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Use of Electronic Control Devices 2014 – 2015 Montgomery County, Maryland Police Department¹

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Electronic Control Weapons (ECW) as a type of police use of force has received considerable attention since the Rodney King incident in 1991. In the 1990s, relatively crude devices were used by the police to shock suspects. These devices, better described as weapons, have been revolutionized and continue to be re-engineered so that they are easier for officers to use; moreover, the ever-growing body of research on the consequences of using an ECW continues to show that, when deployed properly, they reduce the rate and severity of injuries to both officers and suspects (see Alpert et al, 2011). That said, the use of ECWs has not passed without criticism (see Stinson et al., 2012 Azadani, et al., 2012.). The New York Civil Liberties Union (2012) as well as publications by the American Civil Liberties Union (ACLU) and Amnesty International (AI) have criticized the use of ECWs and have put law enforcement on notice that these organizations and others like them will continue to monitor deaths and injuries related to its their use. In the present Report, we will refer to the weapon by its accepted brand name, Taser[®], which is named after the “Thomas A. Swift Electric Rifle” (Swift is a fictional teenage inventor made famous by Victor Appleton in a series of juvenile adventure novels published between 1910 and 1941).

Taser use has increased in recent years. The manufacturer estimates that more than 18,000 law enforcement and military agencies around the world use them.

Tasers and their use have created a good deal of controversy (in much the same way as did pepper spray when it was first used by law enforcement): Tasers have been associated with in-custody deaths, as well as allegations of overuse and intentional abuse. There is a significant amount of literature about the Taser and the consequences of its use available both in the media, and in academic and professional literature, and we will therefore not review it here; however, it is worth providing a brief description of the weapon itself in order to understand how it is designed to be used. In sum, there are two ways a Taser is intended to be deployed. First, the traditional “probe” mode and, second, the “drive stun” mode.

When a Taser is deployed using probes, a discharge of compressed nitrogen launches two barbed darts that have a “fishhook” type tip to penetrate clothing and skin. Each dart has a thin wire that remains connected to the weapon to form an electrical connection. As the barbs can get stuck in clothing and often fail to connect with skin, the weapon is designed to generate an arcing pulse, which creates a conductive path for the electricity. While the weapon generates 50,000 volts, it delivers a peak of 1200 volts, which equates to approximately 400 ohms of resistance to the body. If the probes connect properly, the Taser will cause in most people uncontrollable muscular contractions, which will likely immobilize the subject, as long as the electricity is flowing. When an individual is “under the power” of the electricity, he or she is easier to both control and handcuff. When the electricity is turned off, the pain quickly subsides. Consequently, the experience can easily make the subject angry and willing to fight the police.

The “drive-stun” mode has two purposes. First, it can be used to “close the circuit” when a one prong has made contact with the body and the other has not; and, second, it is a method of “pain-compliance.”

Pain compliance tactics, including joint manipulation, pressure points, and distraction blows are used when officers are trying to control and handcuff resisting or fighting suspects. The Taser in drive-stun mode can also be used when an officer is fighting a suspect who is in very close proximity, to create distance. The use of the Taser in drive-stun mode is more controversial and has been limited in many police departments, because it is not always effective. As noted above, there is a great deal of literature available for those who want a more detailed description and analysis of the engineering and consequences of Taser use (see for example, Alpert and Dunham, 2010; Kroll, and Ho, 2009; and Miami-Dade County Grand Jury, 2005).

The Study

The Montgomery County Police Department (MCPD) initially purchased Tasers as part of a pilot program for patrol officers in 2001, and later that year, after completion of the program, began rolling out Tasers throughout the department. To date, the agency has approximately 565 Tasers in service. In September 2015, the department created a Use-of-Force Policy Review Team that was charged with reviewing the management of use of force, including policy, training, supervision and practice. The agency in May 2016 continued to explore the use of Tasers. First, the Taser policy was examined for clarity and sufficiency as well as for language that would provide officers with a full understanding of what is expected when they deploy Tasers, and the factors necessary for officers to take into account in order to make reasonable decisions in an encounter where force is justified. Second, the training provided to the officers was reviewed. Unfortunately, during the period of examination, no recruit and only one in-service training (for the Sheriff's Office) was delivered and observed, in addition to one in-service use-of-force training session, so segments of the information for this report were derived by examining lesson plans, curricula, and conducting a group interview with training officers.

Third, interviews and focus groups were held with a sample of officers who deployed Tasers during 2014 – 2015. These officers were asked about their experiences with the Taser, their understanding of the policy, and their responses to both training and supervision, with the understanding that they would remain anonymous. Finally, all Use-Of-Force Reports and Incident Reports involving Tasers during 2014 – 2015 were examined. Specifically, each of these Reports was coded, entered into a database, and analyzed. The result of the evaluation is a descriptive analysis looking at officer, suspect, and incident variables.

A comprehensive examination of Taser use is undoubtedly timely. Police departments' use of Tasers has elicited a considerable amount of public attention and a great deal has been published about both the positive and negative consequences of Taser use. Moreover, in January 2016, the United States Court of Appeals for the Fourth Circuit has made such an examination even more pressing. The court's opinion in Armstrong v Village of Pinehurst (810 F. 3d. 892 (2016)) declared that:

A taser, like “a gun, a baton, . . . or other weapon,” Meyers, 713 F.3d at 735, is expected to inflict pain or injury when deployed. It, therefore, may only be deployed when a police officer is confronted with an exigency that creates an immediate safety risk and that is reasonably likely to be cured by using the taser. The subject of a seizure does not create such a risk simply because he is doing something that can be characterized as resistance -- even when that resistance includes physically preventing an officer's manipulations of his body. Erratic behavior and mental illness do not necessarily create a safety risk either. To the contrary, when a seizure is intended solely to prevent a mentally ill individual from harming himself, the officer effecting the seizure has a lessened interest in deploying potentially harmful force.

This opinion provides guidance on two issues. First, it ruled when a Taser can be used by a police officer, and, second, it directed other courts that use outside their ruling is excessive force.

All departments under the jurisdiction of the Fourth Circuit will henceforth incorporate this decision into their policies and training, and departments in other Federal Circuits are also in the process of modifying their policies (see 4th Cir. Opinion in Yates v Terry No. 15-1555).

The Montgomery County Police Department must therefore revisit its policy controlling the use of a Taser, as well as their corresponding training. This report is organized to include an Executive Summary, Recommendations for policy and training revisions, a Methodology and four chapters that summarize the findings from each of the project's tasks.

Chapter 1 Executive Summary

Perhaps the most important finding of this study is one known well to the officers and administrators of MCPD: that Taser use is low and is not the “go to” weapon or “weapon of choice” that is found in so many police departments throughout the United States. In 2010, results published from a national examination on police use of force, funded by the National Institute of Justice explain the uses reported in many agencies around the country.¹ In that examination the “lazy cop syndrome” was described as a circumstance when officers turned to a Taser too early in a confrontation and/or use it too often to gain compliance rather than relying on de-escalation skills or necessary hands-on applications. In many incidents, officers relied on their Taser to gain compliance from a subject rather than talking to him or her, or trying to figure out what the person wants, and attempting to reach a mutually successful resolution. That action, while seen in too often in other agencies, is not the normative response in the Montgomery County Police Department.

¹ “A Multi-Method Evaluation of Police Use of Force Outcomes,” available online at <http://www.ncjrs.gov/pdffiles1/nij/grants/231176.pdf>. This research was supported by grant number 2005-IJ-CX-0056 from the National Institute of Justice.

To the contrary, officers consistently use verbal skills and hands-on techniques prior to the majority of Taser deployments. Residents of Montgomery County should be proud of their officers, the training they receive and the thoughtfulness that goes into their decisions to use the Taser.

In order to conduct this study, the MCPD Taser policy was reviewed, as were incident reports regarding Taser deployments for 2014 and 2015. The training curricula were reviewed and in-service training was observed. In addition, a sample of officers who had deployed a Taser in 2014 or 2015 was interviewed.

This study does not conclude that there is no room for improvement in the use of the Taser in MCPD. In fact, there are areas that must be addressed by management, trainers, supervisors, and officers; overall, however, MCPD's performance is impressive. A review of the incident reports for 2014 – 2015 indicates that Taser deployments were appropriate which was prior to the Fourth Circuit's recent decision in *Armstrong*. Based on the court's ruling in *Armstrong*, some of the pre-*Armstrong* deployments may raise questions as to the appropriate use of the Taser under the current case law. In the interviews, officers conveyed that the type of force used in *Armstrong* would not happen at MCPD, even prior to 2016. A comprehensive understanding of any use of force must start with the communities that are served by the agency and the number of crimes known to the police. These data are available in the MCPD Annual Use of Force Reports. For example, there are 1,265 officers and the 2015 report indicates that there were 209,207 calls for service, 50,432 crimes reported and 17,682 arrests, yet force was used in only 451 incidents (2.5% of arrests, 009% of reported crimes, and .0021% of calls for service).

To understand the use of force in context, MCPD reports that 414 incidents (82%) of the use of force incidents involved hands-on responses, while a Taser was used 59 times (13%). The Taser use has declined 65% since 2011, and in 2015, 49 deployments were with the cartridge (probe mode) while 10 uses were drive-stun mode. Twenty-two deployments had no effect on the subjects, or not enough of an effect to control them. Only 14 of the 59 uses were deployed before an officer went hands-on with a subject. This demonstrates that officers in MCPD are attempting to handle the majority (76%) of the situations without reliance on the Taser (for a broader understanding of Taser use in Maryland, see Maryland Statistical Analysis Center, 2015).

While there were no major concerns with the Taser program at MCPD in 2015, there are areas for improvement. First, the United States Court of Appeals for the Fourth Circuit 2106 decision in Armstrong v. Village of Pinehurst requires changes in policy, training, and supervision. While MCPD is working on policy revisions, it must publish a new policy, and while MCPD has already issued a Training Bulletin (#16-01, 22 January 2016), there must be scenario-based training to make sure officers are comfortable with the implications of the court's decision. Additionally, supervisors must be trained to assist officers in understanding the new policy and how to explain situations in which Tasers were deployed.

Beyond the Armstrong-related policy changes, the MCPD Taser policy should be reviewed in its entirety. Administrators must determine if it is worth adding a guiding philosophical statement for the use-of-force and/or Taser policy. In addition, there are concerns the Taser policy could be a stand-alone policy, that the Taser should be referred to as a weapon rather than a device, as well as whether or not a spark test should be allowed as a deterrent.

Other administrative concerns such as storage and non-purposeful deployments should be addressed.

The training officers receive for Taser use is an improvement over the manufacturer's suggested preparation. Importantly, Officers must complete successfully a 40-hour Crisis Intervention Team Training (CIT) course before taking a Taser orientation course. The department wants to train officers in the best strategies when dealing with those in crisis. They also want to provide officers with the skills to defuse situations safely and without using physical force. The CIT training also teaches alternatives to the application of force, such as de-escalation techniques, communication skills, and how to deal effectively with persons with intellectual and/or developmental disabilities. Additionally, officers must also comply with state recertification requirements to maintain certification.

Officers are trained during the recruit academy and in-service on various aspects of use-of-force, including applications and decision making. Officers decide whether they want to be trained and carry a Taser, and those who choose to carry one receive the extra training and practice before they are authorized and certified to carry it. While there is specific training on the Taser, its use is also integrated into use-of-force training. The initial orientation course for the Taser includes the traditional Taser familiarization lectures and exercises. Certainly, an officer will be familiar with the weapon after this 10-hour block of instruction. While there are practical drills, the focus is on learning to use the weapon, as opposed to when to use it. Similarly, the three-hour re-certification course includes practical drills, but these too focus on using the weapon rather than on decision-making. In the interviews with officers, a concern was raised about the lack of decision-making training they received on the Taser.

One recommendation is to incorporate decision-making skills by way of scenario-based training in both the orientation and re-certification courses.

Officers who had deployed their Tasers were interviewed concerning their experiences. Many requested additional training as soon as possible on the changes in policy created by the Armstrong case. Specifically, they wanted to know when it is justified to deploy the Taser and when they should not use it. A specific suggestion they made was to have scenario-based training in which they can make decisions and, if necessary, be corrected by trainers. Many officers requested supervisors who would be more involved and assist with evidence collection and incident report writing or a more detailed review. There were also some comments about downloading the Taser data; some officers were not sure if each station had a download facility or if they had to go to the academy. Several officers complained about having to remove the prongs from subjects, and others indicated that they wanted to make sure the department backed them on decisions not outcomes.

The combined data for 2014 and 2015 show that MCPD officers used the Taser only 14 times before going hands-on and actually de-escalated 24% of the events in the initial stage (first sequence) of the interaction. These data demonstrate that the officers used a lower level of force than the level of resistance used by the suspect in those cases. Most of the Taser incidents continue until the third sequence or interaction when officers have to resort to the Taser to control the suspect in order to avoid inflicting a more serious injury.

An editorial essay by Christine Hall, an emergency room physician and epidemiologist in Vancouver, British Columbia, compares her decisions in emergency rooms with officer's dealing with subjects.

She explains that, when she makes a decision, she does so for the right reasons, even though hindsight may show her decision to be in error and the outcome may be the death of a patient. What she saw and reacted to at the time, in the midst of the stress and anxiety of the emergency room, was effectively her best decision. She places the use of a Taser in its proper perspective and with the proper questions (2009: 84):

Gaining control of a violent or disoriented individual is a challenging scenario in which the unpredictable risk is affected by numerous factors involving the individual, the environment and the intervention. Adverse outcomes, including death, are possible. In any dynamic, unstable scenario, the risk must be weighed against the need to gain physical control, prevent injury to others and limit the destruction of property. Even the risk of death can remain acceptable in the context of other immediate and measurable dangers.

Considering this also requires knowledge of the risks of other modalities, including the use of batons, impact weapons and firearms, this raises the partially unanswered question, “what are the risks of CEW use by the police?” and the more important question, “Is it as safe as, or safer than the alternatives?”

Her essay asks important questions, including what would happen to the subject, the community, and the officer if the police opted not to use such a serious weapon as a Taser? What would the impact be if a suspect were to escape apprehension or seriously injure an officer? After 10 hours of training and some experience on the street, we do not expect our police officers to have skills at the level of an emergency room physician, but we do expect them to make proper decisions when using force against citizens. This review concludes that officers in Montgomery County are well trained, and make good decisions, but affirms that the Armstrong decision requires that all aspects of Taser management be revisited. The executives at MCPD are therefore challenged to revisit their policy, training and supervision, and to modify the areas that need it to comply with Armstrong, and to make sure the officers are provided with decision-making skills so that they know what to do in specific circumstances and when they will be supported for their choices.

Chapter 2 Recommendations

Chapters 4 and 5 cover issues concerning policy and training revisions. The following recommendations are made in those chapters.

Policy

- 4.1 Consider beginning use-of-force policies with a general statement or philosophy.
- 4.2 Refer to the Taser as a weapon.
- 4.3 Note in the policy that a Taser application is painful.
- 4.4 Remind officer to maintain certification.
- 4.5 Provide guidance in the policy as to where and when Tasers can be stored.
- 4.6 Identify where and when officers should charge and check the Taser's batteries.
- 4.7 Re-consider the policy that allows officers to "spark" a Taser from a safe distance from a subject in an attempt to de-escalate a potentially violent situation. Alternatively, require that officers have lethal cover from another officer if allowed to continue the use a Taser "spark" as a deterrent.
- 4.8 Address all deployments outside of training, and re-title "accidental" deployments as unintentional, non-purposeful or with another label.
- 4.9 Initiate a requirement to download the data every three or four months, even if the weapon is not used.
- 4.10 Consider whether officers should be de-briefed when they download their Taser after a deployment, given that an intentional Taser deployment is a serious use of force, it is important to document the circumstances involving each Taser use.

- 4.11 Consider reviewing Taser deployments by committee as serious uses of force.

Training

- 5.1 Training on the use of force should begin with an explanation that the use of force is a response to resistance that is justified only to protect life and preserve public safety.
- 5.2 Include practical drills that emphasize when Tasers should be used in the New User Course and Taser Recertification Course.
- 5.3 Taser training should emphasize how to de-escalate potentially violent encounters.
- 5.4 Assure that training materials received from Taser International are consistent with the decisions and opinions of the MCPD administrators, and presented to officers using the MCPD logo.
- 5.5 Trainers should be familiar with their agency's deployment patterns and uses. Statistics and information from MCPD should be incorporated into the training so officers are familiar with agency patterns and practices.
- 5.6 Officers should receive additional instruction on the recent decision of Armstrong v Village of Pinehurst.

Chapter 3 Methodology

In September 2015, the Montgomery County Police Department Use-of-Force Policy Review Team met, and initiated a review of its use-of-force practices. There was a briefing on the statistical data maintained by MCPD, and on the history of the department's use of Tasers. Review team members discussed the current use-of-force policy, and reviewed the recent opinion in Armstrong v Village of Pinehurst. While it became clear that policy revisions are imminent based on the Armstrong case, the policy directive relating to Tasers in place at the time was reviewed. This review provides basis for the information presented in Chapter 4.

Training curricula and related documents provided to officers were reviewed and interviews were conducted with training officers to go over their perspectives on the nature, extent, and quality of the training provided to pre-service and Taser certified officers. Additionally, we observed in-service use-of-force training and recertification training. The recommendations made in Chapter 5 are based on our observations, the information from the documents and the opinions of training officers.

Interviews and focus groups were held with a sample of officers who have deployed a Taser during the past two years. Mr. Donahue from the Policy and Planning Division randomly selected names of officers who deployed a Taser in 2014 or 2015 and provided those names to the Fraternal Order of Police (FOP), who invited a sample of those officers to meet to discuss their experiences with the Taser. During the first week of May 2016, a series of one-hour meetings were held at the FOP office. Officers were asked specifically about their recall of the deployment(s), their preparation by policy and training to use a Taser, the role and importance of their supervisor, and what they knew about accountability and review issues relating to the Taser. Officers were informed that their participation was voluntary, and that no names would be reported. The information they provided in those focus groups is discussed in Chapter 6.

Finally, an analysis of the Taser deployments during 2014 and 2015 was conducted. As noted earlier, the Annual Use of Force Reports for 2014 and 2015 were provided for review. It is important to note that these Reports are excellent statistical summaries of the force used by MCPD officers, and their use is discussed in the context of these officers' other activities. There is no question that these Reports should serve as a model for other agencies: they are well organized, laid out in an easily understandable format, and provide a great deal of information about the MCPD and its use of force.

In an era when our nationwide police use-of-force data are a “national embarrassment,” it is refreshing to see the complexity, comprehensiveness, and transparency with which MCPD reports its information. Rather than repeat verbatim the information provided in those reports, it is sufficient to refer those interested in learning more about the agency and its operations to these reports. This said, the following excerpts (from pages 15 and 17 of the 2015 Report, published April 2016) typify MCPD’s clarity of purpose through documentation:

The department currently has 562 *Electronic Control Devices* (ECDs) that are issued to qualified officers after they complete extensive training and are certified in its use. In addition, officers must attend 40 hours of *Crisis Intervention Training* (CIT) before an ECD can be carried. Once certified, officers are also required to complete annual recertification training to be authorized to continue to carry an ECD.

In 2015, an ECD was deployed 59 times (13 percent of total use of force incidents), compared to 63 times in 2014, a decrease of 6 percent.

Since 2011, ECD deployments have decreased 65.5 percent. Since 2013, ECD deployments have decreased 60 percent, while the number of officers trained and certified has remained relatively constant.

These reports were scrutinized in order to understand better the Taser use data and the ancillary information necessary to compile them. The data used to determine the uses and characteristics of Taser use is stored in an electric database managed by Mr. Michael Donahue in the Policy and Planning Division.

These data are collected and analyzed for administrative purposes, and do not include all the information a researcher needs. It was therefore necessary to read and review all the use-of-force and incident reports that were the basis for the agency’s annual reports, and extract other important information.

This additional information was coded from the original reports written by the officer involved and approved by his/her supervisor, then added to a copy of the agency data after all identifying information—the names of the officers and their supervisors and suspects were removed.

Specifically, the actions of the officer and suspect were coded in sequential order, and added to the data set. These data were used to compute the tables and analysis provided in Chapter 7.

Chapter 4 Taser Policy

The MCPD FC No. 131, Use of Force, is a comprehensive policy that includes all types and levels of force. There may be a variety of areas to consider for review in this policy, but the present Report is limited to the use of ECD's which begins on the bottom of page 3. However, before moving to issues relating to the specific Taser policy, it is important to mention that any use-of-force policy should begin with a general statement, or philosophy. The reason for the statement is to provide an over-arching declaration for officers to think about and follow. When reaching the decision to use force as a response to subject resistance, officers should have a framework which guides their decisions. While the last thing anyone wants is for an officer facing a violent subject to hesitate, she or he must nonetheless have a guiding ethos. For example, the following, in one form or another, is used in many agencies, and a similar statement should be considered as a preamble to any use-of-force policy:

The ----- Police Department is committed to the protection of people, to preserve and protect life, property and citizen's rights, while providing the best in public safety and service. The proper use of force is essential for policing, and there are circumstances where individuals will not comply with our officers unless compelled or controlled with force. Yet, officers must also remain mindful that they derive their authority from the community and that excessive or unreasonable force degrades the legitimacy of that authority. Our officers will attempt to defuse a potentially violent encounter, when possible, but will use the force necessary to control a subject when necessary.

Our officers hold the highest regard for the dignity and liberty of all persons, and place minimal reliance upon the use of force. The department respects the value of every human life and that the application of deadly force is a measure to be employed in only the most extreme circumstances.

The specific elements of the MCPD policy on Tasers should consider a few modifications. First, as noted above, the Taser policy is part of the use-of-force policy. One suggestion is to separate it into its own policy. Many agencies maintain it as a separate policy while others use a format similar to that of MCPD. There are arguments for both models. An integrated policy keeps all types and levels of force under one number and heading, whereas a separate policy can show its independence and importance. An analogy is the policy controlling emergency and pursuit driving. Pursuit driving is a subset of emergency driving and considers many of the same issues, risks and benefits. However, because there are some differences between emergency driving and pursuit driving, most agencies maintain a separate pursuit policy. This potential change for MCPD should be discussed by the Use-of-Force Policy Review Team and a suggestion made to the Chief as to whether to keep them under the same umbrella or to separate them (as well as other components included in FC 131).

Second, the Taser is a weapon and while called a device in the policy, it is termed a weapon in training. The policy should reflect the fact it is a weapon. A modern term used by many agencies is Conducted Electronic Weapon (CEW).

Third, it may be appropriate to note that a Taser application is painful, and that most of those on whom a Taser is deployed will experience pain, which can sometimes be severe. This reminds the officers of what they are about to inflict on a subject. While it may be necessary to use different levels of force on a subject, including a Taser, it is important that officers do not become reliant on the tool to manage all uncooperative subjects.

It is also important that the agency reiterate that officers must maintain their certification and attend annual re-certification training. They and the Training and Education Division are jointly responsible to assure that all officers who are issued a Taser are up-to-date with their certification. This should be part of the policy.

Tasers are expensive weapons that should certainly not be left unattended. We heard that several officers are leaving them in locked trunks, which is potentially problematic. There should be policy guidance as to where they can be stored, and under what conditions. Similarly, officers should be instructed by policy to store Tasers in particular locations, where and when to charge and check batteries, etc. These administrative controls are necessary, just as they are with firearms.

An interesting strategy condoned by MCPD is to “spark” a Taser from a safe distance from a subject in an attempt to de-escalate a potentially violent situation. The policy language also continues to permit “laser tagging” on a subject in order to gain compliance. While both of these actions provide an opportunity to display a force option without using it, the suggestion that an officer “spark” the Taser, even from a safe distance, may actually compromise officer safety. This action requires an officer to remove the cartridge within proximity of a subject, then activate the weapon, reload it and possibly use it. This series of actions would be akin to asking an officer to drop a magazine out of his firearm and rack the slide several times in front of a suspect as a show of force. In short, it is inherently risky. Officers always have the ability to “tag” the subject with the laser light in the hope that the subject will come to his senses and submit to verbal orders. In fact, officers explained situations where that occurred, but never said anything about removing a cartridge to “spark” a Taser, which might also be an indicator of the questionable practicality of such a maneuver.

The Taser policy addresses “accidental” deployments. It is important to document any deployments outside of training; however, we have come to understand that there are no “accidents.” An individual deploys a Taser, or there is mechanical error. If an officer unintentionally deploys it, then it should be investigated to determine why it was deployed. As is the case with a firearm discharge, it is important to maintain a record, to find out why the weapon was discharged and to determine if there are any training, policy, or equipment modifications needed.

Tasers are sophisticated electronic weapons that maintain a complex record of use internally. As MCPD transitions to X-2’s, there is even more important information stored internally. A Taser policy should include a protocol for downloading the data, and as officers explained, different information is currently being disseminated to different officers. There should be a policy concerning a download after each deployment, and officers should know when and where this can be accomplished. Even when they are not deployed, there should be a protocol to download the data every three or four months to make sure there are no mechanical problems with the weapon.

A final issue is whether officers should be de-briefed when they download their Taser after a deployment. Although this requires another form, and takes officer and supervisor/trainer time, such a requirement would ensure an excellent record of Taser use, as well as justification beyond the incident report. An example of an interview form is attached as Appendix A. to this report.

Chapter 5 Training

This chapter focuses on training for the Taser, but because it is one tool some officers carry to respond to suspect resistance, preparation for it cannot be disaggregated from other use-of-force training. In other words, the Montgomery County Police Department prepares its officers for citizen encounters with a variety of training, including decision-making training that requires officers to assess threats and risks, and to determine a reasonable response. While the overall training strategy is to prepare officers to interact with citizens, there are specific blocks of training to help officers manage subjects who resist the officer's verbal orders and/or who use force against the officer, or another citizen.

There is general use-of-force training and specific training for those who carry the Taser. Officers who go through the extra training and earn the certification to use a Taser have an additional force option, while the other officers who are not "Taser certified" must select another tool, or an alternative approach to control a subject.

Specifically, recruits receive more than 100 hours of training that includes interactive decision-making exercises that involve the response to a subject, de-escalation and scenarios that can result in a level of force necessary to control a subject and protect the officer and public. Beyond that exposure, officers receive field training, specialized unit training and can learn from other training provided by the department, that includes the use-of-force as an appropriate response to a subject's behavior.

On a yearly basis, officers receive two days of in-service training that reinforces their original training and refreshes decision-making skills. The use-of-force is a perishable skill that requires periodic review and decision-making can change with experience on the street.

Therefore, the in-service training is designed to provide officers with legal updates, and to remind officers how to respond to subjects, how to de-escalate situations and how and when to use force, if necessary. This two-day training program includes exposure to the classroom, simulations, interactive scenarios based on routine and exceptional situations that require officers to make decisions in response to subject behavior. Officers who are certified to carry a Taser receive additional training that isolates the Taser as a weapon and refreshes their technical and decision-making skills.

All training on the use of force should begin with an explanation that the use of force is a response to resistance that is justified in order to protect life and preserve public safety. A discussion of those principles should provide recruits and officers with insight that is essential to help them understand why force may be necessary, and how and under what circumstances it can/should be applied. Recruits first learn about the use of force generally, including the legal aspects of the use of force, and the objective reasonableness standard. The use of a Taser is just one of the many tools that is available to those who deploy force as part of their service.

Before they are introduced to the Taser, recruits are instructed in the use of force and techniques of de-escalation throughout the Entry-Level Training (ELT) program, with a specific block of training dedicated to negotiation and de-escalation. This training provides the recruit with an excellent orientation about force, the legal limits, and begins the lengthy process of how officers are to make decisions concerning when the use of force is necessary and which type and level of force is appropriate. The training received by the officers for the Taser extends beyond the suggestions of the manufacturer, and is markedly more than is provided in many departments throughout the United States. Officers who choose to carry a Taser are required to take a 40-hour CIT course before being introduced to the Taser.

This training provides officers with the best strategies to deal with emotionally or mentally-challenged subjects, or those in crisis, and provides officers with strategies to de-escalate potentially violent encounters. Additionally, officers learn about local resources available to those in need. The CIT training also teaches alternatives to the application of force. The requirement to make this training mandatory is an excellent precaution, and it is explained that MCPD wants officers who carry a Taser to consider various alternatives to controlling a suspect other than using such a high level of force. Once that course is completed officers learn about the role of the Taser in the use of force in a 10-hour Taser orientation course (TASER X-2 NEW USER COURSE).

As noted above, all officers are required to attend two ten-hour days of in-service training each year. Specifically, this training consists of scenarios that help officers with decision-making skills. Officers who are Taser-trained are exposed to scenarios that require them to consider the use of a Taser, as well as other de-escalation and force options. Officers who are not Taser-trained will learn the same decision-making skills, but without the opportunity to select a Taser as a force option. During both days of in-service training, classroom discussions are followed by decision-making exercises. Each officer has instructors observing, and coaching when necessary. After completion of each exercise, instructors discuss briefly the officer's performance. The role-play scenarios that officers' experience are well thought out and implemented. Officers must assess a specific threat and risk, select a force option, escalate or de-escalate depending upon the subject's actions (and reactions) and resolve the situation. Those officers who are certified to carry a Taser have the option to use it during the scenario training. It provides them with an additional tool beyond those available to those who are not certified in its use.

As the new academy opens and resources allow, it would be helpful to videotape the exercises and de-brief officers on their actions and options. A professional staff that is tough on the officers but fair conducts this training. Officers also take a yearly re-certification course to maintain their Taser certification. Specifically, there is a 10-hour Taser orientation course (TASER X-2 NEW USER COURSE).

The initial orientation course (New User Course) includes the traditional Taser familiarization lectures and experiences. Certainly, an officer will be familiar with the weapon after this 10-hour block. In fact, the performance objectives include:

- Students will be able to correctly identify the nomenclature and describe the operating principles of the X2 Taser.
- Students will demonstrate the correct utilization of the X2 Taser.
- Students will demonstrate proficiency.

While there are practical drills, they focus on learning to use the weapon, not when to use it.

Additionally, there is a yearly 3-hour recertification course (TASER RECERT). This training also includes excellent opportunities for officers to familiarize themselves with the mechanics and operating techniques of the X2 Taser. While this training incorporates practical drills, they focus on using the weapon rather than decision-making. The performance objectives include:

- Students will point Taser in safe direction and unload 25 ft. live cartridges.
- Students will load 15 ft. training cartridges.
- Students will start at the 5 ft. line, on command students will move lateral to 7 ft. deploy one cartridge. Striking target in preferred area.
- Students will reload and start at an arm's length from the target. On command students will move backward and fire a second cartridge within 14 ft. striking a Taser target in the preferred area.

The RECERT includes a PowerPoint presentation created by Mr. Mike Brave who is the National Litigation Counsel for TASER International, Inc.

The PowerPoint slides have the Taser brand and not the MCPD logo. While fourteen slides address the Armstrong decision, it may be appropriate to develop slides specific to the MCPD's new policy and how the MCPD decides how it wants the officer to use the Taser. One of the concerns about Taser training has always been that agencies rely on the manufacturer's information. Over the years, Taser International has responded to significant research findings and court decisions, but is not equipped to address individual agency's concerns. In fact, Taser International warns:

Obey applicable laws, regulations, and agency Guidance. Use of CEWs must be legally justified and comply with applicable federal, state, and local laws and regulations. The decision to use a CEW in a particular manner or circumstance must follow applicable law enforcement agency Guidance.

Law enforcement agencies are force experts and are solely responsible for their own Guidance. "Guidance" includes policy, custom, procedure, rule, order, directive, training, continuum, and standard. TASER has no authority to mandate Guidance, set policy, require training, or establish standards of care or conduct.

(Downloaded 11 May 2016)

<https://www.dropbox.com/sh/shn4epnkh6s3fgr/AAClC6A1ZktpUqOaRdTsuNmaa/Releases%20%26%20Warnings/Law%20Enforcement%20%20Warnings.pdf?dl=0>

The Training Division should modify the Taser International-provided training to make sure it is consistent with the decisions and opinions of the MCPD administrators, and presented to officers using the MCPD logo. Additionally, there should be role-play or scenario-based exercises that incorporate decision-making at both the orientation and re-certification training, and if possible, these exercises should be based on real MCPD events. Trainers should be familiar with their agency's deployment patterns and uses. Statistics and information from MCPD should be incorporated into the training so that officers can understand agency patterns and practices.

For example, how many times was a Taser used by officers during the past year? And for what levels of resistance? How many times did a Taser malfunction or not work well enough to control a subject? How many times did officers use Tasers before going hands-on? This information is maintained in the Management Services Bureau and can be used to demonstrate the options that are available to officers before deployment of the Taser. There should be a closer connection between agency data and officer training.

Taser training should include de-escalation and tactical decision making, similar to what is available in the mandatory in-service training. If videos of Taser uses (or near-uses) by MCPD officers are available, they should be used to show appropriate deployments and, conversely, when officers could use tactics to slow things down or reason with a subject to reach a mutually acceptable outcome before force is used. Just as with training with a firearm, officers should get additional training on when to use the Taser, as well as how to deploy it. As body-worn cameras are rolled out, there may be an opportunity to use the videos for training purposes.

Finally, trainers should watch their students carefully during exercises to assure proper handling of the weapon and cartridges. If officers are not handling the weapon properly in training, they may experience problems when they are using it under pressure.

Chapter 6 Officer Opinions and Perspectives

Interviews with officers were held for two days, but after the first day, most of the information reported by the officers became repetitive. Officers were asked if they had good recall concerning their Taser deployments, and if they were well prepared to deploy a Taser based on their understanding of their policy and training.

In addition, they were asked to discuss their experiences with supervisors and officer accountability. Officers were also asked if and how policies and training could be improved. Overall, officers were pleased with the department policy and with how they had been trained prior to the Armstrong decision. The concerns they reported were not critical with regard to their decision to deploy the Taser, pre-Armstrong; rather, they amount to suggestions to improve a good and functional system.

Most officers stated that supervisors were present at the scene after a Taser had been deployed, and that supervisors helped officers to review the incident reports when necessary. Supervisors helped officers write reports that provided information and also explained the situation in sufficient detail. Some officers commented that they would like to see supervisors leave the station and be present at a situation before a Taser is deployed. These officers recognized that encounters evolve quickly and that it is unlikely a supervisor could make it to an incident in a timely fashion, but the officers said that they would nonetheless like to see the supervisors be more active at scenes. Some officers felt they were not debriefed well by supervisors and were not provided sufficient information by those supervisors after an encounter. There were comments that the officers wanted to know that the supervisors would support their decisions to use the Taser. One officer also commented that supervisors should help officers collect information in order to write an incident report. Most officers commented that reports should be thorough, and one stated that he had been taught that, "if it isn't in the report, [then] it didn't happen." A few officers wanted more training in how to write a more detailed report - one that uses descriptive/objective language rather than language that leads the officer to draw a conclusion. It was clear that officers believed that some supervisors were very helpful and supportive while others were not as engaged.

It was noted that the reports help educate other officers and also inform how the department can determine if it should modify policies and training. No officer was aware of any fellow officer being held accountable for their use of a Taser because they were not aware of any situations in which an officer had used one improperly.

In general, officers were very comfortable both with the policies with which they were provided and with the training they received prior to the Armstrong decision. They reported no issues for recall or issues with memory under the stress of deploying a Taser in a use-of-force encounter, and they felt comfortable with their training on the current policy. The majority of officers reported understanding the current policies and training, and felt that they were well prepared to make and justify a proper decision to deploy a Taser. The comments made most often during the interviews involved the vagueness of the new directives developed in response to Armstrong.

Many officers stated that the information they received in response to Armstrong does not provide sufficient detail concerning situations in which an officer may or may not use a Taser. Officers reported that this lack of clarity has created the biggest problem for them and that this uncertainty deters many officers from using the Taser for fear of “getting it wrong.” Many comments were made concerning the officers’ fear of getting sued and not being protected by the Department. Many officers said they and/or their colleagues have put the Taser in the trunk of their car and will not carry it, and some have said they have already turned it in, or may turn it in.

When asked about drive-stun deployment, many officers stated that they would like to maintain the ability to use the drive-stun application for situations when they are too close to a subject to use a cartridge, or as a pain compliance technique to gain control of a subject; however, officers also commented that the use of a Taser in drive-stun mode does not always

work and that any modifications to pre-Armstrong policies regarding drive stun also need to be clarified.

The fundamental concern regarding re-certification training was a lack of scenario-based training that has a thorough and comprehensive debrief. According to the officers, this deficiency has created uncertainty about when and how Tasers can be used, either in probe or drive-stun mode. Officers stated that they would be more comfortable and confident in their use of Tasers if the department were to provide more thorough and dynamic training regarding the new policies. In addition, some officers wanted more testing when undertaking re-certification, rather than just being passed through.

All officers expressed a concern over the ambiguity of the post-Armstrong policy. The far-ranging perception is that the Armstrong decision does not give adequate answers on the exact circumstances in which a Taser can be used. This ambiguity appears to be heightened by the information provided by the department. Officers report that thorough training has not yet been conducted.

Officers reported that information on Armstrong was distributed by e-mails and at roll call. There was a strong sentiment from officers that the instructions were purposefully vague. Another concern is that the department has not made it clear how the outcome of a use of force incident would affect the department's response to the officer if he did not sustain an injury. In other words, officers commented that if a subject fell and injured himself after being exposed to a Taser, they would get in more trouble than if the same subject were tased but not injured. The discussions centered on decisions versus outcomes.

This discussion then switched to the officers' concerns over liability. Many officers voiced concern about criminal convictions as well as civil liability.

Specifically, officers reported not fully understanding the difference between “passive” and “active” resistance. Officers would like specific or operational definitions of these terms. Again, officers suggested that real-world, scenario-based training on decision-making be implemented to help them understand proper decision making. One officer went so far as to say that the ambiguity means that he is more comfortable using a firearm than a Taser, because at least he is confident about when and when not to use it.

Other concerns voiced by the officers include the inconvenience of downloading the Taser after a deployment at the district, as opposed to the academy. This said, other officers noted that they were able to download at their district, so while it is uncertain whether this is actually an issue, it does nonetheless merit clarification so that officers can be sure where they can download the data. An additional concern was whether someone other than the officer should remove the probe from a subject. Some officers said they had no problem removing them while others were concerned about the physical removal. It could be that some officers need more training on how to remove them safely or are simply reluctant to remove the probes.

In terms of new information based on Armstrong, some officers would like “emergency” training so they are aware of what management wants them to do. If this is not a possibility, then the officers who have not been recertified would like to be provided role-playing or scenario-based training at their next training. Additionally, some would like to be certified on the new policy so they are sure they understand the training. Many would also like someone to ask and ask “what-if” questions about deployment issues. Finally, one officer commented that it’s difficult for them when prosecutors are all too ready to drop criminal charges against a defendant when the officer uses a Taser against that person.

Many of the concerns raised by the officers during the discussions involved specific situations they had been in, and how the decision in Armstrong would potentially change their decision-making. In any case, it is clear that they feel that the policy and training resulting from the Armstrong decision must be as specific as possible and should be disseminated to the officers such that they are comfortable both with how they make and appropriately explain decisions.

Chapter 7 Analysis of Taser Deployments

The data from this phase of the study identify the demographic characteristics of both officers and subjects involved in an encounter where a Taser is used. Data show that officers who deploy Tasers are more likely to be white, while most subjects are black. Both officers and subjects are mostly male. Further, we find that officers are not likely to be injured in an encounter involving a Taser, but when injured, the most common injury is a reported bruise or soreness. Very few subjects are injured, but when they are injured it is usually a reported abrasion or laceration. Finally, we show officers de-escalate encounters, and that when they do, it occurs in the first two sequences of the encounter. After the officer and subject enter a third sequence or interaction, force is more likely to be used to counteract successfully a subject's resistance.

Officers who deployed Tasers during 2014 and 2015 are described in Table 1. Similar to the demographics of the department, the majority of officers who deployed Tasers are white males. The decrease in deployment numbers between men and women from 2014 to 2015 is worth watching over time, but it is likely a random fluctuation in deployment patterns. At the time of use, officers who use Tasers had been police officers for an average of 7.6 and 8.5 years in 2014 and 2015 respectively.

The three districts with the largest percentages of Taser deployments were 3, 4, and 5. Districts 3 and 4 reversed positions in 2014 and 2015. In 2014, District 3 accounted for 22% of all deployments, while District 4 accounted for 32.2%. In 2015, District 4 accounted for 19%, while District 3 accounted for 31%. These Districts also reported the highest number of Part 1 Uniform Crime Report offenses.

TABLE 1 – OFFICER CHARACTERISTICS				
RACE				
	2014		2015	
	N	Percent	N	Percent
Black	3	5.1	2	3.4
White	46	78	46	79.3
Asian	2	3.4	2	3.4
Latino	8	13.6	8	13.8
SEX				
	2014		2015	
	N	Percent	N	Percent
Male	58	98.3	52	89.7
Female	1	1.7	6	10.3
YEARS AT DEPARTMENT				
	2014		2015	
	N	Percent	N	Percent
Average	7.6	—	8.5	—
Minimum	2	—	1	—
Maximum	25	—	22	—
DISTRICT				
	2014		2015	
	N	Percent	N	Percent
1	4	6.8	4	6.9
2	4	6.8	7	12.1
3	13	22	18	31.0
4	19	32.2	11	19.0
5	6	10.2	6	10.3
6	13	22	12	20.7

While officer characteristics are described in Table 1, the characteristics of those who had Tasers deployed on them are examined in Table 2. The data show that the majority of subjects who had Tasers deployed on them were black in both 2014 (62.7%) and 2015 (65.5%). Most of the subjects were male, 97% in 2014 and 98% in 2015.

TABLE 2 – DEFENDANT CHARACTERISTICS

RACE				
	2014		2015	
	N	Percent	N	Percent
Black	37	62.7	38	65.5
White	19	32.2	13	22.4
Asian	0	0.0	2	3.4
Latino	3	5.1	5	8.6
SEX				
	2014		2015	
	N	Percent	N	Percent
Male	57	96.6	57	98.3
Female	2	3.4	1	1.7

Very few officers or subjects received injuries in events where a Taser was deployed. The data presented in Tables 3 and 4, however, do not indicate whether the injury was sustained before or after the Taser deployment, or whether it was the Taser that caused the injury. In those cases where an injury was sustained, the most common officer injury was a bruise or soreness. In 2014, 13% of Taser deployments involved an officer reporting a bruise or complaining of soreness, while the percentage dropped to approximately 8% in 2015.

TABLE 3 – OFFICER INJURIES

	2014	2015
	N	N
Bruise/Soreness	8	5
Broken Bones	1	1
Laceration/Abrasion	5	1
Dog Bite	0	0
Gunshot	0	0

As expected, subjects were more likely to be injured during a Taser-involved incident than an officer. The data in Table 4 show the most common injury sustained by a subject was a laceration or abrasion, which is the type of injury one would expect. Other than lacerations, bruises/soreness were the next most frequent type of reported injury.

TABLE 4 – DEFENDANT INJURIES

	2014	2015
	N	N
Bruise/Soreness	12	13
Broken Bones	0	0
Laceration/Abrasion	26	22
Dog Bite	0	1
Gunshot	1	0

Police officers use Tasers in response to subject resistance. In many cases, the initial call for service may be different from the reason an officer deployed a Taser. For example, an officer could be called upon for a minor disturbance (non-violent) but the subject could resist the officer with violence, in response to which the officer might deploy his or her Taser to control the subject. In 2014 - 2015, the calls for service that resulted in a Taser deployment included both violent and non-violent crimes. The data in Table 5 show that calls for non-violent crimes made up slightly more than half of the incidents where Tasers were deployed. The data also show that the original call for service involved a violent offense 46% of the time in 2014, 43% of the time in 2015, in relation to incidents when Tasers were used. Assault was the most common violent offense for which officers deployed Tasers both in 2014 (39%) and in 2015 (32.8%).

TABLE 5 – FREQUENCY OF CRIME TYPES FOR USE OF FORCE INCIDENTS

	2014		2015	
	N	Percent	N	Percent
Homicide	2	3.4	1	1.7
Rape	0	0.0	0	0.0
Robbery	0	0.0	0	0.0
Aggravated Assault	2	3.4	5	8.6
Assault	23	39.0	19	32.8
Arson	0	0.0	0	0.0
Non-Violent Offenses	32	54.2	33	56.9
TOTAL	59		58	

In the final analysis data from 2014 and 2015 were combined and the sequential order of behaviors in Taser-involved incidents was determined.

In other words, by analyzing and coding the narratives from the Incident Reports, we determined the subject's response to the officer's orders or behavior was determined. The data in Table 6 show the actions of officer in four sequences or iterations. The final sequence (4) that was coded did not have any subject actions as a response to an officer action, as they were all under control. There were only a few encounters that lasted more than four sequences, and those not coded or analyzed.

Sequence 1 involved almost entirely verbal actions or orders from officers, with the deviation involving an attack. Subjects resisted the officer's verbal commands most often with active resistance or some type of physical struggle. Both sequences 2 and 3 involve a mix of verbal action, hands-on, active or aggressive resistance, aggressive resistance, and Taser use or assault. Subjects had firearms in two incidents in which officers used a Taser. Analyses of the data show generally that officers respond to the suspect's resistance at a lower level of force for the first two iterations. After the second sequence, officers move to a higher level of force to control the subjects.

This is an important way to look at the interaction between officers and subjects, and it shows that not all use-of-force events can be avoided through some action on the part of officers. There are cases in which officers have to react immediately to being attacked without the opportunity to de-escalate; there are still other cases where citizens do not respond to the officer's de-escalation efforts, and keep resisting or fighting. In fact, all the cases in our population resulted in the use of a Taser, so the end result in most encounters was use of a relatively high level of force to counteract subject resistance. That said, even in many of these incidents, officers lowered their level of force from one sequence to another.

A correct measure of officer de-escalation success would require a study of all police-citizen encounters and a determination of which ones could have resulted in the use of force had officers not de-escalated the encounter.

TABLE 6 – FREQUENCY OF OFFICER AND SUBJECT ACTION SEQUENCES

Officer Subject	TYPE OF ACTION									
	Verbal Verbal		Hands-On Active Resistance		Fighting Aggressive Resistance		Taser Assault		Firearm Firearm	
	N	Percent	N	Percent	N	Percent	N	Percent	N	Percent
Officer 1	112	99	--	--	1	1	--	--	--	--
Subject 1	16	13.7	75	64.1	22	18.8	3	2.6	1	0.9
Officer 2	30	25.6	34	29.1	16	13.7	37	31.6	--	--
Subject 2	4	4.4	32	35.6	49	54.4	4	4.4	1	0.7
Officer 3	6	6.9	10	11.5	17	19.5	54	62.1	--	--
Subject 3	--	--	4	12.5	27	84.4	1	3.1	--	--
Officer 4	--	--	--	--	9	28.1	23	71.9	--	--
Subject 4	--	--	--	--	--	--	--	--	--	--

Finally, an analysis of the Incident Reports showed that only 14 Taser deployments occurred before officers went hands-on with the subjects. That’s a very low figure, and demonstrates that officers were, for the most part, reticent to resort to using the Taser as a weapon of choice. Officers in the MCPD attempted to control subjects initially with their hands in the majority of events where a Taser was eventually deployed. It is important to remember that all of these events reviewed for this report occurred prior to the Armstrong decision, which will likely reduce the number of Taser deployments prior to going hands-on with a subject. It is important to consider that twenty-two (22) deployments of the Taser had no effect or insufficient effect to control subjects, and that officers had to go use different force options when the Taser did not achieve the expected or desired outcome.

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APPENDIX A

New Orleans Police Department Taser Interview Form

**NEW ORLEANS POLICE DEPARTMENT
C.E.W. Discharge Interview Form**

Item #: _____ Date: __ Time: __ Dist/Div _____

Officer's Name: _____ Employee ID# _____

Was officer Injured? Y _____ N _____ Injuries: _____

Supervisor On Scene/Notified: # Of Officers Involved _____

CEW Serial #: _____ Cartridge Serial #: _____

CEW Technique Used:

Laser Targeting Only: Y _____ N _____

Discharge: Y _____ N _____

Accidental: Y _____ N _____

Did CEW function properly? Y _____ N _____

Probe Strike: Y _____ N _____

Did the probes penetrate? Y _____ N _____

Did the probes miss? Y _____ N _____

Comments: _____

Original Signal _____ Additional Signals (List all that apply):_

Conditions (check all that apply):

_____Animal

_____Sober

_____Narcotics

_____Alcohol

_____Mental

_____DWI

_____Number of Suspects

_____Vehicle Pursuit

_____Foot Pursuit

_____Traffic Violation

_____Domestic Dispute

_____Citizen Dispute

_____Business Dispute

_____Battery On Officer

_____Battery On Citizen

_____Attempted Suicide

_____Resisting

_____Non-Compliant

Comments: ____

Was initial use effective? Y__N_____

Second Cartridge needed: Y__N_____

Drive stun: Y_N_____

of cycles with cartridge: _____ with drive stun: _____

Distance from suspect at time of deployment (approximate # in ft :) _____

Where did probes strike? _____

Where was the drive stun applied? _____

Was suspect injured? Y_____N_____ Describe Injuries: _____

Was the officer's use of the CEW consistent with departmental training? Y_____N _____

Comments: _____

Interviewing Officer__Date: _____