



# INDEPENDENT INVESTIGATIONS DIVISION

Interim Report Concerning the Police-Involved Fatal Incident  
in Frederick County, Maryland on November 12, 2021

June 15, 2022

**Interim Report of the Independent Investigations Division of the  
Maryland Office of the Attorney General Concerning the  
Death of Danny Michael Holley**

Pursuant to Md. Code, State Gov't § 6-106.2, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this interim report to Frederick County State's Attorney J. Charles Smith, III regarding the death of Danny Michael Holley.

The IID is charged with "investigat[ing] all alleged or potential police-involved deaths of civilians" and "[w]ithin 15 days after completing an investigation ... transmit[ting] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-106.2(c), (d). While the IID does not typically provide interim reports, the continued delay in receiving the written autopsy report in this case, in contrast with the finality of all other aspects of the investigation, led the IID to suggest to the Frederick County State's Attorney that an interim report might be useful, and the State's Attorney agreed. This interim report is being provided to Frederick County State's Attorney J. Charles Smith, III on June 15, 2022. The IID will supplement this interim report when it receives the written autopsy report from the Office of the Chief Medical Examiner (the "OCME").

**I. Introduction**

On November 12, 2021, Frederick Police Department ("FPD") officers were dispatched to a residence in Frederick, Maryland for a person behaving erratically. Upon arriving at the house, officers encountered Danny Michael Holley and determined he needed to be taken to a hospital, and they called for an ambulance. While waiting for the ambulance to arrive, Mr. Holley remained in an agitated state and struck and tackled an officer. A different officer then discharged his Taser, striking Mr. Holley. Officers were able to handcuff Mr. Holley, who was conscious but incoherent. As officers secured Mr. Holley on a stretcher, he continued to resist their efforts, and the officer deployed his Taser a second time. Mr. Holley was taken by ambulance to Frederick Health Hospital ("FHH") where he was seen in the emergency department and subsequently admitted to the hospital. Two days later, Mr. Holley died at the hospital. The complete results of his autopsy are pending.

This interim report details the IID's preliminary investigative findings based on a review of body-worn camera footage, civilian witness interviews, medical records, initial autopsy findings, officers' written reports, and personnel records for the officers involved. All materials reviewed in this investigation are being provided to the Frederick County State's Attorney's Office with this interim report and are listed in Appendix A.

This interim report also includes an analysis of Maryland statutes that may be relevant in a case of this nature. The IID considered the elements of each possible charge, FDP departmental policies, and Maryland case law to assess whether any charge could be supported by the facts of this incident. Because the Frederick County State's Attorney's Office—not the Attorney General's Office—retains prosecution authority in this case, this interim report does not make

any recommendations as to whether any individual should or should not be charged.

## **II. Factual Findings**

Mr. Holley was a 23-year-old Black man from Virginia. Prior to the time of his death, he was employed by Abacus Corporation, a staffing agency, working at a warehouse in York, Pennsylvania. According to witness interviews, Mr. Holley had last worked an overnight shift on Wednesday, November 10, 2021, into Thursday, November 11, 2021, but was subsequently fired by Abacus after getting into an argument with a company security guard. The next day, on Friday, November 12, 2021, Mr. Holley left York via an Uber or Lyft. He traveled to his friend and co-worker [REDACTED] house, located in the 1800 block of Greenleese Drive in Frederick, Maryland where he was planning to stay the night before returning to his family's home in Virginia.

[REDACTED] reported that on November 12, 2021, at around 5:43 p.m., Mr. Holley arrived at his house with a bookbag and trash bags filled with clothing. According to [REDACTED] he and Mr. Holley spent about an hour and a half in [REDACTED] bedroom playing video games, after which Mr. Holley asked to take a shower. Mr. Holley was in the second-floor bathroom for about 10 minutes when [REDACTED] began to hear screaming, crying, and banging on the walls coming from the bathroom. [REDACTED] said he knocked on the bathroom door to check on Mr. Holley's welfare but did not receive a response, and Mr. Holley continued to scream.

[REDACTED] then went the basement to find his father, [REDACTED]. He returned to the second-floor bathroom moments later and continued to hear Mr. Holley screaming from inside the bathroom. [REDACTED] asked Mr. Holley if he had ingested anything, and he thought he heard Mr. Holley state "bleach," but he was unsure if this is what Mr. Holley said or if Mr. Holley was even responding to his question. At this point, [REDACTED] called 911.

FPD received a call for service at 7:10 p.m. Officers were immediately dispatched. The notes associated with the call for service indicate that [REDACTED] the 911 caller, said his friend was in the shower and "now he's in the bathroom screaming." [REDACTED] continued that there was a lot of movement in the bathroom and screaming but that his friend was not responding to him.

The officers who responded to the call were wearing body-worn cameras, which they activated prior to entering the house. According to that camera footage, FPD Officers Charles Ross and Aaron Gregware arrived at [REDACTED], a single-family two-story house situated within a residential neighborhood in Frederick, at 7:19 p.m. The officers were met by [REDACTED] who indicated Mr. Holley was upstairs. Officers went upstairs, and Officer Ross opened the bathroom door and found Mr. Holley laying naked on the bathroom floor, wailing and cursing. Mr. Holley then crawled on the ground out of the bathroom into the hallway past the top of the stairwell. He stood up but immediately dropped to the floor while continuing to curse. Officer Ross put on rubber gloves while Officer Gregware was near Mr. Holley's feet. Mr. Holley struck himself in the face multiple times, and Officer Ross told him to stop.

At 7:21:30 p.m., Officer Gregware asked Mr. Holley numerous times if he had taken any medication. Mr. Holley did not respond and continued to breath heavily and curse. Officers held Mr. Holley's hand and told him to relax. Mr. Holley swatted at Officer Gregware's hand. He then jumped up and paced around the second floor for a few moments before going into a second-floor bedroom and laying on the floor.

Over the next several minutes, while police waited for emergency medical services to arrive, Mr. Holley continued to speak in a nonsensical manner and failed to respond to officers. Officers continued to ask Mr. Holley what he took and told him that an ambulance was on its way. They told him multiple times to calm down, remain on the ground, and take deep breaths. During this time, Mr. Holley did not strike at himself or at others, and officers did not physically engage with Mr. Holley.

At 7:28:50 p.m., Mr. Holley stood up and started to pace. He repeatedly touched his penis and his buttocks. Officers continued to reassure Mr. Holley in a calm manner, expressing concern he would fall or hit his head. Officer Gregware offered Mr. Holley a washcloth while Officer Ross told Mr. Holley to sit down. Then, about a minute later, Mr. Holley began to waive his hands in Officer Ross's face trying to grab at his glasses and touched Officer Ross's chest with his hand. Officer Ross removed Mr. Holley's hands, but Mr. Holley continued to reach for Officer Ross, who then held Mr. Holley's wrists above his head. Mr. Holley tried to break off Officer Ross's grip and knocked his glasses off his face. Mr. Holley then tackled Officer Ross.



Image 1. Still frame from Officer Donato's body-worn camera footage showing Mr. Holley engaging with Officer Ross as described above.

Two seconds later, at 7:30:31 p.m., Officer Jacob Haynie deployed his Taser, striking Mr. Holley on the right side of his lower body. Mr. Holley fell to the ground on top of Officer Ross. Officer Francis Donato immediately knelt over him and cuffed his wrists while Office Gregware

restrained Mr. Holley's legs. Officer Gregware then called for a Reeves stretcher, which is a type of flexible stretcher that can be used for, among other things, transporting patients through tight spaces.

Officer Gregware told Officers Donato and Ross to put Mr. Holley in the recovery position, which is a way to position an individual's body on the ground that keeps the airway clear and open and ensures that any vomit or fluid will not cause the individual to choke. Mr. Holley continued cursing. Officers continued to hold down Mr. Holley, who struggled in response. Officer Donato told Mr. Holley to calm down. Officer Ethan Ramos arrived at the scene and entered the bedroom. Officer Ross was then replaced by Officer Ramos in restraining Mr. Holley.

At approximately 7:32 p.m., two paramedics entered the bedroom. At 7:33 p.m., an officer radioed that they had to use force and deploy a Taser. At 7:33:30 p.m., Officer Gregware told Mr. Holley to calm down and explained to him that he would be placed in a stretcher. As officers attempted to place Mr. Holley in the stretcher, he resisted by kicking his legs. At this point, according to camera footage, it appeared at least one Taser prong was still in Mr. Holley's body, and Officer Haynie deployed his Taser as officers were attempting to place Mr. Holley into the stretcher. After that, Officer Gregware said "stop, it's not in," in reference to a Taser prong. Mr. Holley continued to resist and Officer Gregware warned him that he was going to hit his head. Officer Ramos held Mr. Holley's legs in place and strapped his feet into the stretcher. At 7:34:20 p.m., Officer Haynie disconnected the Taser prongs from the Taser and announced that the wire was dead.

Officers Donato, Gregware, Ramos and Ross lifted Mr. Holley into the stretcher, while he continued to resist and attempted to bite Officer Donato. Mr. Holley was then carried down the steps and handed off to paramedics, who applied additional straps to the stretcher and loaded Mr. Holley into the ambulance.

Officers Donato, Ramos, and Ross joined the paramedics in the ambulance. Their body cameras continued to record. Officer Donato explained to the paramedics that Mr. Holley was slapping himself and jumping up and down. At approximately 7:38 p.m., Mr. Holley stated that he did not want to die, and Officer Donato explained they were taking him to the hospital.

At approximately 7:40 p.m., paramedics can be seen on camera providing routine medical care to Mr. Holley. He was asked his name but responded, "why would I tell you." At 7:42 p.m., the ambulance began driving to the hospital with a paramedic noting Mr. Holley was conscious and alert. He continued to mumble words and wail during the remainder of the ride to the hospital. At approximately 7:52 p.m., the ambulance arrived at the hospital, and Mr. Holley was wheeled in. The footage ended at that point.

### **III. Investigation**

The IID began its investigation upon notification from FPD of Mr. Holley's death on November 14, 2021, two days after his interaction with FPD. This section summarizes Mr.

Holley's medical records from FHH, the autopsy performed by the Office of the Chief Medical Examiner, and civilian and law enforcement witnesses' statements.

A. Medical Records

[REDACTED]

B. Medical Examination

Mr. Holley's autopsy was performed on November 15, 2021 by Dr. Victor Weedn, then the Chief Medical Examiner of Maryland. The following day, MSP personnel met with Dr. Weedn to discuss his preliminary findings and view Mr. Holley's body and the autopsy photographs.

Dr. Weedn explained that the primary cause of Mr. Holley's death was an acutely necrotic liver, and the manner of death was undetermined. He noted there was no significant trauma to Mr. Holley's body except for what may have been a Taser wound on Mr. Holley's left rear thigh. He also noted that he did observe mottled skin on Mr. Holley's legs, mostly in the upper area, and denuding (loss of the outermost layer of skin) on Mr. Holley's lower legs.

Because there was information that Mr. Holley may have ingested bleach, Dr. Weedn reported examining Mr. Holley's body for its presence. Dr. Weedn said there was no odor of bleach or ammonia and there were no chemical burns on Mr. Holley's esophagus. Dr. Weedn indicated, however, he believed there was a chemical present in Mr. Holley's heart based upon the heart's reaction when he stored it in a bottle with a formaldehyde solution. He said he believed Mr. Holley imbibed a large quantity of a substance that led to the necrotic liver, but he did not believe what Mr. Holley ingested were illicit drugs.

As part of his review of this case, Dr. Weedn consulted with Dr. Joshua King, who is Medical Director of the Maryland Poison Center, Program Director for the University of Maryland Nephrology Fellowship, and Professor at the University of Maryland School of Medicine and Pharmacy. MSP personnel spoke with Dr. King and facilitated his review of the body-worn camera footage of the incident from Officers Donato, Gregware, and Ross. Dr. King told MSP that his initial assessment after watching the footage was that Mr. Holley may have been hallucinating at the time of his interaction with police and that his behavior was not entirely indicative of someone who had solely ingested a toxin. Dr. King said he believed that illicit drugs may have played a role in Mr. Holley's behavior and/or death, but Dr. King was not able to opine as to what type of drugs Mr. Holley may have ingested.

As of June 6, 2022 and according to Dr. Pamela Southall, the interim Chief Medical Examiner of Maryland, the OCME has not completed a written autopsy report in this matter and lists the case as "pending." In February, Dr. Weedn left employment with the OCME, which has caused delays in finalizing this case.

## C. Civilian Witness Statements

1. [REDACTED]

During his interview with MSP and the IID, [REDACTED] said he had known Mr. Holley for several years. He indicated that he and Mr. Holley were working for the staffing agency for the last month, and they began a job in York on Sunday, November 7, 2021. He said they stayed together at a motel, and Mr. Holley had no behavioral issues during that time. [REDACTED] said he did not know Mr. Holley to do drugs other than marijuana.

[REDACTED] said he and Mr. Holley worked together from November 7<sup>th</sup> until Wednesday, November 10<sup>th</sup> without issue and were asked to work another job starting on Thursday, November 11<sup>th</sup>. He said when the two arrived at the job site, they were fired for not following the company's security protocols. [REDACTED] said he took an Uber back to his house in Frederick, but Mr. Holley remained in York because he hoped to work on Friday. He then moved from the motel room he was sharing with [REDACTED] to a different motel.

[REDACTED] said Mr. Holley left York on Friday afternoon and took an Uber to [REDACTED] house in Frederick. He said Mr. Holley planned to stay the night before taking a bus back to Virginia early Saturday morning. [REDACTED] showed investigators a text from Mr. Holley indicating that he arrived at the house at 5:43 p.m. [REDACTED] said there were no behavioral issues with Mr. Holley and that he was quiet and reading bible verses on his phone.

Around 7:00 p.m. Mr. Holley asked for a bottle of water and a towel because he wanted to take a shower. Approximately 10 minutes later, [REDACTED] said he began hearing Mr. Holley scream and bang around in the bathroom. [REDACTED] checked on Mr. Holley, but he was not responsive, and the door to the bathroom was locked. [REDACTED] then went downstairs to get his father for help and the two went upstairs. [REDACTED] called 911 and then called Mr. Holley's mother and put her on speaker to try to calm Mr. Holley. He said once the police arrived, he went downstairs and did not witness the interaction between Mr. Holley and police.

2. [REDACTED]

During his interview with MSP and the IID, [REDACTED] said he was in the basement of the house when his son came downstairs seeking help. [REDACTED] went upstairs and heard Mr. Holley screaming, locked in the bathroom. He said he made attempts to contact Mr. Holley. At one point he thought he heard Mr. Holley say "bleach" when he asked him what he took, but he told investigators he could have been mistaken or that Mr. Holley might have been screaming the word "bitch." [REDACTED] directed his son to call 911, and he then called 911 himself to relay that Mr. Holley possibly ingested bleach. [REDACTED] remained downstairs during the interaction between Mr. Holley and police.

#### D. Search of the House

On November 15, 2021, when investigators interviewed ██████████ he consented to a search of his house. Investigators noted that the area where Mr. Holley tackled Officer Ross and where he was Tased was a narrow area at the foot of a bed, and it was approximately three to four feet in width.

On November 17, 2021, after speaking with Dr. Weedn, investigators returned to ██████████ house to photograph any household products that could have been ingested by Mr. Holley. Located in the bathroom was Fabuloso all-purpose cleaner, Clorox all-purpose cleaner, Invisible Glass, Zep glass cleaner, LA's Totally Awesome all-purpose concentrate, and Pine Sol. Located just outside of the bathroom in a laundry closet was powdered Borax, Gain laundry detergent, and gallons of liquid bleach. Photographs of these items were provided to the OCME.

#### E. Law Enforcement Officers' Statements

The involved officers declined to be interviewed by the IID,<sup>1</sup> however, all five officers did write reports describing their responses to this incident. Those accounts are detailed below and generally match what is visible on each officer's body-worn camera footage. Some officers also made statements while on scene that were captured by body-worn cameras. Where relevant, those statements are detailed in the factual section above.

##### 1. Officer Charles Ross

In his written report, Officer Ross stated he responded to the scene with Officer Gregware in reference "to an individual having a mental health emergency." His report further states, "the caller advised that his friend was in the bathroom screaming and would not respond" and "the caller advised that his friend possibly drank bleach."

Officer Ross wrote that upon arrival he heard "screaming and banging noises coming from the bathroom." He opened the bathroom door and found Mr. Holley naked on the bathroom floor. Mr. Holley began sliding around on the floor and then stood up before "slamm[ing] himself on the ground." He then "repeatedly smack[ed] himself in the face and pull[ed] his lip." Mr. Holley went into a bedroom and began to make "incoherent statements." He then stood back up and began "pulling on his genitals." Mr. Holley next grabbed Officer Ross's hands. Mr. Holley let go of Officer Ross's hands but placed his own hand "inside of his anal cavity and began digging." Mr. Holley then began "waving" his hands in Officer Ross's face. At this point, Officer Ross wrote, he "grabbed [Mr. Holley's] right hand with my left and his left hand with my right hand." Mr. Holley then pushed Officer Ross "with enough force that [Officer Ross] started falling backward" and "tackled" him to the ground.

Officer Ross wrote that he attempted to detain Mr. Holley who "resisted" by "tensing up and pulling his arms toward him." Officer Ross was able to hold Mr. Holley's right arm behind

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<sup>1</sup> These officers, like the subject of any criminal investigation, have the right under the Fifth Amendment to not make any statements.



his back and reports that Officer Donato had Mr. Holley's left arm behind his back at which point Mr. Holley was placed in handcuffs. Officer Ross wrote that Mr. Holley was placed in the "recovery position" and was transported to an ambulance in a stretcher. He reports that Mr. Holley continued to move and kick while he was restrained. Officer Ross does not mention in his report the deployment of his Taser.

Officer Ross said he and Officer Donato rode in the back of the ambulance with Mr. Holley. While at the hospital, Officer Ross filled out a petition for emergency evaluation pursuant to Maryland Health General Article 10-620. In his brief hand-written narrative appended to the petition, Officer Ross wrote that he believed Mr. Holley was having a "mental health crisis."

## 2. Officer Aaron Gregware

Officer Gregware wrote that he responded to the scene with Officer Ross in reference to a "mental subject" and noted that Mr. Holley "appeared to be under the influence of an unknown substance." Officer Gregware wrote Mr. Holley was "a danger to himself" based on his observations.

Officer Gregware said Mr. Holley began "crawling across the ... floor while still screaming" and then began "slapping himself in the head." He rolled onto his back and began "biting/sucking on his fingers." Officer Gregware reported Mr. Holley "slapped at" his hands several times. After "approximately 10 minutes of verbally trying to keep [Mr.] Holley calm until EMS arrived," Mr. Holley walked out of the bedroom and into another bedroom before returning. When he returned, Mr. Holley was standing directly in front of Officer Ross and began "swinging his arms/grabbing at" Officer Ross.

Officer Gregware wrote that "suddenly...[Mr.] Holley pushed Officer Ross and then tackled him." Officer Ross was "launched across the bedroom" with Mr. Holley landing on top of Officer Ross. Officer Haynie then deployed his Taser as Officer Donato began to pull Mr. Holley off Officer Ross. Officer Ross and Officer Gregware controlled Mr. Holley's legs, but Mr. Holley "kicked away" from Officer Gregware twice. He placed Mr. Holley in a "toe hold" to prevent further kicking. At this point, officers were able to handcuff Mr. Holley. Once this was complete, Officer Gregware advised officers to place Mr. Holley in a "recovery position" on his side. Mr. Holley continued to resist, however, and attempted to bite Officer Donato. Officer Gregware advised Officer Donato to utilize a "kimura grip" on Mr. Holley to control his movements.

Mr. Holley was then placed in a Reeves stretcher but continued to kick and resist. He also again attempted to bite Officer Donato.

## 3. Officer Jacob Haynie

Officer Haynie wrote that he arrived on scene and heard a male screaming from inside the residence. He entered the house and saw officers in a bedroom with Mr. Holley who was

completely naked and laying in a small hallway that connected the bathroom to the bedroom. He was making “jerking movements” and “uttering short phrases to himself.”

Officer Haynie indicated that officers on scene had already made the decision that Mr. Holley would be taken to the hospital. He next notes that he drew his departmental issued Taser from the holster and “armed it in the event I had to deploy it due to [Mr.] Holley’s unpredictable behavior and appearing to be under the influence of an unknown substance.” Officer Haynie noted that Mr. Holley was “aimlessly walking” and “seemed to not comprehend what officers were saying.”

Officer Haynie wrote that Mr. Holley “began touching Officer Ross in the chest and arm area.” Mr. Holley began “flailing his arms,” and Officer Ross “held them to stop them from hitting him.” Mr. Holley then touched his buttocks before touching Officer Ross “more aggressively.” He “started walking aggressively into” Officer Ross’s body. Mr. Holley started to attempt to punch Officer Ross and pushed his face. Mr. Holley then “crouched down in a football-like stance and attempted to tackle Officer Ross.”

At this point, Officer Haynie aimed his Taser at Mr. Holley and “deployed the cartridge in defense of Officer Ross.” Officer Haynie reports the two Taser probes went into Mr. Holley’s left buttock and thigh, and he fell onto the ground on top of Officer Ross. After five seconds, officer Haynie said Mr. Holley continued to “kick and assault officers” and “resist handcuffing efforts” but he did not utilize his Taser because of the “tight space” and the fact that officers were on top of the Taser wires. Mr. Holley was then handcuffed and placed in the “recovery position” but he attempted to bite Officer Donato and tried to kick other officers. At this point, Officer Haynie “activated the ARC switch to energize the deployed cartridge for a second cycle of five seconds” but “due to the probe being ripped out of [Mr.] Holley’s buttock and leg, the second cycle was not effective and was terminated at four seconds as to not Tase officers by accident.”

#### 4. Officer Francis Donato

Officer Donato indicated he arrived to find Officers Gregware and Ross present and interacting with Mr. Holley who was “completely naked, talking to himself and jumping up and down.” He wrote that officers “attempted to deescalate the situation” by asking Mr. Holley to lay on the ground, and he complied, although he continued to talk to himself and was nonresponsive to officer questioning.

Officer Donato wrote that Mr. Holley walked up to Officer Ross and grabbed Officer Ross’ hands. Officer Ross pulled his hand away , but Mr. Holley continued to swing his arms at Officer Ross. Mr. Holley then began to “push” Officer Ross and then “tackled him.” Officer Donato reports that at this point Officer Haynie deployed his Taser on Mr. Holley and he went over to assist Officer Ross who was positioned underneath Mr. Holley. Officer Donato reports he pulled Mr. Holley off Officer Ross and “pulled” Mr. Holley’s left arm behind his back while Officer Ross placed a handcuff on Mr. Holley’s left arm. Officer Ross then attempted to “pull [Mr.] Holley’s right arm behind his back” but Mr. Holley “resisted by pulling away.” Officer Donato wrote that he was able to place his forearm “across [Mr.] Holley’s face to control him”

while Officer Ross “pulled [Mr.] Holley’s right arm behind his back.” At this point, Officer Donato placed a handcuff on Mr. Holley’s right arm.

Officer Donato said Mr. Holley was “placed in the recovery position.” He began to rock his body, and Officer Donato “placed his arm into a kimura hold to control his movement and keep him in the recovery position.” EMS brought a Reeves stretcher to the scene, but as officers attempted to move Mr. Holley to the stretcher, he began to kick at officers and attempted to bite Officer Donato. At this point, Officer Haynie deployed his Taser a second time, and officers were able to “gain control” of Mr. Holley’s legs. Mr. Holley was placed onto the stretcher and continued to rock his body and attempt to bite. Officer Donato wrote that he “put his hand on the side of [Mr. Holley’s] head to control him.” Mr. Holley was then strapped into the stretcher and taken to the ambulance.

#### 5. Officer Ethan Ramos

Officer Ramos wrote that Officers Ross, Gregware, and Donato were upstairs with Mr. Holley when he arrived. He wrote he observed Mr. Holley “on the ground resisting control efforts.” Officer Ramos wrote he “utilized empty hand control methods to hold down [Mr.] Holley’s legs and prevent him from striking anybody on scene” and that Mr. Holley was then placed on a stretcher and placed in the ambulance.

### **IV. Involved Parties’ Backgrounds**

As part of its standard investigative practice, the IID obtained information regarding Mr. Holley and the involved officers’ criminal histories, as well as the involved officers’ departmental internal affairs records and relevant training. In this case, this information did not affect the analysis of potential criminal charges.

To the extent it exists, any criminal history of any involved party is being provided to the Frederick County State’s Attorney’s Office with this interim report.

#### A. Daniel Michael Holley

As stated above, Mr. Holley was a 23-year-old Black man who lived in Virginia.

#### B. Officer Francis Donato

Officer Donato was hired by FPD in 2017 and is currently assigned to the patrol division. He is a 30-year-old white man. He most recently received in-person training in defensive tactics on May 27, 2021. He last certified his review of the FPD Use of Force Policy on January 21, 2021. Officer Donato has recorded 25 prior uses of force, all of which have been reviewed pursuant to FPD policy and all of which were marked as “closed” or found to be “within policy.” He has no relevant internal affairs complaints.

C. Officer Aaron Gregware

Officer Gregware was hired by FPD in 2012 and is currently assigned to the patrol division. He is a 33-year-old white man. He most recently received in-person training in defensive tactics on April 29, 2021. He last certified his review of the FPD Use of Force Policy on January 27, 2021. Officer Gregware has recorded 32 prior uses of force, all of which have been reviewed pursuant to FPD policy and all of which, except for one use of force, were marked as “closed” or found to be “within policy.” That one prior use of force resulted in an internal affairs allegation that was ultimately “not sustained.” The IID also reviewed that file and did not find it relevant to the analysis of this incident. Officer Gregware has no other relevant internal affairs complaints.

D. Officer Jacob Haynie

Officer Haynie was hired by FPD in 2019 and is currently assigned to the patrol division. He is a 25-year-old white man. He most recently received in-person training in defensive tactics on April 15, 2021. He last certified his review of the FPD Use of Force Policy on January 21, 2021. Officer Haynie has recorded 16 prior uses of force, all of which have been reviewed pursuant to FPD policy and all of which were found to be “within policy.” Regarding his use of a Taser, Officer Haynie last received in-person training in conducted electrical weapons (“CEWs”) on July 28, 2021. He received his initial CEW certification on November 12, 2019. He has no relevant internal affairs complaints.

E. Officer Ethan Ramos

Officer Ramos was hired by FPD in 2020 and is currently assigned to the patrol division. He is a 25-year-old white man. He most recently received in-person training in defensive tactics on March 16, 2021. He last certified his review of the FPD Use of Force Policy on January 25, 2021. Officer Ramos has recorded 11 prior uses of force, all of which have been reviewed pursuant to FPD policy and all of which were marked as “not yet entered or found to be “within policy.” Officer Ramos has no relevant internal affairs complaints.

F. Officer Charles Ross

Officer Ross was hired by FPD in 2017 and is currently assigned to the patrol division. He is a 37-year-old white man. He most recently received in-person training in defensive tactics on April 15, 2021. He last certified his review of the FPD Use of Force Policy on January 22, 2021. Officer Ross has recorded 12 prior uses of force, all of which have been reviewed pursuant to FPD policy and all of which were marked as “closed” or “not yet entered” or found to be “within policy.” Officer Ross has no relevant internal affairs complaints.

## **V. Applicable Policies**

FPD has the following policies concerning use of force and the use of Tasers. The complete policies are attached as Appendix B.

### **A. Use of Force (General Order Number 705)**

FPD policy provides that officers “will employ only force that is objectively reasonable when necessary to accomplish lawful objectives.” The policy continues that FPD officers “will attempt to de-escalate prior to using force when it is safe to do so and there is not an imminent threat of death or serious bodily injury to the officer(s) or a third party.” The policy specifically authorizes “appropriate force” in order “to defend from a physical attack or the use of physical force by another” and “to accomplish a legally permitted law enforcement activity such as . . . service of an emergency petition,” among other situations. The policy also states that an officer does not have to “actually be physically attacked or suffer injury prior to the use of appropriate force.”

### **B. Conducted Electrical Weapons (General Order Number 715)**

FPD policy provides that Conducted Electrical Weapons, a category that includes Tasers, must be used consistent with the FPD Use of Force Order, discussed above, and that they “will only be used on persons posing an imminent threat of physical injury to themselves or others.” The policy notes that it is not prohibited for an officer to use a Taser “if objectively reasonable when necessary to accomplish a legally permitted law enforcement activity such as the service of an emergency petition.”

The policy also provides several factors to be considered by an officer that, when present, require “enhanced justification for . . . utiliz[ing] the” Taser. Relevant factors include “[p]ersons exhibiting obvious signs of medical or mental crisis;” “[p]ersons demonstrating obvious signs of drug or alcohol intoxication;” Taser “discharged multiple times on an individual;” and “[p]ersons who are handcuffed or otherwise partially restrained.”

## **VI. Applicable Law and Analysis**

The IID analyzed Maryland statutes that could be relevant in a death of this nature. This section presents the elements of each possible criminal charge and analyzes these elements considering the findings discussed above. The interim report focuses specifically on the officers’ use of force against Mr. Holley as well as any potential misconduct committed by the officers.

### **A. Second Degree Assault**

The crime of second degree assault requires the State prove: (1) that the defendant caused offensive physical contact to victim; (2) that the contact was the result of an intentional or reckless act of the defendant and not accidental; and (3) that the contact was not legally justified. MPJI-Cr 4:01 Second Degree Assault, MPJI-Cr 4:01 (2d Ed. 2021). “‘Reckless act’ means

conduct that, under all circumstances, shows a conscious disregard of the consequences to other people and is a gross departure from the standard of conduct that a law-abiding person would observe.” *Id.*

Maryland law, however, recognizes a “law enforcement justification defense,” which holds that every police officer “must commit a ‘technical’ battery in order to make an arrest,” and has legal justification to do so, so long as the force used is not excessive. *French v. Hines*, 182 Md. App. 201, 264-65 (2008) (citations omitted). But if the officer uses excessive force in effectuating an arrest, the privilege is lost. *Id.* Whether an officer’s use of force is excessive is evaluated under a standard of objective reasonableness “in light of the facts and circumstances confronting them.” *Lombardo v. City of St. Louis, Missouri*, 594 U.S. \_\_\_, 141 S. Ct. 2239, 2241 (2021) (per curiam) (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)); accord *State v. Pagotto*, 361 Md. 528, 555 (2000) (applying the *Graham* reasonableness standard). In determining whether an officer’s use of force is reasonable, attention is to be paid to “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396.<sup>2</sup>

In this case, based on the available evidence, it would be difficult for the State to prove that officers did not act pursuant to the law enforcement justification. The facts suggest that officers were dispatched to [REDACTED] house because Mr. Holley was in a state of extreme distress, and he needed to be taken to a hospital pursuant to an emergency petition. When officers arrived on scene, Mr. Holley was engaging in behavior that was endangering his own well-being, such as slapping himself in the face, biting his fingers, and moving his body in a manner where he could have repeatedly hit his head. While officers were able to contain Mr. Holley on the floor for several minutes, his behavior soon escalated when he struck Officer Ross and tackled him to the ground, demonstrating a threat of serious bodily injury to all the responding officers. It was only at this point that Officer Haynie deployed his Taser, the evidence suggests, to subdue Mr. Holley so he could be safely taken into custody without harming himself or others. Moments later, when Officer Haynie deployed his Taser the second time, Mr. Holley was continuing to resist officers by kicking his legs, again putting himself and officers in danger. Given Mr. Holley’s actions, there is no evidence to suggest, therefore, that the use of force, including Officer Haynie deploying his Taser twice, was unreasonable or otherwise excessive under *Graham*.

## B. Reckless Endangerment

The crime of reckless endangerment requires that State prove: (1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; (2) that a reasonable person would not have engaged in that conduct; and (3) that the defendant

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<sup>2</sup> In the 2021 session of the General Assembly, the legislature enacted a package of bills to foster police reform and accountability, collectively titled the Maryland Police Accountability Act of 2021, including Senate Bill 71, which was enacted over the Governor’s veto as 2021 Maryland Laws, Chapter 60. Among other things, Chapter 60 created a new Section 3-524 of the Public Safety Article titled the “Maryland Use of Force Statute,” with the express aim of supplanting the *Graham v. Connor* reasonableness standard with a standard of whether force is necessary and proportional. The new use of force statute is effective July 1, 2022 and does not apply to this case.

acted recklessly. MPJI-CR 4:26B Reckless Endangerment, MPJI-CR4:26B (2d Ed. 2021). “The defendant acted recklessly if he was aware that his conduct created a risk of death or serious physical injury to another and then he consciously disregarded that risk.” *Id.*

The act which constitutes the physical element of reckless endangerment is the “reckless conduct and not the harm caused by the conduct...,” *Minor v. State*, 326 Md. 436, 442 (1992). Whether the defendant's conduct created a substantial risk of death or physical injury is an objective determination and is not dependent upon the subjective belief of the defendant. *Id.* at 443. “The test is whether the . . . misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish.” *Id.* The requisite gross departure is satisfied by negligence that is “gross or criminal, *viz.*, such as manifests a wanton or reckless disregard of human life.” *Mills v. State*, 13 Md. App. 196, 200 (1971) (interpreting voluntary manslaughter), cert. denied, 264 Md. 750 (1972). A substantial risk of harm must be created and then disregarded for a defendant to be guilty of reckless endangerment. *Williams v. State*, 100 Md. App. 468, 503-04 (1994).

As noted above, the available evidence does not indicate the officers’ conduct was unreasonable, as Mr. Holley was engaging in increasingly violent behavior that put himself and others at risk of harm.

### C. Homicide-Related Charges

There are several other charges for which full analysis was not warranted given the facts of this incident. First, there is a lack of any requisite intent on behalf of the five involved officers as evidenced by their behavior during their interaction with Mr. Holley. Second, there is a lack of causation between the officers’ use of force and Mr. Holley’s death given Dr. Weedn’s opinion that Mr. Holley died of a necrotic liver. Those homicide-related charges are, however, addressed briefly below.

The crimes of first-degree murder, intentional second-degree murder, and voluntary manslaughter each requires the State to prove the defendant had “either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result.” MPJI-Cr 4:17 Homicide—First Degree Premeditated Murder and Second Degree Specific Intent Murder, MPJI-Cr 4:17 (2d Ed. 2021); *Cox v. State*, 311 Md. 326, 331 (1988) (voluntary manslaughter is “an intentional homicide”). In this case, there are no available facts suggesting that any of the five involved officers intended to kill or cause serious bodily harm to Mr. Holley.

The crime of second-degree depraved heart murder requires the State to prove the defendant “created a very high degree of risk to the life of [Mr. Holley]” and “acted with extreme disregard of the life endangering consequences” of such risk. MPJI-Cr 4:17.8 Homicide—Second Degree Depraved Heart Murder and Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.8 (2d Ed. 2021). There is no available evidence suggesting that any involved officer “created a very high degree of risk of life” or “acted with extreme disregard.”

To prove involuntary manslaughter, the State must prove: “(1) that the defendant acted in a grossly negligent manner; and (2) that this grossly negligent conduct caused the death of [Mr. Holley].” MPJI-Cr 4:17.9 Homicide—Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.9 (2d Ed. 2021). Gross negligence is conduct which “amount[s] to a wanton and reckless disregard for human life.” *Duren v. State*, 203 Md. 584, 588 (1954).

The Court of Appeals has held that, “a violation of police guidelines *may* be the basis for a criminal prosecution.” *State v. Pagotto*, 361 Md. 528, 557 (2000) (citing *State v. Albrecht*, 336 Md. 475, 502-03 (1994)) (emphasis in original). The Court clarified that, “while a violation of police guidelines is not negligence *per se*, it is a factor to be considered in determining the reasonableness of police conduct.” *Id.* (citations omitted). Maryland courts have considered officers’ policy violations as evidence of negligence, recklessness, unreasonableness, and corrupt intent. *See, e.g., Albrecht*, 336 Md. at 503; *Pagotto*, 361 Md. at 550-53; *Koushall v. State*, 249 Md. App. 717, 728-29 (2021), *aff’d*, No. 13, Sept. Term, 2021 (Md. Feb. 3, 2022); *Kern v. State*, No. 2443, Sept. Term 2013, 2016 WL 3670027, at \*5 (Md. Ct. Spec. App. Jul. 11, 2016); *Merkel v. State*, No. 690 Sept. Term 2018, 2019 WL 2060952, at \*8 (Md. Ct. Spec. App. May 9, 2019); *Mayor and City Council of Baltimore v. Hart*, 395 Md. 394, 398 (2006) (civil litigation). However, a “hypertechnical” violation of policy, without more, is not sufficient to establish gross negligence. *Pagotto*, 127 Md. App. at 304.<sup>3</sup>

It is unlikely the State could prove any of the involved officers were grossly negligent in their response to Mr. Holley, in part, because the evidence suggests they were acting within FPD policy. Notably, the officers made numerous attempts to “de-escalate” Mr. Holley’s behavior and the threat he posted to himself prior to using any force. Further, officers only used force to “defend” from Mr. Holley’s “physical attack” and to “accomplish [the] service of an emergency petition.” And while FPD policy does require “enhanced justification” for the use of a Taser in this particular case (*i.e.*, where a person is “exhibiting obvious signs of medical or mental crisis;” “demonstrating obvious signs of drug or alcohol intoxication;” who is “handcuffed or otherwise partially restrained” and when the Taser is “discharged multiple times on an individual”), Mr. Holley’s behavior, when viewed in its entirety, would likely satisfy such enhanced justification.

Additionally, as to the second element of an involuntary manslaughter charge, there is also no basis to conclude that the officers caused Mr. Holley’s death.

#### D. Misconduct in Office

The crime of misconduct in office requires the State prove: (1) that the defendant was a public officer; (2) that the defendant acted in their official capacity or took advantage of their public office; and (3) that the defendant corruptly did an unlawful act (malfeasance), corruptly failed to do an act required by the duties of their office (nonfeasance), or corruptly did a lawful act (misfeasance). MPJI-Cr 4:23 Misconduct in Office (Malfeasance, Misfeasance, and

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<sup>3</sup> For an action to be grossly negligent, it ordinarily must violate departmental policy. If an action was grossly negligent but did not violate departmental policy, that would imply either that the department had no policy on point or that the policy permitted the grossly negligent conduct. In this case, FPD has policies on point that do not condone actions that could be considered grossly negligent. This interim report, therefore, will consider gross negligence through the perspective of possible policy violations.



Nonfeasance), MPJI-Cr 4:23 (2d Ed. 2021). “[T]he conduct must be a willful abuse of authority and not merely an error in judgment.” Comment to *id.* (citing Hyman Ginsberg and Isidore Ginsberg, *Criminal Law & Procedure in Maryland* 152 (1940)).

While the State need not show direct evidence of intent when alleging malfeasance, as discussed above, the available evidence does not indicate that any of the involved officers engaged in an unlawful act. *See Pinheiro v. State*, 244 Md. App. 703, 722 n. 8 (2020). Regarding misfeasance and nonfeasance there is no evidence that any of the officers acted with a corrupt intent, defined as “depravity, perversion, or taint.” *Id.*

## **VII. Conclusion**

This interim report has presented factual findings and legal analysis relevant to the death of Danny Michael Holley that occurred in November 2021, in Frederick, Maryland. The IID will supplement this report when it receives the written autopsy report from the OCME, but please contact the IID if you would like us to supplement this report in any other way through further investigation or analysis.

## Appendices

### **Appendix A – Materials Reviewed**

911 Calls (2 recordings)  
BWC (8 videos)  
CAD Reports (5 documents)  
Civilian Witness Statements (2 recordings, 1 document)  
Decedent Documents (3 documents)  
FPD Media Release (1 video)  
FPD Reports (1 document)  
Internal Affairs Histories and Training Records (10 documents)  
Medical Records (8 documents)  
MSP Reports (11 documents)  
NCIC (5 documents)  
OAG Reports (6 documents)  
Photographs (25 photographs)

### **Appendix B – Relevant FPD Policies**

See attached.

**Appendix B**  
Relevant FPD Policy

# FREDERICK POLICE DEPARTMENT GENERAL ORDER

**Section 07:** Force, Detention and Arrest  
**Topic:** USE OF FORCE  
**Approved:** 01/20/21  
**Review:** Annually in March by the Professional Services Division Commander  
**Supersedes:** General Order 705 dated 10/09/20

**Order Number:** 705  
**Issued by:** Chief of Police

## .01 PURPOSE:

To provide guidelines to sworn personnel regarding the application of various types of force utilized by officers to gain compliance or accomplish legitimate law enforcement goals. In addition, this Order will explain policies and procedures regarding the reporting of force incidents.

## .02 CROSS-REF:

G.O. 435, "Canine Unit"  
G.O. 710, "Non-Lethal Force"  
G.O. 712, "Less-Lethal Force: Impact Weapons"  
G.O. 720, "Deadly Force Guidelines and Investigations"  
G.O. 773, "Sick or Injured Prisoners"  
G.O. 1422, "Jurisdiction"  
G.O. 1610, "Complaints and Internal Investigations"

## .03 DISCUSSION:

The Department recognizes that it has a responsibility to control the application of physical force by its officers to ensure that force is used in conformance with existing professional standards and within limits permitted by law. In addition, the Department must ensure that the use of force by its members is properly documented and that there is a complete, thorough, and objective supervisory and command review of the incident to ensure compliance with existing departmental policies and procedures.

## .04 POLICY:

It is the policy of the Frederick Police Department that its members will employ only force that is **objectively reasonable when necessary** to accomplish lawful objectives. In accordance with case law, the "reasonableness" of the force used will be a major factor in any review as to the propriety of any use of force (whether constructive or actual), as well as whether the force was appropriately applied and in accordance with training. With the understanding that use of force incidents are extremely fluid, dynamic, and oftentimes violent encounters, it is the policy of the Frederick Police Department that its members will attempt to de-escalate prior to using force when it is safe to do so and there is not an imminent threat of death or serious bodily injury to the officer(s) or a third party.

It is also the policy of the Department that its members will document, in writing, all incidents in which physical force above a certain defined level, and in some cases "constructive force," in a Use of Force BlueTeam Entry. The Department will monitor, review, evaluate and investigate in accordance with this order the amount of force used by its members in the performance of their duties. Use of Force BlueTeam entries will be analyzed and evaluated by supervisors and command members of the agency to determine the appropriateness of the force used, including whether the force used was a tactic/technique recognized, accepted, and/or taught by the Department. Based upon this supervisory and command review, a determination will be made whether the force used, as reported and affirmed by any review, was objectively reasonable and appropriate, or whether it was inappropriate and/or excessive. In cases where a determination is made that the force used was inappropriate and/or excessive, the Department will decide whether remedial training and/or administrative action is warranted.

## .05 DEFINITIONS:

**APPROPRIATE FORCE:** The amount of force, which a reasonable, trained law enforcement officer would apply or determine to be permissible to apply in a given situation in order to obtain compliance from a resistant individual, using established departmental and/or judicially accepted standards. Appropriate Force must be commensurate with the actual or potential threat posed based upon the articulable facts of a given situation, in keeping with the policies and procedures of the Department, and recognized by the courts as objectively reasonable.

**BLUETEAM:** The web based data entry software for Use of Force reports, submissions and review. BlueTeam Use of Force software is composed of two sections:

- A. **BLUETEAM USE OF FORCE ENTRY:** Initial use of force entry completed by officer(s) who utilized reportable force during the incident.
- B. **BLUETEAM USE OF FORCE REVIEW:** Electronic review of a BlueTeam use of force entry by Supervisors/Commanders within the applicable chain of command.

**DEADLY FORCE:** Physical force, which, by its application, causes death or has a high probability of causing death or serious physical injury.

**DE-ESCALATION:**

- A. **Pre-Incident:** Taking action or communicating during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat faced by the officer so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. Examples of pre-incident de-escalation actions include, but are not limited to: tactical use of cover, use of tactical verbal communication strategies, etc.
- B. **Post-Incident:** Taking action to communicate and professionally stabilize a situation after a use of force. Examples of post-incident de-escalation actions include, but are not limited to: placing the person on which force was used into a recovery position, maintaining an open airway, establishing a professional rapport, application of immediate life-saving first aid techniques when it is safe to do so, immediate summoning emergency medical personnel (if necessary), etc.

**EMPTY-HAND CONTROL:** Any weaponless control or technique performed with empty or open hands, such as control holds, joint locks and manipulation, pressure points, take downs and the intentional moving (pushing) of an uncooperative person, as well as instinctive weaponless control techniques used to gain control of a resistant subject. **Empty-hand control does not include any strikes or active use of personal weapons (feet, fists, elbows, knees, etc.) or the mere application of handcuffs.**

**EXCESSIVE FORCE:** Physical force that is grossly disproportionate to the actual or potential threat posed by an individual, and exceeds the amount of force that a reasonable, trained police officer would deem permissible to apply in a given situation. The application of excessive force either causes or may potentially cause injury to an individual.

**EXIGENT CIRCUMSTANCES:** Those circumstances that would cause a reasonable officer to believe that a particular action is necessary to prevent physical harm to self or others, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement duties.

**FORCE:** The amount of effort used by a police officer to gain compliance from a subject while acting in his official capacity, whether on or off duty. This definition includes both physical force and "constructive force" (presence, commands, pointing a firearm, etc.).

**IMMINENT:** Likely to happen without delay; impending; threatening.

**INAPPROPRIATE FORCE:** A higher level of force than a reasonable, trained police officer would

utilize or deem permissible to apply in a given situation using established departmental and/or judicially accepted standards.

**LIGHT-HANDED CONTROL:** Any minimal physical hand contact used by an officer to guide, direct or steer an individual in a given direction.

**NON-DEADLY FORCE:** Physical force, which by its application, is not intended to cause and/or has a low probability of causing death or serious physical injury.

**OBJECTIVELY REASONABLE:** The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

**REASONABLE BELIEF:** Believing that a given fact or combination of facts exist, and that the circumstances which are known, or should be known, are such as to cause a reasonable person to believe so.

**REPORTABLE FORCE:** Those types of force that the Department requires to be documented in a Use of Force Report as outlined in this General Order (Sections .35 and .40)

**SERIOUS PHYSICAL INJURY:** An injury that causes major disfigurement, severe tissue damage, broken bones, internal organ injury, or permanent paralysis.

**.10 LEGAL STANDARD:**

This Order is for departmental use only and does not alter any criminal or civil standard of care. The Department's policy and procedures should not be construed as creating a greater or higher legal standard of safety or duty of care in an evidentiary sense with respect to third party claims. Violations of this Order will only form the basis for departmental administrative sanctions.

**.15 AUTHORIZATION TO USE FORCE:**

1. The Department authorizes its sworn personnel to use **APPROPRIATE** force under specific conditions:
  - A. To defend from a physical attack or the use of physical force by another;
  - B. To defend a third party from a physical attack or the use of physical force by another;
  - C. To affect the lawful arrest of a non-compliant individual and/or to prevent a suspect's escape from police custody;
  - D. To secure and maintain control of an arrestee while detained or in police custody,
  - E. To accomplish a legally permitted law enforcement activity such as the execution of a search and seizure warrant or the service of an emergency petition, etc.
2. The department understands that an officer's **PERCEPTIONS** are an essential element in the decision to use force. **Nothing in this Order is intended to infer that an officer or third party must actually be physically attacked or suffer injury prior to the use of appropriate force.** Appropriate force may be used as stated above in response to perceived imminent danger or a threat, provided that the perceived danger/threat or reason the force was necessary can be articulated, and is a threat/necessity to which a reasonable, trained police officer would likewise respond.
3. When assessing the need to use force and the appropriate level of force to use,

personnel will consider all relevant information, including, but not limited to, the following:

- A. The nature, extent, and imminence of the threat or the perceived threat to the officer and/or third party by the individual(s);
  - B. The severity of the crime or incident;
  - C. The threat level posed or perceived to be posed by the individual(s);
  - D. Any attempt made by the individual to evade arrest by flight;
  - E. The availability of, and benefit of, other options and/or tactics;
  - F. The skill level of the particular officer in various tactics/techniques;
  - G. The danger to innocent bystanders; and,
  - H. The established General Orders and training guidelines of the Department.
4. The force used in any incident must be appropriate as defined in this Order. **Personnel are expressly prohibited from using inappropriate or excessive force.** Force used by sworn members of the Department will be evaluated by supervisors and command staff to ensure that it was appropriate and objectively reasonable. Personnel using force deemed to be either inappropriate or excessive may be subject to remedial training and/or administrative action.
5. Officers of the Frederick Police Department have a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so. Officers are required to report such occurrences to his/her immediate supervisor immediately and when it is safe to do so.
6. All personnel authorized to carry various deadly and non-deadly weapons will be trained in the proper application of force and the contents of this Order prior to being permitted to carry such weapons. After initial academy training, personnel must show proficiency in the use of agency authorized weapons and knowledge in the use of force policies annually during In-Service which will be documented in accordance with established training guidelines, or, for weapons specifically addressed in their own general order or standard operating procedure, as described in that G.O. or S.O.P.
7. Definitions of conditional terms, such as those for reasonable belief, serious physical injury, or similar terms used to qualify this directive, shall be included and reviewed during annual in-service training.

**.25 TYPES OF FORCE PROHIBITED:**

1. The Department recognizes that in a truly violent confrontation or struggle during which an officer is unable to use the tactics and/or equipment provided because of the circumstances, he may have to deviate from the limits placed on him as to the methods and/or manner in which force may be applied in order to fend off death or serious physical injury. In its training and in this Order, the Department acknowledges and teaches that should an officer become involved in a violent confrontation in which established tactics and authorized equipment are ineffective or unavailable for use **AND** there is the likelihood of serious injury to the officer or another, he may have to resort to instinctive survival tactics to preserve his life or the life of another. Such tactics may involve the use of other physical objects, which are at hand as defensive weapons in lieu of authorized equipment or may involve the use of tactics not recognized by the Department under other circumstances. Personnel are cautioned that the use of any

tactic/technique must consider the welfare and safety of innocent bystanders and will always be judged by the Department using the standard of objectively reasonable/appropriate force as defined in this Order.

2. However, barring such imminent threat to an officer's safety or the safety of a third party, the Department expressly **prohibits** the following tactics/techniques to be used by personnel:
  - A. The deliberate placement of body weight on any portion of the spinal column or airway;
  - B. Strangle or choke holds which restrict the ability of an individual to breathe or restrict the flow of blood to the brain;
  - C. Intentional, direct blows to the head;
  - D. Dragging an individual along the ground, floor, or stairs; and,
  - E. Binding an arrestee's hands and feet together (commonly known as "hog tying").

### **.30 AUTHORIZED EQUIPMENT:**

1. The Department issues various items of defensive equipment and restraining devices for use by its personnel. The Department recognizes that before a device can be used in the field it must be evaluated to ensure that it meets its performance criteria. Likewise, the Department will not issue or authorize for use devices that it concludes fall short of accepted professional standards. At present, the Department has issued, or has available and authorized for use by all sworn personnel, the following restraining devices, lethal and less-lethal equipment:
  - A. Glock 9mm semi-automatic firearm;
  - B. Handcuffs;
  - C. O.C. spray;
  - D. Expandable baton;
  - E. Flex cuffs, restraining straps and hobble restraints;
  - F. Riot shields and batons.
  - G. Spit Shields
  - H. Vehicle Prisoner Containment Modules (PCM)
2. Other sworn personnel who are specially trained may also be issued, and utilize under permitted conditions, additional equipment such as Tasers, shotguns, carbines, and SRT weapons, including "bean bag" rounds.
3. Personnel are prohibited from carrying, displaying and/or using any weapon, control device or other equipment which may be considered an offensive or defensive weapon while on-duty or engaged in secondary employment which has not been expressly approved by the Chief of Police or his designee. Officers will use only those weapons, to include ammunition, for which they have been trained and are qualified to use by the Department. (Exception: officers may carry a small folding type knife with a blade not exceeding four (4) inches for non-offensive purposes.)



4. Off-duty personnel who carry other weapons or control devices, which are neither approved nor issued by the Department, should carefully weigh their own personal liability should such devices be used.
5. Specialized equipment purchased and authorized by the Department for its Special Response Team is governed by standard operating procedures within that Division.

**.35 USE OF FORCE REPORTING REQUIREMENTS:**

1. In documenting any use of force, officers will report **specifically** what threat level or force was used against them or another and **detail** what tactics/techniques were utilized to overcome the resistance. Whenever practical, appropriate terminology shall be used to explain tactics/techniques and specific areas of the body affected.
2. The mere touching or handcuffing of an individual being placed under arrest, the use of light handed control to guide or direct an individual, or the **display** of weapons such as O.C. spray, baton, or handgun (without pointing) will not normally require written documentation.
3. Specifically, the Department **requires** that any officer who uses force under any of the following circumstances will complete a Use of Force BlueTeam entry as follows:
  - A. BlueTeam Use of Force Entry:
    - (1) Uses any force which causes any visible or apparent physical injury **or complaint** of injury, **or** which results in medical treatment for the individual or the officer;
    - (2) Uses any object, including but not limited to, a hand, fist, or foot, to strike or attempt to strike a blow to a subject, to include baton strikes and blocks;
    - (3) Uses force in such a way as to cause a subject to suffer a blow to the head, even if that blow to the head is accidental;
    - (4) Uses O.C. Spray or any other chemical agent;
    - (5) Discharges a firearm under circumstances that require a Use of Force Report per [General Order 720, "Deadly Force Guidelines and Investigations,"](#) i.e., discharge of a firearm at an individual regardless of whether the person is actually struck;
    - (6) Utilizes a canine for a physical apprehension (refer to [G.O. 435, "Canine Unit"](#));
    - (7) Uses force during or after which a subject loses consciousness.
    - (8) Uses any empty-hand control technique that does not cause injury or complaint of injury to the officer or the subject the force is applied to and does not result in medical treatment for subject or officer; or
    - (9) Points a firearm at any person, or
    - (10) Uses a baton as part of a control hold; for example, to remove an arrestee's hands from under their body.

Exception 1: A BlueTeam Entry for “intentional moving (pushing) of an uncooperative person” is required only when the person on whom the force is used is arrested, injured, or otherwise easily identified. In all other circumstances under which an uncooperative person is intentionally moved (pushed), an Incident Report will be completed, with a copy forwarded to the Professional Services Division (PSD).

Exception 2: The pointing of weapons by the Special Response Team (SRT) may be reported either on a BlueTeam Entry or by documenting such use in an SRT “After Action Report” that is forwarded to the Commander PSD with all required statistical information.

4. A supervisor has the discretion to require that an officer complete a BlueTeam Entry if that supervisor believes it is in the best interest of the Department, the officer, and/or the public, to do so.
5. All employees are required to immediately report to a supervisor when another employee is using or has used force that appears, from an objectively reasonable standard, to be inappropriate or excessive.

#### **.40 HIGH RISK STOPS/BUILDING SEARCHES:**

As stated above, the **pointing** of a firearm at any individual will require a BlueTeam Entry . In instances where a High Risk Stop, whether involving a vehicle or a pedestrian, has been made and a firearm has been **POINTED AT** an individual(s), the officer initiating the stop will be required to submit a BlueTeam Entry in addition to any required Incident Report. In instances where the only reportable force used is the pointing of a firearm, one officer will complete the report detailing all officers involved who pointed firearms and all subjects who had weapons pointed at them. This procedure will also be followed if a firearm is pointed at any individual during a building search.

#### **.45 OFF-DUTY ACTION:**

1. While off-duty and out of uniform, officers should refrain from taking overt police action except under circumstances that threaten life and/or seriously threaten public safety. Before taking overt police action while off-duty and out of uniform, officers will carefully consider the risk to themselves and to others that may be caused by a sudden confrontation with criminals, suspects or other law enforcement officers who may not readily identify them as police officers. Dependent on the circumstances posed by the threat, off-duty personnel who take overt action will **visually and verbally** identify themselves as law enforcement officers as soon as appropriate and practical. Officers will attempt to seek the assistance of on-duty personnel if possible prior to initiating overt action dependent on the circumstances of the situation and in every case immediately after the situation has stabilized.
2. Under circumstances that do not require immediate police intervention, officers who are off-duty and out of uniform will request the presence of an on-duty officer. Prior to the on-duty Officer's arrival, the off-duty officer will monitor the situation until the on-duty officer arrives, and intervene only when necessary.
3. Any force that is used by an officer during an incident that occurs while he is off-duty will be reported in accordance with this Order.

#### **.50 MEDICAL TREATMENT OF INJURED PERSONS:**

1. While the objective of any force application by an officer is not to inflict injury, but rather to control or obtain compliance from a subject, the Department recognizes that injuries may result from the application of force. Additionally, the Department realizes that discomfort and/or the complaint of pain can be by-products of certain techniques (pain compliance, O.C. spray, etc.) and that this type of discomfort may initially be interpreted

by the individual as an actual injury. Supervisors and officers are occasionally called upon to determine whether an individual's complaint of pain is merely discomfort or is, in fact, an injury that requires medical treatment. The Department relies on the good judgment of its supervisors to distinguish between the two. However, in the event that any person complains of injury and requests medical attention, **medical attention will be sought for the person.**

2. In some instances, a subject may refuse medical treatment following a use of force incident. Should this occur, the supervisor will document the refusal in his report of the incident. If the injury appears to be more serious than first aid would treat, the subject will be transported to a medical facility and evaluated by medical personnel.
3. In the event that an individual is injured or complains of being injured during the application of force and/or during an arrest, the officer using the force and/or making the arrest will promptly notify his supervisor or the on-duty supervisor. If the injury is obvious to the officer on the scene, medical treatment will be obtained immediately.
4. The type of treatment, the location of the treatment, and the name of the medical professional providing the treatment will be documented in the Use of Force Report. Visible injuries and those areas where the subject complains of injury will be photographed. Copies of pertinent medical reports will also be submitted with the Use of Force Report if available. If circumstances warrant, supervisors may confer with medical personnel and include their observations in the report.
5. The treatment and reporting of injuries to an officer(s) will be handled in accordance with existing procedures and will, in addition, be documented in the Use of Force Report, and photographed.

**.55 NOTIFICATION OF SUPERVISOR:**

1. Any officer who uses force as outlined in this Order will notify his immediate supervisor as soon as possible after the incident has occurred if the immediate supervisor is working. If the officer's immediate supervisor is unavailable or if the incident occurred while the officer is off-duty, then the on-duty Patrol Division supervisor will be notified.
2. In the event that the officer who utilized the force is injured during the encounter, the supervisor assuming control of the situation will determine, through medical consultation, whether the officer's injuries preclude him from completing BlueTeam Entry. If the injuries preclude the completion of the report, the supervisor will determine the essential facts of the incident and submit an administrative memo to his Division Commander giving as much detail as possible. The supervisor will ensure that a follow up BlueTeam Entry is completed by the officer as soon as practical after he is released from medical care.

**.60 SUPERVISOR RESPONSIBILITIES CONCERNING USE OF FORCE INCIDENT:**

**FOR PURPOSES OF THIS ORDER A SUPERVISOR WILL BE CONSIDERED ANY OFFICER OF THE RANK OF CORPORAL OR ABOVE.**

1. In instances where force requiring the completion of BlueTeam Use of Force entry has been used, a supervisor who has been contacted will be responsible for gathering information concerning the incident including what event(s) precipitated the use of force and the names of those persons who could provide pertinent information about the incident. The supervisor will then conduct a thorough review into the incident. The supervisor's review **must** include, but not be limited to:
  - A. Identifying and interviewing police witnesses (all statements by witnesses are

discoverable for any criminal prosecution related to the incident and should be documented in a supplement);

- B. Identifying and interviewing, if appropriate, employees and civilian witnesses identified who possess pertinent and relevant information about the incident;

**NOTE:** If the supervisor does not respond to the scene (due to the movement of the subject from the area or due to other operational reason), other officers present will gather this information and forward it to the supervisor for follow-up.

- C. Observing the condition and demeanor of the arrestee and questioning him if necessary as to the **facts** of the use of force incident;
- D. Ensuring the arrestee/detainee is photographed, regardless if they have or claim injury (this excludes the pointing of a CEW or firearm);
- E. Ensuring that any and all injuries (or claimed injuries) to an injured officer are photographed;
- F. That the officer documents **specifically** what threat level or force was used against them or another and **detail** what tactics/techniques were utilized to overcome the resistance in an incident report/probable cause statement/incident supplements and that all documentation is entered into BlueTeam.
- G. Ensuring that any additional evidence or items needed to complete the administrative review are secured and/or processed; and,
- H. Obtaining, if applicable and available, any pertinent medical reports for any individual injured during the incident.

NOTE: The reviewing supervisor will have had no involvement in the use of force, either by application of force or in authorizing its use by others. In all such cases, an uninvolved supervisor or command member will conduct the review of the incident. The involved supervisor will contact another on-duty supervisor of equal or greater rank or an on-duty or on-call command officer, who will handle the initial review of the incident.

- 2. The findings of a supervisor's review of the incident will be reported by him during the supervisor's written report of the incident.

**.65 SUPERVISOR RESPONSE TO SCENE:**

- 1. The presence of a supervisor at the scene of a force incident not only reinforces support for the officer(s) involved in the incident, but also assures the public that the Department views force incidents seriously and worthy of supervisory attention. By responding to the scene of a force incident as soon as possible after it has occurred, a supervisor will be better able to determine the circumstances which led to the use of force, to identify any witnesses who may be able to provide relevant and pertinent information about the incident and to safeguard and/or process evidence which may be critical to any subsequent review into the event.
- 2. While the Department relies on each supervisor to use good judgment and common sense to determine whether he is needed at the scene of a use of force incident, and expects him to respond if available, the following incidents will **require** the presence of a supervisor as soon as possible after the incident has occurred:
  - A. Police involved shootings;

- B. The discharge of a police firearm other than for training purposes or to kill an injured animal;
  - C. Serious injury to an officer or suspect;
  - D. Any force incident where either an officer or suspect loses consciousness; and,
  - E. Any situation that is unstable and requires continued police intervention.
3. In other instances involving the use of force by an officer, a supervisor will need to weigh the situation against other operational needs to determine if his presence is needed/appropriate. Instances in which an arrest has been made, the arrestee removed from the scene without further incident and the situation has been resolved, may not warrant the presence of a supervisor on the scene. In cases where a supervisor determines that his presence is not needed at the scene or circumstances prevent a timely arrival, he will note this fact during the supervisor review of the incident.

### .70 THE USE OF FORCE REPORT:

1. The BlueTeam Use of Force entries have been designed to provide an accurate, detailed account of a police use of force incident. BlueTeam utilizes one (1) use of force entry form for all use of force incidents. The officer utilizing force will complete a BlueTeam Use of Force entry. Supervisors/Commanders within the affected officers' chain of command will complete a BlueTeam Use of Force review.
2. BlueTeam Use of Force Entry
  - A. As stated in Sections .35 and .40, a BlueTeam Use of Force entry must be completed by any officer who uses any reportable force, or who is otherwise directed to do so by a supervisor. This report will include information identifying the officer and suspect and a series of check-off boxes to summarize the incident. The Officer will complete an incident report narrative setting out **in detail** the circumstances that resulted in force being used. This may be done in the Statement of Probable Cause if it is an essential element of criminal charges. Officers are required to specifically describe the resistance and/or force used against them by a subject as well as what force was used to overcome the resistance and accomplish their lawful purpose. NOTE: A recitation of the elements of any criminal charges are not required on the BlueTeam Use of Force entry unless they have a bearing on the justification for the use of force. **A PDF copy of the incident report will be electronically attached to all BlueTeam Use of Force entries.** A copy of other department or court paperwork may be electronically attached to any BlueTeam Use of Force entry, as appropriate.
  - B. In the event that multiple officers use force requiring a BlueTeam Use of Force entry against a single subject, each officer will submit a BlueTeam Use of Force entry detailing only the specific force they used during the incident. If a single officer uses force requiring a BlueTeam Use of Force entry on multiple subjects during a single incident, one BlueTeam Use of Force entry can be created with all involved parties listed.
  - C. The only exception to this reporting procedure will be if the only force used is the pointing of a firearm at an individual(s). In that case, the officer who initiates the stop will complete the BlueTeam Use of Force entry, detailing which officers pointed firearms and identifying all subjects at whom firearms were pointed. If additional force is used in the incident, the officer(s) who used the additional force will be required to complete the appropriate reporting. **Identification of all subjects on which force was used MUST include the full name, race,**

**ethnicity, sex, and date of birth, as available.**

- D. In an effort to allow for adequate time to complete associated paperwork and review any body worn camera footage associated with the incident, all Blue Teams Use of Force entries will be submitted to the supervisor responsible for the review by the conclusion of the second working day after the incident, unless extraordinary circumstances prevent the timely completion of the Blue Teams Use of Force entry AND the Division Commander approves the delay beyond two working days. Every effort will be made to complete all Blue Teams Use of Force entries by the completion of the shift during which the use of force incident occurred, to include utilization of any overlap periods between shifts, reassignment of calls, etc. if possible. Leads reports concerning the use of force incident will need to be completed prior to the end of the shift in which the use of force incident occurred.

3. SUPERVISORY/COMMAND REVIEW

- A. If officers from more than one squad or division are involved in an incident requiring the completion of a BlueTeam Use of Force entry, the supervisor of the individual who initiated the incident will be responsible for conducting the review into the incident and completing the required reports. In the event that there is a question as to which officer initiated the incident, the supervisor of the officer who used the highest level of force will be responsible for conducting the initial BlueTeam Use of Force review.
- B. It is the goal of the Department to conclude each use of force review as expeditiously as possible after an incident. All BlueTeam Use of Force reviews will be submitted from the supervisor for command review within twenty-four (24) hours of the event's occurrence unless specifically granted an extension from a command officer. In all cases where the force used was above "Active Countermeasures," and in other cases as appropriate, supervisors will notify an on-duty command officer of a use of force incident and verbally report pertinent details prior to the completion of the official reports.
- C. In certain circumstances, a supervisor from another squad or division may complete the BlueTeam Use of Force review, if, for example, an incident occurs just prior to the end of the last day of a squad rotation. In this situation, both supervisors will communicate and agree upon who is responsible for completing the supervisor's review.
- D. Once supervisory review is completed, the review will be submitted to the Division Commander. Command personnel, generally up to the Deputy Chief, are afforded the opportunity to review and evaluate each BlueTeam Use of Force entry involving their personnel.
- E. Division Commanders who receive a BlueTeam Use of Force review will review the report, note their conclusions and remarks, if appropriate, and forward the report to the Deputy Chief.
- F. If, during the review process, a supervisory or command member believes that a BlueTeam Use of Force entry is incomplete or lacks pertinent/relevant information, it will be returned for additional documentation/investigation prior to submission further up the chain of command.
- G. The Chief of Police will review all BlueTeam Use of Force entries involving the use of Tasers, impact weapons or firearms, as well as any incident where serious

physical injury is involved, or any person incurs a canine bite. The Chief may, at his/her discretion, review any other use of force report.

- H. All BlueTeam Use of Force entries will, after review by the chain of command, be electronically sent to PSD. In the event an allegation of inappropriate/excessive force is made that a Use of Force reports deals with, the report will be immediately sent to PSD.

4. BlueTeam Use of Force Review

- A. The supervisor and command members responsible for evaluating the use of force incident will complete a BlueTeam Use of Force Review. It will be the responsibility of the supervisor to document all witnesses, both civilian and police, to the incident. In addition, the supervisor will list and document any injuries to either officers or civilians during the incident. The supervisor will also document and comment on his observations of the subject, if applicable.
- B. The supervisor responsible for evaluating the incident will also complete a narrative as part of his report. This narrative will include:
  - (1) Documentation of the supervisor's direct observations of the incident, if present;
  - (2) A summary of injuries sustained (or injuries claimed) by any person involved in the incident;
  - (3) Identification of any witnesses to the incident, both officers and civilians;
  - (4) A **detailed** summary of any witness statements from both officers and civilians, if any;
  - (5) A summary of any contact with the subject of the use of force incident detailing his behavior, demeanor, or any statements made;
  - (6) Any other pertinent information about the incident that may be needed to form a judgment of the propriety of the force used; and,
  - (7) A conclusion as to the appropriateness/ reasonableness of the force used and adherence to Departmental policy.

**NOTE:** In the event that multiple officers are involved in the same use of force incident, supervisors are only required to complete one BlueTeam Use of Force Review for the entire incident.

- C. Following the supervisor's review of the use of force incident, they will report their findings and recommendations, as appropriate, via the BlueTeam Use of Force review. If the supervisor finds that a use of force was inappropriate and/or excessive for any reason, they will comment as to the reason prior to forwarding the report up the chain of command.

**.75 FINDINGS/RECOMMENDATIONS:**

- 1. All documented uses of force are subject to supervisory and command review. During the review process of each use of force incident by either first line supervisors or command, a conclusion regarding the appropriateness or inappropriateness of the force used must be made using all relevant facts that have come to light during the review.

2. If a determination is made that a particular use of force by an officer was excessive and/or inappropriate, supervisory and/or command personnel will document the reason for their decision in a memo and attach it to the report.
3. Should supervisory or command review result in a conclusion that inappropriate and/or excessive force may have been used and administrative/disciplinary action is warranted, the matter will be processed as an internal investigation per [G.O. 1620, "Discipline."](#)
4. Conclusions of the force used in an incident will be made in part on whether the tactic(s) and/or technique(s) is recognized, accepted, sanctioned, or taught by the Department during its training and on the circumstances of the entire incident. In most instances, first line supervisors and command will recognize a particular tactic or technique used in a situation from their own departmental training and will be able to make a judgment regarding the force used in a given situation. Should, however, any question regarding a tactic or technique arise during the review process, the sergeant of the Training Section and/or the Defensive Tactics Coordinator, will be called upon to provide a written response to any question or concern. This response will be included as part of the completed Use of Force Report forwarded up the chain of command.

**.80 RETENTION OF REPORTS:**

Once the Office of the Chief completes the review and evaluation, the BlueTeam Use of Force Entry/Review will be sent to the PSD and a copy sent to the Training Section. PSD will be responsible for the maintenance of these reports and their retention for a period of five years, with statistical data retained for 10 years, in accordance with the City of Frederick Records Retention Policy.

**.85 STATISTICAL ANALYSIS:**

The PSD will prepare an annual statistical analysis of uses of force for the Chief of Police during the first quarter of the succeeding year, and other use of force analysis as requested. The analysis will include any training, policy, or equipment issues that may need to be brought to the attention of the command staff.

**.90 SUMMARY OF ACTION:**

Type of Force	Report Required	Supervisor Notified
Pointing Firearm (No discharge)	Yes BlueTeam Use of Force Entry	No
Pointing Taser (no probe deployment or drive stun)	Yes BlueTeam Use of Force Entry	No
Empty-Hand Control: Includes control holds, pain compliance, take-downs, pressure points, and the intentional pushing/shoving of an uncooperative person	Yes BlueTeam Use of Force Entry	Yes - As soon as practical if no injury  Immediately if there are any injuries
O.C. Spray, Chemical Agents, Irritants	Yes BlueTeam Use of Force Entry	Yes - immediately
Strikes, kicks and Canine	Yes	Yes- Immediately



Type of Force	Report Required	Supervisor Notified
apprehension	BlueTeam Use of Force Entry	
Impact Weapons, including bean bag rounds	Yes BlueTeam Use of Force Entry	Yes- Immediately
Taser	Yes BlueTeam Use of Force Entry	Yes- Immediately
Firearms/Deadly Force	Yes BlueTeam Use of Force Entry	Yes- Immediately

## FREDERICK POLICE DEPARTMENT GENERAL ORDER

**Section 07:** Force, Detention, and Arrest  
**Topic:** LESS LETHAL FORCE:  
CONDUCTED ELECTRICAL WEAPON

**Order Number:** 715  
**Issued by:** Chief of Police

**Approved:** 04/21/21  
**Review:** Annually in February by Support Services Division Commander  
**Supersedes:** G.O. 715 dated 01/20/21

### **.01 PURPOSE:**

To specify the type of Conducted Electrical Weapon (CEW) approved for use by sworn members of the agency, to specify the appropriate uses for these weapons, and to provide the training and reporting guidelines required for officers to carry them

### **.02 CROSS-REF:**

G.O. [705](#), "Use of Force"  
G.O. [710](#), "Less Lethal Force: Chemical Agent Weapons"  
G.O. [712](#), "Less Lethal Force: Impact Weapons"  
G.O. [773](#), "Sick or Injured Prisoners"  
G.O. [1125](#), "Inventory and Inspection"  
G.O. [1663](#), "Uniforms and Appearance"  
G.O. [1710](#), "Roll Call"  
Form SOD-017 "Taser Contact Form"

### **.03 DISCUSSION:**

A Conducted Electrical Weapon (CEW) is a less lethal weapon system that provides law enforcement personnel with an additional method of controlling subjects who may be dangerous or violent to themselves or others. The CEW will be used to enable the officer to carry out his duties in a safe and professional manner with minimal injuries to officers and citizens. The Frederick Police Department (FPD) currently issues the X2 Taser ® to designated qualified members of the Department as an alternative tool for appropriate use of force situations. The FPD will educate interested citizens regarding CEWs and the Department's policy on its use during appropriate educational forums, such as the Citizen's Police Academy.

### **.04 POLICY:**

It is the policy of the FPD that its members will use a CEW only in accordance with the use of force policy and guidelines specified in [G.O. 705, "Use of Force."](#) In addition, no member will be issued or permitted to carry or use a CEW until he has been trained in its use and demonstrated proficiency with it on an annual basis. The provisions of this Order apply to personnel both while on and off duty.

### **.05 DEFINITIONS:**

**CONDUCTED ELECTRICAL WEAPON (CEW):** A weapon which can be used in two different modes which are listed below from an inserted cartridge. The Frederick Police Department currently purchases and uses the X2 Taser ® conducted electrical weapons

**PROBE DEPLOYMENT:** Utilizing compressed nitrogen gas to propel two (2) probes attached to the end of wires stored in a cartridge already inserted into the weapon. The CEW sends an electrical signal to the probes, via the wires, which can disrupt the body's ability and usually causes motor skill dysfunction.

**DRIVE STUN:** The CEW acts as a stun system when it is brought into immediate or close proximity contact with the subject's body or clothing. Due to the narrow spread of the probes and/or the cartridge removed from the CEW, drive stun application will be less likely to create motor skill dysfunction.

**CEW CARTRIDGE:** A removable plastic cartridge containing two probes, wires, a compressed nitrogen charge, and up to forty (40) small Anti-Felon Identification Tags (AFID).

**AFID:** The AFIDs are small plastic disks that can be traced to the individual weapon charge. The system provides accountability for each use of the Taser via the dispersal of tiny unique coded tags every time the device is probe deployed.

**PASSIVE RESISTANCE:** Physical actions which do not actively or dynamically oppose an officer's attempt to control a suspect and do not pose a threat to the officer's safety. Actions such as remaining limp or simply refusing to act as instructed are passive resistance. Verbally indicating an intention to actively oppose an officer's attempts at control raises a suspect's resistance above purely passive.

**ACTIVE RESISTANCE:** Physical actions which actively and/or dynamically oppose an officer's attempt to control a suspect, or actions that a reasonable officer would believe pose a threat to his/her safety.

**PROBES:** Small metallic pins with a barbed point. The probes are used to transmit the electrical pulse into the target's body.

**ARC SWITCH:** An ambidextrous switch located forward of the trigger used to select options from the Taser X2 menu, to select a specific cartridge, or to activate the Taser X2 without deploying a cartridge.

**MPCTC Certified CEW Instructor:** An officer who is authorized by this agency to carry and/or use a specific electronic control device, has successfully met Maryland Police and Correctional Training Commissions (MPCTC) general instructor requirements, and has successfully completed an MPCTC approved training course for the specific manufacturer's model of an electronic control device for which the officer will be providing training.

#### **.10 LEGAL STANDARD:**

This Order is for departmental use only and does not alter any criminal or civil standard of care. The Department's policy and procedures should not be construed as creating a greater or higher legal standard of safety or duty of care in an evidentiary sense with respect to third party claims. Violations of this Order will only form the basis for departmental action.

#### **.20 TRAINING:**

1. Only officers who have successfully completed the Department's approved course of instruction on the CEW are authorized to carry and to use the CEW. Designated officers will receive an initial course of instruction on the use of the CEW from certified MPCTC CEW instructors. Additionally, designated officers will receive annual in-service training in accordance with the manufacturer's recommendations and MPCTC regulations.
2. Use of the CEW is currently restricted to officers specifically designated via Personnel Order by the Deputy Chief. Training will be developed and conducted by certified MPCTC CEW instructors. Initial and annual in-service training curriculums for CEWs will include, at a minimum: nomenclature, characteristics, capabilities, limitations, maintenance, safety, operating principles and technology, agency policy on the use of CEWs, use of force, escalation and de-escalation of force and deadly force, judgment/decision making, legal considerations, physiological and psychological effects, target zones, defensive measures, potential for collateral occurrences, after care measures, side effects, and individuals with an elevated risk.
3. Only sworn officers demonstrating proficiency in the use of CEW during initial and annual in-service training may carry or utilize CEW. "Demonstrating proficiency" means attaining a score of at least 80% on a written test covering the training topics and successfully demonstrating, to a certified MPCTC CEW instructor, skills in the safe handling and deployment of a CEW. In addition, officers must successfully complete an initial CEW certification course. Officers attending the initial training course will be exposed to the CEW

under the supervision of a certified MPCTC CEW instructor. Training and testing, both academic and practical/skills, will be documented by the Training Unit. The Training Unit will also submit the names of certified CEW users to MPCTC.

4. In the event that an officer is unable to successfully demonstrate proficiency with a CEW during annual in-service training, the course instructor will immediately notify the Training Unit Supervisor. If, after reasonable remedial training avenues have been exhausted, the officer is unable to demonstrate proficiency with a CEW, the Training Unit Supervisor will notify the Deputy Chief, in writing and via chain of command, of the officer's unsatisfactory performance, and the officer's designation to carry a CEW will be removed. The Training Unit Supervisor or the officer's supervisor may also immediately suspend the officer's designation to carry a CEW at any time.
5. During initial CEW training, and before being issued a CEW, all designated officers will be issued copies of, and instructed in, all of the Department's General Orders concerning use of force and CEW use. The Training Unit will document the issuance of, and instruction in, these General Orders. Receipt of policy will be tracked in PowerDMS.
6. Supervisors will receive annual in-service training for CEWs to include, at a minimum: nomenclature, characteristics, capabilities, limitations, maintenance, safety, operating principles and technology, agency policy on the use of CEW, use of force, escalation and de-escalation of force and deadly force, judgment/decision making, legal considerations, physiological and psychological effects, target zones, defensive measures, potential for collateral occurrences, after care measures, side effects, and individuals with an elevated risk.
7. Use of Force Reports involving the deployment of a CEW will only be reviewed and approved by supervisors and commanders who have received the annual CEW in-service training or who have completed CEW operator certification training.

### **.30 AUTHORIZATION, ISSUANCE, AND INSPECTION:**

1. Following the successful completion of initial CEW training and submission of names to MPCTC, the Training Unit will issue officers, who are specifically designated by the Deputy Chief, a Taser ® X2 should the weapon be available. The Training Unit will file this original record, and will forward a copy documenting the issued equipment to the Manager, Fiscal Unit.
2. Officers who have been issued a CEW will inspect their weapon and conduct a "spark test" prior to each tour of duty. Officers who have been issued a CEW will also inspect their weapon after each use. Additionally, CEWs will be inspected for damage and serviceability during monthly inspections by the designated members' supervisors. Damaged or unserviceable CEWs will be immediately removed from duty and returned to the Training Division for repair or replacement. The Power Performance Magazine (PPM) will be replaced if the charge display is less than "20."
3. The Training Unit, in conjunction with the Department's defensive tactics instructors, will continually evaluate the effectiveness of the Department's CEWs in comparison to other available less-lethal weapons systems. In the event that the Training Unit believes that the Department should replace its CEWs with more effective less-lethal weapons, they will submit such recommendation in writing, via chain of command, to the Chief of Police.
4. Officers will carry and utilize only those CEW that were issued to them by the Department.
5. Officers who are issued a CEW are responsible for properly syncing the CEWs on a quarterly basis. Officers will also sync/download their CEWs after each deployment and whenever firmware updates are issued by Axon. Officers will also scyn their CEWs during time changes (i.e. Daylight Savings Time, etc.)

#### .40 USE OF A CEW:

1. Any use of a CEW will be in accordance with the use of force policy and guidelines specified in [G.O. 705, "Use of Force,"](#) and as defined in that order as "appropriate force."
2. When feasible, officers will give a verbal warning that the CEW is about to be used, and will give verbal commands and directions for compliance during CEW uses.
3. CEWs will only be used on persons posing an imminent threat of physical injury to themselves or others.
4. The ARC switch should not be the primary method of activating the Taser X2.
5. The ARC switch should primarily be used to activate the Taser X2 when the officer is giving a Taser warning, or when the decision has been made to re-activate a deployed cartridge without deploying a loaded second cartridge, or when the decision has been made to re-activate both deployed cartridges. The ARC switch should be activated for five (5) seconds every time it is activated.
6. Consistent with CEW training, when an officer causes the "initial probe deployment," he will release the trigger to allow the automatic "5-second" deployment to activate, and he will not hold the trigger down for an undetermined length of time.
7. CEWs may be used against an animal that is a hazard or is threatening or is attacking a person, including officers, or another animal.
8. The CEW is a less-lethal weapon, and is not intended to replace the firearm in deadly force situations.
9. Officers may request that a certified CEW operator respond to their location for potential appropriate application of the CEW as a use of force under circumstances dictated in this general order and in [G.O. 705, "Use of Force."](#) Requesting officers will broadcast a brief description of the circumstances involved, and will notify their supervisor, if feasible. Supervisors will monitor all requests for CEW responses, and will intervene when appropriate.
10. In deadly force situations, an officer capable of deploying deadly force will always be designated as a cover officer to the officer potentially deploying a CEW. This officer will be in the cover position, ready to deploy deadly force if appropriate, prior to the deployment of the CEW.
11. CEWs will be carried in their protective holsters. CEWs may be kept in the secured passenger compartment of the cruiser, but once removed from the car, they will be carried in their issued holsters except while being used.
12. **CEWs will be carried on the non-firearm side of the duty belt with the straight draw configuration in the issued holster. CEWs will not be drawn at the same time as a firearm.**
13. No changes, alterations, modifications, or substitutions will be made to the CEW other than those recommended by the manufacturer and approved by the Deputy Chief.
14. Following the probe deployment of a CEW, the CEW cartridge and probes used will be placed on property as evidence. The probes will be treated as biohazard sharps. The officer collecting the cartridge and probes will wear latex gloves when handling them. The wires will be wound around the cartridge. The probes will be inverted into the portals from which they

were fired. This will prevent sharp ends from penetrating the evidence bag. Tape will be placed over the portals to secure the probes in the cartridge. Additionally, at least two AFIDs will be placed inside the evidence bag with the air cartridge. The number from the AFIDs will be logged on the related incident report.

15. Any officer who uses a CEW will notify his immediate supervisor as soon as possible, if the immediate supervisor is working. If the officer's immediate supervisor is unavailable or if the incident occurs while the officer is off-duty, then the on-duty Patrol Division supervisor will be notified.
16. The Court of Appeals of Maryland, in Reid v. State, ruled that a CEW used in probe deployment mode turned what otherwise may have been a Terry stop into a de facto arrest for Fourth Amendment purposes. Officers are required to have probable cause to arrest prior to using their CEW in probe deployment mode during criminal investigations. This does not prohibit the officer from utilizing the CEW in probe deployment mode if objectively reasonable when necessary to accomplish a legally permitted law enforcement activity such as the service of an emergency petition.

#### **.50 PROHIBITED USES OF A CEW :**

CEW will not be used under the following circumstances:

1. In a punitive or unnecessarily threatening manner;
2. As a prod or escort device;
3. On an individual whose resistance is solely passive;
4. On an individual who is only attempting to destroy evidence;
5. Inconsistent with training procedures;
6. In close proximity to known flammable liquids or gases, or explosive materials;
7. When potential incapacitation of the subject would expose the subject to serious bodily injury or death (e.g. a fall from a high place or in water; when the subject is handcuffed and running; when the subject is running across a hard surface where he is likely to strike his head during a fall), except in a scenario where deadly force is justified;
8. When an individual is in care and control of any vehicle or machinery.
9. When a police canine has been deployed for suspect apprehension or handler protection, except if the canine has become ineffective for the purpose deployed;
10. In violation of [G.O. 705, "Use of Force."](#)

#### **.60 SPECIFIC FACTORS:**

When reasonably perceived by the officer, the following factors will be considered by the officer when deciding to utilize a CEW. The known presence of these factors will require enhanced justification for deciding to utilize the CEW:

1. Known pregnant female;
2. Elderly persons, small children, and those individuals under eighty (80) pounds;
3. Individuals with known heart problems, neuromuscular disorders, or otherwise frail and infirm;
4. Persons exhibiting obvious signs of medical or mental crisis;

5. Persons demonstrating obvious signs of drug or alcohol intoxication;
6. CEW discharged multiple times on an individual;
7. Potential significant injury to a running suspect ;
8. Persons who are handcuffed or otherwise partially restrained; or,
9. Intentional CEW application outside of the target areas recommended by the manufacturer, such as the face, neck, genitalia, or chest. Without exigent circumstances, the CEW will not be intentionally aimed at these areas.

**.70 SUPERVISOR RESPONSIBILITIES:**

1. The supervisor will respond to the scene of the CEW usage, and investigate the use of force per [G.O. 705, "Use of Force,"](#) which will include causing photographing of probe impact sites or drive stun marks on the subject/animal on which the CEW was used.
2. Supervisors will respond to any anticipated CEW deployments.
3. Supervisors will ensure that EMS is activated following all CEW deployments, and that subjects that CEW have been used on are evaluated and treated by medical personnel.
4. Supervisors will conduct visual inspections of subordinates' assigned CEW and related equipment during monthly inspections.

**.80 REPORTING CEW USE:**

1. A Blue Team Use of Force Entry will be submitted by any officer who uses a CEW as required under [G.O. 705, "Use of Force."](#) The supervisor of the officer will download data documenting the deployment from the CEW onto a designated computer using the Taser Evidence Sync program. The downloaded data will be printed and attached to the officer's Use of Force Report. The supervisor will complete Form OSB-11B.
2. A Blue Team Use of Force Entry will be submitted any time an officer aims a CEW at a person.
3. The mere un-holstering or presentation of a CEW, use of a CEW for training, or CEW use on an animal, will not require a Blue Team Use of Force Entry to be completed. Use on an animal or an accidental cartridge discharge must be documented via the Department's incident reporting system.
4. Officers will complete appropriate incident reports, and will place the spent air cartridge and probes in property following a probe deployment.
5. Officers will photograph the probe impact sites / drive stun marks following the use of a CEW. If the impact sites/marks are in a private area, the officer will ask permission of the subject to have a same sex officer or medical personnel photograph the impact site/marks at the medical facility where the subject is treated.
6. A Taser Contact Form (Form SOD-017) will be read to any person a CEW has been used on and completed as soon as reasonable after the CEW use. Medical aid rendered to the person will not be delayed in order to read the form. The completed form will be scanned and electronically submitted with the Blue Team Use of Force Entry. CEW training deployments are accepted.
7. Per House Bill 507, "Electronic Control Device (ECD) Reporting," the FPD will submit an annual report titled, "Electronic Controlled Device Discharge Report" to the Maryland

Governor's Office of Crime Control and Prevention (GOCCP) prior to March 31<sup>st</sup> of the following calendar year containing all required ECD data for the year. The Support Services Division Commander will designate one of the Department's MPCTC certified ECD Instructors to complete and submit the required report to the State each year.

**.90 MEDICAL TREATMENT OF TASED PERSONS:**

1. Following the use of a CEW, the officer utilizing the weapon will ensure that appropriate steps are taken to determine if the use of the CEW caused injury to the suspect or any other person. All injured persons will be provided with appropriate medical aid as described in [G.O. 705, "Use of Force."](#)
2. An officer utilizing the CEW on an individual will immediately have EMS activated to provide medical aid. As soon as it is safe to do so, officers will place the suspect / arrestee in a recovery position that is less-likely to impair respiration. (E.g.; seated or on his side versus prone) An officer will monitor the suspect for medical complications prior to the arrival of EMS. Officers will not attempt to remove any probes that are still imbedded in the subject's body. During training, probes may be removed under the supervision of the class instructor following the training protocol.
3. All suspects who are in FPD custody on whom the CEW has been used will be transported to the hospital, even if the suspect wants to refuse treatment. If a suspect refuses treatment at the hospital, the arresting officer will copy paperwork documenting this refusal, and will provide a copy of this paperwork to Central Booking personnel, as well as submitting a copy of this paperwork with the arrest file. The suspect will not be left unattended for any period of time while in custody. If the suspect is treated at the hospital, the arresting officer will copy the arrestee's release paperwork, and will forward copies of this paperwork to the same locations. One exception to this requirement is a person who has been struck with a CEW who is not in FPD custody. EMS will be called for these individuals, but they are free to refuse treatment or transport by EMS. A second exception to this requirement is a person on whom the CEW is used for training purposes. During training, medical treatment will be obtained when appropriate.