

## **ADMINISTRATIVE INVESTIGATION OF WINOOSKI POLICE DEPARTMENT INCIDENT WITH ISAAC SAGE OCCURRING ON APRIL 25, 2013.**

The City of Winooski contracted with Lou Reiter to conduct this administrative investigation concerning the police practices involved in this incident (Reiter resume is attachment 8. The following materials and events were used in the preparation of this investigative report:

- Vermont State Police report, 13A101574, with DVDs provided by the Chittenden State Attorney's Office
- Transcribed interviews of Officers Nokes and MacHavern taken by the State Police Trooper Zorn
- Transcribed interviews of Officers Nokes and MacHavern taken by Investigator Reiter on September 4, 2013
- Training records of both officers
- Training materials on handling emotionally disturbed/ in-crisis persons
- Various Winooski Police Department policies
- Site visit by Investigator Reiter of the various locations of the incident
- Interviews by Reiter of Chief McQueen, Deputy Chief Benoit and Howard Center Mental Health representative for background and non-incident related information
- CBA, City of Winooski and IBEN#300, 2012-2015

Administrative investigations and reviews of police critical incidents are performed to evaluate agency personnel performance during these incidents and to learn from and create a better agency. This administrative investigative report will address seven (7) police practices issues concerning the incident with Mr.

Sage:

- Encounter tactics
- Use of non-lethal force
- Use deadly force
- Policy and procedure
- Training
- Equipment
- Supervision

## **OVERVIEW OF INCIDENT**

The Winooski Police Department (WPD) received a call for service from Woolen Mill Apartment Complex representative that there was a male inside the building without authorization and who was refusing to leave. Officers Nokes and MacHavern, in separate marked police vehicles responded to the Complex. Both officers were informed that the source of the call was an unwanted person and he was trespassing. The apartment complex representatives provided a description of the man who had already left the Complex.

Both officers observed the described male and confronted him. During that contact, Isaac Sage struck Officer Nokes in the head. Officer MacHavern used force on Mr. Sage including forcibly pushing him against a vehicle, Taser deployment and then open hand strikes to the side of his torso. Officer Nokes discharged one round from his service weapon striking Mr. Sage. Both officers were then able to restrain and handcuff Mr. Sage.

## **ENCOUNTER TACTICS:**

The State Police investigative report identifies numerous civilian witnesses who stated that Mr. Sage's actions indicated to them that he may have been an emotionally disturbed/diminished capacity person:

- Tammy Taylor, the Complex manager "did not believe the male was 'right'...was acting irrationally and when he spoke he made no sense." (SP 31)
- The summary of the State Police investigator's interview with Mr. Sage is indicative of this type of vulnerable person. (SP 44-46)
- Mr. Sage, in fact, was a client of Howard Center

- Officer MacHavern stated during interview with the State Police describing his observations of Mr. Sage as he was talking with Officer Nokes as “obdurate,” “just being difficult,” and “didn’t make a lot of sense...” (SPI lines 51-60) He acknowledged that he heard Nokes make comments to Mr. Sage about being arrested and cuffed (60-63). Officer MacHavern agreed that he suspected some form of mental health problems with Mr. Sage (351-366). “...he was acting like a crazy person...” (385-386) “But contextually it didn’t make sense...” (400-403) “Catalyst” for the assault appeared to be the comment about handcuffing (827-830).
- Officer MacHavern, during his interview with Mr. Reiter, outlined his recall of his training on handling emotionally disturbed persons and indicated that he did not recall any substantive content (RI lines 153-157; 172-188). He stated that he was unaware of any special protocols with Howard Center Mental Health (RI 196-257). He discussed his approach to handling emotionally disturbed persons and that it “doesn’t change how you respond,” and that he will use “different ways of communicating with people based upon the interaction that I’m having...” and “a lot of times it doesn’t matter how you communicate to them...” and “the way that you structure your communication when you’re dealing with somebody who has a mental health issue, has no benefit to you whatsoever – it doesn’t impact the outcome because a lot of times people that have mental health issues, they’re not adept, uh, socially...” (RI 259-325) He recounted his concerns that Howard Mental Health has different objectives than the police (RI 334-372). He described his observations of Mr. Sage and that there was no “forewarning” of his assault (RI 379-412).
- Officer Nokes stated during his interview with the State Police that he purposefully chose the location to stop Mr. Sage to be away from a location, City Market, that might have posed tactical problems (SPI lines 76-84). He described his initial observations of Mr. Sage including “I knew that this, like there’s something wrong with him...like a transient and or, uh, some mental health issue...” and Mr. Sage responded to his request for ID with “You don’t need to know who I am. You have no authority” and he kept saying that Officer Nokes knew who he was and by the location where he said he had lived for 3 years Officer Nokes knew it was the Allen house (100-140). Officer Nokes acknowledged that he asked Sage if he wanted to be handcuffed and “the interaction was just getting worse and worse and worse, like it was not de-escalating...it was getting more escalating...” (140-147) Officer Nokes stated he was feeling “very unsafe,” Officer Nokes stated that he was going to detain him and reached for his wrist and this is when Mr. Sage suddenly pivoted and struck him in the head (150-159). “My intentions were to just give him a trespass notice.” (359-360) Officer Nokes further described his observations of Mr. Sage’s mental health status and reflected on his past encounters particularly when he was with Burlington P.D. (504-520; 548-565) Officer Nokes said “...maybe I set him off, I don’t know...” (691-694)

- Officer Nokes stated during his interview with Mr. Reiter that he didn't have any specific recall of his training on handling emotionally disturbed persons (RI 92-136; 548-566; 585-625). He stated "there was no way to determine if this individual (Mr. Sage) was in any sort of emotional crisis when I parked my cruiser and I asked him to approach me" and that his answers were "no different than anyone else." (144-163) He further discussed his knowledge of and interaction with Howard Center Mental Health (188-214; 284-304). Officer Nokes recounted his normal manner of dealing with persons who may be emotionally disturbed and his past successful resolution to these types of encounters (218-282).

### **Encounter analysis:**

Every police agency, particularly those in urban areas, can expect that its officers will encounter emotionally disturbed persons. This is a term used by law enforcement to identify persons who are exhibiting unusual, strange, bizarre or erratic behaviors. Some of these types of individuals have ingested drugs or large quantities of alcohol, have mental illness, or are suicidal. The number of these types of persons has increased during the past 50 some years with their presence in urban areas now being considered commonplace. This trend increased with the elimination of governmental facilities for these types of persons since the administration of President Kennedy. These persons of diminished capacity present law enforcement officers with special needs. Field officers are presented with multiple choice options. Making the wrong choice frequently results in unreasonable uses of force and exacerbates the situation resulting in unnecessary harm to the person with this diminished capacity. A model consistent with the generally accepted police training on the subject of dealing with persons who may be emotionally disturbed and/or suicidal is an acronym - CCCT. This is a graphic model that embodies the leading law

enforcement materials on this subject and the concepts are similar to those in the various training materials provided by the WPD during this investigation. Some other sources are both books by Gerald Murphy published in 1986 Special Care: Improving the Police Response to the Mentally Disabled and in 1989 Managing Persons with Mental Disabilities, the International Association of Chiefs of Police Training Keys 273 Suicide Intervention and 274 Mentally Ill, and the initial authoritative police manuals by Rowland and Matthews published between 1954 and 1975 Police Manual: How to Recognize and Handle Abnormal People. These concepts have been more recently codified in the 1997 Model Policy and Concept Paper "Dealing with the Mentally Ill," by the International Association of Chiefs of Police. These tactical police concepts are also outlined in the authoritative texts by Calibre Press including Street Survival: Tactics for Armed Encounters, 1981, and The Tactical Edge, 1986.

**Coordination.** The concept of devising a plan. Allocating available resources and ensuring that sufficient units and equipment are brought to the scene. Determining who will be doing what aspects of the operation. Developing a perimeter to ensure that outside persons don't become involved. Determining who will be the lead person. Ensuring that the officers at the scene conduct themselves in manner not to unnecessarily agitate or excite the subject.

**Containment.** Devising a plan that will contain the subject. This includes the ability to convince the subject that they do not need to move or continue flight. This oftentimes requires officers to ensure that they respect the comfort zone of the subject and not agitate or compress this comfort zone.

**Communication.** One person should be designated as the command voice. Verbal communication should be non-threatening. Open-ended questions should be used which will facilitate the subject's participation. Various methods of communication should be used particularly if the subject does not respond. Sharp,

authoritative commands should be avoided. Officers must constantly analyze what affect, if any, their efforts are having on the subject.

**Time.** History has shown that the longer the encounter is allowed to occur, the better the chance of a successful and safe resolution. This allows the subject to reflect on his or her predicament. It also allows for the deployment of additional police resources. It encourages the ability to communicate and create a relationship between the lead officer and the subject.

These concepts; however, are not always compatible with the encounter facing officers on the street. Police encounters oftentimes are rapidly evolving situations and individual in their specific elements.

The on-line training documents provided by the WPD are consistent with reasonable training for field officers. These contained specific tactical approaches to be considered consistent with those concepts delineated above.

Officers Nokes and MacHavern had a duty to respond to this call for service. Their initial on-scene preliminary investigation gave them adequate information to reasonably believe that a crime of trespassing had occurred at the Complex. The information provided to them and their personal observations were more than reasonable to stop and conduct an inquiry of Mr. Sage. It was reasonable for Officer Nokes to ask Mr. Sage for his name and identification.

The preponderance of the evidence in this incident indicates that Mr. Sage's actions and verbalization were indicative of a person of diminished capacity or

someone in-crisis. This is based upon the interviews of the personnel of the Apartment Complex as well as the interviews of both officers. Officer Nokes should have realized that Mr. Sage's responses were indicative of this type of person. Officer Nokes continued to use confrontational terminology including "being arrested," "jail," and "handcuffing." These are not consistent with de-escalating the obvious agitation exhibited by Mr. Sage. Officer Nokes indicated that he would have used different terminology had Mr. Sage cooperated and that what he normally does was not possible when Mr. Sage suddenly and unexpectedly struck him in the head with a closed fist. At this point in the encounter further dialogue would have been unreasonable until Mr. Sage was under control.

**Encounter Tactics Finding:**

**Officer Nokes: Sustained, not in conformance with policy/practice.** His initial verbal response to Mr. Sage's refusal to give his name and identification was not consistent with generally accepted police practices and the on-line training he received from the WPD. His verbalization was the type known to exacerbate rather than de-escalate an encounter such as this one.

**Officer MacHavern: Unfounded.** He did not become directly involved until after the sudden assault on Officer Nokes by Mr. Sage. There was no opportunity for him to intercede, as he would have been classified as the cover officer in this initial encounter.

## USE OF NON-LETHAL FORCE

The State Police investigative report fully identifies and is without conflict that following Mr. Sage's striking of Officer Nokes, Officer MacHavern pushed Mr. Sage into the side of a vehicle, deployed his Taser twice, struck him in the side of his torso during the handcuffing process, and handcuffed him along with the assistance of Officer Nokes.

- The State Police investigator after his agency's investigation of the incident prepared an arrest affidavit on Mr. Sage for unlawful trespass, resisting arrest, and 2 counts of aggravated assault on a law enforcement officer. (SP 9)
- Jeremy Sterling told investigators that the officers "were hitting him (Sage) in the side trying to handcuff him." (SP 37) Later during his recorded statement he said that the officer gave "4 or 5 'shots to the body..." and he didn't know whether Mr. Sage was cuffed or while they were trying to cuff him, but "to me it looked like he was already cuffed." (SP 47-48)
- The video taken by Mr. Sterling is reported by the investigator to show that during the handcuffing there were "fist strikes to Sage's torso." (SP 74)
- Officer MacHavern stated during interview with the State Police that he engaged Mr. Sage immediately after he struck Officer Nokes, tried to control him by throwing him into the side of the car, deployed his Taser twice with no effect (SPI lines 69-94). He described his use of "full hand strikes to the left side of his ribs...to free his (Sage) arm..." (109-112). Officer MacHavern described Mr. Sage as "totally violent." (484-493; 512-519) He said that Mr. Sage seemed like "he just wanted to fight..." (605-620)
- Officer MacHavern, during his interview with Mr. Reiter, described his attempt to control Mr. Sage after his assault of Officer Nokes and his attempt to pin him against the side of the car (RI 421-439) and his use of his Taser (485-504). Officer MacHavern stated that he used "full hand strikes...to gain compliance over somebody that is being or is engaging, you know, actively resisting your attempts to take them into custody...to gain compliance" and that he used this tactic as Mr. Sage's arm was under his body resisting handcuffing (514-560).
- Officer Nokes stated during his interview with the State Police that Mr. Sage was "Just coming back at us, trying to keep fighting, like he's co-he's charging us again, like he's charging..." and he described the violence he observed (SPI lines 753-762).

- Officer Nokes during his interview with Mr. Reiter discussed the force and Taser use by Officer MacHavern and that in his experience suspects who assault officers usually flee, but Mr. Sage “not only did not flee, but he continued to assault me and assault Officer MacHavern.” (620-647)

### **Non-Lethal force analysis:**

Reasonable police officers are trained in the legal and operational aspects of use of force. Use of force training all must conform to the Supreme Court decisions and state law. This training has become national in scope. Model policies on use of force are promulgated by several national guidance bodies such as the International Association of Chiefs of Police. Police officers are provided with laws, models and subject control tactics to use. These are designed to be within the parameters of legal uses of force. They are also designed to protect not only the officer involved, but also the subject upon whom force is used. Officers are restricted in the use of force to use only that force which is objectively reasonable and necessary to overcome resistance, comply cooperation and affect an arrest (*Graham v. Conner*). The police training stemming from this case and generally accepted by police practitioners is that the force used by officers must be evaluated on the seriousness of the crime, the level of resistance of the subject, the continuing threat to officers and others, and whether the subject is capable of resisting arrest and fleeing. They are trained and told that they are allowed to use more force than the level of resistance used by the subject to ensure that the subject is effectively controlled. This is often referred to as “control superiority” and “one plus one” concepts. Officers are expected to control the situation in order to be able to investigate and resolve the incident. This use of force training

is often complemented by the use of some form of use of force/control/subject resistance matrix, continuum or graphic. These are very similar in the basic content. They identify levels of subject resistance and types of officer reaction/response to this resistance. The graphics are designed to demonstrate visually to police officers, trainees and others viewing the document the reasonable relationship between what a subject being arrested/restrained does and the officer's response. Common subject levels of resistance such as verbal, passive, active, assaultive, aggressive and aggravated. Common descriptors used for officer response are presence, verbal, soft hand control, chemical agents, hard hand control, transporters, intermediate, incapacitating and deadly force. Other common factors reasonable officers use in determining the reasonable force options are the capability of the subject being encountered, the location of the incident, and the officer's capability. These are similar to the content of the WPD policy General Order "Response to Active Resistance."

Mr. Sage committed an aggravated assault against Officer Nokes. All of the witnesses as well as the interview of Officer Nokes and his medical records indicate that he was physically incapacitated by this assault. He received a concussion and broken nose due to Mr. Sage's assault.

Officer MacHavern attempted to use hard hand tactics of forcibly throwing Mr. Sage into the side of a car to use that as a base to control him for successful handcuffing. This use of force was reasonable for the circumstances of this

encounter. Officer MacHavern then resorted to the use of his agency issued Taser. This was a reasonable and proper choice of subject control tools under the circumstances confronting the officers. Both of his Taser deployments were ineffective. From the witness statements, physical evidence and the testimony of the officers this was most likely due to the outer jacket worn by Mr. Sage and his violent twisting movements. Neither of the two probes ejected during each Taser deployment apparently were able to make the proper contact for the device to be effective.

Once Mr. Sage was on the ground, both officers were attempting to control his arms to enable handcuffing. While one handcuff was secured, Mr. Sage would not cooperate by exposing his other arm. This is very common in police subject control operations on the street. Subjects place their arm or arms under their bodies and it becomes extremely difficult to remove them without their cooperation. Police defensive tactics train officers to use distraction blows or strikes to the subject's side or between the shoulder blades on the back to refocus the subject on that area and inadvertently allowing the officers to now control the arm(s). Officer MacHavern's description of his use of open hand strikes to Mr. Sage's side would be consistent with this police subject control tactic and would be consistent with generally accepted police practices.

**Use of non-lethal force finding:**

**Officer Nokes: Exonerated, in policy and conforming to policy/practice.**

**Officer MacHavern: Exonerated, in policy and conforming to policy/practice.**

## USE OF DEADLY FORCE

The State Police investigative report indicates no conflict in testimony or physical evidence that Officer Nokes fired one round striking Mr. Sage in the thigh region.

The report also describes the physical state of Officer Nokes during the struggle with Mr. Sage after he struck Officer Nokes in the head.

- Dean Fullerton observed Officer Nokes when the handcuffing was being finished, "Looked like he (Nokes) was getting ready to pass out" and he supported Officer Nokes to sit down. (SP 62)
- Rick Hebert stated that Officer Nokes was "unsteady on his feet..." (SP 62)
- Thomas Frobel stated it looked like Sage was getting ready to move forward with one foot forward. (SP 69)
- Assistant Fire Marshal John Audy stated that Officer Nokes appeared "stunned...stumbled back on his heels and he needed assistance to be lowered to the ground." (SP 78)
- Investigator Zorn in his final supplemental report wrote, "...Officer Nokes, who reported being dazed and unable to reengage physically with Sage drew his sidearm...believing that Sage was continuing to come at him...fired one round..." and "Witnesses report that once Sage was handcuffed Officer Nokes still stunned from being punched, stood up, stumbled backwards and nearly fell." (SP 86)
- The dispatch records indicate that Officer MacHavern reported observing the subject (Sage) at 1346 hours and then reported shots fired and requested an ambulance at 1350 hours. (SP 73)
- Officer MacHavern stated during interview with the State Police that he didn't realize that Mr. Sage had been shot until he was controlled and handcuffed, he heard a "pop" as he closed in for a drive stun with his Taser, and later when Officer Nokes said "I think I shot him...thought he had a knife..." and when they stood Sage up Officer MacHavern saw some sunglasses on the ground (SPI line 95-119). He described how quickly the incident occurred during the effort to control and the shot (637-645). Officer MacHavern stated that the strike to Officer Nokes was a "super solid hit" and "it was just me fighting Sage" and after he was controlled "he (Nokes) almost fell over..." (693-702) "...it was to the point where yeah, it was – it was getting out of control...there was nobody there to help us...it was scary... This was a serious issue that if it continued to go the way that it was going, you know, we – we would've definitely gotten hurt or, you know, something bad would have happened..." (874-893)

- Officer MacHavern stated that he didn't see the sunglasses or Sage holding anything (958-959).
- Officer MacHavern, during his interview with Mr. Reiter, discussed his position in relation to Mr. Sage when he heard the discharge (RI 445-480). At the time of the gunshot Mr. Sage "was still spinning..." (505-509) He stated that the entire incident "happened so quickly" (592-608).
  - Officer Nokes stated during his interview with the State Police that when he was hit by Mr. Sage he immediately fell to his knees and "I was completely dazed...I was completely basically useless" and he kept telling Officer MacHavern to Taser him (SPI lines 157-180). When neither Taser deployment was effective he unholstered his gun and held it in the low ready position near his hip..."he just kept coming, and he kept like – there was no stopping, and um, when he came back, he was coming back at me, I uh, I shot one round." (190-211) Officer Nokes felt that Officer MacHavern "was almost on his own" due to his physical condition (234-238). He was told that he had a concussion and broken nose at the hospital (288-289). Officer Nokes said "I was scared to death, like I was afraid, I was so awful afraid..." (613-628) Officer Nokes further described his physical condition including "I was completely uh, messed up" and "I did not want to die..." (640-643; 663-668) "I felt fearful for my life, and I felt fear – completely fearful for Chris (MacHavern), more than probably me." (680-681) He further described his thought process and his belief due to Mr. Sage's actions that he was going to "attack me again." (806-814) Officer Nokes discusses his observations and beliefs of what might be in Mr. Sage's hand (848-885). He again stated "I felt like he was gonna kill me...I felt like I had lost, uh, a substantial ability to have any sort of a fight." (896-899) He stated what he might have done had he not been physically impaired by the strike and "when he came back at me, I had no other option – that's the only reason I shot..." (1026-1027) Officer Nokes acknowledged that he did not see anything in Mr. Sage's hands (1072-1094; 1116-1121).
  - Officer Nokes stated during his interview with Mr. Reiter that he "was fighting for his life...it was all I could do to get back on my feet." (RI 324-326) He discussed his method of holding his weapon after he unholstered it and that "We just know that your finger doesn't go on the trigger until you're gonna, until you're gonna use the gun...so that you don't accidentally discharge" a round; he consciously pulled the trigger as Mr. Sage "was actually coming back at me" and "I made a choice to pull the trigger 'cause I was in fear for my life. And I was also in fear for Officer MacHavern;" and "I'm completely useless in the sense of if it wasn't for Officer MacHavern it would have been a very difficult situation for me to survive." (391-503) He denied that he had an unintentional/accidental discharge (505-508; 529-531). He stated that he holstered his weapon after one discharge (648-666). Officer Nokes described his comments made during his first interview with State Trooper Zorn, his perceptions and assumptions, and that that "in no way did I ever lie." (693-715)

**Use of deadly force analysis:**

A portion of the State Police report and the interview of Officer Nokes by the State Police focused on whether Mr. Sage possessed something in his hand at the time of the shooting. Officer Nokes has stated and witnesses overhead similar statements from Officer Nokes that Mr. Sage may have had a knife, keys or eyeglasses at the time of the shooting. During his interview with the State Police, Officer Nokes he “believed” or “assumed” that Mr. Sage had some object in his hand, but in the end he acknowledged during this interview that at the moment he discharged his weapon he did not see anything in Mr. Sage’s hand.

This is not deception by Officer Nokes from a police practices point-of-view. He acknowledged in the end that there was nothing in his hands at the time of the shooting. Officer Nokes’ subjective belief is not considered when evaluating the reasonableness of his decision to use his firearm. It must be based on an objective belief and one that a reasonable police officer would have had under the same circumstances.

However, Officer Nokes was physically incapacitated by Mr. Sage’s strike to his head. His physical incapacitation occurred immediately after being struck and continued on until after he fired the shot and even until after Mr. Sage was eventually controlled and handcuffed. Officer MacHavern and all of the witnesses who were in a position to observe Officer Nokes before and after the

shooting corroborate his impaired condition. These events occurred in a very short period of time and were rapidly unfolding. The entire incident from Officer MacHavern's report to dispatch as observing the subject to his call for shots fired and a request for an ambulance was only 4 minutes. Officer Nokes was no longer in a position to reasonably support his partner who was physically engaged in the assaultive and resistive behavior of Mr. Sage. Officer Nokes observed the ineffectiveness of both Taser deployments. Drawing his firearm at this point in the altercation to control Mr. Sage was a reasonable choice under the circumstances of his physical ability and the on-going resistive behavior. He, as any reasonable officer would determine, could not retreat and leave his partner in an extremely vulnerable situation. Officer Nokes' use of deadly force was consistent with the WPD "Response to Active Resistance" policy, "The officer is faced with an imminent threat of serious bodily harm or death to him/herself, or some other person who is present..."

Officer Nokes' control of his firearm was consistent with generally accepted weapon retention tactics for this type of encounter. His decision to place the weapon in a low ready position against his hip kept the weapon out of potential reach of Mr. Sage. Officer Nokes fired his weapon to defend his own well being as Mr. Sage defeated the control efforts of Officer MacHavern and as he began to move toward Officer Nokes. One disinterested civilian witness and Officer MacHavern specifically support this act of aggression by Mr. Sage, as well.

Reasonable police officers are trained to consider their own capabilities as one of the factors to use when evaluating whether to use deadly force. History has demonstrated that approximately 15 percent of police officers who are slain by suspects with a gun are the victim of their own weapon being taken, controlled and used by the suspect they are confronting. By the accounts of both officers Mr. Sage was winning the battle. Not stopping his aggravated assault had the potential for Mr. Sage to overpower Officer Nokes, who was physically incapacitated, and allow him to gain possession of Officer Nokes' weapon. None of Mr. Sage's actions were the type that a reasonable police officer would have determined were intended to allow him to flee; Mr. Sage stayed to fight both officers.

Officer Nokes had a right and duty to defend himself from the immediate threat posed by Mr. Sage. This threat under these circumstances and Officer Nokes' physical condition was real and had the potential to result in serious harm or death to Officer Nokes. The use of deadly force under these circumstances would be objectively reasonable and consistent with generally accepted police practices and training.

Officer Nokes fired only one round and then reholstered when he observed Mr. Sage react to the gunshot and begin to double over. Officers are trained to target at center mass when they fire at subjects. It is fortunate for Mr. Sage that

Officer Nokes' physical impairment may have been a factor in the shot being to his thigh rather than the vulnerable areas of center mass.

**Use of deadly force finding:**

**Officer Nokes: Exonerated, in policy and conforming to policy/practice**

**POLICY AND PROCEDURE**

The administrative investigation of any police critical incident is also an opportunity to evaluate the agency's written policy and procedures. Written policies and procedures are not static documents and are subject to modification as events in law enforcement occur, new tools/tactics are developed and used, and there are changes in the law or case law. The ultimate purpose for written policies and procedures is to give guidance to police employees on how to do their job. This is most important when dealing with the high risk, critical tasks of policing. During this administrative investigation the following policies of the WPD were reviewed:

- General Order "Complaint Review" dated 7/08
- Rule and regulation "Employee Discipline" dated 4/07
- General Order "Mental Health Procedures" dated 3/04
- General Order "Response to Active Resistance" dated 2/12
- General Order "Motor Vehicle Stop" dated 3/04 (amended 4/08)

These written policies are consistent with generally accepted practices, with a couple of exceptions. While the "Mental Health Procedures" policy is adequate for its limited function it has not been revisited for 9 years. In addition, this order seems to be oriented only to mental health commitments. Even these have

changed with the diminishing resources in this public health field. The most significant omission is the lack of any guidance for officers regarding the field tactical issues involved to successfully deal with persons of diminished capacity. This is the aspect of police work that ends up creating the bulk of the incidents resulting in public attention and potential civil liability. While these tactical considerations might be considered more training related, including them in a written policy simply reinforces their importance and provides further guidance for field officers. These types of tactical considerations are a significant part of the WPD policy on vehicle stops.

An essential aspect of developing and breathing life into a policy is to ensure that all relevant stakeholders are involved in the process. With mental health issues there can be a disconnect between the needs of a police agency and the services provided by the mental health community. It is reasonable for any police agency, such as the WPD, to maintain on-going liaison with the public health provider for mental health.

The policy "Response to Active Resistance" is detailed and comprehensive with the exception of the area dealing with an officer involved shooting, particularly one where a subject is wounded or killed. It is understood that the Sage shooting was the first the WPD had experienced in recent years. The model policies developed for the Vermont League of Cities and Towns include one titled "Critical Incident Investigation and Review" and those of the IACP are excellent starting

points for the development of a workable policy to cover this area. While the Sage incident appears to have been handled consistent with the concepts embodied in these model policies, an agency policy ensures that they will be followed regardless who might be on-duty at the time of the incident.

The MPD is using video recording devices in field situations in two methods. The first is the in-car video and audio recording system and the second is body cameras worn by officers. The only policy related to video recording is for the interview room at the station and a very small section in the "Motor Vehicle Stop" policy stating "officers will activate the vehicle video system (if so equipped) prior to making contact with the suspect vehicle." There is no policy for the use of body cameras, even though the use of these is now only discretionary. Today there is a great deal of supportive evidence to demonstrate that these field tools are officer safety and agency liability benefits.

**Policy and procedure finding:**

1. The Winooski Police Department should expand its written policy on dealing with persons of diminished capacity to include officer tactical encounter recommendations.
2. The WPD should institute an on-going liaison with the Crisis Center of the Howard Center Mental Health organization. One police member should be designated as the Department's liaison person and should be required to make reports regarding the on-going liaison work.

3. The WPD should adopt a policy concerning the investigation and review of critical incidents including officer-involved shootings.
4. The WPD should develop written policies to guide officers in the reasonable and necessary use of the in-car video system and mandate the use of body cameras when there are sufficient resources. The WPD should study the model policies of the Vermont League of Cities and Towns and the IACP for direction in this development.

## **TRAINING**

Training records were evaluated particularly in the areas of use of force and dealing with the mentally ill. There certainly is no deliberate indifference by the WPD in the area of training. Both officers satisfactorily completed the State mandated basic training. Officer MacHavern is a part-time officer who completed the required training, agency orientation training, and a 12-week field-training program. The curriculum for both of these officers during basic training covered force issues and a minimal number of hours of dealing with the emotionally disturbed/mentally ill person. Officer MacHavern completed the firearms instructor training of 64 hours in 2012.

Officer Nokes recent training records for 2010-2012 shows completion of various training programs. These programs included use of force, firearms qualification, and four (4) on-line training courses concerning police involvement with persons with various forms of disabilities. In 2002 he attended training on Crisis Services.

The on-line training does delve into the tactical issues of dealing with persons with diminished capacity.

The training records are not complete. There are few for Officer MacHavern and no indication that he has been exposed to any on-line training similar to Officer Nokes. Neither officer was able to discuss at length any of the substantive content information contained in any training they received on dealing with emotionally disturbed/diminished capacity persons. Officer Nokes did discuss his continued involvement with these types of persons and the success he has had with them during his regular patrol duties. His responses were reasonable and displayed an on-the-job knowledge of effective strategies for dealing with these types of persons.

In-service training for police personnel is an on-going problem for all police agencies. It becomes even more difficult when the agency is small, such as WPD. Relief factors and the need to ensure adequate community coverage are intensified in smaller communities. But the need for up-to-date and reinforced training in the high risk/critical tasks is as great for the small agency as it is in a larger agency. In some respects may even more important since there may be less resources and back-up for the field officer in the smaller community.

Training should be planned and be related to the high liability/critical tasks confronting the individual agency. Progressive agencies have an in-house training planning group and develop an annual training subject target.

**Training finding:**

1. The WPD should revisit and enhance its in-service training concerning dealing with emotionally disturbed/diminished capacity persons. On-line training is a very reasonable resource, but it must be followed up with discussion by supervisors. It is understood that the State is providing additional training in this field and the WPD should make every attempt to participate in any available training.
2. The WPD should ensure that part time officers receive the same training as fulltime officers in the high risk/critical tasks.

**EQUIPMENT**

Law enforcement has seen numerous significant improvements in available equipment. The WPD has adopted many of these improvements. The WPD has advanced Tasers, video capabilities for both its police vehicles and body cameras, and various forms of armament.

The Taser used by Officer MacHavern during the encounter with Mr. Sage operated as designed. Even the best of police equipment may not always be effective. Officer MacHavern had a very comprehensive understanding of the Taser deployment and application.

It is unfortunate that neither the in-car video nor audio systems captured the incident with Mr. Sage. The systems must wait to be booted up after the police vehicle is restarted. Neither officer was using the body camera. The WPD does not have adequate body cameras available and there is no specific policy on officers using them when they are available. It is understood that the WPD is looking at alternative styles of body cameras. These recording devices are becoming more common in law enforcement. These safety and liability tools should be mandated, rather than discretionary for field officers when they are available.

An issue on the weapon being issued to officers of the WPD was discussed. It appears that the GLOCK weapons provided to officers have the civilian designed trigger pull of 5 pounds of pressure. Officer Nokes' weapon trigger pull was not tested during the State Police investigation. He did not know the trigger pull pressure of his weapon. Chief McQueen indicated that his armorer told him it was the 5 pound model. GLOCK offers its weapons in 8 and 11 pound trigger pulls. These are more reasonable for officers who are involved in tense field situations. There is less potential for an unintentional/accidental discharge. There is no indication, however, that an unintentional/accidental discharge occurred in the Sage shooting.

**Equipment Finding: Information only.**

## **SUPERVISION**

Officer Nokes indicated that he was directed to a psychologist following the shooting incident with Mr. Sage and he is continuing this treatment. This is reasonable and consistent with the generally accepted practice in law enforcement. During his interview with Mr. Reiter, however, he spent a considerable amount of time discussing other professional resources and the lack of any specific to law enforcement (RI 758-906). These specifically dealt with the apparent lack of any peer group of officers who might have had similar types of police incidents and his on-going active involvement with Alcoholic Anonymous. However there apparently is no AA Chapter specifically oriented to public safety employees. Unfortunately this lack is common in most parts of the country, particularly those areas that are less populated. But the needs of public safety employees in substance abuse transcends the country and it can be difficult for these employees to end up in group settings with persons they may have arrested or who may have had encounters with law enforcement.

### **Supervision finding:**

The WPD through its on-going professional associations might consider bringing these employee needs of peer counseling and substance abuse resource groups to the Vermont law enforcement country.

**ATTACHMENTS:**

1. Vermont State Police Investigation as submitted to WPD by the State's Attorney (printed version)
2. Nokes' transcribed interview to Trooper Zorn
3. Nokes' transcribed interview to Investigator Reiter
4. MacHavern transcribed interview to Trooper Zorn
5. MacHavern transcribed interview to Investigator Reiter
6. Winooski Police Department policies
7. Nokes and MacHavern training records
8. Exerpt from WPD on-line training
9. Reiter bio