

**Special Investigations and
Prosecutions Unit**

**Report on the Investigation into
The Death of John Havener**



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EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (the “Executive Order”) appointing the Attorney General as the special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On January 22, 2018, John Havener died following an interaction with members of the Canastota and Oneida Police Departments (“CPD” and “OPD,” respectively). Governor Cuomo subsequently issued Executive Order No. 147.14, which expressly conferred jurisdiction upon the Attorney General to investigate any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Havener’s death.

Video evidence, medical records, civilian witnesses, and law enforcement witnesses establish that:

- Mr. Havener, while driving under the influence of narcotics at approximately 4:20 am, drove in reverse down Route 5 in the City of Oneida, causing the passenger in Mr. Havener’s car to try to take over the steering of the vehicle;
- Mr. Havener’s car almost collided with another motorist’s car before it left the roadway, went over the curb, and came to rest in a snowbank;
- Mr. Havener got out of his car speaking incoherently and acting erratically and police officers responded, blocked traffic in both directions, and engaged with Mr. Havener, who refused to leave the roadway;
- The first two responding officers – after first trying to persuade Mr. Havener to leave the roadway – tried using only their hands to effect an arrest;
- The two officers were unable to control Mr. Havener, who was strenuously resisting, so – after warning Mr. Havener that he would be tasered – the officers tasered Mr. Havener, first in drive-stun mode and then three times in dart- probe mode,¹ and used pepper spray once, none of which subdued Mr. Havener;²
- A third officer arrived and deployed his taser in dart-probe mode and the three officers were then able to take Mr. Havener to the ground;

¹ Tasers are used in “drive-stun” mode (where the instrument’s two electrodes are pressed directly against the suspect) or “dart-probe” mode (where darts are released from the instrument, pierce the skin, and can cause temporary neuromuscular incapacitation, rendering an individual unable to move). Drive-stun mode delivers an electric shock that is a pain compliance technique, but does not cause override of an individual’s central nervous system.

² As fully detailed below, of the five attempts to taser Mr. Havener in dart-probe mode, only three were successful in making apparent contact with him and none produced muscular incapacitation.

- Two additional officers arrived and the five officers in total were able to subdue Mr. Havener and place him in handcuffs;³ and
- The medical examiner did not ascribe Mr. Havener's death to the use of force; he found that Mr. Havener's death was accidental and was caused by multiple drug toxicity.⁴

The officers' use of force in an attempt to arrest Mr. Havener was justified under New York State Penal Law. New York law permits a police officer to use reasonable force when that officer reasonably believes that such force is necessary to effect an arrest. Under OPD and CPD policies, to the extent possible, officers should first use lower levels of force and then escalate to more forceful techniques if the lower levels of force are ineffective. Here, officers appropriately used escalating force techniques, and the evidence establishes that the officers reasonably believed that the force used was necessary to arrest Mr. Havener.

STATEMENT OF FACTS⁵

This incident can be divided into three segments: (1) Mr. Havener's conduct prior to police officers being summoned to Route 5 in the city of Oneida; (2) the interaction between the officers and Mr. Havener culminating in Mr. Havener being taken into custody; and (3) the actions of law enforcement personnel after Mr. Havener was restrained and became unresponsive.

A. Events Preceding the Interaction between Mr. Havener and Law Enforcement

CW-1's Account⁶

According to CW-1, Mr. Havener went to CW-1's home, approximately 8 miles south of Oneida, at approximately 8:30 pm on January 21, 2018, and Mr. Havener and CW-1 together used Methamphetamine (or "meth," a schedule III controlled stimulant). Sometime after 3:00 am, the pair left CW-1's house to get food.

Mr. Havener drove CW-1's mother's car toward the city of Oneida. During the ride, CW-1 told Mr. Havener that he was driving too fast and tried to convince him to slow down. As Mr. Havener turned left from Route 46 north onto Route 5 west,⁷ he "cut off" another driver who had

³ The entire interaction between Mr. Havener and law enforcement lasted approximately 11 minutes (between 4:28:20 am, when the officers arrived on scene, and 4:39:08 am, when officers radioed dispatch that Mr. Havener was in custody).

⁴ The investigation included, among other investigative steps: (1) interviews of the various civilian witness who saw or heard various parts of the incident; (2) review of the 911 dispatch recordings; (3) review of video evidence secured from various cameras capturing different portions of the incident; (4) review of the Onondaga County Coroner / Medical Examiner Report; and (5) review of the taser download reports from the tasers used during the incident.

⁵ None of the information referenced in this report was obtained through the use of grand jury subpoenas. Any subpoenas issued were pursuant to New York State Executive Law Section 63(8).

⁶ All civilian witnesses are identified by CW-[#] in order to protect their privacy.

the right of way (the driver was CW-3, whose statement is discussed below). CW-1 told Mr. Havener he was going to be pulled over because of his erratic driving, to which Mr. Havener said words to the effect of “F— it, the cops ain’t going to get me.”

At some point, Mr. Havener began driving backward against traffic on Route 5, in front of a New York State Police (“NYSP”) station. CW-1 tried to grab the wheel and told Mr. Havener that they were approaching other cars; the car that Mr. Havener and CW-1 were in then crashed into a snowbank. CW-1 took the keys and both men got out of the car. Mr. Havener ran into the roadway yelling unintelligibly. CW-1, having tried and failed to “talk [Mr. Havener] down” determined that he was “out of control” and left the area, walking in a westerly direction down Route 5.

CW-2’s Account

CW-2 was driving to work in Oneida around 4:15 am. CW-2 stopped his vehicle facing south at the corner of Route 46 and Route 5 and prepared to turn right onto Route 5 west. Another car (occupied by CW-3) was stopped in front of him and was also signaling an intention to turn right. Mr. Havener and CW-2 approached the same intersection from the opposite direction (north on Route 46). Mr. Havener’s vehicle was in the non-turn lane and it appeared that his car was going to cross Route 5 and continue in a northerly direction on Route 46. Instead, Mr. Havener’s vehicle swerved left onto Route 5 west, cutting off and nearly striking CW-3’s vehicle. CW-2 then observed Mr. Havener’s vehicle weave back and forth between the center and westbound lanes of Route 5 west. At this point, for safety, CW-2 left the roadway and pulled into a McDonald’s parking lot.

CW-2 observed Mr. Havener’s vehicle drive backward in an easterly direction (with the hood facing west and the trunk facing east) on Route 5 before making a sharp turn, jumping the curb, and landing in a snow bank. Two males got out of the vehicle. The passenger (*i.e.*, CW-1) began walking west on Route 5 toward the McDonald’s parking lot. The driver (*i.e.*, Mr. Havener) started running down the center median of the roadway. At this point, CW-2 left the area.

CW-3’s Account

CW-3 first encountered Mr. Havener when Mr. Havener’s car suddenly pulled in front of CW-3’s. Had CW-3 not applied his brakes, CW-3 believes the two cars would have collided. Mr. Havener continued to operate his vehicle erratically as he proceeded west on Route 5, weaving back and forth across the road. Fearing a collision, CW-3 pulled to the side of the road. CW-3 then saw Mr. Havener’s car travel in reverse at a high rate of speed in an easterly direction, with the trunk open. After Mr. Havener’s vehicle passed him, CW-3 pulled into the McDonald’s parking lot. After seeing that Mr. Havener’s car was stuck in a snowbank and off the road, CW-3 left the area.

⁷ A map encompassing the location of the incident is attached here as Exhibit [A].

CW-4's Account

CW-4 was driving east on Route 5 when she noticed a car on the curb near the New York State Police barracks. CW-4 saw Mr. Havener in the middle of the road holding some type of light. As CW-4 approached in her truck, she heard Mr. Havener screaming somewhat incoherently. At that point, Mr. Havener "charged" toward CW-4's truck yelling, "I need help, I need help . . . Do you need help?" Terrified, CW-4 continued moving her truck forward, at which point Mr. Havener beat on the rear of the vehicle. Once CW-4 moved her truck a good distance away from Mr. Havener, she called 911. (The call was received at 4:22:22 am.) CW-4 told the dispatcher that there was a "gentleman in the middle of the road completely losing his mind." CW-4 also said that Mr. Havener looked like he was drunk or on drugs. The 911 dispatcher stayed on the line with CW-4 until the police officers arrived on scene; she remained parked on the side of the road, west of the location where the officers interacted with Mr. Havener and ultimately took him into custody.

Video Evidence

Digital video was secured from cameras mounted on a business facing Route 5 from a north-to-south perspective and from cameras mounted on the NYSP barracks facing Route 5 from a south-to-north perspective. These cameras captured various portions of the incident: (1) Mr. Havener's car traveled in reverse, east on Route 5, with the trunk open before coming to rest at the curb in front of the NYSP barracks; (2) CW-1 and Mr. Havener got out of the car; (3) Mr. Havener ran/skipped into the middle of the road and CW-1 walked in the opposite (westerly) direction toward McDonald's; (4) CW-4's truck approached the area of the roadway where Mr. Havener was standing; (5) Mr. Havener approached CW-4's truck and, when the truck started to move away, Mr. Havener appeared to strike the truck with his fist; and (6) thereafter, Mr. Havener remained in the road and advanced upon several vehicles that approached him.

B. Law Enforcement's Interaction with Mr. Havener

Driving separate vehicles, OPD POs Jeffrey Barres and Daniel Slator responded to Route 5 from the OPD for a radio call concerning a "male in the roadway . . . hitting a vehicle . . . possibly intoxicated or on drugs." Both officers approached the scene traveling west on Route 5 and arrived at 4:28:20 am, approximately six minutes after CW-4 began her call to 911. The officers found Mr. Havener standing in the middle of the eastbound lane of the roadway. Neither officer knew him nor recalled having had any interaction with him previously.

PO Barres' Account⁸

According to PO Barres, Mr. Havener immediately began telling the officers that he was paranoid and, although there were no people in the vicinity, he said that he needed help getting people away from him. After trying to reason with Mr. Havener for a short time, the officers began to direct him expressly to exit the roadway. Mr. Havener did not comply and continued to walk around in the middle of the road. The officers maintained space between themselves and Mr.

⁸ OPD and CPD officers who responded to the scene were interviewed by the NYSP; thereafter, they waived their rights under the Fifth Amendment and declined to be interviewed further by the OAG.

Havener, while futilely trying to persuade him to leave the road. The officers determined that they needed to take action, because vehicles were approaching from both directions. At 4:28:30 am, approximately two minutes after the officers arrived on scene, PO Barres radioed dispatch asking for additional officers to respond; neither officer had yet used his taser.

PO Barres then approached Mr. Havener and tried to pull his arm behind his back, but Mr. Havener broke free. The officers then grabbed Mr. Havener (one on each arm) and tried to take him to the ground, but the officers were only able to take Mr. Havener down to one knee. PO Barres warned Mr. Havener that he would be tasered if he continued to resist; Mr. Havener continued to scream and would not submit. PO Barres then placed his taser against Mr. Havener's upper back and used the taser in drive stun mode. Notwithstanding having been drive-stunned, Mr. Havener broke away.⁹

The officers remained approximately 10 to 12 feet away from Mr. Havener, who was in the center lane of the roadway, and continued instructing him to get down on the ground. PO Slator un-holstered his taser and deployed a cartridge in dart-probe mode, but Mr. Havener was unaffected; the officers assumed at least one prong may not have connected with Mr. Havener. Accordingly, PO Slator deployed a second cartridge in dart-probe mode. This time, Mr. Havener dropped to his knees, grabbed at the taser probes, and appeared to pull them off. He removed his belt, stood up and began swinging the belt around. At 4:32:00 am, approximately 5.5 minutes after the officers arrived on scene, PO Barres again radioed dispatch and advised that the taser had been deployed.

PO Barres then deployed his taser in dart-probe mode. He saw that one probe struck Mr. Havener's upper body but did not see whether the other probe connected; in any event, he observed that the taser had no effect. PO Slator then sprayed Mr. Havener with OC (pepper) spray for two seconds, which, like the taser, had no effect. At 4:35:00 am, approximately 8.5 minutes after the officers arrived on scene, PO Barres advised dispatch that the taser had been deployed again and OC spray had been used, but that they were all still in the road.

Due to the continued difficulty of subduing Mr. Havener, the officers continued to engage him verbally while waiting for additional personnel to arrive on scene. Mr. Havener walked about in the roadway, screaming, yelling, and flailing his arms. CPD PO Oursler arrived on scene, and with traffic stopped in both directions, the three officers formed a triangle around Mr. Havener. While Mr. Havener's attention was briefly focused on PO Barres, the other two officers closed the distance and PO Oursler deployed his taser in dart-probe mode at Mr. Havener's back. Although Mr. Havener remained standing, PO Barres eventually performed a leg sweep and the officers were able to take Mr. Havener to the ground.

Mr. Havener continued to resist and the three officers struggled to restrain him. At this point, two NYSP troopers arrived at the scene. Trooper Valerie Sgarlata worked with PO Barres to get Mr. Havener's left arm behind his back, and Trooper Justin Weakley and PO Slator were able to get Mr. Havener's right arm behind his back. One set of handcuffs was applied to Mr. Havener's right wrist and a separate set applied to his left; the two sets of cuffs were then connected

⁹ Subsequent taser analysis could not conclusively determine that the drive stun attempts actually resulted in contact between the prongs and Mr. Havener's skin.

together behind Mr. Havener's back. At 4:39:08 am, approximately 11 minutes after POs Barres and Slator arrived on scene, PO Barres radioed dispatch that Mr. Havener was in custody.

PO Slator's Account

When PO Slator and PO Barres initially encountered Mr. Havener, Mr. Havener was saying that he was paranoid and people were out to get him. The officers tried to talk him into leaving the roadway, but Mr. Havener refused to leave and asked them to call the police. The officers explained that they were police officers, but despite their uniforms and patrol cars, Mr. Havener kept asking them to call the police. After "what seemed like minutes" as vehicles traveling in both directions were stopping because of what was transpiring in the roadway, the officers told Mr. Havener that if he did not move out of the roadway, he would be taken into custody.

As the officers moved in, PO Slator observed Mr. Havener move aggressively toward PO Barres; as a result, the officers took Mr. Havener to the ground. However, Mr. Havener would not put his hands behind his back and continued to resist. PO Barres advised Mr. Havener that if he did not submit, he would be tasered. Mr. Havener continued to resist, and PO Barres then deployed his taser in drive-stun mode. PO Slator saw Mr. Havener tense up and make a comment about being shot, but Mr. Havener did not stop resisting. After PO Slator warned that he was going to use his taser, PO Slator deployed his taser in dart-probe mode. One probe appeared to strike Mr. Havener's chest and another at the belt line, but Mr. Havener registered no reaction. Mr. Havener appeared to pull the probes out, and PO Slator deployed his taser in dart-probe mode again. The probes struck Mr. Havener's torso, but again appeared to have no effect. Mr. Havener pulled the probes off and rose to his feet.

Mr. Havener removed his belt, which he proceeded to swing around, and he continued pacing in the roadway. PO Barres then deployed his taser in dart-probe mode. Although the probes struck Mr. Havener in the back and he tensed for a moment, he turned quickly and broke the probe wires. Mr. Havener continued to pace back and forth in the roadway while the officers continued issuing verbal commands in an attempt to get him out of the roadway. PO Slator administered a burst of OC (pepper) spray, but like the taser, it had no effect.

PO Oursler of the CPD arrived on scene around this time. PO Oursler deployed his taser in dart-probe mode as Mr. Havener was walking in the direction of a vehicle stopped in the westbound lane of the highway. POs Slator and Barres were then able to close in, each taking one of Mr. Havener's arms. The officers were able to take Mr. Havener to the ground, although he continued to resist. Troopers Sgarlata and Weakley arrived at this time, and the five law enforcement officers were finally able to handcuff Mr. Havener by linking two sets of handcuffs together behind his back. Although restrained, Mr. Havener continued to struggle.

PO Oursler's Account

Upon hearing radio dispatches that OPD officers needed help, PO Oursler responded to the scene from the CPD, located approximately six miles away. He arrived on scene at 4:35:27 am, and he immediately saw Mr. Havener in the roadway, blocking traffic and screaming.

As PO Oursler approached the scene, Mr. Havener walked in his direction in an aggressive manner. PO Oursler pointed his taser at Mr. Havener and directed him to get on the ground. Mr. Havener did not submit and instead, turned and charged in the direction of PO Barres. PO Oursler deployed his taser in dart-probe and administered shock.¹⁰ Mr. Havener stumbled and fell to the ground, where he continued to fight and yell.

As the officers were trying to restrain Mr. Havener, PO Oursler applied hand strikes (i.e., punches) to Mr. Havener's right quadriceps to try to get him to stop resisting arrest; the strikes did not prompt Mr. Havener to stop resisting. Working in conjunction with troopers who had arrived on scene, the officers were finally able to handcuff Mr. Havener by linking two handcuffs together behind Mr. Havener's back.¹¹

Video Evidence

One camera mounted on the exterior of the NYSP station captured much of the interaction between Mr. Havener and the officers: (1) POs Barres and Slator arrived on scene and, shortly thereafter, Mr. Havener entered the camera's view; (2) the officers maintained a perimeter around Mr. Havener, who approached them; (3) vehicles approached the area, stopped, and turned away as the officers attempted to persuade Mr. Havener to get out of the middle of the road; and (4) PO Oursler arrived on scene and the three officers surrounded Mr. Havener as he continued to move about the roadway.¹² Mr. Havener and the officers then moved out of the camera's view. No camera captured the moment when the officers were actually able to restrain Mr. Havener.

C. Law Enforcement Actions After Mr. Havener Was Restrained

Mr. Havener initially continued to struggle, despite being restrained. After PO Barres reported that Mr. Havener was in custody (at 4:39:08 am), PO Slator radioed dispatch advising that EMS could "continue in" as he believed they had been "staging," since the officers had already

¹⁰ The "shock" refers to the delivery of electric current through the taser prongs, an action that can produce muscular incapacitation.

¹¹ Although PO Oursler did not realize it, he accidentally deployed another taser cartridge, the prongs of which were found in PO Slator's shoe.

¹² Some of the interaction occurs before and after all the participants moved into the camera's view, and trees obscure other portions.

notified dispatch that they used their tasers.¹³ Mr. Havener continued kicking to the point that PO Slator retrieved a leg restraint from his vehicle, which Dep. Wooden applied to Mr. Havener's leg. The officers then realized that Mr. Havener's right leg (below the knee) was a prosthetic.

Before the ambulance arrived on-scene, Mr. Havener became unresponsive and Dep. Wooden asked dispatch to have the ambulance expedite its response. PO Slator monitored Mr. Havener's breathing; he was still breathing – talking slowly, and taking shallow breaths. Trooper Sgarlata applied a sternum rub¹⁴ in an attempt to rouse Mr. Havener. Ambulance and rescue units arrived and took over Mr. Havener's care approximately six minutes after being dispatched.

EMS and Medical

Dispatchers initially paged City of Oneida Fire Department (“OFD”) and Vineal Ambulance (“Vineal”) to perform an “evaluation on a taser deployment.” While en route, dispatch requested that they expedite the response, because Mr. Havener had become unresponsive. According to a Vineal medic, when they arrived, Mr. Havener was lying prone in the roadway, with his hands cuffed behind his back. There was one officer kneeling beside him and others standing around him.

Assembled emergency personnel lifted Mr. Havener and placed him onto a stretcher. At that point, a member of the OFD checked Mr. Havener's pulse and advised that there was none, whereupon rescue personnel commenced CPR.¹⁵ In the ambulance, EMS personnel attached AED¹⁶ pads and continued chest compressions and breathing (via a bag valve mask) until their arrival at the hospital at approximately 4:54 am. During the brief ride to the Oneida Health facility (less than one minute), a member of the ambulance crew contacted the hospital to advise of Mr. Havener's condition.

Dr. Gregory Cartledge, the attending physician at Oneida Health Care, and other staff members were prepared for Mr. Havener's arrival and immediately took over the life-saving efforts. The EMTs were performing CPR, which hospital staff continued as they moved Mr.

¹³ “Staging” refers to the practice of keeping EMS outside the perimeter of an incident until law enforcement has secured an unsafe (or potentially unsafe) scene. When responding, EMS personnel remain outside of the scene and only enter the area when the police report that the scene is secure. In this case, the dispatchers did not dispatch EMS with directions that they stage; instead they dispatched the ambulance only after being advised that Mr. Havener was finally in custody.

¹⁴ A sternum rub is the application of painful stimulus with the knuckles of a closed fist to the center chest of a patient who is not alert and does not respond to verbal stimuli, performed in an effort to evoke a response or rouse an unconsciousness person.

¹⁵ Vineal described the order of events as noted. The OFD records describe the pulse being checked and CPR begun *before* Mr. Havener was placed on the stretcher. Dep Weaver's dash camera video appears to confirm that the order of events was as described by Vineal.

¹⁶ An Automated External Defibrillator (“AED”) is a portable device that checks heart rhythms and, if warranted, sends an electric shock (*i.e.*, defibrillation) to the heart to try to restore a normal rhythm.

Havener to a hospital stretcher. Medical personnel issued two doses of Narcan®,¹⁷ in case Mr. Havener had overdosed on heroin or another opioid. They also administered one unit of epinephrine in an effort to restart Mr. Havener’s heart. Despite their efforts, Mr. Havener remained unresponsive, and at 5:10 am, Dr. Cartledge declared him deceased.

Audio / Video Evidence

Radio runs between the law enforcement officers and dispatchers captured their communications during the aftermath of the incident. After determining that the ambulance was not staging (see above and fn13), PO Barres asked the dispatchers for an estimated time of arrival. The dispatcher advised that other units were arriving at that time.¹⁸ Shortly thereafter, the dispatcher asked if Mr. Havener was breathing, and an officer answered that he was. Dep Wooden then requested that the ambulance be expedited, because Mr. Havener had become unresponsive.

PO Oursler had a body camera, but it was found to have been in the “off” position after the incident concluded; neither PO Barres nor PO Slator had body cameras. However, the vehicle operated by Madison County Sheriff’s Deputy Joseph Weaver, who arrived on-scene after Mr. Havener was restrained, had a mounted dashboard camera that captured audio and video footage. On the dashboard camera video, the officers can be seen watching and monitoring Mr. Havener.

Immediately upon exiting his vehicle, Dep. Weaver communicated by cellular telephone with an individual he referred to as “Doc Cooney.”¹⁹ The officers told Dep. Weaver that Mr. Havener was breathing, which Dep. Weaver conveyed to the person on the phone. Dep. Weaver then asked whether Mr. Havener was still unconscious; one officer replied “yeah” and another said, “He’s not responsive, but he’s breathing.” Dep. Weaver told the officers that pursuant to “Doc Cooney,” they should roll Mr. Havener to his left side, which they did.

Approximately one minute later, EMS vehicles arrived on scene. When the first medic reached Mr. Havener, the officers described Mr. Havener’s situation – advising that his pupils were “not big,” he was yelling and screaming, and the taser did not affect him. Approximately one minute later, EMS personnel began performing CPR on Mr. Havener. Numerous officers are heard at this point stating, “No pulse?”

MEDICAL EXAMINER’S DETERMINATION

Mr. Havener’s body was examined in the Onondaga County Medical Examiner’s Office on January 23, 2018, one day after his death. Mr. Havener was 41 years of age, 70.5 inches tall

¹⁷ Narcan® is the brand name of naloxone hydrochloride, which can prevent fatal opioid overdoses by displacing opioids from opiate receptors and thereby blocking their effects. Narcan will not have any effect on a person who has not consumed opioids. See https://www.narcan.com/?gclid=EAJalQobChMI9Kmp9Dz2gIVjUsNCh1mWAQgEAAYASAAEgKGH_D_BwE

¹⁸ The dispatcher seems to be referring to other law enforcement units, not EMS units.

¹⁹ Andrew Cooney is the name of the EMT who was, at the time of the phone call with Dep. Weaver, responding to the scene onboard the ambulance.

and weighed 240 pounds. One barbed electrode penetrated the skin of Mr. Havener's chest. There were three other, superficial puncture-type injuries on his chest, abdomen, and back that were consistent with the puncture injury caused by a taser probe.²⁰ There were also several minor abrasions, contusions, and subcutaneous hemorrhages, none of which contributed to the cause of death.

Samples of Mr. Havener's blood and bodily fluids were submitted for toxicological analysis, which revealed the presence of methamphetamine, amphetamine, and pseudoephedrine. The final autopsy report ascribed Mr. Havener's death to "a mixed drug toxicology of methamphetamine, amphetamine, and pseudoephedrine." The manner of death was deemed "Accidental."

TASER DOWNLOAD EVIDENCE

Taser analysis, conducted by the NYSP and reviewed by the OAG, concluded that the number of taser deployments and drive stun attempts were consistent with the officers' statements. The analysis shows that POs Barres and Slator each had one likely taser strike, with neither lasting more than three to five seconds, and that PO Oursler had one strike lasting a total of 15 seconds. PO Oursler was found to have deployed two (not one) taser cartridges. As noted above, the second deployment appears to have been accidental, and taser prongs were located in PO Slator's boot after the incident.

LEGAL ANALYSIS

As an initial matter, the medical examiner determined that the force employed during this incident *did not cause* Mr. Havener's death. Further, the evidence shows that the force employed by the officers was justified under New York State law. New York State Penal Law Section 35.30(1)²¹ provides that a police officer may: (1) "in the course of effecting or attempting to effect an arrest . . . of a person whom he or she reasonably believes to have committed an offense" (2) "use physical force when and to the extent he or she reasonably believes such to be necessary

²⁰ In order for a taser deployed in dart-prong mode to produce neuromuscular incapacitation, both prongs must pierce the target's skin. The medical examiner's finding of four puncture wounds could mean that, at most, only two taser deployments were successful. But, it is also possible that a prong penetrated Mr. Havener's skin, but it was not noticeable to the medical examiner. The NYSP's taser analysis concluded that each officer likely had one successfully-deployed taser, while acknowledging that such analysis is somewhat subjective.

²¹ The OPD and CPD use-of-force policies borrow directly from Penal Law Section 35. CPD's policy also notes that its officers are authorized to use non-deadly force techniques and department-issued equipment: (a) to protect themselves or another from physical harm; (b) to restrain or subdue a resistant individual; and (c) to bring an unlawful situation safely and effectively under control. OPD's policy explicitly permits its members to use force (1) to prevent the commission of a breach of the peace or any other unlawful act; (2) to prevent a person from injuring him or herself; (3) to effect what the officer reasonably believes is the lawful arrest of a person resisting arrest or attempting to flee from custody; and (4) in self-defense or in the defense of another person.

to effect the arrest”²²

First, it was reasonable for the responding officers to believe that Mr. Havener had just committed an offense (driving while intoxicated – Vehicle and Traffic Law §1192, *et. seq.*) and was in the course of committing another (disorderly conduct - Penal Law §240.20 *et. seq.*). The officers responded to dispatch information indicating that a man whose car was stuck in a snowbank and was possibly “intoxicated or on drugs” was in the middle of the road “hitting [a] vehicle” and “refusing to move out of the way of traffic.”²³ Upon their arrival at the scene, as reported, Mr. Havener was, in the middle of the road, the vehicle he had been operating was in the snowbank, Mr. Havener was acting erratically, and he refused to leave the roadway.

Second, the officers used force that they reasonably believed was necessary to effect the arrest of Mr. Havener. The United States Supreme Court has held that a determination of whether police use of force is reasonable is a fact-specific inquiry that requires balancing the nature of the use of force with the countervailing government interests at stake. Relevant considerations include “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See Graham v. Connor, 490 U.S. 386, 396 (1989).²⁴

The offense at issue here – disorderly conduct (preceded by driving while intoxicated) being carried out in the middle of a public thoroughfare – presented a very real threat to Mr. Havener, the officers, and the individuals using the roadway. Mr. Havener actively resisted arrest for nearly eleven minutes, and the force the officers used was measured and graded. It progressed through verbal commands and the attempted use of a taser in drive-stun mode, to the use of pepper/OC spray and use of the taser in dart-probe mode. When the taser was ultimately deployed in dart-probe mode, Mr. Havener was still actively resisting. The officers’ escalating use of force was consistent with the OPD’s policy on the use of force which states: “When the use of force is necessary and appropriate, officers shall, to the extent possible, utilize an escalating scale of

²² Section 35 sets forth a different standard for the use of deadly force. The use of a taser is considered to be non-lethal force. See, e.g., Buckley v. Haddock, 292 Fed. Appx. 791, 796 (11th Cir. 2008) (use of a taser is “at most-moderate, non-lethal force”); Whitfield v. City of Newburgh, 2015 WL 9275695, *11 (S.D.N.Y. Dec. 17, 2015) (discussing where on the force continuum taser use should be and describing the use of a taser as a “significant” amount of force); Negron v. City of New York, 976 F.Supp.2d 360, 367 (E.D.N.Y. 2013) (“Common sense suggests that, in the ordinary case, the likelihood of sustaining serious, permanent injuries from a taser is relatively low”); People v. Patterson, 115 A.D.3d 1174, 1175 (4th Dept. 2014) (use of a taser is “non-lethal force”); see also Jeff Fabian, Don’t Tase Me Bro! A Comprehensive Analysis of the Laws Governing Taser Use by Law Enforcement, 62 FLA. L. REV. 763, 766 (2010) (“Research shows that the large majority of Taser incidents result in mild or no injuries to the suspect.”); Both the OPD and CPD’s policies reflect this principle. Per CPD’s taser policy, “The Taser X2 falls into the category of less than lethal force...” Per OPD’s Use of Force Policy, tasers are classified as non-lethal force instruments, which, like other use of force methods, should only be used if a lesser level of force is inadequate. The policies are attached hereto as: (B) OPD Use of Force Policy; (C) CPD Use of Force Police; and (D) CPD Taser Policy.

²³ These quoted statements are from radio-run audio between the dispatchers and the responding officers.

²⁴ In Graham, the United States Supreme Court set “the minimum standard of care which a police officer must exercise in making an arrest to avoid violation of the arrestee’s Fourth Amendment rights.” See McCummings v. New York City Transit Auth., 81 N.Y.2d 923, 927 (1993).

options and will not use more forceful measures unless it is determined that a lower level of force is inadequate.” See generally Crowell v. Kirkpatrick, 400 Fed. Appx. 592, 595 (2d Cir. 2010) (officers used a taser in drive-stun mode “only as a last resort” when other means to effect arrests had proven infeasible).

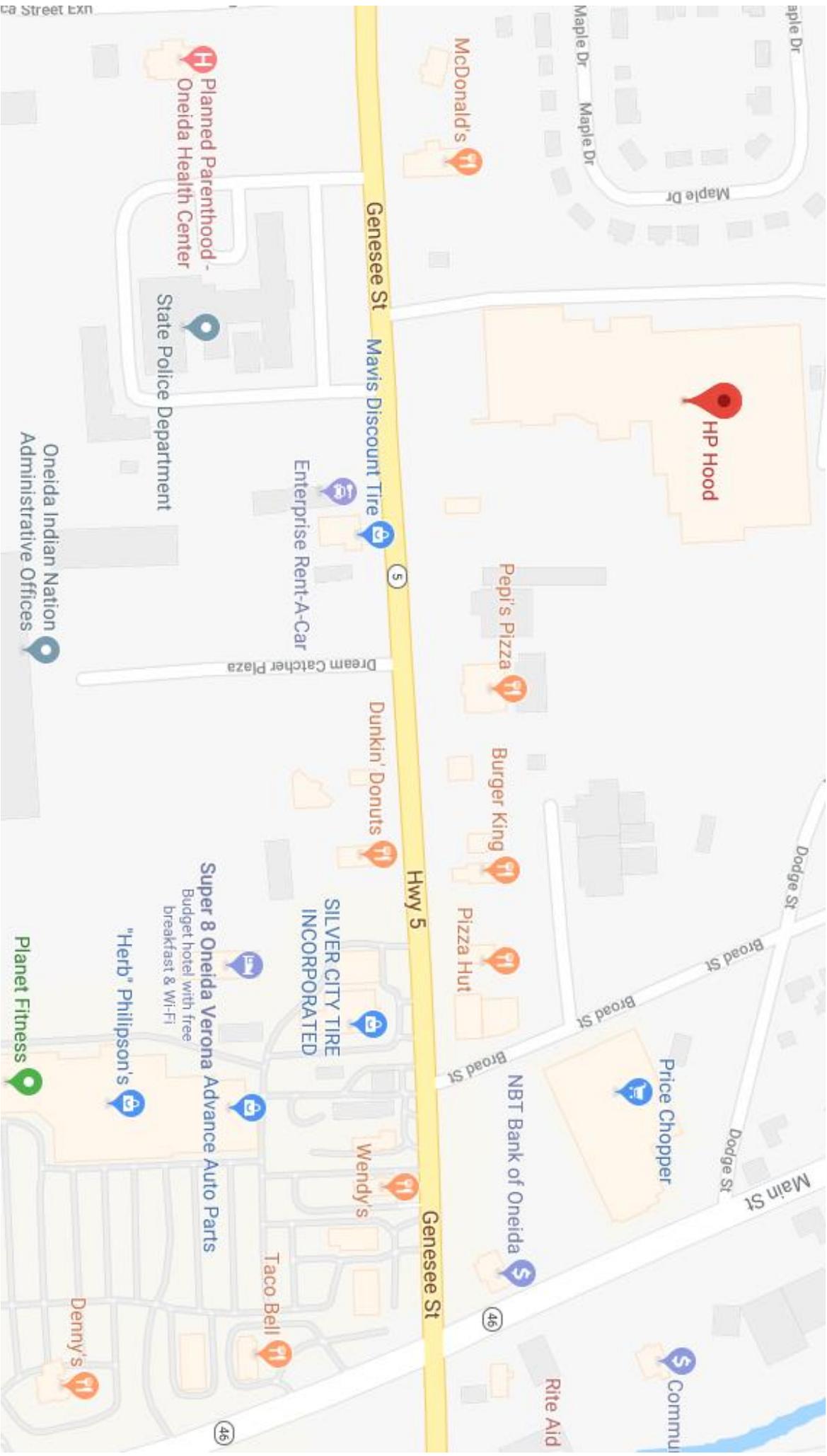
Several courts have held that, for purposes of civil liability, the use of a taser is reasonable where a suspect actively resists arrest.²⁵ See, e.g., Crowell, 400 Fed. Appx. at 595 (drive-stun tasing deemed reasonable where plaintiffs actively resisted arrest by chaining themselves to a several hundred pound barrel drum); Draper v. Reynolds, 369 F.3d 1270, 1278 (11th Cir. 2004) (holding that use of a taser was not excessive force where a suspect who was stopped because his license plate was not illuminated was hostile, belligerent, and uncooperative); Neal-Lomax v. Las Vegas Metropolitan Police Dept., 574 F. Supp.2d 1170, 1185-86 (Dist. Ct. D Nevada 2008) (noting vigorous resistance in finding reasonable taser use on an individual under the influence of PCP who died of cardiac arrest, including five taser strikes after the decedent had been restrained); Wright v. Deghetto, No. 5:06CV-133-R, 2008 WL 199890 (W.D. Ky. Jan. 23, 2008) (holding that it was reasonable to taser a suspect who was verbally combative and who resisted officers’ attempts to handcuff him); Johnson v. City of Lincoln Park, 434 F. Supp.2d 467, 479-80 (E.D. Mich. 2006) (holding that the use of a taser was reasonable where a fourteen-year old, who was handcuffed and surrounded by four police officers, still violently resisted arrest).

The number of times a taser is used and the duration of the taser applications are relevant to whether the use of force was reasonable. Here, collectively, the officers used a taser once in drive-stun mode and deployed tasers four times in dart-probe mode. Based on the taser analysis by the NYSP, Mr. Havener was likely tasered once each by POs Barres and Slator, with the actual shock events lasting 3 seconds (PO Barres) and 5 seconds (PO Slator); Mr. Havener was then tasered once by PO Oursler with the shock lasting a total of 15 seconds. Mr. Havener was combative with the officers throughout the incident and could not be subdued prior to the use of a taser and, indeed, continued to resist after the last tasing.²⁶ Courts have determined that multiple taser applications can be reasonable when necessary to subdue a subject. See Neal-Lomax, 574 F. Supp.2d at 1187-88 (holding that it was reasonable to taser the defendant seven times – for a total of 31 seconds – including five times after he was handcuffed, because he resisted an officer’s attempts to place him in an ambulance); Sanders v. City of Fresno, 551 F. Supp. 2d 1149, 1168-76 (E.D. CA 2008) (holding that ten total taser applications – for a total of a maximum of 70 seconds – by three officers were not unreasonable due to the suspect’s apparent physical threat to his wife, his continued resistance against officers, and the inability of multiple officers to physically subdue him).

²⁵ Courts have placed emphasis on whether, like here, officers warned a civilian that he or she would be tasered if the civilian did not stop certain conduct. See Negron, 976 F.Supp.2d at 367 (noting the importance of giving a warning before a taser is used); Neal-Lomax v. Las Vegas Metropolitan Police Dept., 574 F. Supp.2d 1170 (Dist. Ct. D Nevada 2008) (officers gave warnings).

²⁶ The CPD’s relevant order indicates that the taser is programmed to give a five second burst, after which the officer can evaluate and determine if additional bursts are needed. Dep. Oursler shocked for a total of 15 seconds, constituting three bursts, before the officers could restrain Mr. Havener.

In sum, the officers involved in this incident were trying to take a person into custody who was actively endangering his own life and the lives of others, and they reasonably used force necessary to effect an arrest. Accordingly, their conduct was justified under New York law.



HP Hood

McDonald's

Planned Parenthood -
Oneida Health Center

State Police Department

Genesee St

Mavis Discount Tire

Enterprise Rent-A-Car

Dream Catcher Plaza

Dunkin' Donuts

Hwy 5

SILVER CITY TIRE
INCORPORATED

Super 8 Oneida Verona Advance Auto Parts
Budget hotel with free
breakfast & Wi-Fi

"Herb" Phillipson's

Planet Fitness

Pepi's Pizza

Burger King

Pizza Hut

NBT Bank of Oneida

Wendy's

Taco Bell

Denny's

Price Chopper

Main St

Rite Aid

Comm

ca Street Exn



ONEIDA CITY POLICE DEPARTMENT
POLICIES AND PROCEDURES

SECTION #
20.1 - 21.2

ISSUE DATE
9/20/07

REVISION
Yes
No

ORIGINAL
ISSUE DATE
February 16, 1996

AUTHORITY
Paul R. Meek
Chief of Police

USE OF FORCE

LEGAL DISCLAIMER:

This directive is for departmental use only and does not apply in a criminal or civil proceeding. The department policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violation of this directive will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

USE OF FORCE:

In a complex society, officers are confronted daily with situations where control must be exercised to effect arrest and to protect the public safety. Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in a situation which cannot be otherwise controlled, force may not be resorted to unless all other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances.

Officers are permitted by New York State Penal Law Article 35.00 to use whatever force is reasonable and necessary to protect others and themselves from bodily harm. Officers should bear in mind that Article 35 of the Penal Law only authorizes the use of physical/deadly physical force, it does not command its use.

Members of the department may only use that level of physical force necessary in the performance of their duties within the limits established by Article 35 of the New York State Penal Law and consistent with training given by this department. It is the responsibility of each member to be aware of the requirements of Article 35 and to guide their decision based upon that law.

Generally, members may use force in the performance of their duty in the following circumstances:

1. To prevent the commission of a breach of the peace or any other unlawful act.
2. To prevent a person from injuring him or herself.
3. To effect what the officer reasonably believes is the lawful arrest of a person resisting arrest or attempting to flee from custody.
4. In self-defense or in the defense of another person.

Only issued and approved equipment will be carried on duty and used when applying physical force, except in an emergency when the officers may use other resources at their disposal.

UNNECESSARY FORCE DEFINED:

Unnecessary force occurs when unjustified physical abuse of a person has occurred or when it is apparent that the type of force employed was neither necessary nor appropriate, or when any degree of force is utilized as summary punishment or vengeance. The use of indiscriminate force is prohibited.

LEVELS OF FORCE:

When the use of force is necessary and appropriate, officers shall, to the extent possible, utilize an escalating scale of options and will not use a mere forceful measure unless it is determined that a lower level of force is inadequate. The scale of options in increasing severity is as follows:

A. VERBAL PERSUASION

1. The practice of courtesy in all public contacts encourages understanding and cooperation. Lack of courtesy arouses resentment, and often physical resistance.
2. Simple directions which are complied with while you accompany the subject are by far the most desirable method of dealing with an arrest situation. Control may be achieved through advice, persuasion, and warnings before resorting to actual physical force.
3. The above should not be construed to suggest that officers should ever relax and lose control of a situation, thus endangering personal safety or the safety of others.

B. PHYSICAL STRENGTH

1. Frequently subjects are reluctant to be taken into custody and offer some degree of physical resistance. Normally, all that is required to overcome this resistance is physical strength and skill in defensive tactics combined with verbal persuasion methods.

C. USE OF AEROSOL DETERRENT

The use of aerosol deterrent is a legal right granted to police officers as an alternative force in those situations where the potential for injury to an officer or citizen exists, but where the application of deadly physical force would be extreme or unjustified.

Oleoresin Capsicum is the only aerosol deterrent or agent to be carried by officers of this department on a day to day basis.

The use of aerosol deterrent will be limited to that degree of force which is reasonably necessary to provide protection for the officer, a third party and/or to effect an arrest that the officer reasonably believes to be legal.

Each officer will be issued an aerosol deterrent canister. Each officer will be responsible to replace any canister that is low or out dated. The officer will be responsible for retaining the chemical agent in their possession and will exercise the same precautions for its security as is required for issued firearms or baton.

The aerosol deterrent shall be carried in the issued holster on the uniformed officers's gun belt. Investigators may also carry an aerosol deterrent issued by the department.

Aerosol deterrent shall only be used in accordance with department training.

Aerosol deterrent shall be periodically inspected for expiration date and replaced, if expired.

After use of an aerosol deterrent, the officer shall inspect the canister to ascertain that sufficient content is left to ensure reuse. If not, the officer will be responsible to apply for replacement.

NOTE: Intoxicated, drugged, demented and enraged persons may have reduced sensitivity to the aerosol deterrent. Members of the department are warned that the aerosol deterrent's effects are not uniformly predictable. Officers are cautioned to take additional action to insure their safety in such situations. Further, all officers should be aware of the potential for permanent damage to a person who is exposed to aerosol deterrent and should insure that medical attention is properly given, if necessary.

There is an increased potential for injury when the aerosol deterrent is used under the following circumstances:

- When the subject is less than one foot away.
- When the subject lacks normal reflexes, the ability to blink or is otherwise incapacitated.
- When used in the presence of open fire or flame.
- When not used in the manner prescribed in department training.

Officers should recognize the fact that they may contaminate themselves, other persons or any other officer assisting them when using an aerosol deterrent. Care should be taken when using in windy or limited ventilation circumstances. Each situation must be judged by the officer prior to use.

Aerosol deterrent should ideally be used at a distance of two to ten feet from the subject. Spray should be directed at the facial area of the subject and in a burst of about two seconds or until the desired effect is achieved or it is obvious that the spray is not effective.

NOTE: The arresting officer is responsible to see that first aid is administered after the use of an aerosol deterrent and the subject is under control.

Within 30 minutes, the exposed skin area should be doused with water. Splash the area, do not rub the water on it. Bio Shield towelettes or spray may be helpful in relieving the effects of cap-stun. If it appears that the subject is experiencing abnormal reaction he shall immediately be offered medical attention

Persons in charge of an area where an aerosol deterrent has been used, if available, should be informed that there is no specific decontamination needed. Oleoresin Capsicum is a natural product without chemical additives. Therefore any spray in the area should dissipate naturally in approximately thirty minutes or faster if the area is well ventilated. If the person should care to remove any residue this may be accomplished by use of a mild soap and warm water solution.

If the subject is transported to another holding facility or jurisdiction, the booking officer or officer in custody of the subject shall be advised of the defendant's exposure to the aerosol deterrent. Within one hour of exposure, if still in custody, the person in charge of the custody of the subject will be told to interview and examine the subject for adverse effects of the aerosol deterrent. If necessary the subject should receive further medical examination/or treatment.

D. POLICE BATON/PR-24

The use of the police baton/PR-24 is a legal right granted to police officers as an alternative force in those situations where the potential for serious injury to an officer or citizen exists. It may be used in those instances where the use of a firearm may be considered extreme and use of a aerosol deterrent has failed or is inappropriate under the circumstances.

Use of the police baton/PR-24 will be limited to that degree of force which is reasonably necessary to provide protection for the officer, a third party, and or to effect a legal arrest.

The police baton/PR-24 shall only be used in accordance with departmental training.

Each officer that requests and is trained in the use of a baton/PR-24 shall be issued a police baton/PR-24 and will be responsible for retaining it in their possession. They will be required to exercise the necessary precautions for the security of the police baton/PR-24 to prevent its theft, loss or misuse.

Officer's when on duty and in uniform shall carry the police baton/PR-24 in the carrier when out of the patrol vehicle. The baton/PR-24 shall not be brandished unnecessarily.

The baton/PR-24 is to be used in accordance with the training techniques of the department. Only those members who have received specific training with that weapon are authorized to use it as a defensive/offensive weapon.

In the event injury is sustained, first aid will be rendered and appropriate medical assistance will be obtained if necessary.

E. TASER

Any Taser carried or used by this department will first be authorized for use by the chief. Prior to carrying or using the department approved taser, the member, must first be trained and certified in its use.

The taser is a defensive weapon. A taser can be utilized to safely control a combative subject when there is no other safe alternative.

Prior to utilizing the taser the following safety factors are to be considered;

1. Do not use in areas that are potentially flammable. The taser emits an electrical charge.
2. Keep in mind that the person that the taser is used on may fall after being stunned and the taser should not be used in an area where there is an additional safety concern for the person falling after the taser is used. (example- top of stairway, next to an open window, roof edge etc)
3. Do not aim higher than the center body mass, If the subject is moving to the point where an errant dart could strike the subject in the face or eye area do not utilize the taser until a safe shot can be made.
4. Caution is to be used when dealing with a person that you suspect or know is under the influence of drugs. Certain drugs coupled with physical exhaustion from fighting or resisting efforts to be taken into custody can lead to that person being susceptible to serious health risks if that person is then tasered.
5. Any use of a taser on a juvenile or person with a health impairment will be documented in detail to show justification as to why a taser was used.

Use of taser:

Officers discretion is to be utilized in considering if the use of a taser is needed.

The use of a taser should be one of your last alternatives if other options are available however the use of a taser should be considered if it is a safer option for the officer, suspect or other citizens. If a subject can be safely controlled without the use of a taser then that should be the course of action. If the taser provides a safer option then that would be the course of action.

The taser is an effective weapon to resolve standoff situations quickly; and in a method less likely to result in injury to the officer or subject.

The taser is not a replacement for the firearm. In certain situations a tactical procedure would be to have one officer with a taser while a second officer covers with a firearm. (example subject with knife, blunt object).

The taser will be carried on the duty belt on the non gun side and when the taser is out of the holster the officer will advise other officers on the scene by stating taser, taser.

When a taser is used on a subject the following procedures shall be followed:

1. The on duty supervisor shall be notified.
2. The area where the darts penetrated the suspects skin will be photographed. If the darts penetrate clothing only a photograph will be taken of the clothing. If the darts penetrated a sensitive area, discretion should be used for photographing any contact.
3. The expended barbs and cartridge shall be recovered and placed into evidence. The barbs are to be treated as "sharps" and bio-hazard protocol is to be followed. A syringe tube can be used for securing the barbs.
4. Complete a use of force report.
5. Document use in police report.
6. When removing the probes in non-sensitive areas remove by firmly grasping probe and pulling

straight out in quick fashion.

7. Any probe that contacts a sensitive area(neck, throat, face and groin) will be removed by emergency medical personnel. Any injury or report of injury will be checked by medical personnel. Any substantiated injury will be documented and notification made to the Chief of Police or in the chief's absence a lieutenant..

UNAUTHORIZED NON-LETHAL WEAPONS:

The carrying or use of any instrument as an offensive or defensive weapon, not specifically authorized or issued as a weapon by this department, is **PROHIBITED**. Examples of unauthorized weapons include, but are not limited to the following:

Blackjacks, weighted gloves, stun guns, and brass knuckles.

Flashlights are not authorized as a weapon to quell resistance except in extreme cases when no other adequate instrument is available.

SPECIAL WEAPONS:

The Oneida Police Department has special weapons in storage for use in special occasions. These weapons include long range rifles.

Only those officers who have received training in the use of a special weapon shall be authorized to use such weapon.

These weapons are not to be removed from storage in the department without explicit consent of the Chief of Police or such person as he may appoint.

VEHICLES:

A motor vehicle may be used as the last level force against a perpetrator when the person is a significant threat as described in the Deadly Physical Force Policy. It must be remembered that all other levels of force be exhausted or eliminated prior to the consideration of the use of a motor vehicle.

TRAINING:

Prior to carrying or using any weapon, the officer, must first be trained and certified and must retain certification as required to continue to carry any weapon. Any certification lapse will require the immediate removal of the weapon until such time certification is obtained.

REPORTING:

After physical force, aerosol deterrents, taser or baton/PR-24 is used by authorized personnel, except for training purposes, the officer shall immediately evaluate the need for medical assistance and if necessary arrange for such attention.

Notification to the immediate superior officer must be made without delay whether or not physical injury occurs when the use of physical force, an aerosol deterrent, the police baton/PR-24, unauthorized non-lethal weapon or special weapon is used, followed by a complete and comprehensive report, including a "Use of Force Report" (see Appendix A) to the Chief of Police indicating why it was used, the circumstances surrounding its use and the result of said use. The report shall be completed prior to the end of the officers tour of duty.

Any use of Capstun or a taser or of any special weapons shall be detailed in a written report including a "Use of Force Report" by the officer involved. Included in the report of the incident will be the authorization for its use, the name of the person who authorized use, the special conditions that required its use, and the effect. A copy of this report will be sent to the Chief of Police or a person appointed by him for review and will be completed before the end of the tour of duty in which the incident occurred.

Any use of force that is not justified will be investigated and may result in disciplinary action.

SUPERVISOR'S RESPONSIBILITY:

After the use of force by any officer, the officer's immediate supervisor (on duty supervisor; sergeant or above or senior officer) will review the circumstances, investigate the incident and determine if the use of force was authorized and not excessive. The supervisor will review and sign the use of force report where indicated. Any use of force that is determined to be unauthorized or excessive will be investigated by the investigator on call and notification made to the Chief of Police or in the chief's absence a lieutenant.

Type of Incident: _____ Case # _____

Date _____ Time _____ Location _____

OFFICERS (Each officer utilizing any use of force will complete a report)

Officers involved: _____

Officers assignment at time of incident _____

Was Officer injured _____ If yes, type of injury _____

Treatment and location _____

Type of force used by officer: Physical _____ Cap-Stun _____ Taser _____ Baton _____ Firearm _____

Other _____ Effect _____

CIVILIAN (Complete for each civilian for which there was used any use of force)

Name _____ DOB _____ Address _____

Weapon(s) _____ Sex _____ Civilian's action at time of

incident(resisting arrest, danger to them self or others, verbal threats etc.) _____

Was civilian injured _____ If yes, type of injury _____

Treatment and location _____

Charges _____ Subject under influence of alcohol or drugs _____

Photos taken _____ Time Supervisor notified _____ Time Chief or Lt. Notified _____

Description of incident if not documented in police report, document any injury to bystander(s) _____

REVIEW
Chief Supervisor _____ Signature _____ In policy- (circle one) Yes No Date _____

Chief of Police _____ In policy-(circle one) Yes No Date _____

Investigation assigned to _____ No additional investigation required _____

Taser use:

Dart probe contact Yes No Stun gun contact Yes No

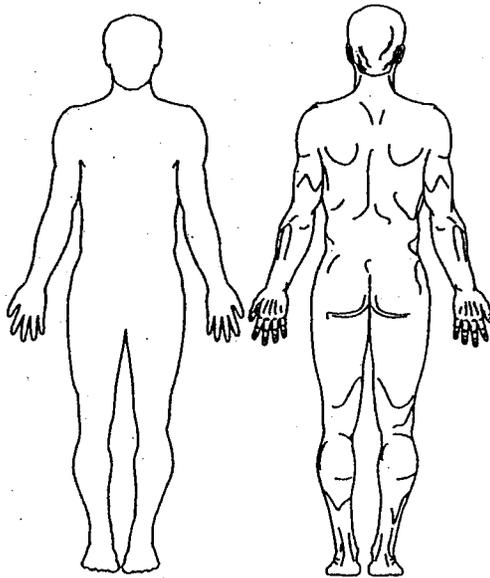
Approximate distance from target _____ Number of applications _____

Did dart contacts penetrate the subject's skin Yes No

Any injury _____

Treatment and location _____

In the diagram below indicate where any contact was made with a baton, taser, or other weapon used while using force.



CANASTOTA POLICE DEPARTMENT	
POLICIES AND PROCEDURES	
SUBJECT: Non-Deadly Use of Force and Deadly Use of Force	NUMBER: B-5
AUTHORITY: Chief Guy Blason Mayor Mark Lavonas 759249 <i>JH2 241</i>	ISSUED BY: Sgt. David VanDusen <i>7/18/03</i>
PAGE: One of Four	EFFECTIVE DATE: August 15, 1996

1. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of deadly and non-deadly force.

2. POLICY

This department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this department that police officers shall use only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others.

3. DEFINITIONS

- A. *Deadly Force:* Any use of force that is likely to cause death or serious bodily harm.
- B. *Non-Deadly Force:* Any use of force other than that which is considered deadly force.

4. PROCEDURES

- A. Parameters for use of deadly force:
 1. Police officers are authorized to use deadly force in order to:
 - a. Protect the police officer or others from what is reasonably believed to be a threat of death or serious bodily harm; or
 - b. Prevent the escape of an armed fleeing felon whom the officer has probable cause to believe will pose a significant threat to human life should escape occur.
 2. Before using a firearm, police officers shall identify themselves and state their intent to shoot, where feasible.

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3. A police officer may also discharge a weapon under the following circumstances:
 - a. During range practice or competitive sporting events.
 - b. To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured, public safety considerations have been provided for.
4. Police officers shall adhere to the following restrictions when their weapon is exhibited:
 - a. Except for maintenance or during training, police officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy.
 - b. At no time will an officer fire warning shots in an attempt to stop a person.
 - c. An officer may fire at a vehicle only to stop a person in that vehicle who is using DPF against the officer or another person.

B. Parameters for use of non-deadly force:

1. Where deadly force is not authorized, officers shall use only that level of force on the force continuum that is reasonably necessary to de-escalate the incident and bring it under control.
2. Police officers are authorized to use department approved non-deadly force techniques and issued equipment for resolution of incidents as follows:
 - a. To protect themselves or another from physical harm.
 - b. To restrain or subdue a resistant individual.
 - c. To bring an unlawful situation safely and effectively under control.

C. Training and qualifications:

1. Deadly weapons:
 - a. While on- and off-duty, police officers shall carry only weapons and ammunition authorized by the department, unless officer has his own permit.
 - b. Authorized weapons are those with which the police officer has qualified and received departmental training on proper and safe usage, and that are registered and comply with departmental specifications.
 - c. The Canastota Police Department shall schedule regular training and qualification sessions for service weapons, and back-up and specialized weapons.
 - d. Firearms qualification will be graded on a pass/fail basis.
 - e. Police 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 nonenforcement duties.
 - f. A police officer shall not be permitted to carry any weapon with which he has not been able to qualify during the most recent qualification period.

NUMBER: B-5	EFFECTIVE DATE: August 15, 1996	PAGE: Three of Four
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g. A police officer who has taken extended leave or suffered an illness or injury that could affect his firearms ability will be required to requalify before returning to enforcement duties.

2. Non-deadly force weapons and methods:

- a. A police officer is not permitted to use a non-deadly weapon unless qualified in its proficient use as determined by training procedures.
- b. The following non-deadly force weapons are issued and authorized to be carried by officers:
 - * Baton (department issue only)
 - * Cap stun

D. Reporting uses of force:

- 1. A written report prepared according to departmental procedures will be required in the following situations:
 - a. When a firearm is discharged outside of the firing range.
 - b. When a use of force results in death or injury.
 - c. When a nonlethal weapon is used on a person.
- 2. A supervisor will be immediately notified and will direct the officer on how to proceed as required by the Department rules and regulations in the following situations:
 - a. When a firearm is discharged outside of the firing range.
 - b. When a use of force results in death or serious injury.
 - c. When a subject complains that a serious physical injury has been inflicted.
 - d. When misconduct is alleged or suspected.

E. Departmental response:

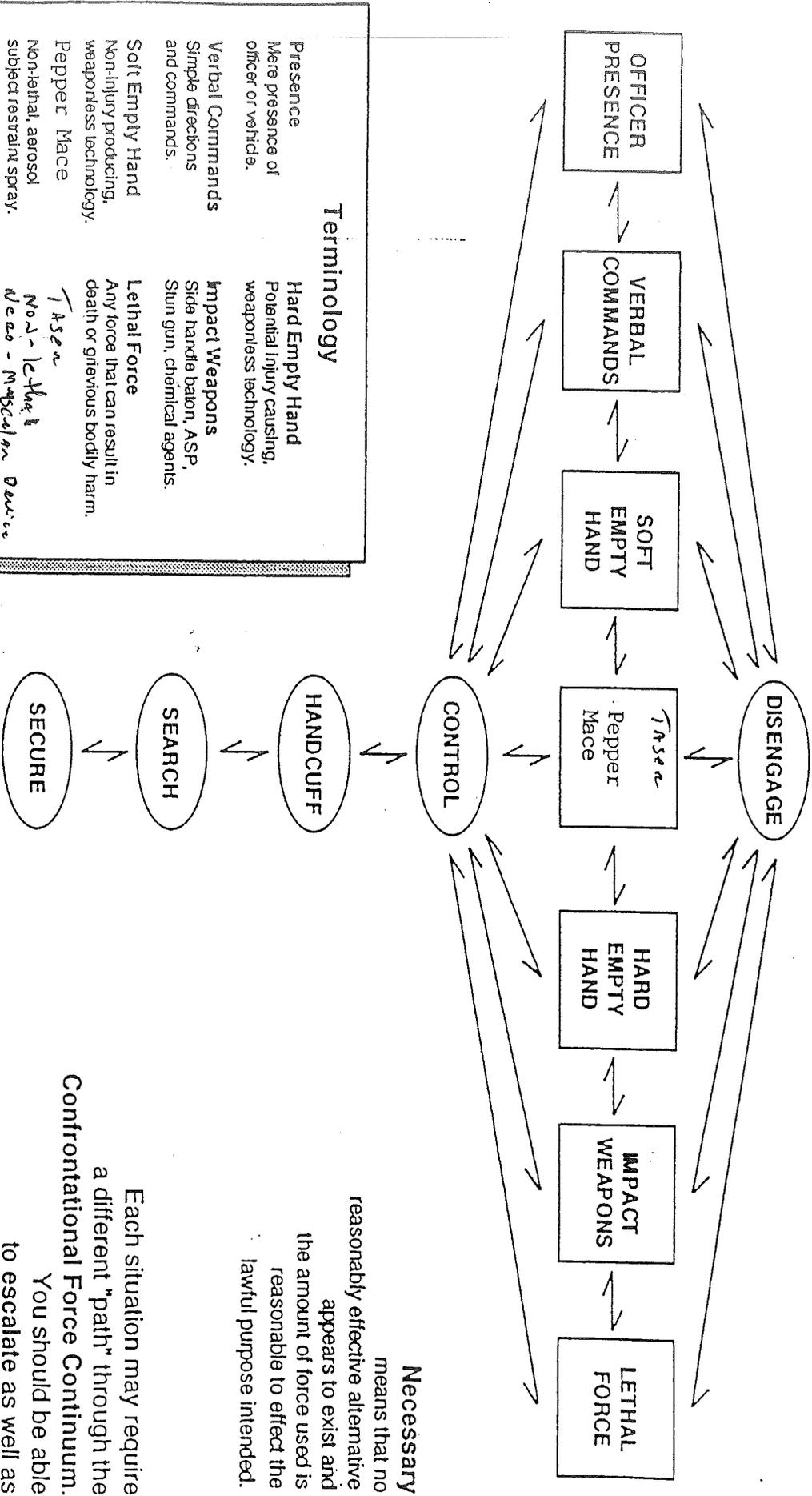
- 1. Deadly force incident
 - a. Where a police officer's use of force causes death, the officer shall be placed on administrative leave with pay after completing all internal investigative requirements, and until it is determined by the mental health professional that the police officer is ready to return to duty.
 - b. The department shall conduct both an administrative and criminal investigation of the incident.
- 2. Administrative review of critical incidents:
 - a. All reported uses of force will be reviewed by the appropriate departmental authority to determine whether:
 - * departmental rules, policy or procedures were violated,
 - * the relevant policy was clearly understandable and effective to cover the situation, and
 - * department training is currently adequate.
 - b. All findings of policy violations or training inadequacies shall be reported to the Chief for resolution and / or discipline.
 - c. All use-of-force incident reports shall be retained.

NUMBER: B-5	EFFECTIVE DATE: August 15, 1996	PAGE: Four of Four
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- d. There will be a regular review of use-of-force incidents by the Police Chief and the Firearms Instructor to ascertain training and policy needs.
- e. An annual summary report of use-of-force incidents will be published and made available to the public.

The Law Enforcement Confrontational Force Continuum

Force is used "when and only to the extent necessary."



Necessary
 means that no reasonably effective alternative appears to exist and the amount of force used is reasonable to effect the lawful purpose intended.

Each situation may require a different "path" through the Confrontational Force Continuum. You should be able to escalate as well as de-escalate through the Continuum.

Figure A

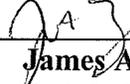
ATTESTATION

By virtue of the authority vested in me as the Chief of Police of the Village of Canastota, I hereby order the adoption of the following Rules and Regulations for use by the Police Department of the Village of Canastota.

These Rules and Regulations shall supersede all previous Rules and Regulations, which may have been issued or were in effect.

The right to amend or revoke these Rules and Regulations at anytime is reserved to the Chief of Police of the Canastota Police Department.

Signed by: _____


James A. Zophy III
Chief of Police

Dated: _____

7/18/03

CANASTOTA POLICE DEPARTMENT POLICIES AND PROCEDURES	SUPERCEDES ANY OTHER POLICY
SUBJECT: X2 TASER POLICY	NUMBER: B-4
AUTHORITY: CHIEF JAMES ZOPHY	ISSUED BY: CHIEF JAMES ZOPHY
PAGE: ONE OF SIX	EFFECTIVE DATE: APRIL 3, 2013

I. PURPOSE

The purpose of this policy is to provide members of the Village of Canastota Police Department with guidelines regarding deployment of the X2 Taser.

II. POLICY

The policy of the Village of Canastota Police Department is to provide officers with options for controlling combative or uncooperative subjects in a manner that minimizes the risk of injury to both officers and resistive subjects. The Taser X2 is one use of force option available to officers. The Taser, like baton, OC spray, and empty hand techniques may not be effective in every situation. Officers must assess the effectiveness in each application and determine whether further applications are warranted or a different tactic should be deployed. The X2 Taser is a proven device for controlling combative and uncooperative subjects with a minimal risk of injury. The X2 Taser is deployed as an additional police tool and is not intended to replace firearms or self-defense techniques.

The Taser X2 falls into the category of less than lethal force options and is intended to supplement other weapons in this category. The Taser is to be used in accordance with Article 35 of the New York State Penal Law, other applicable case law, and other department policies including, but not limited to, the Village of Canastota Use of Physical Force Policy, and the Taser user course. In determining the justification whether to use the Taser, the totality of the circumstances should be considered together with the following:

- a. The likelihood of physical injury resulting from a Taser strike to include accidental probe contact to a sensitive tissue area or a secondary injury to the subject from falling post deployment.
- b. The optional effective range of the Taser. (3 feet being the minimum recommended range and 25 feet being the maximum range.)
- c. Number of officers or suspects on scene.

III. DEFINITIONS:

- a. X2 Taser: A handheld Nero-Muscular Incapacitation device manufactured by Taser International. The device is equipped with two replaceable Smart Cartridges each containing two probes that can be fired a distance of up to 25 feet. The probes are connected to the weapon by insulated conductive wires. Electrical pulses are sent along the wires to the probes with the intended effect being to temporarily incapacitate the targeted subject.
- b. Nero-Muscular Incapacitation (NMI) Device: A device that is designed to temporarily incapacitate a subject by delivering electrical pulses to the person. The electrical pulses are intended to completely override the central nervous system and directly control the skeletal muscles. The NMI effect is intended to cause an uncontrollable contraction of the muscle tissue, physically debilitating the targeted subject regardless of pain tolerance or mental focus.
- c. Probe Delivery: Refers to the firing of probes from a Taser weapon into a subject for the purpose of incapacitation through NMI. This type of delivery procures the most desired effect.
- d. Drive Stun: When contact is made by pressing an active Taser into the body of the subject. The driver stun affects the sensory nervous system producing pain compliance and may not achieve NMI.
- e. ARC Display: A non-contact demonstration of the Taser to convince a subject to voluntarily comply with a lawful order prior to force options. Spark display technique will only be utilized when proper justification exists.

IV. PROCEDURE:

- a. The X2 Taser will only be issued and used by officer who successfully completed the Village of Canastota's Taser training program and/or the manufacturer's certification course. Trained officer must go through annual retraining in order to continue to carry and use the device.
- b. The X2 Taser is considered to be a less than lethal force option which is on the same level as strong hand techniques, but before impact weapons. The X2 Taser is to be used for controlling combative and uncooperative subjects, and to protect a subject when that person is either attempting to injure himself or commit suicide.
- c. Officer authorized to carry the X2 will carry the device in the issued holster, or other holster authorized by the Chief of Police or his designee. The Device will be carried on the officer's reactionary (non-gun) side in accordance with X2 Taser training.

- d. If not individually issued, officer shall document the department Taser number on the daily activity log.
- e. Officers are responsible to ensure that the X2 Taser device that they have signed out for the day is fully operational at all times. This includes ensuring the unit is fully charged, the Smart Cartridge has not expired, and all components are fully operational by conducting a spark test prior to each shift. The spark test should be conducted in the following manner:
 - i. All appropriate weapon safety precautions must be taken. Locate a safe area free of persons or property that may represent a risk of personal injury or property damage if there is an unintentional discharge of the Smart Cartridge. The Taser shall be pointed in a safe direction with the safety on during loading, unloading, or when handled in other than an operational deployment.
 - ii. Ensure that the safety switch is in the down (SAFE) position.
 - iii. Point the X2 Taser in a safe direction and place the safety switch in the up (ARMED) position.
 - iv. Check the remaining battery life percentage on the Central Information Display (CID). A battery reading of 20% or less shall require the Taser unit be taken out of service. Officers should never eject or remove the Taser battery pack; this action should only be conducted by a Taser instructor for the purpose of replacing a depleted battery pack (PPM).
 - v. Depress the Arc Switch and perform a spark test for a minimum of one second. Check for visible spark between the electrodes and a rapid spark rate. There is no need to conduct a full five-second firing.
 - vi. Place the safety switch in the down (SAFE) position.
 - vii. If the spark test is not satisfactory, or the CID displays an error message, notify a Taser instructor as soon as practical.
 - viii. Officers shall avoid exposing the Taser to rain and/or moisture as this may permanently damage the device.
 - ix. No alterations or modifications shall be made to the Taser and all repairs will be conducted by an authorized vender.
 - x. Any discharge, other than a spark test, either intentionally or accidentally shall be reported immediately to the Chief of Police.

V. DEPLOYMENT

- a. Members are not authorized to draw or display the Taser other than for a justified use of force or training purpose. The Taser will be handled in the same manner as a firearm. The X2 Taser is considered to be a less than lethal force option which is on the same level as strong hand techniques, but before impact weapons.

- b. The X2 Taser can be used at a distance of up to 25 feet, however the optimum distance is 7 to 15 feet. The device is equipped with both laser and fixed sights. The top probe will follow the sight of the device and the bottom probe will drop at a 6.5-degree downward angle, dropping approximately one foot for every nine feet of travel.
- c. The device should be aimed at a preferred target zone in accordance with Taser training and guidelines.
 - i. Target areas are recommended under the best practice theory, recognizing that officer may not always be able to find a preferred target area of the body during a violent and rapidly evolving use of force encounter. When possible and practical, officer shall selected the following target areas:
 - 1. Large muscle groups of the body are preferred primary target area; particularly, the back area of the body, split by the belt line.
 - 2. When frontal body areas are the only target option, officer shall target the lower center mass, just below the sternum.
 - 3. When encountering subjects with heavy or loose clothing on the upper body, the legs should be considered an appropriate target area.
 - 4. Attempts shall be made to avoid delivering probe strikes into sensitive tissue areas such as the head, face, neck, groin, or female breast.
- d. When feasible and/or appropriate the targeted individual shall be warned that they will receive a Taser deployment, and just prior to discharge, the officer shall state "TASER! TASER!, TASER!" to alert other officers. When justification exists, and when appropriate, officers may consider conducting a spark display to encourage compliance prior to firing the weapon in full probe delivery.
- e. The X2 Taser is programmed to give a five second burst. Generally, Officers will allow the Taser to cycle for the full five seconds, evaluate the subject's response, continue verbal commands, and then decide if another 5 second burst is required. Nothing prohibits the officer from placing the Taser unit on safe to stop a cycle if the need should arise. Additional bursts may be administered by depressing the Arc Switch if the targeted subject is not controlled by the initial burst. The X2 device can be used as a contact device. In situations where only one deployed probe has made contact with the targeted subject and there is no effect, the second cartridge may be deployed.
- f. The Taser X2 may be used in a drive stun mode for pain compliance. To maximize the effectiveness of the drive stun mode, officers should aggressively drive the X2 Taser into the subjects pressure points. While used in the drive stun mode, officers should not deliberately target the face, neck, or groin area.

- g. The Taser may be used in defense against animals where proper justification exists.
- h. Unless there are compelling reasons to do so, which can be clearly articulated, the Taser shall not be used under the following circumstances:
 - i. The X2 Taser has the ability to ignite flammable liquids or gases. The device is not to be deployed at subjects who are known to have come in contact with flammable liquids (pepper spray) or are known to be in environments where flammable liquids or gases are obviously present.
 - ii. When the subject is in a position where a fall, post strike, may cause substantial injury or death.
 - iii. Females who are obviously pregnant.
 - iv. Subjects submersed in water.
 - v. Subjects who are obviously frail or infirm.
 - vi. Subjects operating machinery.
 - vii. Individuals that require more than three applications to gain custody and control.

VI. POST DEPLOYMENT AND AFTERCARE

- a. The target subject should be restrained as soon as possible following deployment of the X2 Taser.
- b. Taser probes may be removed from a subject by an officer once the subject has been restrained using procedures outlined in training. Universal precautions shall be followed to protect the officer from the transfer of bodily fluids. In the event that a Taser probe penetrates a sensitive tissue area (i.e. groin, eye, female breast, face, or neck) the suspect shall be taken to an emergency care facility for removal or in cases where the deploying officer determines that it is otherwise necessary.
- c. An EMS unit will be dispatched to the scene following deployment of the X2 Taser. The subject will be evaluated, and the determination will be made to transport the subject to a medical facility for additional treatment unless documented by EMS responders or a physician.
- d. Detention personnel shall be notified of all Taser strikes.
- e. The Chief of Police shall be notified, as soon as practicable following deployment of the X2 Taser.
- f. Photographs will be taken of the affected probe contact areas and any injuries that were sustained as a result of the Taser deployment.
- g. Any other photographic documentation will be at the discretion of the Chief of Police. All deployed Smart Cartridges and probes should be collected from the scene and disposed of in a safe manner. Any potential bio-hazard items will be disposed of in accordance with related department policies and procedures.

- h. At the direction of the Chief of Police the data from each of the Taser units is to be downloaded and reposted as soon as practical following each use or accidental discharge of the X2 Taser. In addition, the Chief of Police may also direct the data be downloaded from any of the X2 Tasers upon receipt of a personnel complaint or at any other time as deemed necessary by the Chief of Police, or designees.
- i. Deployment of the X2 Taser must be documented by an Incident Reports and Use of Force Report. Officers who un-holster and display the Taser laser (e.g. laser compliance) involving no probe discharge or drive stun shall document their actions in a police incident reports and no use of force report will be required.

VII. TRAINING

- a. Officers authorized to carry Taser weapons must have satisfactorily completed this agency's basic Taser training course, and/or the manufacturer's certifications course, as well as department use of force training.
- b. Police officer shall use only those weapons which are issued by the department and only after they have demonstrated proficiency.
- c. Agency personnel who are unable to demonstrate proficiency and qualify with an authorized department weapon must attend and successfully complete remedial training prior to being allowed to resume official duties.
 - i. When practical, the weapons or tactics instructor shall immediately conduct remedial training in an effort to correct the deficiency.
 - ii. If the deficiency can not be corrected before the members next tour of duty, the instructor shall:
 - 1. Immediately notify the Chief of Police regarding the member's duty status.
 - 2. Reschedule additional remedial training as soon as practical.
 - 3. Keep the Chief of Police apprised of the member's duty status.
 - iii. All remedial training shall be documented.
 - iv. A failure to demonstrate proficiency after reasonable remedial training has been provided may serve as the basis of disciplinary action.