975 to be used by the Kellogg-Hubbard Library for the fiscal year July 1, 2011 to June 30, 2012? (This amount is requested by the library board and is in addition to the \$45,469 for library bond payment included in the City General Fund Budget, Article 2.)

ARTICLE 11. Shall the voters appropriate the sum of \$5,000 to be used by Central Vermont Council on Aging for the fiscal year July 1, 2011 to June, 30 2012? (By Petition)

ARTICLE 12.

Dated this ____ day of January, 2011

Signed:

Mary S. Hooper, Mayor

Members of the City Council:

CITY SEAL:

ATTEST:

Charlotte L. Hoyt, City Clerk

TOPIC: TASER RESEARCH

INVOLVED: VERMONT POLICE AGENCIES

REPORT OF: SERGEANT WADE COCHRAN

During the 2012 budget year Chief Anthony Facos will be asking for fourteen (14) tasers. The taser will act as another tool for the officers in the response to resistance. It is a goal of Chief Facos and myself to help educate and provide the City Council with clear and accurate information on this tool.

During this research I tried to reach out to all fifty-four agencies listed on the Vermont Police Academy web page. Some agencies are small agencies with only one or two officers and did not get a reply from those agencies. I did however speak with most of the agencies similar in size to the Montpelier Police Department.

I had the opportunity to speak with thirty-two (32) agencies to discuss the topic of taser's and if there agencies carried them. Out of the thirty-two (32) agencies I spoke with , twenty-one (21) of those agencies have tasers.

The agencies that I spoke to that are similar in size to Montpelier Police Department that all carry tasers are; Barre City Police, Brattleboro Police, Essex Police, Shelburne Police, St. Albans Police, Rutland City Police, South Burlington Police, Milton Police, and Winooski Police. I also spoke to several other smaller agencies who carry tasers, they are; Bellows Falls Police, Hinesburg, Hardwick, Manchester Police, Morristown Police, Stowe Police, Newport Police, St. Johnsbury Police, and Hinesburg Police.

Chief Facos and I composed six informative questions to be asked of each agency. The questions were as follows:

- 1. When did your agency acquire tasers?**
- 2. Did you see a decrease in subjects challenging police officers?**
- 3. Were officers seeing immediate compliance with the tasers?**
- 4. Has there agency seen a decrease in workers compensation claims as a result of carrying the taser?**
- 5. Who carries them in their agency?**
- 6. How many times have they use them in a year, month, or since they acquired them?**

I will break each question down with the information provided to me. The first question asked to each Chief or agency head was, "**When did your agency acquire tasers?**"

Barre City Police September 2009

Newport Police 2005

Shelburne Police 2008

Bellows Falls Police 2007

Stowe Police 2004

St. Johnsbury Police 2008

Year Taser were acquired (continued)

Brattleboro Police 2003	Winooski Police 2005	Hinesburg Police 2008
Essex Police January 2010	Burlington Police May 2006	Milton Police aprox. 2004
Morristown Police 2006	St. Albans Police December 2008	
Rutland Police Department 2009	Manchester Police Department (currently down due to mechanical reasons)	
South Burlington Police 2004	University of Vermont Police 2006	
Hardwick Police 2010	Castleton Police 2006	
Brandon Police approx. 2008		

The second question I asked was, ***“Did you see a decrease in subjects challenging your officers?”*** I received two different answers from the agency heads on this question. Most of the agencies informed me that there was a brief learning period where subjects where learning that the officers where carrying them. But once the subjects learned that officers had tasers they did not want to resist.

The other agencies told me that noticed an immediate change. They thought this was possibly due to other agencies in the area having them or subject being more aware of what the taser is.

The next question was ***“Were officers seeing immediate compliance with the tasers?”*** This question was answered with a unanimous, “yes.” I was told by the agency heads that they noticed a large number of individuals that will comply merely because a taser is displayed. I was also told by several agency heads that they decided to purchase the color yellow because of its visibility. Some said they have had subjects comply due to seeing the taser on the officer’s belt.

When I asked the fourth question, ***“Has their agency seen a decrease in workers compensation claims as a result of carrying the taser?”*** Some agency heads told me that they did not have specific figures but they did know there has been a reduction in injuries to officers and subjects. Chief Richard Keith, of Morristown Police Department said they have not had a worker’s compensation claim since they acquired the tasers. Lt. Hoague of St. Albans Police told me his agency had three workers compensation claims prior to getting the tasers and have not had any since they added the tasers to their tools.

On the fifth question, ***“Who carries them in their agency?”*** once again the answer was pretty much the same from agency to agency. In larger agencies like Barre City and Essex Police Departments even the detectives have them. I was informed by all of the agency heads that training is very important, as it is for all tools that officer’s carry on their duty belt. South Burlington Police said the

tasers are mandatory for patrol officers and recommended for detectives and administrative officers. Essex Police Chief Leo Nadeau, said that everyone including part-time officers carry them in his agency.

The sixth and final question I asked was, "***How many times have they use them in a year, month, or since they acquired them?***" Chief Bombardier of Barre City Police Department said they have deployed there's five times since they put them into service. Chief Leo Nadeau of Essex said they have not deployed there's but have taken them out of the holster several times. South Burlington referred to their use of force reports that say that on an average they have been unholstered seven times a year and half of those result in a subject being tased. Brattleboro Police Lt. Evans told me they use there's approximately six to eight times a year. Officer Chris Rogers of Stowe Police said they have only had six probe deployments since 2004. Rick Hebert of Winooski said they only have two to three deployments a year because compliance is generally gained when the taser is unholstered.

As the answers to this question show these tools don't always get used often but are an effect tool. A large agency like St. Albans Police report one taser deployment a year where an agency like Rutland City Police report only two deployments in 2009. In that same year Rutland City reportedly unholstered twenty-nine times. But compliance was gained by the subject merely seeing the taser.

When concluding my conversations with the police agencies I asked if they had anything to add. Three of the Chiefs or representatives from the agencies did and I will share them.

Chief Whipple said, "In my 4+ years as chief in South Burlington I have had only one subject provide comment about being tased. He came to my office to thank me for our officers using a taser when he was intoxicated and out of control. He compared being taken in to custody via use of a taser as much less traumatic than having officers take him in to custody without a taser. When tased by our officers he said he had no residual injuries. He commented that when a neighboring agency took him in to custody without tasers he had bruises the following morning."

Sergeant Alan Fortin of Shelburne Police Department told me about a call they received to provide back up to a Hinesburg Police Officer. The Hinesburg officer had been assaulted and trying to take a subject into custody for 45 minutes. Shelburne officers arrived on scene and simply advised the subject he would be tased, the subject said he was done and taken into custody. Sgt. Fortin said that more times than not just displaying the taser is all it takes to de-escalate a situation.

Chief Nadeau of Essex Police spoke of one of his female officers going to a home in Essex with a restraining order. The order stated the male subject was to leave the residence. The subject was unwilling to leave the residence until the officer displayed and informed the subject he would be tased if he resisted. The subject then said that he would leave without any issues.

During this research project I was able to speak with some Chiefs that did not have tasers and some that did not want tasers.

One Chief that I spoke to that said he was not a great supporter of them was Chief Doucette, of the Bennington Police Department. Chief Doucette said that he was not a strong supporter of the tasers for personal reasons. The Chief did say that he has recently given them more thought due to an officer of his who was just involved in breaking up a bar fight and broke his hand. He said now that officer will be out of work for several weeks. That may have been prevented had a taser been accessible to the officer.

Chief Charles Kirker of Colchester Police said that he would like to add the taser as a tool for his officers but is working on a new building to house the police department. Further down the road Chief Kirker would like to acquire the taser when funds are available.

I have also included a press release that was issued by Chief Michael Schirling discussing the use of the taser in Burlington Vermont.



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Chief's Counsel, December 2010. Despite a significant and growing body of research on electronic control devices, controversy persists over the effect on humans and the safety of their extensive and expanding use by law enforcement.

Document Text:

CHIEF'S COUNSEL

What Every Police Chief Should Know About Electronic Control Devices

By Craig E. Ferrell Jr., Deputy Director, Major Cities Chiefs General Counsel, Chief's Command/Legal Services, Houston Police Department, Houston, Texas

Despite a significant and growing body of research on electronic control devices (ECDs), controversy persists over the effect on humans and the safety of their extensive and expanding use by law enforcement. In fact, statistics from Taser, the manufacturer of a popular ECD, show that as of June 30, 2010, 15,500 law enforcement and military agencies have purchased ECDs. The statistics state that there have been more than 1,070,785 field deployments.

ECD Use in Arrests Involving Suspects in Crisis

Law enforcement officers are frequently called upon to deal with individuals in crisis, who are physiologically compromised[1] and are at a heightened risk of serious injury or death, regardless of actions taken by law enforcement. In addition, the restraint and arrest process can introduce additional physiological changes that may worsen a person's baseline physiology. These changes may include significant acidosis, cardiac arrest, or other medical conditions.

If these individuals are under the influence of drugs or alcohol or are mentally or emotionally disturbed and off their medications, they are often noncompliant with officer commands, irrational, aggressive, impervious to pain, and, sometimes, they display super strength. They can be a danger to themselves and to others. By the time officers arrive at a scene, many suspects are already significantly acidotic from their own struggles and volitional actions -- likely with lower pH levels resulting in an increased chance of injury, worsening condition, or possibly death, independent of any action taken by the officers. Potential danger exists in allowing the suspect to continue with agitated or resistive behavior. In other words, something has to be done by the police.

Recent human medical research[2] has investigated the physiological health risks associated with physical exertion similar to resisting arrest or fleeing from officers, as well as those risks associated with certain law enforcement control tools. The three law enforcement control tools tested for their effects on causing acidosis were law enforcement canine for capture and restraint, oleoresin capicum (OC) spray exposure to the face and neck, and ECD exposure for 10 and 15 seconds to the torso. The researchers measured acidosis changes associated with the above physical exertion and police tools and found the following:

* Muscle contractions from ECD exposures for up to 10 and 15 seconds in rested human subjects resulted in minimal increases in acidosis that did not approach a dangerous level and was clinically not noticed by the test subjects.

* Physical activity similar to fighting and resisting or fleeing from law enforcement produced the worst and most clinically significant

acidosis. This volitional activity was clearly the most potentially harmful from a physiological standpoint, and the test subjects clinically felt ill following this activity.

- * Canine takedown and restraint had the highest increase of acidosis levels of the law enforcement tools tested.

- * OC spray had the least increase in acidosis levels of the law enforcement tools tested. This was expected since ECD application stimulates muscles and OC spray does not. The researchers opined that since OC spray does not usually incapacitate a focused person or a person intoxicated on drugs or alcohol, the fight or flight response is likely to continue and may result in worsening acidosis. It is likely that OC spray, while not directly causing acidosis, could indirectly make it worse.

- * This recent human medical research also investigated the physiological health risks associated with an ECD discharge on an already acidotic person. This research showed that application of a Taser device for up to 15 seconds to an exerted, already acidotic person did not worsen the acidosis that was already present.

The challenge facing law enforcement is to determine the tactics that are best suited to gain control of resisting suspects as quickly as possible. Pain compliance tools, such as OC spray, are often not effective when dealing with a person who is impervious to pain or focused. Canine or hands-on tactics can lead to struggles, increased resistance, and higher acidosis levels and often result in injury to the officer and the suspect. The research cited above shows that ECD use, as part of an overall capture plan, is a viable option, minimizing the duration of the struggle by incapacitating suspects without relying on pain compliance. The key is using the suspect's incapacitation as a window of opportunity to get the handcuffs on and gain control of the situation.

ECD Safety

If an ECD with a good probe spread is a tool providing quick restraint, then what about the general safety of ECDs? Many headlines condemn deaths after ECD use, but rarely do they announce when an autopsy clears the ECD use. ECD safety is beyond the scope of this article. The following excerpts provide relevant conclusions and suggested courses of action.

- * A three-year review of all ECD uses against criminal suspects at six law enforcement agencies found only three significant injuries out of 1,201 criminal suspects subdued by ECDs and reports that 99.75 percent of criminal suspects shocked by one received no injuries or mild injuries only, such as scrapes and bruises.[3]

"These weapons appear to be very safe, especially when compared to other options police have for subduing violent or combative suspects," said study author William P. Bozeman, MD, of Wake Forest University in Winston Salem, North Carolina. "That is not to say that injuries and deaths are impossible. Police and medical personnel need to be aware of the potential for serious injury and look for evidence that a person subdued by a Taser has been hurt."[4]

- * A prospective, population-based, 15-month study of the introduction of ECDs at the Dallas, Texas, Police Department; of policy compliance; and of associated medical events following ECD activations was conducted.[5]

- * The University of South Carolina's Department of Criminology and Criminal Justice examined the impact on officer and suspect injuries of 1,645 ECD deployments between January 2002 and July 2006 from two law enforcement agencies: the Richmond County, South Carolina, Sheriff's Department and the Miami-Dade County, Florida, Police Department.[6]

- * ECD exposure produced no detectable dysrhythmias and produced a statistically significant increase in heart rate. Overall, ECD exposure appears to be safe and well tolerated from a cardiovascular standpoint in this population (volunteer police officers participating in ECD training and testing). This study increases the cumulative human subject experience of ECD exposure with continuous ECG monitoring and includes 28 full 5-second exposures (24 men and 4 women).[7]

These research data are consistent with statistics from agencies[8] deploying ECDs that show that, although an ECD is not risk free, there are reduced rates of injuries to officers and suspects when an ECD is used, as well as reduced citizen complaints and use-of-force claims. In other words, the ECD is effective and minimizes suspect injuries.

Guidelines

Following are some guidelines you should consider in deploying ECDs:

1. Ensure that all ECD users are properly trained and certified by instructors using the latest training materials

2. Follow agency standard operating procedures and manufacturer warnings

3. Address areas of increased risk in training program:

- a. Presence of flammable liquids/fumes or explosive environments
- b. Elevated positions
- c. Person operating moving vehicle or machinery
- d. Person running (fleeing)
- e. Pregnant female, child, frail, or infirm individual
- f. Swimming pool or other body of water
- g. Intentional ECD application to sensitive areas
- h. Perceived risk of repeated ECD applications
- i. Physiologically/metabolically compromised persons

4. Create standard operating procedures that at a minimum contain the following information and ensure a review procedure is included:

- a. Make sure that ECD use is within agency policy and training recommendations
- b. Use ECD to accomplish only lawful law enforcement objectives
- c. Do not use an ECD for punishment
- d. Use the window of opportunity to restrain (key to any good training program)
- e. Justify/document every trigger pull/5-second discharge -- articulate/document threat/behavior
- f. Avoid multiple, repeated, prolonged, or continuous exposures unless absolutely necessary to counter reasonably perceived threat(s) and use is justifiable -- always document your justification in an offense report of the arrest
- g. Avoid intentionally targeting sensitive areas when possible
- h. Know your objectives for using force
- i. Give a warning
- j. Give adequate time for voluntary compliance (if possible)
- k. Verify the person is capable of complying
- l. Prepare clear, complete, and unambiguous reports
- m. If at all possible, don't use an ECD on a person who is in an elevated position where he or she can be injured from a fall
- n. When possible and if circumstances allow, aim for the preferred target zone of lower center mass and back areas

5. When dealing with exhausted individuals or persons exhibiting symptoms of distress or agitated/excited delirium, do the following:

- a. Once officers engage in capture procedures, it is important to minimize the duration of the physical struggle.
- b. When encountering subjects exhibiting symptoms of exhaustion, distress or agitated/excited delirium, refer to agency guidelines for proper response. These subjects are at significant risk of arrest-related death. Immediate medical attention may reduce this risk and should be obtained at the earliest safe moment.

Notable Cases of Interest Regarding ECDs

Graham v. Connor.^[9] Many cases involving deployment of an ECD use factors discussed in *Graham* in their analyses. Those factors are

- * the severity of the crime at issue,
- * whether the suspect poses an immediate threat to the safety of the officers or others, and
- * whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

These factors are not exclusive, however, and courts also examine the totality of the circumstances in an effort to objectively determine the amount of force that is necessary in a particular situation.

Draper v. Reynolds.^[10] Similarly, in this case dealing specifically with deployment of an ECD, the court considered the additional following factors in determining if the force used was reasonable:

- * The need for the application of force
- * The relationship between the need and the amount of force used
- * The extent of the injury inflicted

Recent Cases Concerning ECDs

Bryan v. McPherson.^[11] In an action asserting excessive force based on an officer's ECD use on the plaintiff during a traffic stop for a seatbelt infraction, a denial of summary judgment based on qualified immunity is affirmed in part where, viewing the circumstances in the light most favorable to the plaintiff, the defendant's use of the ECD was unconstitutionally excessive.

Oliver v. Fiorino.^[12] The facts, when viewed in a light most favorable to Oliver, show that Oliver was neither accused nor suspected of a crime at the time of the incident; that Officer Fiorino Tasered Oliver at least 8 and as many as 11 or 12 times with each shock lasting at least 5 seconds; that the officers made no attempt to handcuff or arrest Oliver at any time during or after any ECD shock cycle; that the officer continued to administer ECD shocks to Oliver while he was lying on the hot pavement, immobilized and clenched up; and, finally, that these ECD shocks resulted in extreme pain and ultimately caused Oliver's death. The court concluded that the officers were not entitled to qualified immunity on the claim of excessive force.

Brooks v. City of Seattle.^[13] Arresting officers' use of an ECD in drive-stun mode three times to effect arrest was not unreasonable and qualified immunity is granted, despite the fact that the suspect's crimes of refusing to sign notice of infraction regarding traffic offense and obstructing law enforcement officers were not serious offenses. Additionally, the use of the ECD in drive-stun mode inflicted only temporary and localized pain without significant lasting injury, the suspect posed a flight risk and a physical threat to the officers, and she refused to cooperate despite officers' repeated warnings that an ECD would be used.

Mattos v. Agarano.^[14] Officers' use of an ECD did not constitute excessive force where, given the dangerous nature of domestic violence situations, the close quarters in which the officers and plaintiffs were contained, and the intoxicated state of the plaintiff's husband, there was the risk of immediate threat to the safety of the officers.

Notes:

1. "Physiologically compromised" include those persons whose lives in rare circumstances may be at risk of arrest-related death due to excited or agitated delirium, acidosis, cardiac arrest, serotonin syndrome, neuroleptic malignant syndrome, sudden unexpected death in epilepsy, catecholamine release or buildup, compromised cardiac or pulmonary conditions, sickle-cell compromise, and drug or alcohol use or withdrawal.
2. Jeffery D. Ho et al., "Can Prolonged Taser X26 Exposure or Continued Exertion Contribute to Sudden Cardiac Death through Worsening Acidosis?" (paper presented at CardioRhythm, Hong Kong, February 2009), http://www.taser.com/research/Science/Documents/Ho_J_2009_Feb_Acidosis_Cardiorythm.pdf (accessed November 1, 2010); and Ronald Moscati et al., "Physiologic Effects of Prolonged Conducted Electrical Weapon Discharge on Acidotic Adults," abstract, *Academic Emergency Medicine* 14, no. 5 S1 (May 2007): S63-S64, <http://onlinelibrary.wiley.com/doi/10.1197/j.aem.2007.03.704/pdf> (accessed November 2, 2010).
3. William P. Bozeman et al., "Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officer Against Criminal Suspects," *Annals of Emergency Medicine* 53, no. 4 (April 2009): 480-489, <http://download.journals.elsevierhealth.com/pdfs/journals/0196-0644/PIIS0196064408020611.pdf> (accessed November 2, 2010).
4. *Annals of Emergency Medicine*, "Serious Injuries from Taser Are Extremely Rare," press release, January 15, 2009, <http://www.acep.org/pressroom.aspx?id=43742> (accessed November 2, 2010).
5. Alexander L. Eastman et al., "Conductive Electrical Devices: A Prospective, Population-Based Study of the Medical Safety of Law Enforcement Use," *The Journal of TRAUMA Injury, Infection, and Critical Care* 64, no. 6 (June 2008): 1567-1572.
6. Michael R. Smith et al., "The Impact of Conducted Energy Devices and Other Types of Force and Resistance on Officer and Suspect Injuries," *Policing: An International Journal of Police Strategies and Management* 30, no. 3 (2007): 423-446.
7. William P. Bozeman et al., "Immediate Cardiovascular Effects of the Taser X26 Conducted Electrical Weapon," *Emergency Medicine Journal* 26, no. 8 (August 2009): 567-570.
8. Agency statistics received from Taser International, Inc., Cincinnati Police Department Review to Community, Fall 2005, officer injuries reduced 56 percent; suspect injuries reduced 35 percent; use of force reduced 50 percent; citizen complaints reduced 50 percent.
9. *Graham v. Connor*, 490 U.S. 386 (1989).
10. *Draper v. Reynolds*, 369 F.3d 1270 (11th Cir. 2004).
11. *Bryan v. McPherson*, 608 F.3d 614 (9th Cir. 2010).
12. *Oliver v. Fiorino*, 586 F.3d 898 (11th Cir. 2009).
13. *Brooks v. City of Seattle*, 599 F.3d 1018 (9th Cir. 2010).
14. *Mattos v. Agarano*, 590 F.3d 1082 (9th Cir. 2010).

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Montpelier Police Department

Memo

To: Montpelier City Council and Mayor Mary Hooper

From: Chief Anthony J. Facos

CC: William Fraser, City Manager

Date: Friday January 7, 2011

Re: TASER request

In your weekly packet I have enclosed the following documents for your review:

-MPD's current Use of Force policy

-Draft of the proposed replacement policy titled Response to Resistance

-An informational document on TASERs from the International Association of Chiefs of Police (IACP)

-Vermont Attorney General's report on TASERs and other Less Lethal force (2008)

-Vermont TASER survey report by SGT Wade Cochran MPD

-Burlington Police Department Press Release

These documents will provide some background information regarding the TASER device and more importantly, the policy documents outline how the Montpelier Police Department applies the lawful use of force in response to a resistant offender.

I have been a police officer for the City of Montpelier since 1985. During my career, I have experienced numerous violent encounters, some of which have resulted in permanent injury, even disability to Montpelier Police Officers. Based on my experience and extensive training, it is my professional opinion as Chief of Police that the TASER is an important tool that can significantly minimize the physical risk to our police officers, to those we have to take into custody, and to innocent third party citizens.

The lawful application of force is an area of great responsibility for any law enforcement agency. The key elements to effectively carry out this responsibility include, having good officers, extensive training (physical skills, policy, and law), proper tools/systems, and good policy-that is current and understood. All of these elements require standards and accountability which are in place in our department.

Over the last few years, both Montpelier Police Officers and Fire Fighters have been injured as a result of combative action while performing their duty to protect and care for people in our City. The recent financial loss is just over \$6,000 according to the Finance Department. Yet if we go back a couple of years further, one of my officers broke his leg while we wrestled a combative suspect to the ground, I have been in another fight years ago when an individual on drugs attacked me and my partner which resulted in my partner having his rotator cuff completely ripped (I ended the situation by temporarily strangulating the suspect with an impact weapon after he unsuccessfully struggled to grab my firearm from its holster—my actions by the way did constitute deadly force). Other Montpelier Police Officers have had serious back injuries due to fighting with combative suspects and a couple of those former officers had medically related early retirements.

Any aspect of physical force; be it hands-on defensive tactics, chemical agents, impact weapons, and TASERS can have significant risks. Knee strikes, kicks, palm-heel strikes, and common defensive tactics all have the possibility of serious injury or even death. This is why we refer to these force responses as “less lethal” or “less than lethal.” Whether it is a physical move such as an arm bar take down or the use of an electronic control device (TASER), the intent and or design of that action or tool is not intended to cause serious bodily injury or death.

Regarding training, all full-time Montpelier Police Officers and Dispatchers have received the Law Enforcement Mental Health training curriculum. In addition to this training, we also have one active trained negotiator and we are sending a second to training in CT next month. We have an effective crisis intervention team here in Montpelier which is a joint response and partnership with Washington County Mental Health. In addition to this training, all MPD sworn personnel must be certified with the various weapons systems that we have in place. We undergo policy training, defensive tactics, less lethal, and quarterly firearms training (including annual night time live fire training with both handgun and carbine). For the last two years, our department has conducted an intensive “force on force” scenario based training program. During this training, we utilize modified Glock handguns that fire “Simunition” rounds, we wear special protective equipment including special padded suits (for full force strikes and maneuvers), and we use inert rounds in the Pepperball Launcher etc. During these training scenarios, our instructors watch and evaluate how the officers resolve incidents and they analyze their proficiency with defensive tactics, hand cuffing techniques, less lethal force options, firearms handling, and verbal de-escalation techniques. I can tell you that all of us are quite sore and bruised for the next several days after this training, but the lessons learned have greatly honed our skills and ability on the street.

Also in preparation for my request for TASERS, I reviewed our internal use of force reports since our current policy was adopted. There were 15 reports within the last couple of years and four of those indicated assaultive behavior that would have potentially risen to the policy level of TASER deployment. I will discuss the general circumstances of those incidents with you on Wednesday.

Based on my training and experience, I strongly believe that the TASER device will greatly improve the safety of our officers and those we arrest when we are responding to an actively resisting offender. I do not take this formal request lightly and I am proud to say that our aggressive training has lead to the best trained police force in the City’s history.

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 ☐

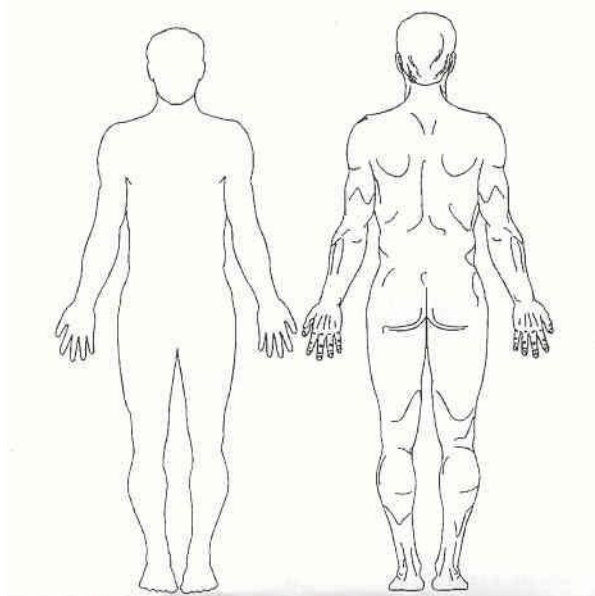
Who fired first?Officer: ☐ Suspect: ☐ Other: ☐

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 ☐

Baton incident

Straight Baton: ☐ Expandable Baton: ☐ Riot Baton: ☐ PR-24: ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

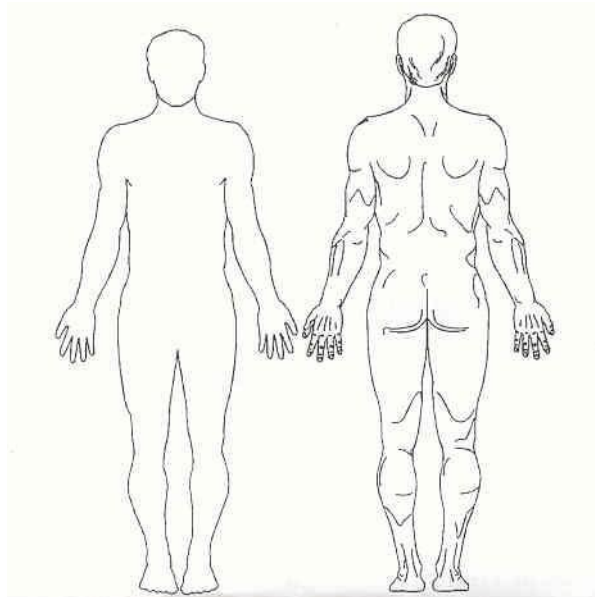
Appendix A

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 ☐

Controlled with body

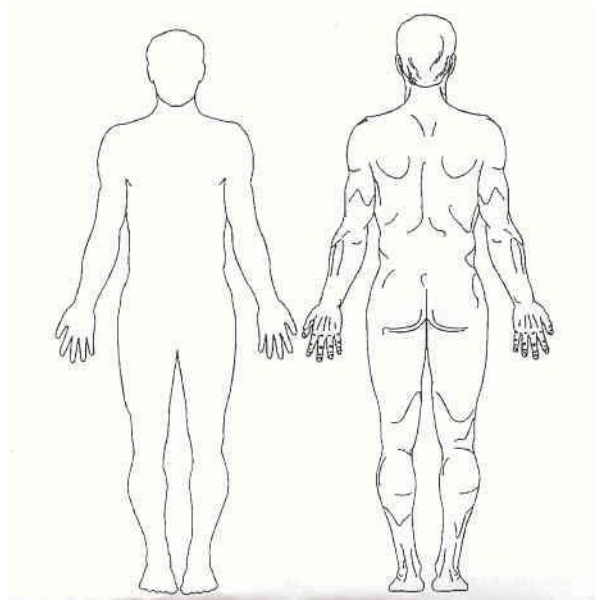
Impact technique Y ☐ N ☐ Control technique Y ☐ N ☐ Both Y ☐ N ☐

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

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 ☐

Tire deflating spikes

MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM
Appendix A

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 Complete Yes ☐ No ☐

OC Spray / Pepperball Launcher Incident
--

OC Spray: Yes ☐ No ☐ Pepperball Launcher: Yes ☐ No ☐ Both: Yes ☐ No ☐

Type of contamination used: Individual: ☐ Area: ☐ Both ☐

**MONTPELIER POLICE DEPARTMENT
USE OF FORCE REPORT FORM**

Appendix A

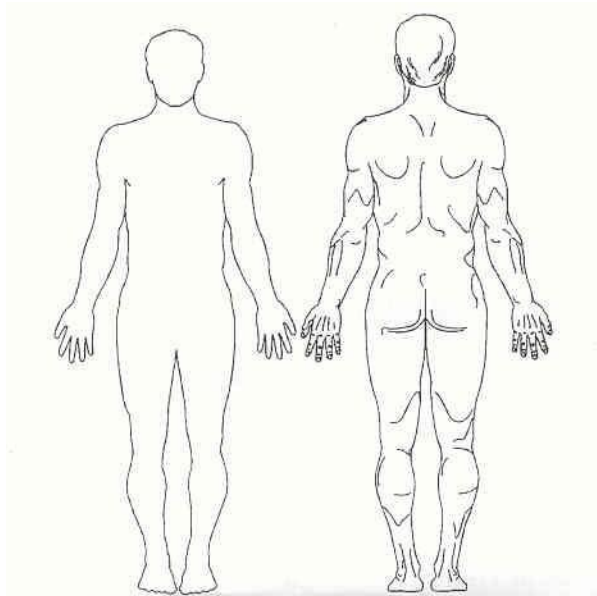
Number of pepperballs fired: Water: _____ OC: _____ Glassbreaker: _____ Total: _____

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.)

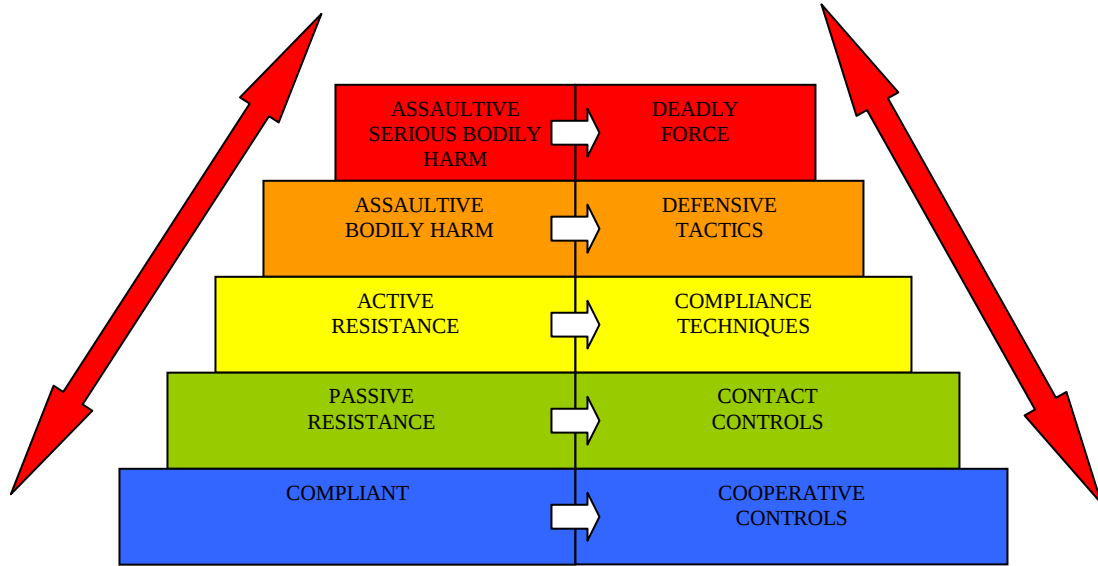
Involved Officer's Signature

Supervisor's Signature

Policy Compliance Yes ☐ No ☐

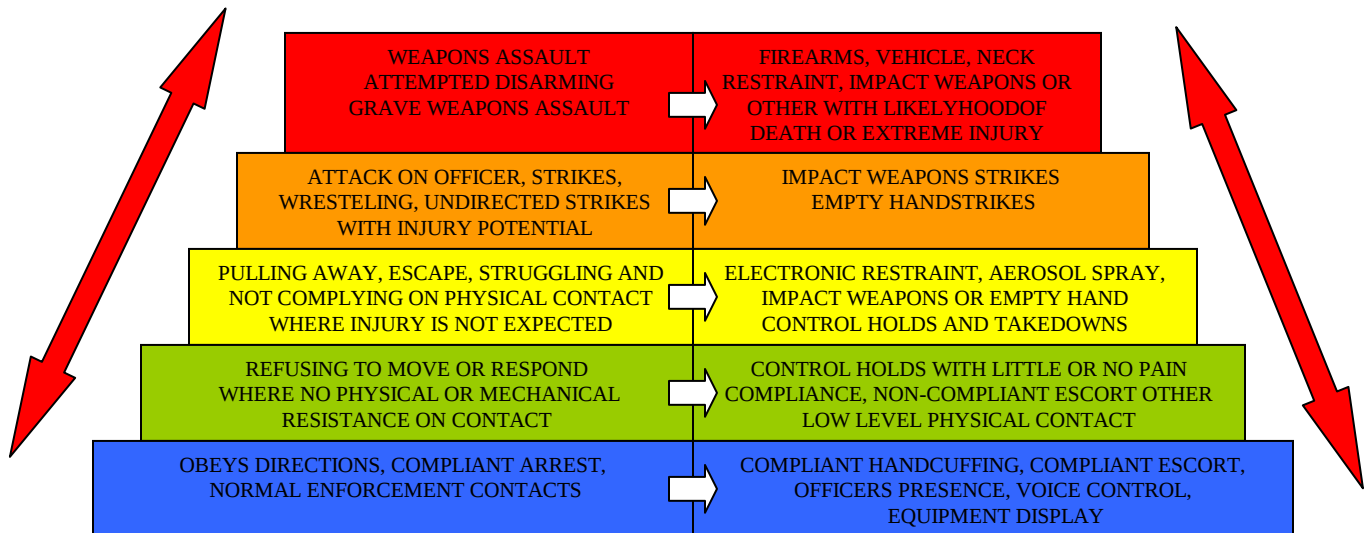
Chief _____ Policy Compliance Yes ☐ No ☐

MONTPELIER POLICE USE OF FORCE CONTINUUM



REASONABLE OFFICER PERCEPTION

REASONABLE OFFICER RESPONSE



A STUDY AND REPORT CONCERNING THE USE
OF TASERS AND OTHER LESS LETHAL MEANS OF
FORCE BY VERMONT LAW ENFORCEMENT

APRIL 7, 2008

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INTRODUCTION

Over the past several years there has been much public focus both within and outside Vermont on law enforcement use of deadly force. Similarly, as technology has evolved and law enforcement agencies have made progress adding less lethal means of force alternatives to the options open to police officers in the effective performance of their duties, public concern about the appropriate use of these technologies, particularly Electronic Control Devices (ECDs), has been on the rise. Since the ECDs industry leader for law enforcement nationally and in Vermont is Taser International, in this report we use the term “taser” when we refer to any ECD.

The Attorney General’s Office has been asked to look into two particular taser incidents that occurred in Brattleboro, Vermont during the summer of 2007. In one case, two individuals protesting a contemplated commercial development were tased when they refused police orders that they leave their protest site. In the other case, police responded to a call for assistance at the Brattleboro Retreat, a residential treatment facility for individuals experiencing mental health, addiction and/or other issues. A teenaged boy in state custody was tased after he had barricaded himself in his room and was damaging property.

In the first incident, then Brattleboro Police Chief John Martin asked the Attorney General’s Office to review the appropriateness of the tasing of the protestors. In the second incident, Governor Douglas, by letter of August 2, 2007, asked the Attorney General to study the appropriateness of the tasing of the youth in state custody.

Rather than look only at the two Brattleboro incidents, we decided to look generally at the use of less lethal means of force by Vermont law enforcement agencies and more specifically at police use of tasers, with particular focus on

the two situations confronted by the Brattleboro police. The results of the study are set forth in this report.

SUMMARY FINDINGS

1. 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 the subject of police interventions.

2. Like all weapons, less lethal means of force, including tasers, OC (pepper spray), beanbags and batons, are subject to abuse and misuse.

3. Tasers are Electronic Control Devices (ECDs), also called Conductive Energy Weapons (CEWs), which override the body's central nervous system by means of a stream of 50,000 volts of electrical current.

4. More than 7,000 police agencies in the US, including approximately 28 in Vermont, provide tasers to their personnel.

5. The hierarchy of the Brattleboro Police Department failed to provide adequate supervision and direction to the officers assigned on July 24, 2007 to handle a peaceful protest at the site of a contemplated commercial

development.

6. On July 24, 2007, the Brattleboro Police Department should have given greater consideration to options involving the disassembly of a barrel mechanism used by two protestors at a peaceful protest.

7. On July 24, 2007, the Brattleboro Police Department, in apparent violation of its then-existing Use of Force Policy, erred in repeatedly tasing two protestors engaged in a peaceful sit-in.

8. On or about February 8, 2008, the Brattleboro Police Department Use of Force Policy was amended to make it clear that tasers should not be used against subjects displaying only passive resistance.

9. The Brattleboro Police Department has been negligent in not accurately recording and maintaining data detailing the dates and durations of its taser deployments.

10. Considering the evidence made available, on July 3, 2007, it was appropriate for the Brattleboro Police to use a taser to promptly halt the destructive and threatening behavior of an out-of-control youth at the Brattleboro Retreat. However, without additional evidence to establish otherwise, the duration of the tasing of the youth was unnecessary and inappropriate.

RECOMMENDATIONS

1. Law enforcement in Vermont, before making tasers available to departmental personnel, should engage in a process to obtain community or non-law enforcement feedback on appropriate and inappropriate uses of tasers.

2. Vermont law enforcement agencies are advised to have

written protocols governing the use of lethal and less lethal means of force, reporting obligations when force is used in the line of duty and mechanisms in place to review the appropriateness of the use or uses of force deployed in specific situations.

3. For departments with the technology, the use of force policy should contain specific provisions relating to tasers.

Consideration should be given to addressing the appropriateness of taser deployments in the “drive stun” and “probes” modes, against particular classes of individuals and/or in particular situations and when multiple tasings or extended continuous tasings of a subject are appropriate.

4. Consideration should be given to inclusion in the written protocols as to when medical personnel will be used to remove probes or to otherwise treat or examine a person who has been tased.

5. Tasers should not be used against passively resistant individuals who pose no danger to themselves or others.

6. As is the case with any lethal or less lethal means of force, personnel should be appropriately trained by competent instructors in the use of the taser. Consideration should be given to a requirement that an officer be subjected to being tased or at least afforded the opportunity to be tased before being authorized to carry a taser in the line of duty.

7. There should be a written record of any taser deployment with such record reviewed by a supervisor to determine the appropriateness of the deployment. Consideration should be given to a requirement of such recording obligation when a taser is removed from its holster, even if not fired. The written records should be retained for an appropriate length of time.

8. Tasers should be calibrated and periodically checked to assure accurate recording of the date, time, number and

duration of any unit deployments.

9. Information stored in a taser's data port should be downloaded periodically, retained and compared for accuracy to written deployment reports.

10. There should be periodic reviews of the departmental use of force policy after consideration of experiences in the field, to determine whether amendments to the policy should be made.

PROCESS OF STUDY AND INVESTIGATION

In preparation for the completion of this report, the Office of the Attorney General communicated with all Vermont state and municipal law enforcement agencies soliciting information on what less lethal means of force are used by each agency, what, if any, written protocols exist concerning the use of these tools and written reports or information concerning actual experiences with tasers, pepper spray, etc. during the period from August 1, 2006 through July 31, 2007. We experienced a 100% response to our survey requests.

We obtained police and other reports concerning the two Brattleboro taser incidents that prompted this review, and traveled to Brattleboro and St. Johnsbury to interview many of those familiar with the two incidents. Our interviews included the two protestors, staff at the Brattleboro Retreat and several Brattleboro police officers. We observed a lengthy demonstration of the taser, OC and beanbags at Burlington Police Department HQ and interviewed other law enforcement personnel.

We collected and reviewed voluminous written reports concerning tasers and other less lethal means of force technology, including the results of national and international studies as well as reports by the police departments of Seattle, Phoenix and Oakland, among others. It should be noted that we also obtained and

reviewed reports critical of tasers, e.g. Amnesty International's "Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of tasers" and the American Civil

Liberties Union of Northern California's "Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives."

We did not approach this task from the perspective of public health experts with the intention of making findings as to the health risks of tasers when deployed generally, used on certain types of subjects or when a person has been subjected to numerous tasings within a relatively brief period of time. We leave medical questions to medical experts. We are mindful, however, that at least hundreds of Vermonters have been tased and evidence of any resulting serious bodily injury has not been brought to our attention.

We are grateful to all those who cooperated with us in obtaining the information we reviewed during this endeavor and the interviews we conducted with individuals with knowledge of particular tasing incidents and/or more general information about tasers and their use both within and outside Vermont. We particularly wish to express our gratitude to Burlington Police Department Deputy Chief Walter Decker, to former Burlington Chief, now Commissioner of Public Safety, Thomas Tremblay and to UVM Police Services Deputy Chief Lianne Tuomey.

LESS LETHAL MEANS OF FORCE

Subjects interacting with the police are typically described as fitting into one of the following categories:

Co-operative – appropriately responsive to the officer's presence, direction and control.

Resistant (Passive) – the subject refuses, with little or no physical activity, to appropriately respond to the officer.

Resistant (Active) – the subject uses non-assaultive physical activity to resist, e.g. walking or running away.

Assaultive – by actions or attempts, exerts force against another or presents an imminent threat to do so, e.g. kicking, shoving and/or punching.

Grievous Bodily Harm or Death – by the subject's actions, there is a reasonable fear that he/she will imminently cause or attempt to cause death or serious bodily injury to self or another, e.g. through the use of a weapon.

In the performance of lawful duties, police are authorized and expected to obtain compliance or cooperation from those whose behaviors fit into the last four categories. In certain situations, they do so through the use of force, ranging from verbal commands, hand-to-hand physical force, so-called intermediate weapons and in the most serious cases by using lethal force, most typically through the use of deadly weapons.

Trying to describe the “typical” scenario when police resort to use of force is fraught with peril. Indeed, virtually every such situation is unique, representing an interplay of factors including the individual profiles of all persons involved in the event, the psychological and physical functioning of each, individual subjective and objective perceptions, the physical setting and other factors too numerous to describe in this report.

At the same time, however, national studies and anecdotal reports from Vermont law enforcement support the conclusions that police uses of force are more likely during interactions with persons who are under the influence of

drugs or alcohol and on some occasions when dealing with subjects manifesting mental health issues. Subjects against whom force is used can be combative or assaultive, engaging in active, physical resistance to police efforts to

control the situation and can intend to inflict harm on themselves or others.

When scrutinizing a police use of force, the main question is whether the use of force was objectively reasonable in that particular time and place. Factors considered in making a determination on reasonableness focus primarily on: 1. the seriousness of the underlying behavior for which the police are interacting with the subject; 2. whether the suspect posed an imminent threat to the officer or another person; and 3. whether the subject was actively resisting or attempting to evade arrest.

Studies have shown that physical injuries to officers occur in approximately 10% of general use of force situations, most often when hand-to-hand physical force is used. These same officer injury rates climb to 30-40% when using force against mentally ill and impaired subjects. In general, during use of force situations, approximately 38% of subjects are reported injured, most typically having suffered bruises or abrasions.

Most police departments have a use of force policy describing the various options available to officers when use of force is appropriate and leaving it to the officers involved, again, held to an objective reasonableness test, to determine the appropriate use of force in a given situation. Typical police use of force protocols do not require the use of option A before employing option B, etc.

What follows below is not an exhaustive list of all less lethal or intermediate means of force but does encompass the vast majority of such means currently available to and used by various Vermont law enforcement personnel. We do not

focus on the use of the older generation stun gun.

I. Baton

The baton or nightstick is carried by or is at least available to nearly all Vermont uniformed law enforcement personnel. When used to control a subject, the officer typically strikes the subject in the elbows, knees and/or abdomen. Batons are useful only in close quarter contact situations. When displayed, like other less lethal means of force, they can be effective in causing some subjects to cease disruptive behavior. When used in a physical confrontation, however, batons typically result in bruising and/or other potentially disabling injuries to the subject of the blows. Like other conventional impact weapons, police studies have shown that batons have a “high potential for escalation of subject resistance if they were not immediately effective.”

II. Oleoresin Capsicum (OC or Pepper Spray)

OC is a chemical mixture delivered via a spray or, in the case of a “pepper ball”, in a powdered form delivered via round gel-like projectiles fired by a weapon similar to those used in paintballing. The instrument or launcher used to discharge pepper balls has the advantage of being able to be loaded with up to 150 projectiles and thus can be used when confronting a large number of disruptive subjects. A pepper ball can be used relatively accurately in that a particular subject may be targeted from a distance of ten or more feet. A subject struck by a pepper ball suffers pain and potential bruising associated with being hit by the projectile and then is impacted by the OC powder released when the capsule breaks open.

As a spray, OC can be delivered at relatively close range to a single or small number of targets from a small canister carried by an officer or directed at an unruly crowd at a distance of up to approximately twenty feet from a fogger, i.e. a large canister and hose configuration.

OC's active ingredients are those found in hot peppers.
They inflame the mucous membranes in the eyes and

breathing passages and incapacitate by causing severe pain and difficulty seeing and breathing. Some subjects vomit after inhaling OC.

OC's advantages include effectiveness in rendering many unruly subjects unable to continue their behaviors and an ability to be simultaneously deployed from a safe distance against numerous subjects. Police departments adding OC to their use of force options have found a reduced need for use of batons. Among its disadvantages is that, particularly when used in confined spaces, OC can incapacitate nearby law enforcement and/or rescue personnel and innocent bystanders. It can be ineffective and inaccurate in windy conditions. There is anecdotal evidence that its use can escalate the behaviors of some subjects. Further, the pain, irritation and disabling effects of OC can persist for hours after first contact. There are reported deaths attributable to OC, particularly when the subject struck by pepper spray suffers from asthma or a similar breathing disability. OC is less effective in cold weather and it reportedly has little or no effect on approximately 15% of the population.

III. Beanbags

Beanbags are a specialty impact munition, intended to deliver a severe concussive blow to a subject. They offer the advantage of being able to be deployed from distances that enhance the safety perimeter of the police, although the concussive impact is reduced the further the distance to the target. The projectile, delivered in what appears to be a typical shotgun shell, is a cloth bag containing a number of small lead BBs. It is fired from a shotgun and incapacitates primarily from the pain suffered when being struck. Display of the shotgun can cause some subjects to halt their combative and/or unruly behaviors.

In a study conducted by the Orange County (FL) Sheriff's Office (OCSO), approximately 80% of subjects hit with a

beanbag suffered some injury, most typically severe bruising or abrasions. Some subjects have suffered permanently disabling injuries depending on where hit and the distance from which the beanbag has been fired. The OCSO study reported 8 deaths in 373 deployments.

IV. Tasers

“The M26 taser is intended to provide officers with a force option to help in overcoming a subject’s combative intent, physical resistance, and/or assaultive behavior; in disabling or subduing persons bent on harming themselves or others; or in providing self-defense. As with all applications of force, officers using less lethal options are expected to use necessary and reasonable force to effect a lawful purpose. ‘Necessary and reasonable’ uses are defined by the totality of the circumstances that confront officers.”

Seattle Police Department Special Report 2002

(The more modern taser model is the X26.)

A taser is a handheld Conductive Energy Weapon (CEW) that causes electromuscular disruption (EMD). The most popular CEWs are manufactured by Taser International. In this report, “taser” is used to describe all CEWs. The use of tasers by law enforcement is steadily increasing. There are now more than 7,000 police departments that include this weapon among the less lethal means of force available to their personnel. Currently there are approximately 28 Vermont law enforcement organizations, including several of

the largest municipal departments, using tasers, with more actively considering employing taser technology.

A taser is typically used to deliver 50,000 volts of electricity at low amperage for five seconds. The voltage causes

severe muscular contraction and the individual is rendered essentially unable to voluntarily control his/her behaviors while the current flows.

When discharged, a taser stores downloadable data, including the date and time of discharge and the number of cycles employed. In the “probes mode”, small pieces of confetti-like paper are discharged. These “AFIDS” contain information unique to the cartridge used in the deployment and can be collected at the scene.

In the probes mode, two sharply pointed probes are fired from a cartridge attached to the end of the barrel of the taser. The probes are propelled by a nitrogen gas and travel at approximately 200 feet per second. They remain connected to the cartridge by thin copper wires. The most common wire lengths carried in Vermont are 21 feet or 25 feet. To be effective, the probes must puncture the skin or be in close proximity to the skin. At a distance of 10 feet, the probes will typically spread approximately 20 inches. The length of charge is a standard five seconds in tasers used for law enforcement purposes. This charge can be abbreviated by turning off the taser. It can be extended if the deploying officer continues to depress the trigger. As long as the probes remain in place, a second or subsequent charge cycle can be inflicted.

In “drive stun mode”, which requires direct contact between the taser and the subject, the taser does not typically incapacitate the subject by muscular contraction but is a pain compliance implement. In this mode, the taser discharges current for as long as the person in control of the weapon depresses the trigger and remains in contact with the subject. It should be noted that there have been reports on the part of police volunteering to be tased not only of a burning sensation when being tased in the stun mode but of

significant skin redness at the contact site(s) which lasted approximately a week after the tasing.

There are tasers available for private sale on the market. These can deliver a ten second and a thirty second charge cycle. The taser models used by law enforcement sell for approximately \$900 per unit. There are now models on the market that include a videocamera (presently used by UVM police) and cost approximately \$1250 per unit. The models available for private use cost approximately \$300 apiece.

Except in cases in which serious injuries are suffered – most often when the subject is injured during a fall while experiencing the muscle contraction or when a probe strikes a particularly vulnerable location, e.g. the eye, the significant pain or discomfort experienced during the tasing cycle ends abruptly once the current flow has ceased. The probes are relatively easily removed, typically without the need for intervention by medical personnel. Other than a possible spotting of blood as might be experienced after having a flu shot, there are seldom injuries suffered of even a short-term duration.

To be sure, nationwide there have been approximately 280 deaths of subjects following tasing incidents. For the vast majority, if not all of these deaths, there have been indications that some other cause, e.g. heart disease, acute cocaine or other drug intoxication, excited delirium syndrome, positional asphyxiation et al., rather than the taser, has been the primary cause of death. Interactions with police, particularly if involving a physical struggle, handcuffing and/or other restraint, etc. can be extremely stressful. Since in many cases this stress is exacerbated by one or more of the conditions mentioned above, there are medical experts of the opinion that a number of the subject deaths would likely have occurred even if no tasing had taken place. There are reports on in-custody deaths in Canada and the United States occurring in psychiatric hospitals and geriatric care facilities when restraints have

been applied but no tasings have taken place.

Depending on the probes' locations and due to the intense muscular contraction during a tasing cycle, normal respiratory patterns can be significantly altered. There have been studies on pigs that have been subjected to multiple tasings over a brief period of time (three minutes of five seconds on, five seconds off cycling) that have shown dramatic physiological effects on the animals. Clearly, more study is called for before health concerns generally and in the cases of particular classes of individuals can be known with certainty. Thus, multiple tasings of an individual over a brief period of time should be avoided if reasonably possible.

We are certainly not equipped to definitively rule on the conflicting medical opinions concerning the dangers inherent in taser use. We are mindful of Amnesty International's call for a suspension of taser use until more study of their effects on subjects has been conducted. At the same time, we are mindful of studies like that presented during the fall of 2007 to the American College of Emergency Physicians' Research Forum in Seattle. Lead study investigator Dr. William Bozeman, an emergency medicine specialist at Wake Forest University, reported that in his analysis of 597 tasing incidents, serious injuries were suffered approximately 0.3% of the time. This is roughly consistent with the results provided to us anecdotally and through written reports from Vermont law enforcement.

When the Bozeman study was released, Dr. Corey Slovis, professor and chair of emergency medicine at Vanderbilt University, was quoted as saying: "Tasers save lives, but tasers are not perfectly safe. A taser should not be used unless force is absolutely necessary..." Similarly, Dr. Bozeman was quoted as follows: "These are not 100 percent safe. These are weapons and must be treated as such."

Law enforcement in Vermont should continue to be mindful

of these realities.

Given Vermont's relatively small number of law enforcement personnel and the relatively recent deployment of tasers by law enforcement in the state, some of our observations and conclusions concerning taser use must come from reports by large out of state police agencies that have used tasers for a number of years. These include the Columbus, Ohio, Phoenix and Seattle police departments.

Phoenix police, the first major city police department in the country to fully deploy tasers to patrol officers, reported employing tasers 354 times during 2003, an increase of 139% over its 2002 usage numbers. At the same time, its officer-involved shootings fell 54% and its fatal shootings fell 31%.

In a Columbus police report on six months of taser use during 2005, there was a reported nearly 24% drop in citizen complaints about the police, an over 25% reduction in excessive force complaints, injuries to officers from physical confrontations declined over 23% and injuries to subjects involved in physical confrontations with police declined over 24%. Further, the report described twelve documented incidents when subjects attempting suicide were tased and taken into custody and fourteen incidents when tasers were deployed but deadly force was justified.

A particular area of concern in the use of tasers is the deployment against a subject who is not actively resisting police orders. Simply because a taser does not typically result in serious injury to a subject, typical use of force policies do not allow for or encourage the use of a taser when it would be inappropriate to use baton strikes, OC or bean bags against a subject. Following a reported review of model policies and studies conducted in the US and Canada, the Legal & Liability Risk Management Institute has suggested that use of force policies prohibit the use of tasers

against passively resistant subjects.

TASERS AND VERMONT LAW ENFORCEMENT

Of the approximately 72 state and local law enforcement agencies in Vermont, approximately 28 have a total of approximately 220 individual taser units available for use by their personnel.

As of the completion of the surveys prepared in conjunction with this study, of those agencies owning taser units, availability ranges from one unit for the 5 members of the Ludlow Police Department to 30 units for the 39 law enforcement personnel of the South Burlington Police Department and 44 units owned by the Burlington Police Department.

THE BURLINGTON EXPERIENCE

“Use of Electronic Control Device – The ECD

is designed as a tool to respond to threat levels,

which place the officer or other individuals in the

threat of physical harm due to the actions and

behaviors of a suspect. The suspect must be

actively aggressive and presenting a risk of

injury to the officer(s), him/herself or others

...ECDs are not to be used in a punitive or

coercive manner, and shall not be used to...

gain compliance from passively resistant subjects.”

Burlington Police Department Use of Force Policy

(Emphasis added.)

The Burlington Police Department (BPD) is the largest municipal police force in the state. Deputy Chief Walter Decker began considering the feasibility of using the taser while enrolled at the Police Executive Research Forum’s Senior Management Institute during 2004. Decker learned that the Cincinnati Police Department, under federal court order after numerous allegations of police brutality and civil

rights violations, was issued tasers by the federal government.

BPD first provided information on tasers to and obtained training for its firearms instructor, its use of force instructor and one of its corporals. All responded positively to the possibility of adopting the taser as a less lethal means of force option for the department.

To assist the lay Burlington Police Commission in determining the appropriateness of taser use by the department, a special committee was formed to look in more depth at taser-related issues. There was a medical component and a community input component to the committee's efforts. Interested parties were invited to presentations concerning the weapon, including demonstrations of taser deployments.

In looking at adopting a written policy for use of the taser, BPD considered a model policy from the International Association of Chiefs of Police and policies from a number of other police departments from around the country. These were reviewed by the committee and there was much discussion about the appropriate thresholds for use of the taser, including consideration of special populations, e.g. the very young, the elderly and pregnant women, and particular situations, e.g. school settings, when a subject is in control of an automobile, the physical location of a subject, etc. Ultimately, after an approximately year long process, the Police Commission adopted a written policy concerning taser use. The policy remains subject to periodic reevaluation and change.

BPD adopted a standard protocol that includes a reporting

obligation when a taser is even brandished in the performance of duty. Departmental experience is that brandishing incidents outnumber actual deployment by approximately 3 to 1. After deployment, BPD officers pose

standard questions to subjects, including whether the individual is on any drugs, has a pacemaker or other similar medical device, etc. Initially, medical or rescue personnel were always engaged to remove probes and/or to examine subjects who had been tased. BPD received medical advice that this was not necessary. Its written protocols currently mandate medical evaluation of a subject who has been tased if the subject “has exhibited signs of extreme uncontrolled agitation or hyperactivity prior to the ECD exposure or does not appear to recover properly after being energized.”

Medical personnel may be engaged depending on location of the probes, e.g. in the groin area, or on the answers to certain standard questions.

There are 66 uniformed officers at BPD. A phased deployment of the taser was begun in May, 2006. The department now owns approximately 44 tasers, of which approximately 39 are in active use. Training is provided by three in-house instructors for a minimum of six hours.

Deputy Chief Decker reports that the tasers have proven effective over 80% of the times they have been deployed. Their use has dramatically reduced and all but eliminated workers’ compensation claims by officers due to injuries sustained in combative situations. There has been only one complaint of excessive force lodged by a subject who has been tased and in that case, the allegation of multiple tasings was disproved by the taser unit deployment history recording mechanism. It is standard practice for the units’ use history data to be downloaded regularly in order to confirm the accuracy and reliability of the use of force reporting procedures.

Given factors including the size of Burlington, its busy downtown area with numerous bars and a large population

of college students and residents in their 20s and the fact that BPD has more tasers than any other law enforcement agency in the state, tasers have been brandished and

deployed more times in Burlington than anywhere else in the state. What follows below are descriptions from officers' reports of a few Burlington tasing incidents.

On January 11, 2007, at approximately 4:45 PM, Burlington police officers were dispatched to a location in response to a complaint of a stolen motor vehicle. They were advised that the subject was outside the vehicle. On arrival, they located the vehicle in question with an open rear door and a man doing something in the back seat. The man stood approximately 6'4" tall and weighed approximately 325 pounds. He was apparently startled by the police arrival. Wanting to see his hands to make sure he wasn't armed, the police ordered him to show them his hands and to approach them. He shouted "No" and backed away from the police. He began to reach for his waistband and then started to run up the street with the police in pursuit yelling for him to stop. He ran into a narrow alley and appeared to be reaching for his pockets. A Burlington officer fired his taser, causing the subject to fall to the ground. He rolled onto his back despite police orders for him to get onto his stomach. When he reportedly reached quickly for his pants, an officer drew his firearm and threatened the subject. Shortly thereafter he allowed himself to be handcuffed.

While searching him incident to the arrest, the police found multiple crack stems, two packets of heroin and a Leatherman tool in his pocket.

On May 28, 2007, just before 1 AM, Burlington police were alerted that a suicidal male had walked away from Fletcher Allen Health Care. Shortly thereafter the man in question was located wearing hospital clothing on upper Main Street near the UVM campus. When a second officer arrived on the scene, the man took off running with the police in pursuit. After a brief chase he stopped but refused the police order

to get on the ground. He stated: “I have a gun” and said something to the effect that the police should go ahead and

shoot him. He continued to refuse to get on the ground after being advised that he would be tased. He was tased and promptly fell to the ground but began to get up immediately after the flow of current stopped. He was tased for another cycle. This time he remained on the ground, was handcuffed and soon thereafter returned to the hospital. While searching him, the police found no weapon, only a cell phone.

On August 10, 2007, just before 1:30 AM, Burlington police were dispatched to ACT 1, an alcohol treatment facility, to respond to a complaint of an intoxicated male who was causing a disturbance. Upon arrival, the responding officer was advised that the male had admitted himself earlier for detox but that he was being disruptive and needed to be sent to another facility. The officer confronted the subject in a hallway near an emergency exit. He swore at the officer, shouting that he wasn't going anywhere. He then went out the exit and held the other side of the door preventing the officer from following. Assistance was requested but the subject let go of the door and began to run through some bushes into an adjacent driveway. He was ordered to stop and place his hands behind his back. Instead, he grabbed a ladder and began swinging it at the officer. The officer had unholstered his taser. He fired it and the subject was immediately incapacitated. A second officer arrived on the scene and handcuffed the subject, who was then taken to a secure detox facility after it was determined that he was the subject of an outstanding arrest warrant.

And in one of numerous incidents in and around Burlington bars, on August 26, 2007, shortly after midnight, police on downtown patrol were approached by an employee of a Church Street bar who requested their assistance. In the front of the bar they found several bar employees wrestling with an individual on the ground. A responding officer ordered the combative male subject to turn onto his stomach. The subject refused and attempted to get up.

Two Burlington officers grabbed his arms to obtain his compliance but he told them he wouldn't comply. Instead, he grabbed onto a nearby table, thus preventing the officers from getting him onto his stomach. He was threatened with being tased and told the officers to go ahead and do so. He was tased and became briefly compliant but then continued his resistance. Ultimately the table he was grasping was flipped over, thereby releasing his grip and he was handcuffed.

He remained combative while being brought to a cruiser for transport and once in the cruiser he continued yelling threats at the police and tried to kick out the rear window. He stopped the kicking only after being threatened with being pepper sprayed. He continued his verbal threats and lack of cooperation with the police, ultimately being lodged at the correctional center for several offenses.

Finally, on Christmas Eve afternoon of 2007, BPD officers were dispatched to an apartment on College Street in response to a complaint that an identified male subject was threatening another male with a knife. Upon arrival, the police recognized the allegedly armed individual from a prior history of interactions. Although they could see the subject seated at a table in the kitchen, he ignored police knocks on the door.

The police gained entry and observed the subject pick up a bottle of tequila. He initially ignored police orders to put the bottle down, first taking a drink. It appeared to the police that the subject was intoxicated. He grabbed a steak knife from his lap and pointed the knife at one of the officers, saying: "You don't want a piece of this." The officer had his taser unholstered and ordered the subject to put down the knife or he'd be tased. The subject complied, throwing the knife on the table. He was ordered to stand and place his

hands behind his back. He did so but asked the officer if he wanted to fight and on the way to the correctional facility

yelled that he would kill the officer. He was lodged and charged with assault on a law enforcement officer.

As reflected in the excerpt from the BPD Use of Force Policy quoted at the beginning of this section, BPD would not have used a taser in the handling of the peaceful protest situation confronted by Brattleboro police on July 24, 2007. At the same time, Deputy Chief Decker is in agreement with the Brattleboro officer who opined that the taser is perhaps the best advancement for law enforcement that he has seen in the last twenty years.

OTHER VERMONT EXPERIENCES

RUTLAND

One night in July 15, 2007, at approximately 10 PM, Rutland police were dispatched to a location to deal with a reported suicidal 14-year-old male with a knife who was threatening to harm himself. Upon arrival at the scene, the responding officer observed two adult males struggling with a subject down on the sidewalk. The subject was attempting to free himself from two adult males, ultimately identified as the juvenile's father and stepfather. The subject was swearing at the men as well as his mother, who was on a nearby porch.

The officer inquired of the juvenile where the knife was located. Eventually he was told that it was in a pocket. The officer told the subject that if he didn't stop fighting, he would be tased. The juvenile said he would stop fighting. The officer asked the adult males to let the juvenile up. The

juvenile followed a command to stand up but when he was told that he'd be handcuffed until the situation had stabilized and any weapons had been secured, he became resistant, pulled away from the officer and reached towards his pocket. The officer wrestled the subject to the ground, unholstered his taser and ordered the juvenile to put his

hands behind his back. The juvenile ignored the order and began getting back up.

In probes mode, the officer fired his taser, striking the subject in the left rib cage area. He was immediately incapacitated. When the five seconds cycle was over, he promptly obeyed an order to put his hands behind his back and he was handcuffed. A knife was removed from his pants pocket and the officer then removed the probes. The juvenile, upset over a breakup with a girlfriend, admitted to having consumed alcohol and taken some prescription medication.

Since the juvenile had become calm, his mother offered to let him remain with her after he promised there would be no further problems. He was left in the care of his mother, facing the possibility of future juvenile court proceedings.

SOUTH BURLINGTON

On September 10, 2007, South Burlington Police were dispatched to Country Club Drive just before 2 AM, in response to multiple complaints of a male “yelling and smashing things”. They arrived on the scene and located an apparently intoxicated 21-year-old male walking with a bicycle. Although he contended that he had not been drinking, he gave a sample of his breath, which produced a reading of over .19%.

The officers informed the subject that he was going to be placed into protective custody and that he was to place his hands behind his back. When the officers grabbed his hands

to handcuff him, he began to actively resist, throwing an elbow and almost striking one of the officers in the face. He was wrestled to the ground, the officers delivering multiple strikes to his body in order to gain compliance. These were unsuccessful as the subject continued to kick and flail about. One of the officers tased the subject in the stomach in drive

stun mode. This was not successful in causing him to stop fighting, so the officer backed away and fired his taser in probes mode, striking the subject in the chest and thigh.

He was then taken into custody but continued to be combative and disorderly to the police and rescue personnel who were called to evaluate his condition. He was transported to the hospital where he continued to yell and manifest mood swings, including paranoia. Ultimately, he refused medical care. The police were of the view that the man had ingested something other than alcohol. Just before 5 AM, the subject was discharged from the hospital and detoxed, facing criminal charges of disorderly conduct and resisting arrest.

SPRINGFIELD

On September 29, 2006, at approximately 12:30 AM, Springfield police were attempting to arrest a man for disorderly conduct after responding to an alleged domestic assault. The individual refused to be handcuffed and approached the police in a threatening posture. He was pushed to the ground but then continued to resist being handcuffed and attempted to get up. He grabbed one officer's wrist and held it underneath him. The officer freed his wrist and then sprayed the subject with OC on the right side of his face. The OC had no immediate effect so the officer drew his taser, removed the probe cartridge and pressed the taser into the man's back, threatening to tase him. Rather than being tased, the subject promptly placed his hands behind his back, was handcuffed and taken into custody.

In another Springfield incident, on May 26, 2006, at

approximately 7 PM, police received a complaint from a person who wished to remain anonymous, reporting concerns that a 17-year-old female who had been vomiting outside a residence might have overdosed. The girl was

allegedly the girlfriend of an identified male subject. Upon arrival at the location, the police were informed by the boyfriend that his girlfriend had left a half hour earlier. But another person present advised the police that the girlfriend was in the bathroom.

The male subject denied this, saying that it was his mother in the bathroom and that she was taking a shower. He took a position in front of the bathroom door. An officer attempted to open the bathroom door but the boyfriend pushed it shut and braced himself against the door. The officer grabbed the subject's wrist to pull him away from the door but the subject pulled his wrist away and took up a fighting stance. Another officer attempted a neck pull down on the boyfriend but he successfully avoided the attempt. When it appeared that the male was going to throw a punch, one officer hit him with his flashlight, using it as an impact weapon. In the tight quarters the two officers and the male subject fought. It was unclear to one officer whether he was successfully hitting the male with the flashlight but any hits were not stopping the fighting. The other officer then unholstered his taser and fired probes into the boyfriend's torso. The deployment seemed to achieve muscular disruption only intermittently. The subject was on the floor and continuing to thrash about. One officer hit him with the flashlight on his thigh.

The subject only complied with orders to put his hands behind his back when he was threatened with being tased a second time. He was handcuffed and the police saw blood on the floor. He was found to have an approximate one-inch cut above his left eye. It was unclear whether the cut was caused by a flashlight blow or from broken glass that was on the floor or from shelving or food items that were strewn about. Rescue personnel were called and brought him to the hospital for treatment. The 17-year-old girlfriend was located in the bathroom and found to have a BAC of .13%.

UVM POLICE

At approximately midnight on September 2, 2006, UVM police were dispatched to a residence hall in response to a complaint that a nude male was assaulting a resident of the dorm. They encountered a nude 19-year-old male exhibiting signs of impairment by a drug or drugs. He had muscle rigidity, was perspiring and his pupils were dilated. The officers were in the hallway outside a room in which the male was located. He was ordered to get down on the floor, but instead of complying, he began to swing his fists at the police. One officer had unholstered his taser and when ordered by a superior officer, fired probes into the subject's abdomen.

He fell to the floor, was handcuffed behind his back and subsequently transported to the hospital. Prior to going to the hospital, he advised the police that he had consumed "a lot" of "ecstasy and mushrooms". The police learned that before they were called, he had entered a dorm room uninvited and fondled a female student. After discharge from the hospital he was lodged at the Chittenden County Correctional Center for multiple felony charges.

Vermont State Police

At present, the Vermont State Police, although the state's largest law enforcement organization, has only 18 tasers. They are assigned to its Tactical Services Unit personnel. Consequently, VSP has few taser deployments. A more typical VSP use of force incident occurred in Lunenburg at approximately 7:00 PM on November 8, 2006. Troopers responded to a female's 911 call reporting an argument with a male subject. Upon arrival at the scene, they found a

heavily intoxicated male who admitted that he and his girlfriend had been having a fight over financial and other matters. One trooper got the male out of the residence while the other trooper talked to the female.

The male told one trooper that he could stay at a relative's house for the night and that he did not wish to be arrested again because he had been arrested in the past "for beating up cops". The trooper offered to drive him to the relative's house. Soon after, the male subject attempted to reenter the residence, saying he wanted to get a beer. He was told that he could not reenter the residence until the conversation with the female complainant had been completed. Eventually, for a second time, the male subject began to walk away from the property. He was told that he could not leave until the investigation had been completed. The subject ignored the trooper's statement but ultimately did stop and was informed that he was going to be detoxed for the evening. He was ordered to place his hands behind his back because he was under arrest. The subject swore at the trooper and refused to comply. He pulled away when the trooper grabbed his arm.

Eventually the trooper took out his OC and sprayed him directly in the face. The subject yelled: "you f----g sprayed me." He continued to resist the trooper's efforts to control him. When it appeared that he was about to throw a punch, he was sprayed again to the right side of his face, including his right eye. The subject proceeded to charge the trooper and try to tackle him. The trooper eluded the charge and then wrestled the subject into the side of a motor vehicle and onto the ground. The subject, on all fours, continued to fight, ignoring orders to put his hands behind his back. It appeared to the trooper that the subject was trying to grab something from the trooper's belt. He became concerned that the subject would grab his baton. The trooper punched the subject with a closed fist in the face and then kneed him.

Due to fatigue and/or the delayed impact of the OC, the subject began to struggle less. The second trooper came

out of the residence and assisted in placing the subject in

handcuffs. The male had superficial cuts to his face and hands and requested medical treatment. He was taken to the hospital, treated and then taken for detox, ultimately facing several criminal charges.

Although relatively few troopers are provided with tasers, VSP does have a written taser deployment policy. In part, it reads as follows:

“3.3 Tactical Considerations and Limitations – Do not use the taser in any of the following situations:...

(2) Any known or obviously pregnant female...

(6) Should not be used as a tool of coercion or punishment.

(7) Excessive use of the X26 Taser in subduing a subject is forbidden.

Vermont State Police Rules & Regulations –

Operational Policies & Procedures

(Emphasis not added.)

In a VSP taser incident, during August, 2006, troopers were dispatched at approximately 9:30 PM to a residence in Rutland County. Prior to arrival, the troopers were advised by dispatch that a male in his 20s was damaging his mother’s residence. They were also advised that the male had a history of mental health issues, was becoming increasingly violent and was in the process of strangling his dog. One of the troopers had had numerous non-violent

interactions with the subject prior to this date.

The troopers found that the front and back doors of the residence had been kicked in. There was broken glass in the back porch area. A scared woman answered the troopers' knocks and reported that her son was having a violent episode. The son was seen standing in the living room swinging a large dog bone and striking the wall with it. He was ordered to drop the bone. He did not do so but made some growling noises and went into his bedroom. A trooper

unholstered his taser and advised the male that if he did not drop the bone he would be tased. The male subject proceeded to pound the floor the floor with the bone and attempt to go under his bed and strike his dog with it. The dog bit the subject's hand and then exited the room.

The male subject stood, still holding the bone, and advanced on the troopers. He was shot in the chest area with the probes. He immediately dropped to the floor and was handcuffed. He promptly became docile, was brought to a standing position and the probes were removed. The subject advised that he would no longer be a problem. His mother thanked the troopers for their prompt and injury free actions. Her son was transported to the hospital for an emergency mental health evaluation.

As is readily apparent from these descriptions of tasing incidents in Vermont, in the hands of a trained officer making reasoned decisions on appropriate deployment, the taser can be very efficient in allowing police to promptly control a stressful and potentially dangerous situation. And further, that compared to other uses of force, this prompt taking of control can typically be realized without serious injury or even other than temporary discomfort to the subject involved, the police and any bystanders.

BRATTLEBORO PROTEST INCIDENT

“The Tasers are NOT for use on strictly non-compliant subjects without some information or fear that the suspect is

going to do harm to the officer or

someone else.” Rutland PD 12/13/06

directive to Sergeants (Emphasis not added.)

We interviewed the two protestors who were tased in this incident and all of the police officers who were at the scene. What follows is a description of what happened. Clearly,

there are differing views, perceptions and interpretations of what happened and why. The following description reflects a desire to present the recollections of the major participants.

During July, 2007, a group of approximately 20 individuals who reside in the Windham County area were concerned about the possible commercial development of a vacant lot located on the Putney Road in Brattleboro into a truck stop or other form of strip development. The group decided to conduct a protest on the property to raise public awareness of the issue. Their intention was to begin a community garden by planting flowers on the site and to maintain a physical presence for two to three days.

Whereas most of the group planned to be at the site only periodically, Jonathan Crowell and Samantha Kilmurray, both 32 and residents of West Dummerston, intended to remain on the site throughout the protest and to make it difficult for anyone attempting to remove them while the protest was in progress. Their preparations included the construction of a barrel mechanism to which they could attach themselves and hinder police efforts to clear the site.

A metal 55 gallon drum was partially filled with concrete in which steel rebar was vertically set. Two holes were created on opposite sides of the barrel with PVC piping large enough to accommodate a human forearm running horizontally from the holes to the rebar. Much of the rest of the barrel was filled with dirt.

Crowell and Kilmurray each had chains and mountain climbing carabiners attached to their wrists. The barrel mechanism design allowed them each to place an arm inside

the PVC piping and to clip the carabiner on the chain attached to the wrist to the rebar configuration. At the same time, the police or others would not be able to access the inside of the barrel without removing the dirt, etc.

Kilmurray estimated that the barrel weighed approximately 300 pounds. It was brought to the protest site in a pickup truck. A blue tarp was used to create a makeshift tent over the barrel in order to shield Crowell and Kilmurray from the elements.

The protest began on Monday, July 23 shortly before noon. Kilmurray describes the day as rainy and chilly. The barrel was placed under the tarp and flowers were planted. Within roughly an hour of the beginning of the protest, police arrived on the scene. Upon their arrival, Kilmurray and Crowell were locked into the barrel. The police were “cordial and polite” as were the protestors. The police made clear that the protestors were trespassing and had to leave the property. They were told that if they were still present when the police returned that they would be charged with trespassing.

The police contend that they were content to let the protestors make their point, get media attention to dramatize their cause and have the incident resolved without arrests, criminal charges or other law enforcement intervention.

Later in the afternoon two police officers returned. Most of the protestors had departed. Lieutenants Robert Kirkpatrick and Jeremy Evans were the two officers at the scene. According to Kilmurray, they were “not very aggressive”. The police told Kilmurray and Crowell that they would have to leave but the couple made clear that they intended to remain. One of the officers allegedly said that there would be “no arrests on my clock” and indicated how long his shift would run. Kilmurray thought that perhaps they would not face arrest.

According to Evans and Kirkpatrick, when Kilmurray and Crowell refused to vacate the premises, they asked the dispatcher to communicate with the property owners. This

was done and permission was obtained for the protestors to remain on the property overnight, as long as they vacated by the next morning. This was communicated to Kilmurray and Crowell before Evans and Kirkpatrick left the scene.

There are clear differences between written reports and witness testimony on the issue of whether supervisory directives were issued to the police concerning appropriate uses of force attendant with attempts to resolve the protest situation. For the day shift commencing at approximately 7:00 AM on the 24th, Lieutenant Kirkpatrick was the shift supervisor. Kirkpatrick contends that neither on the 23rd after first visiting the site nor at any time before returning to the site the next day, did then-Chief John Martin or any captain at Brattleboro PD discuss with him or issue orders on the issue of appropriate uses of force to resolve the protest situation.

To the contrary, in several updated written communications on police department letterhead to Acting Town Manager Barbara Sondag, dated July 30, 2007 and August 1, 2007, then-Captain and present Acting Chief Gene Wrinn wrote that then-Brattleboro Police Chief John Martin on July 23 had directed that the officers assigned to responding to the protest “would take a laid back approach” to the problem. Allegedly Martin “again talked with Lt. Kirkpatrick and reiterated that he did not want a heavy handed approach used with protestors.”

There appears to be no dispute that there were no supervisory communications to Lt. Kirkpatrick on appropriate uses of force on the morning of July 24, 2007. Nor were any captains or the then-chief present at the scene.

On July 24, 2007, the police department did have a written use of force policy. The policy had an effective date of December 17, 2003. Provisions of the policy included:
“When officers reasonably believe it is necessary in the

defense of themselves or others and in the performance of legal duties, appropriate force may be used. Officers are expected to make an objectively reasonable choice from among the force options, based on the facts and circumstances known to them at the time.” (Emphasis added.)

The policy had no specific provisions concerning appropriate or inappropriate uses of force when officers confront passive resistance on the part of subjects with whom they interact. At the same time, the department required officers to complete a “Response to Aggression or Resistance” form whenever a taser, OC or any other weapon described in the departmental “Use of Force Continuum” has been used or brandished. The form asks the officer to indicate whether at the time of the deployment of the force, he/she “was engaged in: Effecting arrest, Defending Self, Defending another, Restraining Subject for Own Safety, Preventing a Violent Felony or Other (please explain)”.

Thus, and potentially contrary to the then-existing Use of Force Policy, it is at least arguable that the departmental protocols allowed a use of force in effecting an arrest, even if the officers were not “in the defense of themselves or others”. The officers at the scene believe they were fully justified in the actions they took since they were “Effecting arrest”.

One couple remained with Kilmurray and Crowell for most of the night but then departed about 5:00 AM on Tuesday the 24th. At approximately 7:00 AM, the police returned and Kilmurray described their tone as different than that of the day before. There were four Brattleboro officers at the scene: Detective Michael Gorman, Lieutenant Robert Kirkpatrick, Officer Peter DiMarino and Lieutenant Charles Aleck. When the police arrived, the couple was not attached

to the barrel but they promptly reconnected to the rebar.

According to the police, they again made clear to the couple that they were trespassing, that the owners wanted them removed from the property and that they could avoid criminal charges if they promptly departed. The police also either showed the couple a story in that day's local newspaper about the protest or told the couple of the existence of the story. The police tried to convince the couple that they had accomplished their goal of dramatizing the issue of the potential commercial development of the site and that they could now depart with a feeling of accomplishment. When the couple refused to move, the police told them that they would be charged with criminal trespass but not be arrested. When again they refused to move, they were legally placed under arrest. The police then had to confront how to take the couple physically into custody.

According to the couple, the police almost immediately began moving the couple's belongings. The police contend that they removed the blue tarp in order to more clearly examine the barrel and to strategize how to extricate the couple. Crowell and Kilmurray were each under a sleeping bag. The police, wanting to clear the area and to make certain the couple had no weapons, removed the sleeping bags. Officer DiMarino described Kilmurray as passive but Crowell as more actively resistant in that he flailed and kicked at the police when his sleeping bag was removed and what they found to be a water bottle was obtained from Crowell's possession. After observing this behavior, Lieutenant Aleck allegedly opined as to Crowell that he would physically fight the police, once removed from the barrel.

According to DiMarino, the protestors were largely silent but at one point early on he asked them to "Give us an option to stop this." Crowell allegedly suggested that they be denied food and water for three days. The police did not see that as a viable option for a variety of reasons. They then

discussed how to most expeditiously resolve the situation. The police first used a shovel to try to dig the dirt from the barrel. Soon they discovered wire, the rebar and concrete and came to the conclusion that even accomplishing the difficult task of removing the dirt was not going to solve their problem.

Next, believing that the couple was actually holding hands within the barrel, the police tried physically pulling them apart. According to DiMarino, Crowell and Kilmurray cried out in pain and the police stopped trying to extricate them by force. DiMarino said the police discussed tipping over the barrel but the couple protested that this could break their arms so the police decided to leave the barrel upright.

The police considered the available less lethal means of force at their disposal. They rejected using nightsticks due to their feeling that that would be brutal treatment and could cause significant bruising and possibly more serious injuries. OC was considered and rejected since it can be very ineffective but can also cause significant pain and discomfort for a prolonged period after exposure to a direct application. Eventually, the police decided to employ their tasers as a pain compliance technique. DiMarino thought that using the tasers in the probe mode, causing the intense muscle contractions would be more effective.

According to Kilmurray, Lieutenant Kirkpatrick appeared to be in charge. In fact, he was. He decided to use his taser for the first time in the line of duty and to do so in the “drive stun” mode. He and DiMarino removed the probe cartridges from their tasers. DiMarino “sparked” his taser to show the couple the current flow. He made clear that they were going to use the tasers unless the couple cooperated. They were warned “this will hurt a lot.” Crowell and Kilmurray began to feel anxious and Crowell told the police: “You don’t have to

do this.” He suggested taking away their food and water to

“wait us out”, bringing in the fire department to dismantle the barrel or bringing in a mediator.

The police were not dissuaded from their plan. Allowing the violation of the criminal trespass law to continue into the indefinite future did not seem to them a reasonable law enforcement response. And one can reasonably speculate there could have been a public uproar about inhumane treatment of the protestors if the police had denied them food and water for a number of days.

According to Crowell, it was explained to the couple that they would be simultaneously tased for three seconds.

A second tasing, if necessary, would be for five seconds. Kirkpatrick and DiMarino unholstered their tasers.

The couple was simultaneously tased, Kirkpatrick on Kilmurray, DiMarino on Crowell. The police then tried unsuccessfully to pull Kilmurray from the barrel. They warned of a second tasing and one to two minutes after the first tasing, again simultaneously tased the couple.

The police and the couple disagree on the length of the tasings. One of the worthwhile features of tasers is the ability to record the exact date, time, number and duration of the times a unit is fired. Over the past two plus months we repeatedly requested the download data from the tasers used at the protest site. We only recently received a response to our requests. Unfortunately, it appears that Brattleboro PD was at least lax in accurately calibrating its tasers to provide accurate firings data. Further, its recordkeeping of downloaded data has been deficient.

The department was only able to provide us with data concerning one taser unit's use at the site of the protest. The information demonstrates that the unit was fired twice for five seconds each, the firings being exactly one minute apart. This purports to be data relating to the protestors' incident but the downloaded data reflects the firings to have

occurred on March 12, 2000 at 16:44:41 and 16:45:41, whereas the tasings took place on July 24, 2007 at approximately 7:00 AM. The number of firings and the duration are consistent with Lieutenant Kirkpatrick's account of his tasings of Kilmurray.

Of even more concern is that Brattleboro PD has produced no information concerning the data downloaded from the taser unit carried by DiMarino. The Department apparently did not properly track the assignment of particular tasers to specific officers and failed to properly synchronize the tasers. As a result, Brattleboro PD has indicated there are, at a minimum, very significant barriers to the recovery of accurate information concerning DiMarino's use of a taser at the protest site. Consequently, we have no independent data on the number of firings or the durations of the cycles deployed against Crowell.

Kilmurray, with her left arm in the barrel up to her forearm, said that the taser was in direct contact with her skin in the area of her elbow. Although Kirkpatrick reported that the couple suffered no injuries, Kilmurray indicated that she suffered "burn-like lesions" for ten to twelve days after the incident. After the second tasing, Kilmurray said: "I can't do this anymore. I'm going to release." She did so, was handcuffed and brought to a police cruiser.

Crowell was advised that he'd be tased a third time in the stun gun mode but then the taser would be used with the prongs shot into his back. The barrel was tipped over but Crowell remained clipped in. He was again tased on the bare arm near his elbow, after which he said: "OK, OK, I'm done. I'm going to release." He did so and, like Kilmurray, was handcuffed, brought to a cruiser, to a local rescue squad headquarters for a brief physical exam and ultimately to the police station for processing and release with a

citation to appear in court to answer to a charge of unlawful
trespass.

Lt. Kirkpatrick completed “Response to Aggression or Resistance” forms for the tasings of both protestors. In each case he checked boxes that the tasings took place while the police were “Effecting arrest” and “Restraining Subject for Own Safety”. Clearly, the former was accurate but the latter is most typically used when a subject is exhibiting suicidal or other self-destructive behavior. That was not the case here.

Acting Chief Wrinn has reported that on the morning of July 24, then-Chief Martin left Brattleboro to attend a meeting with other chiefs of police and Vermont State Police hierarchy. There is little doubt in our minds that the hierarchy of Brattleboro PD should have provided more direction and guidance to the officers dispatched to the protest site.

It is unclear to us why Crowell’s suggestion that the Fire Department or other personnel be called in to dismantle the barrel mechanism was not given more serious consideration. In the past, the Burlington Police Department has encountered scores of abortion protestors who occupied private property and used tires, a large truck and specialized locks to hinder police efforts to effect their removal and arrest. Rather than resort to batons or other “pain compliance” methods, Burlington Police used equipment normally used at motor vehicle accident scenes to free and remove the abortion protestors.

There was significant public outcry in the Brattleboro community after the protestors’ tasings took place. The Town Manager and Select board were actively involved. Acting Chief Wrinn described a July 25 meeting of upper management of the police department at which it was

decided to “not use force for future protests unless life or property is at risk”.

It is remarkable that none of the Brattleboro PD officers to whom we spoke on January 30, 2008, indicated that there had been any official policy change on appropriate uses of force in conjunction with incidents similar to that presented by the protestors. In fact, the revised Use of Force Policy, issued on October 26, 2007, appeared to make the use of tasers in future passive resistance protest incidents even more acceptable than was the case under the policy in effect on July 24, 2007.

However, on or about February 8, 2008, Brattleboro released its own report on the protestors' tasing incident. The report, prepared by Attorney Gordon Black, opines that the use of the tasers in this instance was "unwise and unreasonable under the circumstances". Attorney Black also advised that the Brattleboro use of force policy be further amended to clarify that a taser can be used only against a subject exhibiting "active aggression". Effective February 9, 2008, the Brattleboro Police Department Use of Force Policy was amended and in relevant part makes clear that "Tasers should not be used, either through the use of a shot probe or through Drive Stun mode: ...Against any person displaying passive resistance..."

BRATTLEBORO RETREAT INCIDENT

We initially intended to describe this incident in this report in significant detail. But on reflection, after reviewing Vermont statutes on the confidentiality of records concerning alleged criminal behavior on the part of juveniles, we have elected to be brief and only superficially descriptive.

The incident in question involved a youth in state custody and a call for police assistance to help address the fact that

the youth had barricaded himself in his room and was manifesting significant destructive behaviors. The police responded, ultimately gained access to the room and tased

the juvenile in the probes mode. He promptly calmed down and was moved to a “safe room”.

After reviewing police and Retreat records, interviewing Retreat and police personnel and considering all of the surrounding circumstances, it is the opinion of this office that a tasing of the juvenile was appropriate.

Like the tasers data from the protestors’ incident, over the past two months we repeatedly requested from Brattleboro PD the downloaded data from the taser used during the Retreat incident. It was only very recently that we received a response to our requests. Of significant concern is the fact that the taser unit downloaded data reflects a firing on July 3, 2007 at 16:19:26. The date is correct but the time is off by approximately two hours. Of much greater concern is the fact that the downloaded data reflects a taser cycle of 10 seconds rather than the normal 5 seconds.

We reviewed no evidence to support the need for or the appropriateness of a 10 second firing. Assuming the information provided from the taser unit is accurate as to duration of the cycle, absent additional or different evidence, we believe that the duration of the tasing was excessive, inappropriate and unnecessary.

It should be noted that we also reviewed Brattleboro Police Department records of other interactions with residents of the Brattleboro Retreat, including incidents in which tasers were brandished and readily obtained compliance with police directives and one particular incident in which a taser was deployed from a distance in probes mode and prevented further seriously self-destructive and injurious behavior on the part of a female juvenile.

CONCLUSION

“The most powerful asset in a police officer’s arsenal is public support. Anything that erodes that support reduces the ability of an officer to successfully discharge his/her responsibility on behalf of the public. For that reason, law enforcement use of the conducted energy weapon (CEW), and other use of force techniques, is a public policy issue. The very nature of policing and the dynamics of the relationship between the police and those who are policed call into question actions and techniques vested with law enforcement personnel that would otherwise be illegal to most citizens.”

RCMP Use of the Conducted Energy Weapon (CEW)

Interim Report December 11, 2007

Providing alternatives between wrestling on the one hand and lethal means of force on the other, less lethal means of force such as the baton, OC, beanbags and tasers are valuable tools for Vermont law enforcement in controlling subjects who are at least actively resisting lawful police orders. Still, they are weapons and should be treated as such. Officers should be properly trained in their use and they should be deployed only in accordance with a written departmental use of force policy.

Vermont law enforcement should seek public input during the process of creating and revising a use of force policy. Departmental protocols should require completion of written incident reports whenever weapons are used in the line of duty. These reports should be reviewed by superior officers to determine the appropriateness of the deployment and whether changes in officer training and/or the department’s

use of force policy should be revised.

The taser has proven to be an effective law enforcement tool, both in Vermont and nationally. When used

appropriately, it has reduced the use of lethal force and has significantly lessened subjects', officers', rescue personnel and bystanders' injuries in situations when uses of force are reasonably necessary to control a situation. There remain questions about the safety of the taser's use in certain situations and on certain categories of subjects. These questions are particularly important in situations when multiple tases or extended continuous tasings of a subject are inflicted and when subjects are manifesting a condition called "excited delirium". Continued study of the safety and health effects of tasers is warranted.

A departmental use of force policy should address issues of appropriate taser use against certain classes of subjects, in certain situations and multiple tasings of a subject. Given the possibility of abuse and/or excessive use of taser technology, it is recommended that departments prohibit deployment against subjects who are passively resisting police directives, absent overriding public safety concerns.

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)

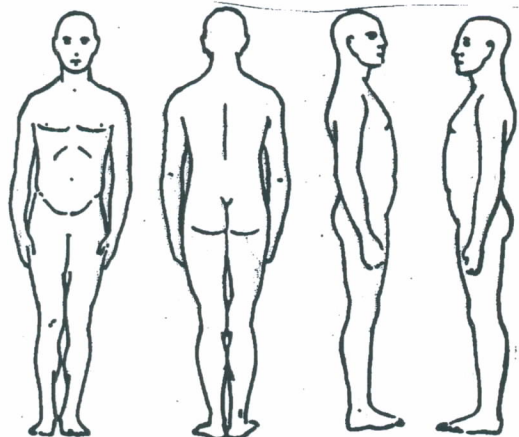
RESISTANCE				RESPONSE			
1	VERBAL			1	PRESENCE		
2	PASSIVE PHYSICAL			2	COMMUNICATION		
3	ACTIVE PHYSICAL			3	PHYSICAL CONTROL		
4	AGGRESSIVE PHYSICAL			4	INTERMEDIATE WEAPONS		
5	AGGRAVATED PHYSICAL			5	INCAPACITATION		
				6	DEADLY FORCE		
SUSPECT FACTORS:				SUSPECT WEAPONS:			
SEX	DRUG	YES	NO	HANDS	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

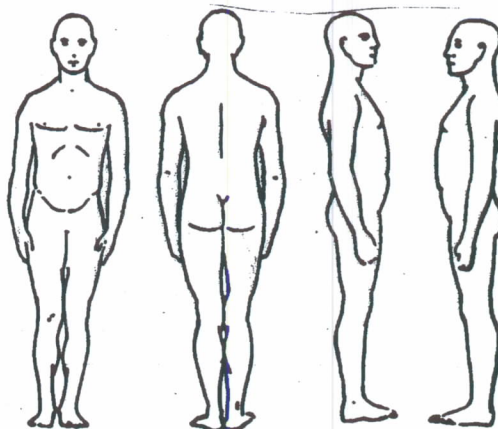
CASE # _____

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: