

“Don’t Tase Me Bro!”

An Argument for Clear and Effective Taser Regulation

MATTHEW J. SPRIGGS*

I. INTRODUCTION

On September 17, 2007, Senator John Kerry addressed a student forum at the University of Florida. During the question-and-answer session following the address, Andrew Meyer, a twenty-one-year-old University of Florida undergraduate student, grabbed a microphone and began a rambling, agitated, three-part question.¹ After approximately a minute-and-a-half the microphone was cut off and Meyer was asked to leave.² Meyer initially refused and campus police officers attempted to forcibly remove him. In the ensuing struggle, Meyer was physically pulled to the ground and restrained by six police officers.³ Meyer continued to resist, yelling “Don’t tase me bro!” moments before officer Nicole Lynn Mallo used a police issued X-26 TASER®⁴ to “drive stun” Meyer in the shoulder.⁵ The entire incident, including Meyer’s subsequent shriek of pain, was captured on video from several angles and soon uploaded to video sharing websites like YouTube.⁶

* J.D., 2009, The Ohio State University Moritz College of Law (expected). The author thanks his peers on The Ohio State Law Journal for their hard work in preparing this Note for publication. The author must also thank avid scholar and sub-par bowler James “Friday” Kostura for his contribution to the development of this Note.

¹ Patrick Oppmann, *Cops on Leave After Taser Incident, Student’s Behavior Under Scrutiny*, CNN.COM, Sept. 18, 2007, available at <http://www.cnn.com/2007/US/09/18/student.tasered/index.html>. See also Monica Hesse, *Aiming to Agitate, Florida Student Got a Shock*, WASH. POST, Sept. 19, 2007, at C1 (describing the question as “an increasingly agitated three-parter”).

² Oppmann, *supra* note 1.

³ Jim Leusner & Katie Fretland, *‘Don’t Tase Me Bro’ Becomes Rallying Cry at UF Following Arrest of Student*, ORLANDO SENTINEL, Sept. 20, 2007, available at <http://www.orlandosentinel.com/news/local/state/orl-taserbro20xsep20,0,2200943.story>.

⁴ TASER International is the exclusive producer of TASER® brand devices, though other stun gun manufacturers exist. For more information on TASER International, see <http://www.taser.com>. This Note will refer to any brand of stun gun as a “taser.”

⁵ UNIV. OF FLA. POLICE DEP’T, OFFENSE REPORT UFPD07OFF002274, at 9 (2007), <http://i.a.cnn.net/cnn/2007/images/09/18/offense.report.072274.pdf>.

⁶ See generally YouTube.com, search: “Don’t Tase Me Bro”, for numerous videos of the incident.

Meyer's plea, "Don't tase me bro!," became an instant pop-culture catchphrase and helped bring the debate over taser use to the public forum.⁷

The significance of the incident is a matter of interpretation. Some argue that Meyer was peacefully exercising his First Amendment right to free speech when forum moderators, upset by the student's question, had him forcibly removed from the event.⁸ When the unarmed twenty-one-year-old challenged his removal, six campus police officers physically restrained and "tased"⁹ the student. Others argue that Meyer was an attention-seeking prankster disrupting the forum and resisting arrest.¹⁰ A CNN.com article published two days after the event suggested that opinions on the issue were evenly divided.¹¹ Indeed, while student groups and the ACLU of Florida released statements criticizing the use of force and requesting a review of police policies,¹² Meyer himself issued an apology stating he "stepped out of line."¹³ An NBC News correspondent aptly pointed out how different camera angles suggest different conclusions as to the extent of Meyer's disruption and the severity of the officers' response.¹⁴ Ultimately, two of the officers involved were placed on paid administrative leave pending an investigation

⁷ Arthur Spiegelman, "Don't Tase Me, Bro" Tops '07 Memorable Quote List, REUTERS, Dec. 19, 2007, available at <http://www.reuters.com/article/oddlyEnoughNews/idUSN1959512020071219?loc=interstitialskip>.

⁸ See Leusner & Fretland, *supra* note 3. See also Lise Fisher, *Two Officers Suspended in Taser*, GAINESVILLE SUN, Sept. 18, 2007, available at <http://www.gainesville.com/article/20070918/NEWS/70918014> (citing an internet post organizing a protest, "The student didn't do anything to deserve getting pulled down by six officers and then Tasered . . . [h]e was censored."); Jack Stripling, *Stun Gun Case Fuels Claims of Repression at UF*, HERALD TRIBUNE, Sept. 20, 2007, available at <http://www.heraldtribune.com/article/20070920/NEWS/709200767>.

⁹ For the sake of clarity, deployment of a stun gun or other TASER® brand device will hereinafter be referred to as "tasing."

¹⁰ See Erin Ehrlich, *Students Doubtful of Meyer's Apology*, GAINESVILLE SUN, Oct. 31, 2007, available at <http://www.gainesville.com/article/20071031/NEWS/710310332>; Eunic Ortiz, *Students Stunned—and Tired—About Taser Incident*, CNN.COM, Sept. 19, 2007, available at <http://www.cnn.com/2007/US/09/19/cnnu.tase/index.html>.

¹¹ Ortiz, *supra* note 10.

¹² Press Release, Am. Civil Liberties Union of Fla., University of Florida Taser Incident Should Have Been Avoided, Says ACLU (Sept. 18, 2007), available at http://www.aclufl.org/news_events/?action=viewRelease&emailAlertID=2980 (last visited Mar. 5, 2009).

¹³ Kim Wilmath, *Meyer Apologizes in Letter to Students*, INDEPENDENT FLA. ALLIGATOR, Oct. 30, 2007, available at <http://www.alligator.org/articles/2007/10/30/news/campus/meyer.txt>.

¹⁴ Posting of Kerry Sanders to NBC Field Notes, <http://fieldnotes.msnbc.msn.com/archive/2007/10/31/441568.aspx> (Oct. 31, 2007, 15:56 EST).

of the incident.¹⁵ The Florida Department of Law Enforcement investigated the incident and on October 24, 2007, released a report finding the officers' actions were justified.¹⁶

This incident is just the latest and most public in the debate over the use of tasers by law enforcement personnel. In September of 2005, the ACLU of Northern California released a study calling for stronger taser regulation and recommending tasers "only be used in life-threatening situations."¹⁷ In 2004, and again in 2006, Amnesty International issued reports citing safety concerns over the use of stun guns, demanding more impartial research on the subject, and calling on police departments "to suspend their use of tasers or strictly limit their use to deadly force situations as defined under international standards."¹⁸ Meanwhile, law enforcement agencies, together with TASER International, a company specializing in development of stun gun products, continue to laud studies suggesting stun guns are a safe, effective means of crime deterrent.¹⁹ Currently, taser regulation in the United States is a patchwork of conflicting case law and police policy. The resulting confusion creates uncertainty for law enforcement personnel and citizens. The uncertainty translates into increased litigation and distrust of law enforcement personnel.

This Note will assess taser regulation in the United States to determine the current state of the law and assess which regulations are most appropriate in governing taser use. Analysis of current case law, state regulations, and law enforcement guidelines will demonstrate the contradictions in current taser usage policies. Proposed taser regulation from both sides of the debate will be discussed in this Note. Ultimately, this Note will argue that taser weapons provide a safe, effective crime deterrent for law enforcement personnel and should be supported by clear, effective regulation that encourages taser use when appropriate.

¹⁵ See Fisher, *supra* note 8.

¹⁶ Associated Press, *University of Florida Police Cleared in Use of Stun Gun on Student*, INT'L HERALD TRIB., Oct. 24, 2007, available at <http://www.ihl.com/articles/ap/2007/10/24/america/NA-GEN-US-Student-Tasered.php> (last visited Mar. 5, 2009).

¹⁷ AM. CIVIL LIBERTIES UNION OF N. CAL., STUN GUN FALLACY: HOW THE LACK OF TASER REGULATION ENDANGERS LIVES 15 (2005) [hereinafter ACLU-NC], available at http://www.aclunc.org/issues/criminal_justice/police_practices/asset_upload_file389_5242.pdf.

¹⁸ AMNESTY INT'L, USA: AMNESTY INTERNATIONAL'S CONTINUING CONCERNS ABOUT TASER USE 2 (2006), available at <http://www.amnesty.org/en/library/asset/AMR51/030/2006/en/dom-AMR510302006en.pdf> [hereinafter AI 2006].

¹⁹ See generally, *Research*, TASER.COM <http://www.taser.com/research/Pages/default.aspx> (last visited Mar. 5, 2009).

Part II of this Note will briefly discuss stun gun design and implementation specifics, including a brief description of health issues associated with deployment. Part III will discuss case law, state regulations, and law enforcement policies governing taser usage. Part IV will assess concerns and proposed regulation from both sides of the taser debate, including Amnesty International and the ACLU. Part V will focus on a proposal for clear and effective taser regulation that enables, rather than limits, law enforcement personnel.

II. TASER DESIGN AND IMPLEMENTATION

Before addressing current taser regulations in the United States, it is important to understand, functionally, what a taser is. This section will discuss the physical mechanics of a taser and implementation techniques to give the reader some sense of what kind of force the taser operator is deploying. This section will also briefly discuss the known and unknown health implications of taser deployment and the recently defined medical phenomenon known as “excited delirium.”

A. *Taser Mechanics*

TASER International (TASER) is a Scottsdale, Arizona-based public company developing a line of tasers for law enforcement and private use.²⁰ TASER’s public relations information, available on TASER’s website, explains, “TASER devices use proprietary technology to quickly incapacitate dangerous, combative or high-risk subjects who pose a risk to law enforcement officers, innocent citizens or themselves.”²¹ Electronic Control Devices, as TASER calls them, “utilize compressed nitrogen to project two small probes up to . . . 35 feet”²² The probes remain attached to wires, through which an electrical signal is transmitted.²³ TASER calls the technology “Neuro-Muscular Incapacitation” (NMI) technology. The NMI technology “temporarily overrides the nervous system, taking over muscular control . . .” by “. . . directly stimulat[ing] motor nerve tissue, causing incapacitation regardless of mental focus, training, size, or drug induced dementia.”²⁴

²⁰ See TASER INT’L, PRESS KIT 1, available at <http://www.taser.com/company/pressroom/Documents/TASER%20Intl%20Press%20Kit%2011%2008.pdf>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 1–3.

TASER currently offers a line of products for home consumers and a line for law enforcement. This Note will deal exclusively with law enforcement's use of tasers, but the difference in product lines is negligible. TASER International offers the X26 Taser for law enforcement and the X26C for citizen consumers. The only difference between the weapons is the range and the duration of the charge, discussed *infra*, Part I.B.

B. Implementation

Stun devices can be deployed in the fired prong setup described above or in a "drive stun" variant, as used in the University of Florida incident. In the "drive stun" version, the taser is used to stun a subject "by making direct contact with the body after the air cartridge has been expended or removed."²⁵ Contact is made by physically pressing the taser into the body of the subject. According to the Las Vegas Metropolitan Police Department, "[t]he Drive Stun causes significant localized pain in the area touched by the TASER® but does not have a significant effect on the central nervous system. The Drive Stun does not incapacitate a subject but may assist in taking a subject into custody."²⁶ This differs from the fired prong variant in which the NMI technology actually incapacitates the subject.

Another advantage to the fired prong implementation is the user's ability to control the pulse cycle of the taser. TASER International's X26C series taser allows the citizen user to pull the trigger up to three times for three consecutive ten-second cycles.²⁷ This adds up to thirty seconds of subject incapacitation. The law enforcement version, X26, allows the user only one five second cycle of incapacitation;²⁸ however, holding the trigger down will continue the electrical cycle until the trigger is released.²⁹ As discussed *infra*, Part I.C., the duration of the cycle and the number of stuns deployed on a subject may entail some health implications for the subject.

²⁵ LAS VEGAS METRO. POLICE DEP'T, PROCEDURAL ORDER PO-43-04, at 1 (2004), available at <http://www.aele.org/taser-lvmpd.pdf> (last visited Mar. 5, 2009) [hereinafter LAS VEGAS].

²⁶ *Id.*

²⁷ TASER INT'L, TASER® X26C SERIES ELECTRONIC CONTROL DEVICE SPECIFICATION (2006) (on file with author).

²⁸ TASER INT'L, TASER® X26E SERIES ELECTRONIC CONTROL DEVICE SPECIFICATION (2007) (on file with author).

²⁹ AMNESTY INT'L, UNITED STATES OF AMERICA EXCESSIVE AND LETHAL FORCE? AMNESTY INTERNATIONAL'S CONCERNS ABOUT DEATHS AND ILL-TREATMENT INVOLVING POLICE USE OF TASERS 5 (2004), available at http://www.amnestyusa.org/countries/usa/Taser_report.pdf [hereinafter AI 2004]. See also *General FAQ's*, TASER.COM, <http://www.taser.com/research/Pages/FAQGeneral.aspx>.

C. Health Implications

Stun gun use by law enforcement personnel has been associated with a variety of health concerns for the tased subject.³⁰ Indeed, one of Amnesty International's primary complaints against taser use is the known and unknown associated health risks of taser use.³¹ In its 2006 report, Amnesty International claims that "[s]ince June 2001, more than 150 people have died in the USA after being shocked by a taser."³² The report goes on to list instances where medical examiners cited taser use as a contributing factor in the death of an individual.³³

The health concerns over taser use, as raised by Amnesty International and other groups, relate primarily to a few general categories. Taser use has been associated with serious injury or death primarily in instances of multiple or prolonged discharge;³⁴ when the subject is under the influence of drugs or alcohol;³⁵ when the subject is pregnant;³⁶ or when the subject injures himself while falling after incapacitation by the taser (also called "secondary injury").³⁷ The injuries caused by prolonged discharge or in combination

³⁰ Amnesty International's 2004 report cites a variety of incidents where a stun gun was listed as a contributing factor in the death and raises general concerns over the health implications of taser use. *See generally* AI 2004, *supra* note 29.

³¹ AI 2006, *supra* note 18, at 1 ("[T]he mounting death toll of people struck by tasers makes the need for a full, independent and rigorous inquiry, as well as restrictions on use, more urgent than ever.").

³² *Id.* at 3.

³³ In a description of Dennis Hyde's death, "[t]he coroner who performed the autopsy said stun guns contributed to death, as well as other factors including methamphetamine in his system . . ." *Id.* at 9. Fifty-four-year-old Ronald Hasse died after being tasered twice by Chicago police. The "medical examiner ruled that Hasse died from electrocution, with methamphetamine being a contributing factor." *Id.* at 8. Twenty-nine-year-old Maurice Cunningham "died of cardiac arrhythmia provoked by the application of six taser cycles, one of which lasted 2 minutes and 49 seconds." *Id.*

³⁴ AI 2004, *supra* note 29, at 45–46.

³⁵ AI 2006, *supra* note 18, at 3–4 ("Of the 152 taser related deaths documented by Amnesty International . . . [m]any of those who died had underlying health problems such as heart conditions or mental illness, or were under the influence of drugs."). *See also id.* at 13 ("The possibility that other factors such as illicit drug intoxication, alcohol abuse, pre-existing heart disease and cardioactive therapeutic drugs may modify the threshold for generation of cardiac arrhythmias cannot be excluded.").

³⁶ AI 2004, *supra* note 29, at 60–61.

³⁷ John J. Ryan, *Use of Force: Deadly/Non-Deadly*, in Section 1983 Civil Rights Litigation 239, 258 (PLI Litig. & Admin. Practice, Course Handbook Series No. 764, 2007) ("Some of the more common injuries with electronic control device deployment were the secondary injuries received when a subject falls to the ground as the result of the deployment.").

with the effects of drugs or alcohol are likely the result of the electrical charge on the cardiovascular system, but further research is needed to confirm this understanding.³⁸ Amnesty International argues that studies lauded by TASER International rely primarily on single cycle taser incidents. Fatalities occur more frequently, however, in instances of multiple or prolonged discharges.³⁹ Consequently, Amnesty International argues, “[t]he psychological and physiological effects of prolonged, as well as repeated, taser shocks also requires [sic] urgent review by relevant independent experts, including those in the field of cardiology and electrophysiology.”⁴⁰

The ACLU has argued that a taser is like “playing ‘Russian Roulette’ with the heart.”⁴¹ In a 2005 report, the ACLU argued that because a taser disrupts the electrical energy pulses of the body, the shock “may be fatal if it hits the subject during the vulnerable period of the heart beat cycle”⁴² The report cites a University of California at San Francisco cardiologist, Dr. Zian Tseng, explaining, “if the Taser sends its energy to the heart at the wrong time, the electricity may cause ventricular fibrillation, a state in which the heart muscles spasm uncontrollably, disrupting the heart’s pumping function and causing death.”⁴³

TASER International’s website highlights a number of medical studies suggesting taser use is safe and effective. One of the most recent studies, from October 2007, concludes that “99.7% of 962 subjects had no injuries or mild injuries only. . . . These findings support the safety of CEW use by law enforcement agencies.”⁴⁴ In response to concerns over multiple discharges, TASER insists its product remains safer than the alternative, alleging, “there have been thousands of documented cases in which multiple applications

³⁸ AI 2004, *supra* note 29, at 46 (“The psychological and physiological effects of prolonged, as well as repeated, taser shocks also requires urgent review by relevant independent experts, including those in the field of cardiology and electrophysiology.”).

³⁹ *Id.* (“It appears that the reported fatalities cases may therefore involve a disproportionate number of multiple discharges (as well as other force), an issue which Amnesty International believes requires urgent review.”).

⁴⁰ *Id.*

⁴¹ ACLU-NC, *supra* note 17, at 4.

⁴² *Id.*

⁴³ *Id.* (citing Sabin Russel, *Heart Expert Warns About Using Tasers*, S.F. CHRON., Jan. 5, 2005, at B1.).

⁴⁴ See WILLIAM P. BOZEMAN ET AL., WAKE FOREST SCH. OF MED., INJURY PROFILE OF TASER® ELECTRICAL CONDUCTED ENERGY WEAPONS (CEWS) (2007), available at <http://www.taser.com/research/Science/Documents/Wake%20Forest%20Univ%20ACEP%20Study%2010%2008%2007.pdf>.

from the TASER system were not only appropriate but were absolutely critical to a safe outcome of the situation.”⁴⁵

D. *Excited Delirium*

Many of the deaths associated with taser deployment are officially attributed to a medical phenomenon known as “excited delirium.”⁴⁶ The ACLU’s 2005 report includes a description of the death of Carlos Casilla Fernandez.⁴⁷ In July of 2005, Fernandez, under the influence of drugs and sweating profusely, resisted arrest by the Santa Rosa, California Police Department. In the ensuing struggle, officers used pepper spray, a carotid restraint, and fired six taser shots at Fernandez.⁴⁸ Fernandez reported trouble breathing and was transported to a hospital where he was pronounced dead. News reports alleged the autopsy listed the cause of death as “drug-induced excited delirium from methamphetamine intoxication.”⁴⁹

The 2006 Amnesty International report alleges that in most instances when a taser is associated with death, the cause of death is listed as excited delirium.⁵⁰ Excited delirium is a poorly understood medical episode. A Canadian Police report on the condition, cited in Amnesty International’s 2006 report explains: “The causes of Excited Delirium are multifactorial. No one really knows for certain what is happening.”⁵¹ Descriptions of excited delirium are vague and conflicted. Deborah Mash, a professor of neurology at the University of Miami, offers the following description of the condition: “Someone who’s disproportionately large, extremely agitated, threatening violence, talking incoherently, tearing off clothes, and it takes four or five

⁴⁵ See Daniel Glossenger, *Lethality of Tasers Should be Considered Before Widespread Use*, TRUMAN ST. UNIV. INDEX, Nov. 29, 2007, available at <http://media.www.trumanindex.com/media/storage/paper607/news/2007/11/29/Opinions/Lethality.Of.Tasers.Should.Be.Considered.Before.Widespread.Use-3121712.shtml> (quoting TASER International’s response to the “multiple application question”).

⁴⁶ AI 2006, *supra* note 18, at 16 (“In at least 31 of the cases reviewed by Amnesty International since 2001 the autopsy listed ‘excited delirium,’ ‘agitated delirium’ or ‘cocaine-associated excited delirium’ as a cause or contributory factor in death.”).

⁴⁷ ACLU-NC, *supra* note 17, at 3.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ AI 2006, *supra* note 18, at 6 (“Although in most cases the cause of death is listed as ‘excited delirium’, often as a result of cocaine intoxication, in 23 cases out of the 152 the medical examiner or coroner performing the autopsy has cited taser as a contributory factor.”).

⁵¹ *Id.* at 16 (citing SGT. DARREN LAUR, CANADIAN POLICE RES. CTR., *EXCITED DELIRIUM AND ITS CORRELATION TO SUDDEN AND UNEXPECTED DEATH PROXIMAL TO RESTRAINT*, CANADIAN POLICE RESEARCH CENTRE 19 (2004)).

officers to get the attention of that individual and bring him out of harm's way—that's excited delirium."⁵² Amnesty International cites medical studies describing the condition as "a state of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, euphoria, hostility, exceptional strength and endurance without apparent fatigue."⁵³ That same report admits, however, that there is "no medical consensus on its definition."⁵⁴ Amnesty International cites this lack of understanding as support for its call for further research before tasers are used by law enforcement agents.⁵⁵

Civil rights groups and other anti-taser organizations have also alleged that excited delirium is listed as a cause of death to cover up abuses by law enforcement agents. "[N]early all reported cases of excited delirium involve people who are fighting with police."⁵⁶ Eric Balaban of the ACLU argues, "I know of no reputable medical organization—certainly not the AMA or the APA—that recognizes excited delirium as a medical or mental-health condition."⁵⁷ Balaban insists that law enforcement agents use the diagnosis "as a means of white-washing what may be excessive use of force and inappropriate use of control techniques by officers during an arrest."⁵⁸

Whatever merit the excited delirium theory might have, it remains an oft-cited but poorly understood phenomenon. What is clear is that any instance of a subject's death preceded by a taser deployment can easily be lumped under the nebulous "excited delirium" category. It remains to be seen whether this general classification ultimately benefits civil rights advocates or law enforcement officers.

The taser is a powerful tool. A taser enables a law enforcement agent to completely incapacitate a subject from a substantial distance. However, it cannot be said that taser use is without consequence. Taser deployment, in any implementation, is extremely painful for the subject.⁵⁹ More importantly,

⁵² *All Things Considered: Death by Excited Delirium: Diagnosis or Coverup?* (NPR radio broadcast Feb. 26, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=7608386>.

⁵³ AI 2006, *supra* note 18, at 16 (quoting DRAZEN MANOJLOVIC ET AL., CANADIAN POLICE RES. CTR., REVIEW OF CONDUCTED ENERGY DEVICES 36 (2005)).

⁵⁴ *Id.*

⁵⁵ *Id.* at 16–18.

⁵⁶ *All Things Considered: Death by Excited Delirium: Diagnosis or Coverup?*, *supra* note 52.

⁵⁷ *Id.* (internal quotations omitted)

⁵⁸ *Id.* (internal quotations omitted)

⁵⁹ TASER International emphasizes that taser functionality "is not dependent on pain and is effective on subjects with a high level of pain tolerance." *Neuromuscular Incapacitation (NMI)*, TASER.COM, available at <http://www2.taser.com/research/>

taser deployment is associated with significant health risks. For these reasons it is important to consider what regulations currently govern law enforcement personnel's use of tasers, and what regulations should be implemented in the future.

III. TASER REGULATION

Tasers are currently regulated in three ways: state and local regulation, case law, and law enforcement agency policy. Unfortunately, the three sources are not always aligned and it is often difficult to determine the state of taser regulation in a given jurisdiction.⁶⁰ As tasers grow more prevalent in the law enforcement community and the general population, it becomes more important to clearly define the rights and limitations governing taser use.

A. State and Local Regulation

While all states have laws governing law enforcement's use of non-lethal force,⁶¹ and many states have laws governing the ownership and use of tasers by the general public,⁶² only a few states have laws that specifically cover

technology/pages/neuromuscularincapacitation.aspx. However, individuals subjected to a taser discharge consistently describe it as an excruciatingly painful experience. An Ohio woman subjected to taser deployment by state police told CBS News' *The Early Show*, "The pain just wouldn't stop, it was so much, so much. I just didn't think it was going to stop ever." CBS/Associated Press, *Tasered Ohio Woman Describes Agony*, CBS NEWS, Sept. 25, 2007, available at <http://www.cbsnews.com/stories/2007/09/25/national/main3294648.shtml>. TASER International co-founder Tom Smith told NPR's *All Things Considered* reporter Laura Sullivan that the sensation was "similar to a physical exertion" from working out. *All Things Considered: Taser Looks to Expand Market for Stun Guns* (NPR radio broadcast Apr. 1, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4571973>. However, that same reporter volunteered to be subjected to a taser strike and reported the pain was "excruciatingly painful—like someone reached into my body to rip my muscles apart with a fork." *Id.* Even TASER's Washington lobbyist, Monty Tripp, admits the pain is "kind of like being hit by a truck and then each one of these pulses as it hits you is kind of like a jackhammer." *Id.*

⁶⁰ See U.S. GOV'T ACCOUNTABILITY OFFICE, *TASER WEAPONS: USE OF TASERS BY SELECTED LAW ENFORCEMENT AGENCIES* 17 (2005), available at <http://www.gao.gov/new.items/d05464.pdf> [hereinafter *GAO TASER*] ("Some Federal, State, and Local Laws Address Tasers But Requirements Differ."). See also *AI 2004*, *supra* note 29, at 21 ("There are no national standards on police use of tasers and practice varies between departments, and even . . . within states.").

⁶¹ See generally MICHAEL AVERY ET AL., *POLICE MISCONDUCT: LAW AND LITIGATION* § 2:22 (2007).

⁶² Arkansas (ARK. CODE ANN. § 5-73-133), Indiana (IND. CODE § 35-41-1-8), Illinois (ILL. COMP. STAT. § 430 ILCS 65/1), Virginia (VA. CODE ANN. § 18.2-283.1) and

law enforcement's use of tasers. Those that specifically mention tasers typically require only some training for officers equipped with the tool.

Arkansas' state code states that "[a]ny law enforcement officer using a taser stun gun shall be properly trained in the use of the taser stun gun and informed of any danger or risk of serious harm and injury that may be caused by the use of the taser stun gun on a person."⁶³ Georgia enacted, in January of 2007, the "TASER and Electronic Control Weapons Act," which "establish[es] legal requirements for the official use of electronic control weapons and similar devices by law enforcement officers . . ."⁶⁴ In effect, however, the Act merely mandates training of officers equipped with tasers and requires tasers "be used for law enforcement purposes in a manner consistent with established standards and with federal and state constitutional provisions."⁶⁵ Florida appears to have the most comprehensive statute governing taser use. Section 943.1717 of the Florida code requires training of taser-equipped officers and also indicates:

A decision by a law enforcement officer . . . to use a dart-firing stun gun must involve an arrest or a custodial situation during which the person who is the subject of the arrest or custody escalates resistance to the officer from passive physical resistance to active physical resistance and the person:

- (a) Has the apparent ability to physically threaten the officer or others; or
- (b) Is preparing or attempting to flee or escape.⁶⁶

This statute clearly defines the scenario in which law enforcement may legally deploy stun gun technology. Without specific mention, like the Florida statute, states leave taser regulation to "established standards" as applied by law enforcement agencies, apparently grouping tasers with other non-lethal weapons like pepper spray and bean-bag rifles.⁶⁷ The disparity in the utility and effect of the various non-lethal weapons leaves tasers in a legal grey zone, where much of the regulation is settled in case law rather than state legislation.

many other states have laws defining tasers as weapons for the purpose of criminal statutes regulating possession and use of weapons. See TASER.com, *State Statutes Regarding TASER® Conducted Energy Devices*, <http://www.taser.com/SiteCollectionDocuments/Controlled%20Documents/Legal/7-2007%20State%20Statute%20Chart.pdf>.

⁶³ ARK. CODE ANN. § 5-73-133(c) (West 2007).

⁶⁴ GA. CODE ANN. § 35-8-26(a)-(b) (West 2006 & Supp. 2008).

⁶⁵ *Id.* § 35-8-26(b).

⁶⁶ FLA. STAT. ANN. § 943.1717(1) (West 2009).

⁶⁷ See GA. CODE ANN. § 35-8-26(b) (West 2006 & Supp. 2008).

B. Case Law

Without state statutes specifically governing taser use by law enforcement personnel, law enforcement agencies are left with an abundance of case law to guide them in developing taser deployment policies. As TASER International is quick to point out, “[e]xisting case law has routinely held that the TASER ECD is an appropriate use of force and does not per se constitute excessive use of force.”⁶⁸ Amnesty International, however, cites several cases where courts have held the opposite, finding an officer’s use of a taser to be excessive force.⁶⁹

Amnesty International argues that many lawsuits by tased subjects against law enforcement agencies are the result of “a lack of clear guidelines or training on the risks involved in using tasers in certain situations.”⁷⁰ The 2004 report lists several cases where substantial damages were awarded.⁷¹ In one case, the City of Chula Vista, California, “paid \$675,000 to settle a damages claim” by a pregnant woman who “lost the baby she was carrying after she was shot with a taser.”⁷² In another case, the City of Portland, Oregon, paid \$145,000 to a blind and partially deaf seventy-one-year-old woman to settle a damages claim of excessive force after she was tased three times for ignoring police orders.⁷³ In *Hickey v. Reeder*, the Eighth Circuit Court of Appeals found that a jail official’s use of a taser on a prisoner who refused to sweep his cell was a “grossly disproportionate response to [the prisoner’s] misconduct.”⁷⁴

TASER International cites *Draper v. Reynolds* in its argument in support of taser use by law enforcement personnel.⁷⁵ In that Eleventh Circuit Court of Appeals case, a Sheriff’s Deputy in Cowetta County, Georgia, pulled over

⁶⁸ See DOUGLAS E. KLINT, TASER INT’L, TASER DEVICE LIABILITY AND LITIGATION RISK 4 (2007), available at <http://www.taser.com/SiteCollectionDocuments/Controlled%20Documents/Legal/TASER%20Device%20Liability%20and%20Litigation%20Risk.pdf> (citation omitted).

⁶⁹ See, e.g., AI 2004, *supra* note 29, at 29–35.

⁷⁰ *Id.* at 29.

⁷¹ *Id.* at 29–35.

⁷² *Id.* at 30.

⁷³ *Id.* at 32.

⁷⁴ *Hickey v. Reeder*, 12 F.3d 754, 756 (8th Cir. 1993). The court found that, given the circumstances, the use of the stun gun violated the inmate’s constitutional right to be free from cruel and unusual punishment. *Id.* In regard to the physical sensation of a taser strike (discussed *supra*, Part II.C.) the court noted: “We find defendants’ attempt, on appeal, to minimize the pain of being shot with a stun gun by equating it with the pain of being shocked by static electricity to be completely baseless.” *Id.* at 757.

⁷⁵ KLINT, *supra* note 68, at 4.

semi-truck driver Stacy Draper for an improperly illuminated registration plate.⁷⁶ Draper, whose actions were recorded by the police vehicle's camera, grew increasingly uncooperative and belligerent.⁷⁷ Ultimately, as Draper yelled and walked towards Deputy Reynolds, the deputy fired his TASER International ADVANCED TASER M26 into Draper's chest, incapacitating the plaintiff.⁷⁸ Draper alleged this amounted to excessive force.⁷⁹ The court held that "Reynolds's use of the taser gun to effectuate the arrest of Draper was reasonably proportionate to the difficult, tense and uncertain situation that Reynolds faced in this traffic stop, and did not constitute excessive force."⁸⁰ Apparently, although there is no evidence that the subject actually intended to attack the officer, the officer's reasonable apprehension that the plaintiff might attack justified deployment of the taser. Ultimately, courts will consider the three factors noted in *Graham v. Connor*⁸¹ when determining if an officer's use of force is reasonable.⁸² In that case the Supreme Court indicated that courts should consider the seriousness of the suspected offense, the threat posed by the suspect to the officer or others, and whether the suspect was actively resisting or attempting to evade arrest.⁸³ When considered on a case-by-case basis these factors can effectively be applied to taser cases.

After examining the facts, it is evident that the cases Amnesty International cites in opposing taser use can actually be reconciled with those cited by TASER International in support of taser use.⁸⁴ The exceptions to the rule, where courts have found taser deployment to be an excessive use of force, generally fall within the circumstances for which Amnesty

⁷⁶ *Draper v. Reynolds*, 369 F.3d 1270, 1272 (11th Cir. 2004).

⁷⁷ *See id.*

⁷⁸ *Id.* at 1273.

⁷⁹ *Id.* at 1274.

⁸⁰ *Id.* at 1278.

⁸¹ *Graham v. Connor*, 490 U.S. 386, 396 (1989). In *Graham* a diabetic plaintiff brought a § 1983 action seeking "damages for injuries allegedly sustained when law enforcement officers used physical force against him during the course of an investigatory stop." *Id.* at 388. Chief Justice Rehnquist held that a claim that law enforcement officials have used excessive force is properly analyzed under the Fourth Amendment's "objective reasonableness" standard. *Id.*

⁸² *Ryan*, *supra* note 37, at 254.

⁸³ *Graham*, 490 U.S. at 396.

⁸⁴ *Compare Hickey*, 12 F.3d at 756 (use of taser against incarcerated inmate who refused to sweep his cell), *with Draper*, 369 F.3d at 757 (use of taser against belligerent truck driver moving towards officer). *Hickey* involved a subject who presented little risk to the officer and was guilty of only a minor offense. Both Amnesty International and TASER International (under *Graham*) would oppose TASER use in these circumstances.

International has already expressed concern: subjects who are disabled, pregnant, elderly, or already restrained.⁸⁵ Apparently courts are more willing to find excessive force by an officer when a tased subject falls within one of these suspect classes. This analysis accords with the Supreme Court's three factor analysis in *Graham v. Connor*. An elderly, pregnant, or already restrained individual would likely pose less of a threat to the officer or others, thus affecting the three factor balance. It is less likely a court would find that the use of a taser in such circumstances satisfies the *Graham* three factor test for objective reasonableness.

Not all case law lines up so neatly, however. While case law discourages taser use against elderly, pregnant, or restrained individuals, Amnesty International and other groups have also expressed concern for subjects with pre-existing health issues, subjects under a chemical influence and secondary injuries from taser use.⁸⁶ Amnesty International cites numerous instances where medical examiners suggested taser use combined with other health issues resulted in death.⁸⁷ However, Amnesty International's 2004 and 2006 reports offer no examples of incidents where a subject actually won a case or a settlement for secondary injuries or injury as a result of taser use combined with health issues. Amnesty International and the ACLU have also expressed concern over numerous reports of taser use by law enforcement personnel against individuals who were merely passively resisting or arguing with officers.⁸⁸ It is not evident that case law exists explicitly discouraging the use of tasers in such situations.

There does exist one area of relative consistency in the case law. Courts have repeatedly discussed the importance of clearly defined law enforcement policies covering taser use. In *Madrid v. Gomez*, the District Court for the Northern District of California noted that "the significance of written policies concerning use of force is self-evident."⁸⁹ The court explained that Title 15 of the California Code of Regulations regarding the use of force was too

⁸⁵ AI 2006, *supra* note 18, at 29.

⁸⁶ *Id.*; ACLU-NC, *supra* note 17. The ACLU-NC report notes:

Drug users may also be more vulnerable because of the effects that drugs have on the heart. Again, Dr. Tseng: "I've seen the Taser folks say, 'Oh, the guy had cocaine in his system, that's the reason for his death.' Well, someone with cocaine in their system is also much more prone to a Taser-induced cardiac arrest. They cannot say that it's safe in my opinion.

Id. at 4 (citing Alan Gathright, *Taser Sued Over 'Non-Lethal' Claim*, S.F. CHRON., Mar. 1, 2004, at B1).

⁸⁷ AI 2006, *supra* note 18, at 8–10.

⁸⁸ AI 2004, *supra* note 29, at 6–11.

⁸⁹ *Madrid v. Gomez*, 889 F. Supp. 1146, 1182 (N.D. Cal. 1995).

general to provide meaningful guidance.⁹⁰ “[T]he absence of authoritative written guidelines allows policy to shift according to the predilections of individual mid-level staff.”⁹¹ The court held that “[t]he use of tasers presents one example where the written policies [of Pelican Bay State Prison in California] fail to provide a consistent framework.”⁹² “Given the substantial pain inflicted by the taser, and the still uncertain health risks . . . clear written policy on use of the taser is critical, particularly since the taser itself can not be pre-programmed to regulate or register the length of the charge.”⁹³

Other courts have reached similar conclusions. In *Moretta v. Miami-Dade County*, the Southern District of Florida conducted a detailed analysis of the Miami Dade County Police Department’s taser policy before ultimately holding that reliance on that policy is not a defense for an officer if the policy is unconstitutional.⁹⁴ In *McKenzie v. City of Milpitas*, the Northern District of California explained that “[t]he reasonableness of the use of force (and of the City’s taser policy pursuant to which the officers were acting) ‘requires careful attention to the facts and circumstances of each particular case’”⁹⁵ This case law suggests that a law enforcement agency’s own policy on taser use is an integral part of any taser regulation discussion.

C. Law Enforcement Agency Policies

Without state statutes or consistent case law clearly governing law enforcement’s use of tasers, police departments are left to construct their own policies. Use-of-Force guidelines define when and how a law enforcement agent can deploy force against a subject.⁹⁶ Amnesty International and the

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 1183.

⁹⁴ *Moretta v. Miami-Dade County*, No. 06-CIV-20467, 2007 WL 701009, at *8 (S.D. Fla. Jan. 23, 2007).

⁹⁵ *McKenzie v. City of Milpitas*, 738 F. Supp. 1293, 1300 (N.D. Cal. 1990) (citation omitted).

⁹⁶ Law enforcement entities often refer to a use-of-force “continuum.” See Dave Grossi, *Setting the Record Straight on Force Continuums*, POLICE MARKSMAN, Jan.–Feb. 2006, available at <http://www.policeone.com/pdfs/forcecontPMAjf2006.pdf>. The continuum is a “gradation[] of force police officers are trained to use when meeting resistance.” *Id.* at 1. The more resistance a suspect offers, the further down the continuum an officer may go. While some use-of-force policies explicitly describe what action is appropriate for what situation, other policies create broad categories, like “intermediate weapons,” and leave it to the officer to select a reasonable use-of-force. *Id.*

ACLU argue that police departments, in general, place the taser too low on the “use-of-force continuum,” allowing officers to use the taser in situations that should warrant a safer alternative.⁹⁷

A survey by Amnesty International of more than 30 US police departments (including 20 of the largest city or county agencies) indicates that tasers are typically placed in the mid-range of the force scale, *below* batons or impact weapons rather than at, or just below lethal force. Some departments place the entry level for tasers at an even lower level, after verbal commands and light hands-on force.⁹⁸

[Amnesty International] suggests that, rather than substituting electro-shock weapons for pepper spray or other force options, better training and restraint in the use of force would be a more appropriate strategy in many situations.⁹⁹

TASER International, of course, encourages law enforcement agencies to consider the taser “among the safest use-of-force options for our police officers to have.”¹⁰⁰ While law enforcement agencies each develop, or fail to develop, their own unique taser policy, most tend to subscribe to the TASER International model more than the Amnesty International model.

Some policies use some combination of the two. For example, the University of Florida Police Department published its own use-of-force continuum. UNIV. OF FLA. POLICE DEP'T, DEPARTMENT STANDARDS DIRECTIVE: USE OF FORCE (2007), *available at* <http://www.president.ufl.edu/incident/UFPD-use-of-force-policy.pdf>. Under the Florida continuum, an officer can resort to intermediate weapons, “[w]eapons that are primarily used to render a subject controllable such as a baton, ASR, or Taser,” at ‘Level Four’ of the continuum. *Id.* at 5. A subject reaches ‘Level Four’ resistance when he makes “physically evasive movements to defeat an officer’s attempt to control.” *Id.* at 3. If a subject escalates to “overt, aggressive, hostile, attacking movements which may cause injury to the officer,” he has reached ‘Level Five’ on the continuum. *Id.* at 4. At ‘Level Five’ a University of Florida Police Officer is authorized to use “[t]echniques that are intended to temporarily incapacitate the subject, delivered with or without intermediate weapons, such as a strike to a major nerve area.” *Id.* at 5. In fact, the University of Florida use-of-force continuum explicitly authorizes taser use for something less than pure self-defense by an officer. The policy explains that a taser “is not intended to replace firearms or self-defense techniques [and may be used] to prevent the immediate destruction of evidence or property when other means are impractical or unsafe.” *Id.* at 10–11.

⁹⁷ AI 2006, *supra* note 18, at 18–19.

⁹⁸ AI 2004, *supra* note 29, at 12.

⁹⁹ *Id.* at 10.

¹⁰⁰ ACLU-NC, *supra* note 17, at 11 (quoting Press Release, TASER Int’l, TASER® Technology is Safe and Effective Based on Law Enforcement and Medical Science Experts (Nov. 30, 2004)).

The Las Vegas Metropolitan Police Department, for example, has issued a taser policy indicating the “TASER falls into Level Three of the force options and is considered a non-lethal use of force.”¹⁰¹ Under this policy a taser may be used “when a subject is displaying active, aggressive or aggravated aggressive resistance to an officer”¹⁰² The policy goes on to list when a taser “will not” or “should not” be used. Instances when a taser “will not” be used include when the subject is at risk of substantial secondary injury (from falling after being incapacitated), when the subject is handcuffed, and when the subject is visibly pregnant, unless deadly force is the only other option.¹⁰³ A taser “should not” be used if the subject is “at the extremes of age or physically disabled”¹⁰⁴ This policy appears to be one of the more comprehensive and explicit of any law enforcement agency.

The Seattle Police Department, on the other hand, issued a taser policy that groups tasers with other “less lethal” tools.¹⁰⁵ The policy does not include any taser-specific regulations aside from post-application procedures for removal of the fired prongs.¹⁰⁶ The policy indicates:

¹⁰¹ LAS VEGAS, *supra* note 25, at 1.

¹⁰² *Id.*

¹⁰³ *Id.* at 1–2.

¹⁰⁴ *Id.* at 2.

¹⁰⁵ SEATTLE POLICE DEP’T, DIRECTIVE D-5-016, at 1 (2005), available at http://www.seattle.gov/Police/Publications/Directives/Less_Lethal_Directive_05-016.pdf.

¹⁰⁶ Removal of the fired prongs, post-deployment, from the body of the subject is another area of contention for anti-taser advocates. Law enforcement agencies have varying policies governing when an officer can remove the prongs from the skin of a subject and when it must be removed by medical personnel. The Seattle Police Department deals with the issue in general terms: “[W]henever a taser is applied to an individual, officers shall determine if medical aid is required. Taser probes requiring removal from an individual’s skin will be removed by qualified aid, medic, or medical personnel.” *Id.* at 3. The Las Vegas Metropolitan Police Department policy is apparently more narrow: “Attempts to avoid hitting the subject in sensitive tissue areas such as head, face, neck, groin, or female breast area, however probes penetrating *these areas* will be removed by medical personnel at a medical facility.” LAS VEGAS, *supra* note 25, at 2 (emphasis added). Amnesty International argues police officers should be required to call medical professionals to administer treatment any time a taser is used. AI 2006, *supra* note 18, at 30. Amnesty International insists “[i]t is advisable to take tasered subjects to [sic] hospital to have the barbs removed and to monitor for other adverse effects.” *Id.* However, a lesson published by The American College of Emergency Physicians suggests that taser barb removal is not usually a serious threat. The lesson states “[t]here is no significant risk to the lungs, heart, or bowel from the TASER device, given the length of the shaft and barb (9.5 mm).” Michael Lutes, *Focus On: Management of TASER Injuries*, AM. COLL. OF EMERGENCY PHYSICIANS, May 2006, available at <http://www.acep.org/publications.aspx?id=24740>. The statistics, from May 2006,

As with all uses of force, “necessary and reasonable” uses of less lethal devices are defined by the totality of circumstances that confront officers. It is not possible to specify in advance all the various scenarios under which less lethal systems are likely to be deployed, but it is possible to identify the *types of situations* for which less lethal options are intended, as well as those for which they are not.¹⁰⁷

While the policy contains no instructions specific to taser use, it does encourage officers to “carefully evaluate conditions or factors . . . that may . . . increase the indirect risks (such as injuries caused by a fall)”¹⁰⁸ It also mentions factors such as “subjects who are very old or very young, pregnant, physically disabled, suffering from a debilitating illness or medical condition, or drug users.”¹⁰⁹ “In such cases,” the policy continues, “the need to stop the behavior should clearly justify the potential for additional risks.”¹¹⁰ By including these caveats the policy is similar to, if less explicit than, the Las Vegas Metropolitan Police Department policy.

Regulating taser use by including it in a general use-of-force policy without specifically addressing tasers is a common tactic among law enforcement agencies.¹¹¹ A Government Accountability Office (GAO) study on the use of tasers by law enforcement agencies stated, “Although none of the [seven law enforcement] agencies [studied] had separate use-of-force policies that specifically addressed Tasers, all of the agencies included the use of such weapons into their existing policies”¹¹² The 2005 GAO study concluded that although the seven agencies placed the taser at different levels on the use-of-force continuum, “each situation in which a Taser may be used is unique,” and, “[a]n officer must rely on prior experience and training and exercise good judgment to determine whether using the Taser constitutes an appropriate level of force.”¹¹³ The study also stressed the

apparently support this conclusion. “There is a theoretical risk to the neck vasculature and genitalia, although there have been no reported cases of significant injury. There is one report of a penetrating eye injury from a TASER barb requiring operative removal and repair.” *Id.*

¹⁰⁷ SEATTLE POLICE DEP’T, *supra* note 105, at 1.

¹⁰⁸ *Id.* at 3.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ GAO TASER, *supra* note 60, at 7.

¹¹² *Id.*

¹¹³ *Id.* at 20.

importance of effective training when equipping law enforcement personnel with tasers.¹¹⁴

The International Association of Chiefs of Police (IACP) released its own report documenting a nine-step strategy for effective taser deployment within police departments.¹¹⁵ The report recognizes and addresses some of the common mistakes law enforcement agencies make when deploying taser technology. To that end, the nine-step strategy includes establishing a training program, placing the taser on the use-of-force continuum, assessing costs and benefits of taser deployment, and establishing use policies prior to taser deployment.¹¹⁶ The report even encourages a phased deployment “with an option to recall the weapons if circumstances warrant, or costs become too prohibitive.”¹¹⁷ The report does not, however, identify any specific standards to be followed by each department. In fact, the report acknowledges that every police department is different and encourages each department to

¹¹⁴ The report concluded, “[o]fficials in the seven law enforcement agencies we contacted stressed that proper training is essential for successful deployment [of tasers].” *Id.* Anti-taser groups have also stressed the importance of appropriate training. However, the ACLU argues that the training materials provided by TASER International to law enforcement agencies “mirror many of the misrepresentations the company has made in its presentations to the public.” ACLU-NC, *supra* note 17, at 8. Relying exclusively on company-produced materials, the ACLU argues, is an insufficient training program. Instead, a police department should supplement TASER International’s materials with the department’s own training materials.

The ACLU found that only four of the fifty-six police departments surveyed actually “created or used any of their own training materials.” *Id.* It is difficult to independently verify those numbers. Many police departments specifically mandate some form of taser training in their police policy, but do not specify what, exactly, that training includes. The University of Florida Police Department mandates that “[o]nly authorized members will be trained to use the Taser,” but also states, “[a]ll Taser training will be conducted by a Taser certified instructor.” UNIV. OF FLA. POLICE DEP’T, *supra* note 96. Apparently the University of Florida training program would only include the information provided by TASER International. The City of Fargo, N.D., on the other hand, emphasizes that “[w]e developed training, procedural and implementation plans specific to the Fargo Police Department before we even purchased the tasers.” City of Fargo, *Use of Tasers by the Fargo Police Department*, available at <http://www.cityoffargo.com/CityInfo/Departments/Police/OntheBeat/Tasers/>. This program apparently includes training information outside of that provided by TASER International.

¹¹⁵ INT’L ASS’N OF CHIEFS OF POLICE, ELECTRO-MUSCULAR DISRUPTION TECHNOLOGY: A NINE-STEP STRATEGY FOR EFFECTIVE DEPLOYMENT, available at <http://www.theiacp.org/LinkClick.aspx?fileticket=Jk7o%2b4Ai2hE%3d&tabid=87>.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 17.

develop its own unique taser deployment plan that fits its specific needs.¹¹⁸ Anti-taser advocates argue that this lack of specific standards is actually part of the problem.

The problem with the various police department policies, the ACLU and Amnesty International argue, is consistency and scope. The policies in place do not cover significant aspects of taser use,¹¹⁹ and the regulations in place are inconsistent and subjective.¹²⁰ For example, while most police departments reserve taser use for subjects who are “violent or potentially violent,” this is an extremely subjective standard.¹²¹ This standard is so subjective, the ACLU of Northern California argued in its 2005 report, that police officers can use tasers on anyone who is arguably “potentially violent,” including passive resisters.¹²² The report points out that the Atherton, California, Police Department encourages the use of tasers even before officers attempt “pain compliance holds or any other hands-on techniques.”¹²³ The 2006 Amnesty International report notes that the Amarillo Police Department of Texas allows taser use “if an unhandcuffed, passively resisting individual cannot be overcome by verbal or control hold techniques”¹²⁴ The end lesson, according to Amnesty International and the ACLU, is that taser policy that is nonexistent or grouped with a general use-of-force policy promotes taser use amounting to excessive force.

Between limited statutory regulations, conflicting case law, and anemic law enforcement policies, it is difficult to assess whether a law enforcement agent is within his legal rights in deploying a taser against a subject. The unique circumstances of each case are not adequately addressed by the current regulatory regime. For these reasons, several organizations have proposed comprehensive taser regulations. Because each proposal has strengths and weaknesses, a careful analysis of the proposed regulations is instructive in determining what an effective taser regulation might look like.

¹¹⁸ *Id.* at 6 (“Each police department should review and adapt this approach based on their unique needs and circumstances, recognizing that this Executive Brief does not represent the only possible approach to address deployment issues.”).

¹¹⁹ ACLU-NC, *supra* note 17, at 12 (“[O]ut of the 54 agencies surveyed, only four agencies had any language whatsoever in their policies warning against or prohibiting multiple shocks.”).

¹²⁰ *Id.* (“Indeed, almost any suspect could be viewed as ‘potentially violent,’ and in the absence of any specific guidelines, officers are given near total discretion in using a Taser.”).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ AI 2006, *supra* note 18, at 10.

IV. PROPOSED REGULATIONS

Amnesty International, the ACLU, TASER International and other organizations have all offered opinions on regulating law enforcement's use of tasers. Analysis of the recommendations reveals strengths and weaknesses to each proposal. TASER International and law enforcement agencies generally promote regulating tasers with the existing use-of-force policies, encouraging officers to evaluate the situation on a case-by-case basis.¹²⁵ Amnesty International and the ACLU insist taser use should be limited to situations where the only alternative would be lethal force,¹²⁶ or should be completely eliminated pending further study on the health risks posed by tasers.¹²⁷

A. *The ACLU*

In its 2005 report, the ACLU of Northern California argued that ensuring appropriate taser use requires a state law mandating minimum standards.¹²⁸ Citing uncertainty in the effects of tasers, the organization insisted "the weapons should only be used in life-threatening situations."¹²⁹ Failing that, the report argues, the state legislature should at least require police departments to "adopt policies regulating the number of shocks that can be administered on an individual, the use of Tasers on juveniles, the elderly, pregnant women, and people known to be under the influence of drugs, the use of Tasers on handcuffed and unconscious individuals, and on passive resisters."¹³⁰ The document includes an appendix that, while "not necessarily represent[ing] the ACLU-NC's model policy, represents some of the best

¹²⁵ See generally COLUMBUS, OHIO DIV. OF POLICE, SIX MONTH TASER STUDY 9 (2005), available at <http://www.taser.com/research/statistics/Documents/Columbus%20TASER%20Study%20June%202005a.pdf> (Sergeant Brian A. Bruce of the Columbus, Ohio Division of Police, in a report to the Chief of Police, stated: "[T]he Division's TASER program and the Division's investment into this new technology has proven its worth."). See also ACLU-NC, *supra* note 17, at 14 (describing an instance where a police department that had developed an explicit taser policy limiting taser use to "incapacitate assaultive or physically resisting persons" or "as a defensive weapon . . . to prevent [serious injury]," retracted the regulation in favor of a general use of force policy without taser-specific rules.).

¹²⁶ ACLU-NC, *supra* note 17, at 15; AI 2006, *supra* note 18, at 29.

¹²⁷ AI 2006, *supra* note 18, at 28.

¹²⁸ ACLU-NC, *supra* note 17, at 15 ("To ensure at least some baseline standards on the use of Tasers, the California Legislature should adopt legislation mandating minimum standards for the use of Tasers.").

¹²⁹ *Id.*

¹³⁰ *Id.*

policies currently being employed by [Northern California] law enforcement agencies.”¹³¹ The suggested policy allows for deployment of tasers only to “overcome resistance from subjects who the officer reasonably believes present an immediate, credible threat” to the officer, the public, or the subject’s own safety.¹³² The policy prohibits taser use on individuals who are passively resisting or “could fall from a significant height,” and requires caution and “additional consideration” before using a taser on pregnant women, elderly persons, children, and persons with known health problems.¹³³ The policy also states that tasers “should not be used on a restrained subject, unless the actions of the subject present an immediate threat of physical injury to a department member.”¹³⁴

B. *Amnesty International*

Amnesty International’s 2004 and 2006 reports each suggest complete suspension of all taser use pending “a rigorous, independent and impartial inquiry into their use and effects.”¹³⁵ Where law enforcement agencies are unwilling to completely suspend taser use, Amnesty International recommends strictly limiting taser use “to situations where the alternative would be use of deadly force.”¹³⁶ The proposal insists “[u]narmed suspects should not be shot with a taser for . . . resisting arrest or fleeing a minor crime scene, unless they pose an immediate threat of death or serious injury that cannot be controlled through less extreme measures.”¹³⁷ This appears to limit taser use even more narrowly than other proposed regulations by prohibiting a police officer from deploying a taser against a subject actively resisting arrest except in exceptional circumstances.

Amnesty International also frequently cites the United Nations’ Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹³⁸ The code requires law enforcement agents to apply non-violent means whenever possible.¹³⁹ Amnesty International argues that many instances of U.S. police officers’ use of tasers “have violated [these] international standards prohibiting torture or

¹³¹ *Id.* at 17.

¹³² *Id.* at 18.

¹³³ *Id.*

¹³⁴ ACLU-NC, *supra* note 17, at 18.

¹³⁵ AI 2004, *supra* note 29, at 67; AI 2006, *supra* note 18, at 28.

¹³⁶ AI 2006, *supra* note 18, at 29.

¹³⁷ *Id.*

¹³⁸ *See generally* AI 2006, *supra* note 18, at 29.

¹³⁹ *Id.* at 18.

other cruel, inhuman or degrading treatment”¹⁴⁰ The organization argues in its 2004 and 2006 reports that law enforcement agencies throughout the United States should “ensure that officers are trained to use force strictly in accordance with these standards.”¹⁴¹

C. *TASER International*

TASER International’s response to calls for more regulation has typically been presentation of statistics suggesting tasers are a safer and more effective alternative to other law enforcement tools.¹⁴² In response to a 2004 *New York Times* article questioning the safety of tasers,¹⁴³ TASER International released a statement citing statistics, such as, “[b]efore introducing TASER guns, Miami police averaged 20 shootings a year, killing two or three people. In the past 19 months, they have not fired a single shot.”¹⁴⁴ While the company never explicitly addresses regulation concerns, the implicit message is that tasers are effective and safe as currently regulated, and that additional regulation is unnecessary. In fact, TASER financed a lobbying campaign to defeat California Assemblyman Mark Leno’s effort to initiate state regulation of tasers.¹⁴⁵ In that instance, however, TASER’s opposition was “focused largely around the provision of the bill which would have banned Taser use and possession by private citizens” rather than a regulation affecting law enforcement’s use of tasers.¹⁴⁶

There are strengths and weaknesses to each proposed regulatory regime. While ACLU and Amnesty International’s proposed regulations might effectively eliminate the value of tasers to law enforcement personnel, the current lack of clear regulation has resulted in increased media coverage of apparent taser abuse by law enforcement personnel. Merging selected elements of each proposal, however, can result in a clear and effective taser regulation that acknowledges the substantial benefits of tasers as well as the legitimate health concerns associated with their use.

¹⁴⁰ AI 2004, *supra* note 29, at 2.

¹⁴¹ AI 2004, *supra* note 29, at 68; AI 2006, *supra* note 18, at 29.

¹⁴² See *Statistics and White Papers*, TASER.COM, available at <http://www2.taser.com/research/statistics/Pages/default.aspx>, for a list of documents citing medical and police statistics.

¹⁴³ Alex Berenson, *As Police Use of Tasers Soars, Questions Over Safety Emerge*, N.Y. TIMES, July 18, 2004, at 1.

¹⁴⁴ Press Release, TASER Int’l, TASER® International Strongly Refutes New York Times Article (July 19, 2004), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=129937&p=irol-newsArticle&ID=592147&highlight=>.

¹⁴⁵ ACLU-NC, *supra* note 17, at 15.

¹⁴⁶ *Id.* at 25, n.118.

V. CLEAR AND EFFECTIVE TASER REGULATION

Tasers are a valuable tool for law enforcement agencies when used appropriately. In the battle over taser policy, the best option is regulation that encourages effective and consistent taser use in a limited range of circumstances. The ACLU and Amnesty International's proposals to eliminate or limit taser use to an alternative to lethal force would diminish much of the value of tasers. On the other hand, the failure of law enforcement agencies to fully and effectively control taser use demonstrates the need for state or federal taser regulation.

This section will address the specific problems with proposals to completely suspend taser use pending further investigation. Next, it will describe why the current, unregulated approach is ineffective. Finally, this section will offer a proposal for clear and effective taser regulation that merges the strengths of each approach. The proposal will consider protected classes, how to deal with passive aggressive resistance, and other concerns.

A. Complete or Near-Complete Suspension of Taser Use

Both the ACLU of Northern California and Amnesty International have recommended tasers be limited to situations where officers would be otherwise authorized to use lethal force.¹⁴⁷ Amnesty International even recommended complete suspension of taser use pending further medical research.¹⁴⁸ While the nuanced medical implications of taser use might not be fully understood, severely limiting taser use in this way would be a great disservice to law enforcement agencies and the citizens who enjoy their protection.

Organizations supporting strict restrictions on taser use cite anecdotal evidence of apparent excessive force by law enforcement agents equipped with tasers. Amnesty International's reports include descriptions of law enforcement personnel deploying tasers against elderly women,¹⁴⁹ restrained individuals,¹⁵⁰ children,¹⁵¹ and subjects who died soon after the incident.¹⁵²

¹⁴⁷ *Id.* at 2; AI 2006, *supra* note 18, at 1.

¹⁴⁸ AI 2006, *supra* note 18, at 1.

¹⁴⁹ *See, e.g.*, AI 2004, *supra* note 29, at 17 ("Police also used tasers on two 71-year-olds, one a woman who was blind in one eye, and the other a man who was trying to restrain a knife-wielding woman.").

¹⁵⁰ *See, e.g., id.* at 24 ("A handcuffed man tasered during his arrest, who still had the barbs attached, was stunned three more times by police officers . . . While he was on a gurney (stretcher) in the hospital, an officer shocked him two more times 'until he settled down.'").

TASER International counters with examples of police officers effectively deploying tasers to protect themselves,¹⁵³ others,¹⁵⁴ and even the subject.¹⁵⁵

While both sides of the debate point to legitimate concerns, the ultimate benefit of taser use is supported by irrefutable statistical evidence. Law enforcement agencies employing tasers cite statistics demonstrating the enormous value of the taser as a tool to save lives, rather than endanger lives. While Amnesty International points to sixty-one deaths in the U.S. in 2005 possibly connected with taser use,¹⁵⁶ the Columbus, Ohio, police department records fourteen instances of taser use in place of lethal force and twelve suicides prevented during a six-month trial in the Columbus, Ohio, jurisdiction alone.¹⁵⁷ TASER International cites reports from police departments in Cincinnati, Green Bay, Long Beach, Orange County, and others, all demonstrating a statistical drop in injuries to police officers and suspects after taser implementation.¹⁵⁸

Much is made of the alleged “excited delirium” phenomenon, but little is known about its biological implications. The fact is that in most instances where excited delirium was listed as a cause of death, the subject was also under the dangerous chemical influence of illegal drugs.¹⁵⁹ The tenuous link between the relatively few deaths loosely linked with taser use and an

¹⁵¹ See, e.g., AI 2006, *supra* note 18, at 26 (“A 12 year old boy was tasered on a school bus after an altercation with another pupil.”).

¹⁵² See, e.g., *id.* at 8 (“Ronald Hasse died after being tasered twice by Chicago police, with one of the shocks lasting 57 seconds.”).

¹⁵³ See, e.g., Press Release, TASER Int’l, TASER Device Apprehends Man With Loaded Gun (July 2, 2007), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=129937&p=irol-newsArticle&ID=1021942&highlight=> (Police use taser to incapacitate a man allegedly reaching for a loaded gun.).

¹⁵⁴ See, e.g., Press Release, TASER Int’l, TASER Device Used to Avoid Tragedy in Edmonton (Dec. 28, 2007), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=129937&p=irol-newsArticle&ID=1090204&highlight=> (Edmonton police use a taser to incapacitate a man in a Toys “R” Us threatening a bystander at knife-point.).

¹⁵⁵ See, e.g., Press Release, TASER Int’l, TASER Device Used to Control Suicidal Woman (Aug. 22, 2007), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=129937&p=irol-newsArticle&ID=1042878&highlight=> (Police use taser to incapacitate a suicidal woman.).

¹⁵⁶ AI 2006, *supra* note 18, at 1 (“More than 150 people in the USA have now died after being struck by tasers since June 2001, 61 in 2005 alone.”).

¹⁵⁷ COLUMBUS, OHIO DIV. OF POLICE, *supra* note 125, at 7.

¹⁵⁸ *Statistics and White Papers*, *supra* note 142.

¹⁵⁹ *All Things Considered: Death by Excited Delirium: Diagnosis or Coverup?*, *supra* note 52 (“Mash says the phenomenon came to light in the 1980s, when cocaine burst onto the scene. Most victims have cocaine or drugs in their systems.”).

unknown medical condition strongly associated with illegal drug use is not a compelling argument for complete elimination of tasers. Even if taser deployment can instigate excited delirium, other non-lethal methods of restraint have brought on the condition as well.¹⁶⁰ There is scant evidence that a taser charge is unique in its effect on an aggressive, drug-induced subject.

Even with the unknown health risks cited by the ACLU and Amnesty International, the number of lives saved by taser deployment greatly outnumbered the relatively few instances where a taser was cited as a possible contributing cause of death.¹⁶¹ Further, most of the deaths associated with taser use are only loosely connected and may, in fact, be attributed to a number of other causes.¹⁶² Dramatically limiting taser use by law enforcement personnel is a mistake. Given the proven benefits of taser use and the relative lack of convincing evidence of health risks, it seems a more reasonable solution would be to permit taser use until a study conclusively proves the risks outweigh the rewards.

B. *Unregulated Taser Use*

While tasers are a valuable tool for law enforcement agencies, state or federal regulation is needed to ensure the devices are used effectively and

¹⁶⁰ The NPR radio broadcast discussed *supra*, note 159, relates the death of a Cincinnati, Ohio man at the hands of Cincinnati police. Forty-one-year-old Nathaniel Jones weighed three hundred and fifty pounds and was high on cocaine and PCP. Officers repeatedly struck Jones with nightsticks in an effort to subdue the man. Jones died minutes later. The coroner cited a number of causes for Jones' death, including heart failure, obesity, drug use, asphyxiation, and excited delirium. *Id.*

¹⁶¹ Consider Amnesty International's own assertion that, as of 2006, "[m]ore than 7,000 law enforcement agencies in the U.S." use tasers, yet only approximately "150 people in the USA have now died after being struck by tasers since June 2001." AI 2006, *supra* note 18, at 1. Even if each law enforcement agency were issued only five tasers and each taser was used only once, the 150 deaths would amount to less than 0.43% of the taser usage. Further, many of those taser deployments would likely be alternatives to lethal force. In a six-month study, the Columbus, Ohio, Division of Police used tasers fourteen times in lieu of justified deadly force. COLUMBUS, OHIO DIV. OF POLICE, *supra* note 125, at 7. The same study found that in six months tasers were deployed 140 times resulting in a 25.3% reduction in excessive use of force complaints, a 24.1% reduction in injuries to prisoners, and a 23.4% reduction in injuries to officers. *Id.* at 4-5.

¹⁶² Press Release, TASER Int'l, TASER® International Strongly Refutes New York Times Article, *supra* note 144 (quoting Dr. Anthony Bleetman, "I do not believe that any of the deaths described in subjects who had been 'TASERed' during their arrest can be conclusively linked to the use of these devices. It seems to me that these individuals shared acknowledged and well-established risk factors of more 'routine' deaths in custody.").

appropriately. Leaving taser regulation to the discretion of individual law enforcement agencies has created a disjointed network of conflicting policies. As discussed above, neither case law nor police policies defines clear guidelines for when and how a taser should be used. This results in instances where tasers are used inappropriately, as cited by Amnesty International and the ACLU.

News media continue to report incidences of taser use by law enforcement personnel that shock and outrage the general public. In October of 2007, a Chicago police officer used a taser on an eighty-two-year-old woman.¹⁶³ In November of 2007, a Utah Highway Patrol Trooper used a taser on a man who refused to sign a speeding ticket.¹⁶⁴ The Utah Highway Patrol sped up its investigation of the incident after video of the event posted on YouTube.com generated outrage from the public.¹⁶⁵ The use of tasers in such situations, apparently in accordance with the law enforcement agency's own policies, engenders in the public a general distrust of tasers and law enforcement. Amnesty International accurately points out that in several instances of taser use by law enforcement personnel that have resulted in lawsuits by the subject, "the officers' actions appear to have resulted from a lack of clear guidelines or training on the risks involved in using tasers in certain situations."¹⁶⁶ Clear statutory regulations are needed to control when and how law enforcement agencies may deploy tasers.

C. Regulation Proposal

The model regulation offered by the ACLU of Northern California is a good starting point for clear and effective taser regulation, though modifications are needed.¹⁶⁷ The proposal recognizes the need for protection from tasers for certain classes of individuals. The proposal distinguishes between active and passive aggression toward law enforcement officers. The

¹⁶³ Associated Press, *Police Probe Taser of 82-Year-Old Woman*, MSNBC, Nov. 6, 2007, available at <http://www.msnbc.msn.com/id/21657211/> (Chicago Police Department officers were dispatched to subdue an elderly woman allegedly armed with a hammer. One officer deployed a taser against the eighty-two-year-old woman. The woman's relatives claim she suffers from schizophrenia and dementia.)

¹⁶⁴ Associated Press, *Cop Allegedly Tasers Driver Over Speeding Ticket*, MSNBC, Nov. 21, 2007, available at <http://www.msnbc.msn.com/id/21921393/> (Jared Massey refused to sign a speeding ticket and slowly walked away from Trooper John Gardner. Video from Trooper Gardner's patrol car shows Gardner drawing his taser and pointing it at Massey. Massey asks, "What the heck is wrong with you?" and Gardner deploys the taser.)

¹⁶⁵ *Id.*

¹⁶⁶ AI 2004, *supra* note 29, at 29.

¹⁶⁷ See ACLU-NC, *supra* note 17, at 17.

proposal also considers other factors such as the risk of secondary injury and the use of tasers against restrained individuals. With some small adjustments, the proposal would make a clear and effective regulation on law enforcement's use of tasers.

1. *Protected Classes*

A regulation guiding law enforcement in its use of tasers should include restrictions against taser use on categories of individuals generally recognized to possess unique health characteristics. With rare exceptions, tasers should not be used on children, the elderly, the physically disabled, or pregnant women. The health risks to these individuals, coupled with the relative ease of otherwise incapacitating the individuals, outweigh the benefits of the taser to a law enforcement agent.

A general averment to taser use on these categories of individuals is already recognized by some law enforcement agencies. The El Dorado County Sheriff Department, cited in the ACLU-NC's "best practices" policy, holds that, "[a]lthough not absolutely prohibited, deputies should give additional consideration to the unique circumstances involved prior to applying the Taser."¹⁶⁸ The policy indicates that individuals who may be at a greater risk include pregnant women, elderly persons, children, and persons with known health problems. The Las Vegas Metropolitan Police Department taser policy also mandates that tasers will not be used "when the subject is visibly pregnant, unless deadly force is the only other option[.]" and should not be used "when the subject is at the extremes of age or physically disabled[.]"¹⁶⁹ This general policy, prohibiting taser use on children, the elderly, pregnant women, and the disabled, except in instances where the alternative is lethal force, should be imposed as a statutory obligation on all law enforcement agencies.

The ACLU and Amnesty International have argued that drug users should also be protected from taser use. The ACLU-NC's report argues the state should adopt legislation regulating taser use "on juveniles, the elderly, pregnant women, and people known to be under the influence of drugs . . ."¹⁷⁰ Amnesty International's reports recommend "prohibition against using tasers on . . . pregnant women; the elderly; children; . . . people under the influence of drugs."¹⁷¹ Including drug users in the class of individuals protected from taser use would substantially diminish the value

¹⁶⁸ *Id.* at 18.

¹⁶⁹ LAS VEGAS, *supra* note 25, at 2 (emphasis omitted).

¹⁷⁰ ACLU-NC, *supra* note 17, at 15.

¹⁷¹ AI 2006, *supra* note 18, at 29.

of tasers to law enforcement personnel. One of the taser's most valuable functions is as a tool for safely incapacitating belligerent drug and alcohol users.¹⁷² Requiring officers to evaluate whether each individual was conceivably under some chemical influence, and if so to then resort to baton blows and pepper spray, would place both police officers and drug users at risk.

2. *Passive Aggression*

There is general disagreement on what role tasers should play in subduing and apprehending suspects who are only passively resisting. Amnesty International and the ACLU have argued that tasers should never be deployed against passive resisters. The ACLU-NC has stated, “[p]assive resisters . . . pose no threat by protesting peacefully and refusing to leave a certain area.”¹⁷³ The 2005 report asserts that only ten percent of the police departments surveyed had any policy prohibiting or regulating the use of tasers on passive resisters.¹⁷⁴

Police departments, for their part, are all over the map with respect to taser deployment against passive resisters. The El Dorado County Sheriff Department's policy, cited in the ACLU-NC's "best practices," mandates that a taser shall not be used on an individual who is passively resisting.¹⁷⁵ The Las Vegas Metropolitan Police Department allows taser use only "when a subject is displaying active, aggressive or aggravated aggressive resistance . . ." ¹⁷⁶ The Lee County, Florida, Sheriff's Department authorizes taser use "for acts ranging from 'passive physical resistance' to 'aggressive physical resistance.'" ¹⁷⁷

Part of the problem is the lack of a clear definition of passive resistance. The ACLU-NC report suggests passive resistance is "refusing to leave a certain area."¹⁷⁸ The 2006 Amnesty International report says an individual is passively resisting "by trying to hide their hands (for example a protestor at a

¹⁷² A six-month study in 2005 by the Columbus, Ohio Division of Police found that "TASER use on persons under the influence of drugs/alcohol or on emotionally disturbed persons (EDP) made up 55.6% of all Division TASER uses." Out of 172 reported taser uses, 35.3% were on subjects under the influence of drugs or alcohol. COLUMBUS, OHIO DIV. OF POLICE, *supra* note 125, at 4.

¹⁷³ ACLU-NC, *supra* note 17, at 12.

¹⁷⁴ *Id.* at 12–13.

¹⁷⁵ *Id.* at 18.

¹⁷⁶ LAS VEGAS, *supra* note 25, at 1 (emphasis omitted).

¹⁷⁷ AI 2006, *supra* note 18, at 8.

¹⁷⁸ ACLU-NC, *supra* note 17, at 12.

demonstration who is resisting arrest).”¹⁷⁹ The report also cites, disapprovingly, the taser policy of the Mesa, Arizona, Police Department, which allows taser use on individuals who are “ignoring [an] officer’s verbal commands *and* pulling away, hiding behind/under objects, pinning arms under the body, thrashing around, body going rigid, assuming a fighting stance.”¹⁸⁰ The Andrew Meyer incident at the University of Florida is an excellent example of the thin line between passive and active resistance. Some, including Meyer’s attorney, argued that taser use was unnecessary.¹⁸¹ Others noted how the student continued to struggle, wave his arms, and shout at officers, preventing them from applying handcuffs.¹⁸²

An effective taser policy must allow taser use when possible and discourage it only when the health risks outweigh the costs. While law enforcement agents should be prevented from applying tasers to subjects practicing genuine passive resistance by remaining unresponsive or verbally uncooperative, physical passive resistance by an able-bodied individual should be afforded less protection. The Andrew Meyer incident is a good example of physical passive resistance that justified the use of a taser. While Meyer never aggressively resisted arrest by attacking police, he continued to struggle and resist throughout the ordeal. Taser deployment spared officers and the subject from other, arguably more violent, approaches like “batons, chemical sprays, physical holds, and other weapons.”¹⁸³ This, coupled with continued police statistics suggesting that increased taser use results in decreased injuries to officers and subjects,¹⁸⁴ demonstrates the benefit of tasers in all but pure passive resistance situations.

3. Training

An effective law enforcement taser deployment program must include a legitimate and comprehensive training program. While most organizations acknowledge the importance of training for all officers equipped with taser technology, not every agency employs the same training regimen.¹⁸⁵

¹⁷⁹ AI 2006, *supra* note 18, at 19.

¹⁸⁰ *Id.*

¹⁸¹ See Associated Press, *Tasered Florida Student Gets Probation*, POLITICO, Oct. 31, 2007, available at <http://www.politico.com/news/stories/1007/6638.html> (“[Meyer’s attorney] said he and his client believe use of the Taser was unnecessary. ‘It actually leaves a burn mark, and it did, and it hurts.’”).

¹⁸² See Ortiz, *supra* note 10; Fisher, *supra* note 8.

¹⁸³ ACLU-NC, *supra* note 17, at 6.

¹⁸⁴ See generally STEVE TUTTLE, TASER INT’L, TASER® ELECTRONIC CONTROL DEVICES (ECDs): FIELD DATA AND RISK MANAGEMENT (on file with author).

¹⁸⁵ See *supra*, Part III.C.

Regardless of the merits and limitations of TASER International's own training materials, law enforcement agencies should supplement those materials with their own policies and guidelines suited to their unique circumstances. Clearly defining and establishing a comprehensive training program will help engender trust in law enforcement from the community the agency serves.

4. *Other Concerns*

Effective taser regulation must also address other concerns officers should consider before deploying a taser. Particularly, officers should be prohibited from deploying a taser on individuals who are already restrained. Also, officers should refrain from deploying a taser in circumstances where incapacitation is likely to result in a fall that could seriously injure the subject.

Amnesty International has noted that taser deployment "in conjunction with restraints has been a common factor in many of the deaths reviewed by Amnesty International . . ." ¹⁸⁶ Aside from the health concerns, if the taser is meant to assist police in apprehending and restraining a subject there is little reason to deploy a taser against an already restrained subject, except in circumstances where a restrained but violent subject poses a threat to an officer. The Fresno Police Department, cited in the ACLU-NC's "best practices," stipulates that tasers "should not be used on a restrained subject, unless the actions of the subject present an immediate threat of physical injury . . ." ¹⁸⁷ This is an appropriate limitation on the use of tasers against restrained subjects in police custody.

Amnesty International, the ACLU, many law enforcement agencies, and even TASER International's own training literature have noted that tasers present a risk of secondary injury. "The use of the Taser technology causes incapacitation and thereby secondary injuries can occur. This includes cuts, bruises, abrasions caused by falling. These short-term injuries are secondary in nature and are reversible injuries." ¹⁸⁸ Consequently, an effective taser regulation must require officers to consider the possibility of a serious secondary injury before deploying a taser. The Scotts Valley Police Department, cited in ACLU-NC's "best practices," incorporates a provision requiring "[a] thorough physical examination with particular emphasis on

¹⁸⁶ AI 2006, *supra* note 18, at 24.

¹⁸⁷ ACLU-NC, *supra* note 17, at 18.

¹⁸⁸ *Id.* at 8 (quoting TASER INT'L, TASER INTERNATIONAL INSTRUCTOR CERTIFICATION LESSON PLAN AND SUPPORT MATERIALS, TASER X26 AND ADVANCED TASER M26, at slide 29 (2004)).

injuries secondary to the fall” after deployment of a taser.¹⁸⁹ While post-deployment medical evaluations are certainly advised, a more significant regulation would be one preventing officers from using a taser on an individual who could fall from a significant height. The El Dorado County Sheriff Department incorporates such a provision.¹⁹⁰

By developing this proposed regulation and incorporating it as a state or federal statute, law enforcement officers will be enabled to safely and effectively deploy tasers in appropriate situations without fear of lawsuits or disciplinary actions. To implement a regulation that eliminates tasers pending further research would deprive officers of valuable technology capable of saving lives. To leave taser regulation in its current form leaves citizens and officers at risk. Only a taser regulation that recognizes the value of tasers but acknowledges their unique functionality will be effective.

VI. CONCLUSION

Andrew Meyer, though not an ideal candidate, fell within the bounds of appropriate taser use during his arrest at the University of Florida. A subject who actively struggles with police and exhibits signs of mental instability is a danger to himself, officers, and others in the near proximity. Had Meyer continued to resist, and had officers been deprived of the taser, the incident could quickly have escalated into a more physical and more dangerous confrontation. By deploying the taser, officers were able to quickly and safely remove the struggling student from the auditorium.

Tasers are a valuable tool for law enforcement agents when used appropriately and effectively. While there remain valid arguments on both sides of the debate, and more research into the medical effects of taser use is appropriate, the benefits of tasers outweigh the risks. However, tasers remain a valuable tool only to the extent they are appropriately used by law enforcement agents. Confusion in case law and police policy presents the need for comprehensive taser regulation. The most appropriate regulation is one that encourages taser use by law enforcement, but includes clear limits.

¹⁸⁹ *Id.* at 19.

¹⁹⁰ *Id.* at 18.