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# Stunning Trends in Shocking Crimes: A Comprehensive Analysis of Taser Weapons

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STUNNING TRENDS IN SHOCKING CRIMES: A  
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I. INTRODUCTION

In 2001, Westminster, Colorado police officers were dispatched to the home of a suicidal thirteen year-old girl who had barricaded herself in a bathroom.<sup>1</sup> The young girl was mutilating her wrist with two butcher knives.<sup>2</sup> When police officers forced their way into the bathroom, the emotionally disturbed girl charged at them with the two butcher knives while screaming, “Kill me! Kill me!” One of the officers deployed a Taser M26, a hand held conductive energy weapon, which fires two barbed darts up to a distance of thirty-five feet that then deliver an electric shock of 50,000 volts.<sup>3</sup> The officer’s Taser shot hit the girl and immediately and safely incapacitated her.<sup>4</sup> All of the police officers at the incident concurred, “without the Taser, we would have had to use lethal force.”<sup>5</sup>

This is just one of several stories of Tasers safely incapacitating dangerous, aggressive, or high-risk individuals.<sup>6</sup> Due to this capability of subduing individuals without harming the officer or suspect, a growing number of law enforcement agencies are purchasing and implementing Tasers. Currently, over 8000 of the 18,000 law enforcement and correctional agencies in the United States are testing or using Tasers.<sup>7</sup> Marketed as one of “the safest and most effective use-of-force options available,” police departments deploying Tasers claim that they reduce injury rates to officers and suspects, lower liability risk, and improve community security by providing a non-lethal<sup>8</sup> alternative to the use of impact weapons or firearms.<sup>9</sup>

The recent widespread use of Tasers, however, has not been without controversy. There remain concerns over health risks, the possibility of abuse, the lack of

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<sup>1</sup>See Taser.com, *Taser™ Non-Lethal Systems: Reducing Injuries and Saving Lives* 12, [http://www.taser.com/documents/TASERS\\_saving\\_lives\\_compilation-short.pdf](http://www.taser.com/documents/TASERS_saving_lives_compilation-short.pdf) (last visited Dec. 20, 2005).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>About Taser International, <http://www.taser.com/about/info.htm> (last visited Dec 20, 2005).

<sup>7</sup>Taser International, [http://www.taser.com/documents/TASER\\_press\\_kit.pdf](http://www.taser.com/documents/TASER_press_kit.pdf) (last visited Dec. 20, 2005).

<sup>8</sup>United States Department of Defense defines non-lethal weapons as “weapon systems that are explicitly designed and primarily employed so as to incapacitate personnel or materiel, while minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment.” Taser.com, *supra* note 1, at 5.

<sup>9</sup>Taser International, [http://www.taser.com/documents/TASER\\_press\\_kit.pdf](http://www.taser.com/documents/TASER_press_kit.pdf) (last visited Dec. 20, 2005).

regulation, and the overall safety of Tasers. Recently, media<sup>10</sup> and human rights<sup>11</sup> organizations, such as Amnesty International, have released reports of more than 100 people since 2001 dying after receiving Taser shocks. Although coroners have attributed the majority of the deaths to other factors, such as drug use, in at least five of the cases, coroners found Tasers to be a contributory factor.<sup>12</sup> In addition to reports of fatalities, there have been reported cases of police officers deploying Tasers on unarmed, non-compliant, or disturbed individuals who do not pose a threat to themselves or others.<sup>13</sup> Some of these individuals include children, elderly, and pregnant women.<sup>14</sup>

This note, provides a comprehensive medical, legal, and policy analysis of Tasers. As part of this analysis, the benefits and potential risks of Tasers are weighed to determine what role the weapon should have in law enforcement and American society. Issues such as officer and suspect safety, unknown health risks, training requirements, deployment protocols, police liability and accountability, government regulation, public acceptance, and comparisons of other non-lethal force are discussed in this note.

In short, Taser weapons have the potential of providing law enforcement with a viable life-saving tool that presents no greater health risk than other less-lethal methods currently in use; however, extensive training, detailed deployment policies providing clear direction on how to avoid unnecessary acts of force, further research, and community approval are critical to ensure its safe, effective, and appropriate use.

Part II of this note discusses the background of Taser technology. It briefly discusses the models of Taser weapons used today, the effect of Tasers on the human body, and the medical research conducted on the device. Part III of this note discusses the use-of-force guidelines established by law enforcement agencies, including general polices on appropriate circumstances for Taser use, training requirements, and safety procedures. Part IV reviews the various federal, state, and local laws regulating Tasers. Part V of this note analyzes the case law associated with Tasers and excessive force liability for law enforcement. Part VI reviews the controversy surrounding Taser, including the debate between human rights organizations and Taser International on the weapon's safety and effectiveness. Lastly, Part VII of this note discusses the role Tasers should play in law enforcement and includes recommendations to ensure the weapon's safe use.

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<sup>10</sup>See, e.g., Alex Berenson, *Police Use of Tasers Rises, Questions Over Safety Increase*, N.Y. TIMES, July 18, 2004, at 1; Kevin Johnson, *Death Prompts Concerns, Reviews on Use of Stun Guns*, USA TODAY, Feb. 16, 2005, at 1A; David Lynch, *Cops Sue Taser*, MIAMI DAILY BUSINESS REVIEW, July 19, 2005.

<sup>11</sup>See, e.g., Amnesty International, *United States of America Excessive and Lethal Force? Amnesty International's Concerns About Deaths and Ill-Treatment Involving Police Use of Tasers*, 51 AMR 139 (2004), available at <http://web.amnesty.org/library/index/engamr511392004> (last visited Feb. 22, 2007) [hereinafter Amnesty International]; ACLU of Northern California, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, [http://www.aclunc.org/issues/criminal\\_justice/police\\_practices/stun\\_gun\\_fallacy\\_how\\_the\\_lack\\_of\\_taser\\_regulation\\_endangers\\_lives.shtml?ht=taser%20taser](http://www.aclunc.org/issues/criminal_justice/police_practices/stun_gun_fallacy_how_the_lack_of_taser_regulation_endangers_lives.shtml?ht=taser%20taser) (last visited Feb. 22, 2007).

<sup>12</sup>See Amnesty International, *supra* note 11, at 3.

<sup>13</sup>*Id.*

<sup>14</sup>*Id.* See also ACLU of Northern California, *supra* note 11.

## II. BACKGROUND

### A. History

John Cover, a scientist for Apollo Moon landing, invented the Taser in 1969.<sup>15</sup> By 1974, the Los Angeles Police Department had become one of the first police agencies to use Tasers.<sup>16</sup> The early models of Taser used gunpowder to launch two “dart-like” wires that latched onto an individual’s skin and administered an electrical charge to their body, disrupting superficial muscle functions.<sup>17</sup> These early Taser models, however, were not very successful and were used sparingly by police forces, due to the weapon’s ineffectiveness against determined and physically strong aggressors.<sup>18</sup> It was not until the late 1990s that companies started to develop more powerful and effective versions of the weapon.<sup>19</sup>

### B. Taser International

While there are various forms of non-lethal weapons, such as stun guns, Taser International is the only manufacturer of Taser brand devices.<sup>20</sup> The company developed Tasers primarily for use in law enforcement, corrections, private security, and personal defense markets.<sup>21</sup> Taser International literature promotes Tasers as using proprietary technology to safely overcome or subdue “dangerous, combative, or high risk individuals who pose a risk to law enforcement officers, innocent citizens, or themselves.”<sup>22</sup>

Taser International produces various models of the electronically controlled device, including the M-18 model for civilian market and the M-26 and X26 models for law enforcement agencies and military forces.<sup>23</sup> The M-18 civilian model has less voltage and less range than the other models, while the M-26 and X-26 differ in size, but generally operate in a similar manner and with similar voltage.<sup>24</sup>

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<sup>15</sup>*All Things Considered: The Taser Gun’s Physical Effect* (NPR radio broadcast, Apr. 1, 2005), available at <http://npr.org/templates/story/story.php?storyID=4571976>. See also Amnesty International, *supra* note 11.

<sup>16</sup>Amnesty International *supra* note 11.

<sup>17</sup>*Id.*

<sup>18</sup>*Id.* Officers also found Taser deployment difficult when required to penetrate thick clothing. *Id.*

<sup>19</sup>See Amnesty International, *supra* note 11.

<sup>20</sup>Taser International, [http://www.taser.com/documents/TASER\\_press.kit.pdf](http://www.taser.com/documents/TASER_press.kit.pdf) (last visited Feb. 22, 2007).

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>For purposes of this note, the term “Tasers” primarily refers to M-26 and X-26 models.

### C. Taser Mechanics

The Taser is a hand-held projectile stun gun that uses compressed nitrogen<sup>25</sup> to discharge two small probes with attached insulated wires, which are connected to the gun portion of the device.<sup>26</sup> Once the probes make contact with the body or clothing of an individual, the Taser delivers an electrical impulse of 50,000 volts through the wires to the probes, resulting in immediate loss of the individual's neuromuscular control and ability to perform coordinated movements for the duration of the shock.<sup>27</sup> The Taser can project the probes up to a distance of 35 feet at a speed of over 160 feet per second.<sup>28</sup> Generally, the electrical impulse is pre-set to last up to five seconds, although, the shock may last longer if the trigger remains depressed and can be reactivated numerous times if the probes remain attached to an individual.<sup>29</sup>

In the latest models of Tasers, there is also a data port system attached to the weapon that provides downloadable information, including times, dates, and duration of recent uses.<sup>30</sup> The purpose of the data ports is to provide accountability and protect officers from charges of misuse of force.<sup>31</sup>

### D. Effects of Taser

In contrast to other stun devices and non-lethal weapons that rely solely on psychological impacts such as pain-compliance or distractions to subdue an individual, the new models of Tasers use Electro-Muscular Disruption (EMD) technology, which causes an uncontrollable contraction of skeletal muscle tissue, overriding the motor nervous system.<sup>32</sup> As a result, complete incapacitation occurs, regardless of an individual's pain tolerance, mental focus, or drug induced dementia.<sup>33</sup> Tasers, however, still inflict substantial pain. Although reports from

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<sup>25</sup>U.S. GEN. ACCOUNTING OFFICE, TASER WEAPONS: USE OF TASERS BY SELECTED LAW ENFORCEMENT AGENCIES (2005).

<sup>26</sup>Taser International, [http://www.taser.com/documents\\_press\\_kit](http://www.taser.com/documents_press_kit) (last visited Feb. 22, 2007).

<sup>27</sup>"Since currents can be conducted by electrical arcs, effective contact with the body of person targeted at can be made even if darts (electrodes) that carry the electrical charge land on thick clothing or if one lands on the ground and the other on the person." See Raymond Fish & L. Geddes, *Effect of Stun Guns and Tasers*, 358 THE LANCET 687 (2001).

<sup>28</sup>Taser International, [http://www.taser.com/documents\\_press\\_kit](http://www.taser.com/documents_press_kit) (last visited Feb. 22, 2007).

<sup>29</sup>See Amnesty International, *supra* note 11, at 5.

<sup>30</sup>"The X26's dataport also connects through a USB cable to most modern computers, and it has digitally encrypted data file to protect data file to protect data for possible admissibility as evidence in court." Paul Stearns, *Taser: Position Paper of the Police Training Institute* (2004), available at <http://www.pti.uiuc.edu/pdf/taser.pdf> (last visited Feb. 22, 2007).

<sup>31</sup>Advanced Tasers M18 uses Anti-Felon Identification system that disperses tiny unique coded tags every time the device is fired that police can use to trace by serial number. Taser International, [http://www.taser.com/documents\\_press\\_kit](http://www.taser.com/documents_press_kit) (last visited Feb. 22, 2007).

<sup>32</sup>*Id.*

<sup>33</sup>"The incapacitation rate in volunteer studies with over 3,000 elite volunteers from SWAT teams, military special forces, and police agencies is over 99%." *Advanced Tasers:*

individuals shocked by Tasers vary in regards to amount of pain felt, one law enforcement officer described the feeling of receiving a Taser shock as similar to “having two screwdrivers attached to jackhammers being driven into my back.”<sup>34</sup> A reporter, who volunteered to be shocked, described the feeling as being “like someone reached into my body to rip my muscles apart with a fork.”<sup>35</sup> The pain, however, does not linger after the shock is applied. After the cessation of the electrical current, the shocked individual typically recovers in about ten seconds.<sup>36</sup>

#### E. Medical Research and Findings

There are over eighty medical studies and reviews relating to the use of Tasers.<sup>37</sup> The published literature includes information on the use of electronic restraint devices, the medical hazards of electricity, and injuries and deaths associated with electronic weapons.<sup>38</sup> The majority of these publications, however, report on the original Taser model or other stun gun devices, not on the newer Advanced Tasers M-26/X-26.<sup>39</sup> Since the introduction of the “new generation” of Tasers in 1998, there has been no published and peer-reviewed clinical experience on Taser’s effects on the human body.<sup>40</sup> There has been, however, medical information gathered on new Advanced Tasers from animal<sup>41</sup> and volunteer testing,<sup>42</sup> independent police studies, and data reviews from medical experts.<sup>43</sup>

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*Safety Every Officer Deserves*, <http://www.taser.com/documents/m26brochure.pdf> (last visited Dec. 19, 2005).

<sup>34</sup>Rob Pincus, *Advanced Tasers: The Next Generation of Moderate Level Force*, SWAT MAG. (2003), available at <http://www.taser.com/documents/swat2003.pdf> (last visited Dec. 22, 2005).

<sup>35</sup>*All Things Considered: Tasers Look to Expand Market for Stun Guns* (NPR radio broadcast, Apr. 1, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4571973>.

<sup>36</sup>Taser International, <http://www.taser.com> (last visited Feb 23, 2007).

<sup>37</sup>Anthony Bleetman, *Advanced Taser: A Medical Review* (2003), available at [http://www.taser.com/documents/UK\\_Review%20~Blee~an.pdf](http://www.taser.com/documents/UK_Review%20~Blee~an.pdf) (last visited Dec. 22, 2005).

<sup>38</sup>“Published information on injuries and deaths associated with electronic weaponry is limited with 35 relevant articles being identified in peer-reviewed medical publications.” See Bleetman, *supra* note 37.

<sup>39</sup>*Id.* The Advanced Taser M26/X26 is several times more powerful than the original Taser. *Id.* The Advanced Taser operates on eighteen to twenty-six watts, while the original Taser operated only on five watts. *Id.*

<sup>40</sup>*Id.*

<sup>41</sup>A study looked at the effect of Tasers on less than a dozen anesthetized pigs. Wayne McDaniel, *Cardiac Safety of Neuromuscular Incapacitating Defense Devices*, 1 PACING & CLINICAL ELECTROPHYSIOLOGY J. 28 (2005), available at <http://www.taser.com/documents/PACE-Dr-McDaniel-Rpt.pdf> (last visited Feb. 22, 2007).

<sup>42</sup>Taser International, <http://www.taser.com> (last visited Feb 23, 2007).

<sup>43</sup>See Bleetman, *supra* note 37.

Overall, the majority of researchers found the risk of life threatening or serious injuries from Tasers to be very low and “essentially safe on healthy people.”<sup>44</sup> According to these studies, permanent or long-term injury is unlikely, and the majority of documented injuries are “secondary injuries” caused from falling down or “athletic type injuries” caused from stress and muscle contraction.<sup>45</sup> During the period of use of low-powered Tasers, “there have been only small number of deaths associated with the large number of operational uses,” and none of the reports exclusively concluded that Tasers were the primary cause of those deaths.<sup>46</sup> In addition, the research found the electrical charge of Tasers to be well below the discharge necessary to cause cardiac arrest.<sup>47</sup> The potential risk of injury also compared favorably with other physical and chemical methods of subduing an individual, including pepper sprays, chokeholds, batons, police dogs, and firearms.<sup>48</sup>

Several of the medical studies, however, questioned the safety of Tasers on individuals with mitigating health factors, such as illicit drug or alcohol abuse, pre-existing heart disease, pacemakers, and pregnancy.<sup>49</sup> Some medical experts involved in the research speculated that individuals with these underlying health problems might be more susceptible to cardiac arrest and recommended further research on the

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<sup>44</sup>A. Bleetman, R. Steyn & C. Lee, *Introduction of the Taser into British Policing: Implications for UK Emergency Departments: An Overview of Electronic Weaponry*, 21 EMERGENCY MED. J. 136 (2004). See also Bleetman, *supra* note 37. “There exists no convincing evidence directly implicating Taser weaponry in deaths of subjects in over 25 years’ experience in America.” *Id.*

<sup>45</sup>See Stearns, *supra* note 30. See also Taser International, <http://www.taser.com/documents/LG-INST-LEWARN-001%20REV%20Apdf> (last visited Dec. 20, 2005).

<sup>46</sup>In discussing in-custody deaths, “[b]ased on the documentation and research reviewed, this report concludes that EMI is likely not the primary causative factor in reported fatalities.” U.S. DEP’T OF DEFENSE, REPORT ON HUMAN EFFECTIVENESS AND RISK CHARACTERIZATION OF ELECTROMUSCULAR INCAPACITATION DEVICES (2004).

<sup>47</sup>McDaniel, *supra* note 41.

<sup>48</sup>See Bleetman, *supra* note 37.

<sup>49</sup>“[T]here is sufficient indication from the forensic data and the known electrophysiological characteristics of the heart (and the effects of drugs on this) to express a view that excited, intoxicated individuals or those with pre-existing heart disease could be more prone to adverse effects from the M26 Taser, compared to unimpaired individuals.” Defense Scientific Advisory Council, DSCA *Sub-Committee on the Medical Implications of Less-Lethal Weapons*, ¶ A28 (2004), available at <http://www.theiacp.org/research/CuttingEdge/DSACReport.pdf> (last visited Feb. 20, 2007).



issue.<sup>50</sup> Although none of the research concluded that Taser in and of itself causes death, some studies listed Taser as a contributory cause.<sup>51</sup>

### III. USE-OF-FORCE GUIDELINES AND DEPLOYMENT POLICIES

#### A. Use-of-force Continuum

A use-of-force policy provides police officers with a defined set of rules or guidance on the circumstances in which certain levels of force may be reasonable.<sup>52</sup> Generally, the use-of-force policies establish a continuum or scale that provides police officers with various options in responding to a subject's actions or resistance level. The officer is trained to use the minimum amount of force required under the specific circumstances.<sup>53</sup>

For instance, the Federal Law Enforcement Training Center (FLETC) use-of-force continuum provides five levels of potential subject actions, and corresponding officer responses that range from cooperative controls, such as verbal commands, when dealing with compliant subjects up to deadly force, such as firearms, when dealing with assaultive subjects that pose a threat of serious physical injury or death.<sup>54</sup> Some use-of-force policies also have the officers consider factors such as subject sizes and age, the number of subjects, the proximity of weapons, potential risk of injury, experience of officers on scene, and influence of drugs or alcohol in determining the reasonableness of force.<sup>55</sup> There is no universally accepted use-of-force policy, however, and the guidelines often vary in their specificity.<sup>56</sup>

Overall, the majority of law enforcement agencies in the United States place Tasers in the mid-range<sup>57</sup> of the use-of-force continuum scale.<sup>58</sup> What constitutes

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<sup>50</sup>“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.” INT’L ASS’N OF CHIEFS OF POLICE, ELECTRO-MUSCULAR DISRUPTION TECHNOLOGY: NINE STEP STRATEGY FOR EFFECTIVE DEPLOYMENT 5 (2005), available at <http://www.theiacp.org/research/CuttingEdge/EMDT9Steps.pdf> (last visited Feb. 20, 2007).

<sup>51</sup>See, e.g., R. N. Kornblum & S. K. Reddy, *Effects of the Taser in Fatalities Involving Police Confrontation*, 36 J. FORENSIC SCI. 434 (1991); T. B. Allen, *Effects of the Taser in Fatalities Involving Police Confrontation*, 37 J. FORENSIC SCI. 956 (1992).

<sup>52</sup>See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 7.

<sup>53</sup>*Id.*

<sup>54</sup>FLETC officials stated that a standardized training program on the use of Tasers is needed. FLETC also stated that greater research into deployment guidelines and safety should be conducted by entities not associated by Taser International. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 9.

<sup>55</sup>Police Service Dogs and Use of Force Continuum, <http://www.k9fleck.org/k9foc.htm> (last visited Dec. 20, 2005).

<sup>56</sup>See Amnesty International, *supra* note 11, at 12; see also U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 10.

<sup>57</sup>Taser International told Amnesty International that eighty-six percent of the United States' agencies place Tasers at the midrange level of the force continuum. See Amnesty International, *supra* note 11, at 12.

mid-range use of force, however, varies with law enforcement agencies. For instance, some law enforcement agencies allow an officer to deploy a Taser when they perceive the situation as potentially harmful.<sup>59</sup> These situations include, for example, instances in which a subject attacks or threatens to attack an officer or another person by fighting or kicking.<sup>60</sup> Police officers can also use neck restraints, batons, and other impact weapons in these situations.<sup>61</sup>

Other law enforcement agencies permit the use of Tasers when a police officer perceives the situation as volatile, as when a subject is defensively resistant.<sup>62</sup> This includes situations in which the subject is actively resisting arrest, but not physically assaulting the officer.<sup>63</sup> Police officers can also use hair/joint takedowns, pepper sprays, and temporary restraints at this level.<sup>64</sup>

Generally, the lowest level of force that police agencies allow the use of Tasers is when an officer perceives the situation as tactical, as when the subject is passively resistant.<sup>65</sup> This occurs, for example, when a subject refuses to comply with police officer's verbal commands, but does not interfere with the police officer and presents no physical threat.<sup>66</sup> This level on the force continuum is the most controversial for Taser deployment, and generally, no other forms of physical force are appropriate.<sup>67</sup>

### B. Training Requirements

Currently, there are no state mandated training requirements for officers to carry Tasers.<sup>68</sup> Several law enforcement agencies, however, stress that adequate Taser training is critical in ensuring the appropriate, effective, and safe deployment of the weapon.<sup>69</sup> The definition of "adequate" training, however, varies with law

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<sup>58</sup>"Tasers should not be used as an alternative to deadly force when use of deadly force is the only viable solution to an incident. In such situations, the officer should not use a Taser if on the scene alone." Stearns, *supra* note 30.

<sup>59</sup>See Amnesty International, *supra* note 11, at 12; see also U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 8.

<sup>60</sup>See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 8.

<sup>61</sup>Portland Public Safety Office, <http://www.cpsso.pdx.edu/html/forcepolicy.htm#continuum> (last visited Dec. 20, 2005).

<sup>62</sup>See Amnesty International, *supra* note 11, at 12; see also U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 7.

<sup>63</sup>See Amnesty International, *supra* note 11, at 12.

<sup>64</sup>Portland Public Safety Office, <http://www.cpsso.pdx.edu/html/forcepolicy.htm#continuum> (last visited Dec. 20, 2005).

<sup>65</sup>See Amnesty International, *supra* note 11, at 12; see also U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 7.

<sup>66</sup>See Amnesty International, *supra* note 11, at 12.

<sup>67</sup>*Id.* Amnesty International reports that in light of some controversial Taser incidents, several police departments have recently changed their policies to raise the entry level of Taser use from "passive" to active" resistance. *Id.*

<sup>68</sup>See Stearns, *supra* note 30.

<sup>69</sup>See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 9.

enforcement agency. In a recent survey of police forces deploying Tasers, the training requirements ranged from five hours to eight hours.<sup>70</sup> Training for firearms, in comparison, ranged from sixty hours to one hundred hours.<sup>71</sup>

Generally, law enforcement agencies require police officers to demonstrate physical competency with the weapon, including “how to (1) properly handling the weapon, (2) locate the shot, (3) safeguard the Taser, (4) conduct proper function tests, (5) overcome system malfunctions, and (6) perform post-Taser deployment actions.”<sup>72</sup> In addition, some law enforcement agencies require a written examination relating to the use-of-force policies and appropriate safety measures.<sup>73</sup> Many law enforcement agencies also require yearly recertification in Taser deployment.<sup>74</sup>

### C. Safety Procedures

Although Tasers are designed to reduce the likelihood of serious injury or death, the weapon is not risk free.<sup>75</sup> Significant injuries can occur from a suspect falling due to the shock, seizure from repeated shocks, and Taser probes embedded in the eyes, throat, or groin.<sup>76</sup> In addition, Tasers can ignite gasoline, explosive gas, and other flammables.<sup>77</sup> Taser International also warns police officers that if a suspect’s system is already compromised by over-exertion, drug intoxication, or pre-existing medical conditions, Taser “may have an additive effect in contributing to cumulative exhaustion, stress, cardiovascular conditions, and associated medical risk(s).”<sup>78</sup>

In light of these risks, many law enforcement agencies, as well as Taser International, developed safety procedures to help minimize harm.<sup>79</sup> For instance, some agency safety guidelines provide that officers should avoid deploying Tasers on children, pregnant suspects, or near bystanders or flammable substances.<sup>80</sup> They also require any individual shot in the groin, neck, or face by a Taser to receive

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<sup>70</sup>See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 10. The survey interviewed seven large law enforcement agencies across the country. *Id.* All of the agencies required Taser training. *Id.* All but one of the agencies had assistance in training from Taser International, who recommends a minimum of four hours of training. *Id.*

<sup>71</sup>*Id.* at 11.

<sup>72</sup>*Id.*

<sup>73</sup>See Stearns, *supra* note 30. Taser International also recommends that each officer that carries a Taser, voluntarily receive a shock from Taser. *Id.*

<sup>74</sup>See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 15.

<sup>75</sup>Taser International Product Warnings, <http://www.taser.com/safety/index.htm> (last visited Dec. 22, 2005).

<sup>76</sup>*Id.*

<sup>77</sup>*Id.*

<sup>78</sup>*Id.*

<sup>79</sup>See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 15; see also Stearns, *supra* note 30. This information is based on a survey of seven law enforcement agencies. *Id.* All of the seven law enforcement agencies had safety guidelines. *Id.*

<sup>80</sup>See U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 16.

emergency medical care to remove the barbs.<sup>81</sup> An officer should also request emergency care if the suspect displays an adverse reaction to the Taser or symptoms of Sudden In-Death Custody Syndrome.<sup>82</sup>

#### IV. TASER REGULATIONS AND RESTRICTIONS

##### A. Federal Level

Currently, the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosions (ATF) does not classify the Taser as a firearm.<sup>83</sup> Thus, the federal regulations regarding the manufacturing, sale, and possession of firearms do not apply to the Taser. As a result, there are no federal restrictions on the distribution and sale of Tasers within the United States. Some federal agencies, however, such as the Transportation Security Administration (TSA), have established some restrictions on the possession and sale of Tasers.<sup>84</sup> For example, the TSA prohibits unauthorized personnel from carrying Tasers beyond airport security checkpoints.<sup>85</sup>

##### B. State and Local Level

Some state and local jurisdictions have enacted laws that restrict the sale and use of hand held shock devices, such as Tasers, but requirements differ. For instance, some states, such as Indiana and Illinois, require prospective purchasers to obtain a handgun license or permit before lawfully buying and carrying Tasers. In addition, some states prohibit certain areas in which an individual can carry Tasers, such as courthouses, schools, or other public buildings. In most states, law enforcement personnel are exempted from regulations and restrictions placed on consumer use. Currently, seven states fully prohibit the sale and use of Tasers by consumers,<sup>86</sup>

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<sup>81</sup>*Id.* at 15. In the event that Taser probes are not in the face, neck, or groin, the officers have discretion to remove the probes themselves. *Id.* If the officers do remove the probes, they are required to dispose of the barbs in “sharp” containers to ensure hygienic disposal and safeguard against exposure to bloodborne pathogens, such as HIV. *Id.*

<sup>82</sup>Taser International Product Warnings, <http://www.taser.com/safety/index.htm> (last visited Dec. 20, 2005). “Sudden in-custody death results from a complex set of physiological and psychological conditions characterized by irrational behavior, extreme exertion, and potentially fatal changes in blood chemistry. Promptly restraining a subject exhibiting signs of these conditions may end the struggle and allow early access to medical care.” *Id.*

<sup>83</sup>18 U.S.C. § 921(a)(3)(A) (2005). The Federal Bureau of Alcohol, Tobacco, Firearms, and Explosions classifies a device as a firearm when it “expel[s] a projectile by the action of an explosive.” *Id.* Tasers, however, uses compressed nitrogen gas as propellant. Taser International, <http://www.taser.com> (last visited Dec. 22, 2005).

<sup>84</sup>*See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 17. The United States Army also prohibits Tasers from being carried into selected military installations in Georgia. *Id.*

<sup>85</sup>49 C.F.R. § 1540.111 (2004). Some individuals, such as police officers and federal agents, may be authorized to carry Tasers beyond security check points. *Id.* In addition, the TSA has authority to allow flight crews to use Tasers on commercial aircrafts. *Id.* *See also* U.S. GEN. ACCOUNTING OFFICE, *supra* note 25, at 18.

<sup>86</sup>Hawaii, Massachusetts, Michigan, New York, New Jersey, Rhode Island, and Wisconsin fully prohibit Tasers. Taser International, [www.Taser.com](http://www.Taser.com) (last visited Dec. 20, 2005).

seven states impose restrictions on Tasers used by consumers,<sup>87</sup> and two states prohibit law enforcement from carrying Tasers.<sup>88</sup> Eight counties and cities also prohibit the consumer use of Tasers.<sup>89</sup>

## V. TASERS AND USE-OF-FORCE LIABILITY

### A. 42 U.S.C. §1983 – *Qualified Immunity*

In reviewing case law concerning the deployment of Tasers and legal liability, the majority of cases involve claims brought by citizens against law enforcement officers under 42 U.S.C. §1983, alleging violations of the Fourth Amendment, due to alleged use of excessive force during an arrest, or the Eighth Amendment, alleging cruel and unusual punishment towards an inmate.<sup>90</sup> Section 1983 provides a civil remedy for individuals who have their constitutional civil rights violated by government officials.<sup>91</sup> The claim is independent of, and in addition to, other common law tort actions, such as assault and battery.<sup>92</sup> To maintain an action for damages under Section 1983, a plaintiff must demonstrate that the defendant, while acting under color of state law, deprived the plaintiff of a federally protected right, and the constitutional deprivation proximately resulted in harm to the plaintiff.<sup>93</sup> If the plaintiff fails to meet this burden, the government officials are granted qualified immunity from the suit. A government official, however, may appeal a trial court's denial of qualified immunity.<sup>94</sup>

### B. *Fourth Amendment Cases*

Claims of law enforcement using excessive force in context of arrests or investigatory stops are analyzed under the Fourth Amendment's objective

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<sup>87</sup>*Id.*

<sup>88</sup>*Id.*

<sup>89</sup>Annapolis, Baltimore, Chicago, Howard County, MD, Lynn County, OH, New York City, Philadelphia, and Washington, D.C. prohibit non-law enforcement from carrying Tasers. Taser International, <http://www.taser.com> (last visited Dec. 20, 2005).

<sup>90</sup>42 U.S.C. §1983 (2005). The scope of this note is limited to liability issues relating to use of Tasers by law enforcement and correctional agencies. Potential criminal liability for use of Tasers against pretrial detainees is beyond the scope of this note. In addition, at least thirty-three wrongful death lawsuits have been filed against Taser International. *See* Amnesty International, *supra* note 11. Seven of those lawsuits, however, have been dismissed. *Id.*

<sup>91</sup>*Saucier v. Katz*, 533 U.S. 194, 201 (2001). “A court required to rule upon the qualified immunity issue must first consider whether, taken in light most favorable to the party asserting the injury . . . the facts alleged show the officer's conduct violated a constitutional right.” *Id.*

<sup>92</sup>Other state actions, such as wrongful death, have been filed against police officers. Amnesty International, *supra* note 11. In addition, a police force filed an action against the manufacturers of Tasers, alleging product liability. *Id.* However, this note only addresses claims by suspects and prisoners against law enforcement under §1983.

<sup>93</sup>*Saucier*, 533 U.S. at 202. “The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Id.*

<sup>94</sup>*See Mitchell v. Forsyth*, 472 U.S. 511, 524-30 (1985).

reasonableness standard, in which a court looks at the “totality of circumstances” at the time of the arrest to determine whether the officer used greater force than was reasonable necessary.<sup>95</sup> This inquiry is from “the perspective of a reasonable officer at the scene, rather than 20/20 vision of hindsight” and “without regard to their underlying intent or motivation.”<sup>96</sup> In determining reasonableness, a court considers all facts and circumstances of each particular case, “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”<sup>97</sup> Moreover, in circumstances where different levels of force are possible, police officers are not required to use the least intrusive amount of force possible.<sup>98</sup>

Although there is no case law supporting the proposition that the use of Tasers is per se unconstitutional, under certain circumstances the courts have deemed the use of Tasers as excessive.<sup>99</sup> A case-by-case analysis determines whether a police officer relied unreasonably on the use of a Taser.<sup>100</sup> Courts have granted qualified immunity to officers that use a Taser in order to avoid a dangerous situation or resort to even greater force.<sup>101</sup> For instance, in *Russo v. City of Cincinnati*, the court found the deployment of Tasers objectively reasonable in incapacitating a potentially homicidal or suicidal individual.<sup>102</sup> In addition, courts have held that the single use

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<sup>95</sup>See *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985); see also *Graham v. Connor*, 490 U.S. 386 (1989); *Saucier*, 533 U.S. at 194.

<sup>96</sup>*Graham*, 490 U.S. at 396-97; see also *Saucier*, 533 U.S. at 205. “If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed . . . An officer might correctly perceive all the relevant facts but have mistaken understanding as to whether a particular amount of force is legal in those circumstances.” See also *Brower v. County of Inyo*, 489 U.S. 593, 594-600 (1989). Although reasonableness is measured without regard to the officer’s motivation, the liability still requires that the use of force be intentional, not negligent. *Id.*

<sup>97</sup>“It is well settled that the right to make an arrest ‘necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.’” *Draper v. Reynolds*, 396 F.3d 1270, 1278 (11th Cir. 2004) (quoting *Graham*, 490 U.S. at 396); see also, *Russo v. City of Cincinnati*, 953 F.2d 1036, 1045 (6th Cir. 1992). “[O]ur court has repeatedly found that a totally gratuitous blow with a policeman’s nightstick may cross the constitutional line.” *Id.* at 1044 (quotations omitted).

<sup>98</sup>See *Forrester v. City of San Diego*, 25 F.3d 804, 808 (11th Cir. 1994). “Whether officers hypothetically could have used less painful, less injurious, or more effective force in executing an arrest is simply not the issue.” *Id.* Courts are also reluctant to hold law enforcement agencies liable for not employing less-lethal force. See, e.g., *Plakas v. Drinski*, 19 F.3d 1143, 1148 (7th Cir. 1994); *Carswell v. Borough of Homestead*, 381 F.3d 235, 245 (3d Cir. 2004).

<sup>99</sup>See *Michenfelder v. Summer*, 860 F.2d 328, 336 (9th Cir. 1988).

<sup>100</sup>*Id.* See also *Caldwell v. Moore*, 968 F.2d 595, 600-01 (6th Cir. 1992).

<sup>101</sup>See *Russo*, 953 F.2d at 1036.

<sup>102</sup>See *id.* The court held that a police officer was entitled to qualified immunity on a claim of excessive force in using a Taser on a potentially suicidal and homicidal individual who posed no immediate threat to the officer. *Id.* See also *Ewolski v. City of Brunswick*, 287 F.3d 492 (6th Cir. 2003) (holding that the police officer’s deployment of a Taser to subdue a potentially homicidal individual did not clearly violate established constitutional law).

of a Taser in making the arrest of a suspect who appears “hostile, belligerent, uncooperative,” and repeatedly refuses to comply with police officer’s commands was justified and does not amount to excessive force.<sup>103</sup>

Courts, however, are less willing to find qualified immunity against Section 1983 claims against police officers who use a Taser on an individual where no other use of physical force would be justified.<sup>104</sup> For instance, in *Chaney v. City of Orlando*, the court held that a police officer was not entitled to qualified immunity for using a Taser on an individual who passively and verbally challenged the arrest,<sup>105</sup> where it was not clear if the arrest was valid.<sup>106</sup>

In addition to police officers’ liability in using excessive force, courts can hold municipalities liable for either inadequate training or implementing of a custom or policy that allows officers to use Tasers in ways that subvert the Fourth Amendment rights of citizens.<sup>107</sup> The burden for the plaintiff, however, is significant.<sup>108</sup> To

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<sup>103</sup>*Draper v. Reynolds*, 369 F.3d 1270, 1278 (11th Cir. 2004). The court held that the deputy’s use of Taser to effectuate the arrest did not constitute excessive force, because the tense and uncertain situation the deputy faced, and the suspects repeated refusal to comply with the deputy’s commands. *Id.* See also *Hinton v. City of Elwood*, 997 F.2d 744 (10th Cir. 1993) (holding that when a suspect’s behavior escalated to that of disorderly conduct, the alleged conduct of grabbing the suspect, throwing him to the ground, and using a stun gun to incapacitate him was objectively reasonable and did not amount to a use of excessive force that would violate the Fourth Amendment).

<sup>104</sup>“A taser is capable of inflicting a great deal of pain upon a person- shocking, burning, and even rendering numb its target- and is, in this sense, little different than a nightstick, mace, or any other weapon that a police officer might use against an adversary.” *DeSalvo v. City of Collinsville*, No. 04-cv-0718-MJR, 2005 U.S. Dist. LEXIS 23180, at \*13 (S.D. Ill. Oct. 7, 2005).

<sup>105</sup>“The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” *City of Houston v. Hill*, 482 U.S. 451, 462-463 (1987).

<sup>106</sup>*Chaney v. City of Orlando*, No. 604-cv-515-Orl-22KRS, 2005 U.S. Dist. LEXIS 30580 (M.D. Fla. Dec. 2, 2005). The plaintiff was Tasered while in his car, and there was material issues of fact as to whether the plaintiff resisted arrest, whether the arrest was lawful, and whether the police officer’s use of Taser was in good faith or with malice. *Id.* The court denied the officer’s motion for summary of judgment. *Id.* In *DeSalvo v. City of Collinsville*, the plaintiff was within a crowd of people, where the officer asked the crowd to disperse and grabbed the plaintiff when he did not immediately leave. *DeSalvo v. City of Collinsville*, No. 04-cv-0718-MJR, 2005 U.S. Dist. LEXIS 23180 (S.D. Ill. Oct. 7, 2005). When the plaintiff asked the officer why he was being arrested, the officer Tasered him twice. *Id.* Videotape showed that the plaintiff was not physically resisting arrest. *Id.* The court refused to grant the officer qualified immunity, based on the grounds that plaintiff’s inquires were insufficient to establish probable cause for arrest, and the use of the Taser was unreasonable. *Id.*

<sup>107</sup>See *City of Canton v. Harris*, 489 U.S. 378 (1989); see also *Chaney*, 2005 U.S. Dist. LEXIS 30580; *DeSalvo*, 2005 U.S. Dist. LEXIS 23180; *McKenzie v. City of Milipitas*, 738 F. Supp. 1293 (N.D. Cal. 1990).

<sup>108</sup>*Harris*, 489 U.S. at 391.

Predicting how a hypothetically well-trained officer would have acted under the circumstances may not be an easy task for the factfinder, particularly since matters of judgment may be involved, and since officers who are well trained are not free from error and perhaps might react very much like the untrained officer in similar

maintain a Section 1983 action against a municipality, the plaintiff must “demonstrate that a custom existed, that custom caused a deprivation of their rights, and that the custom was so widespread” that the municipality “was aware of the custom but failed to end it.”<sup>109</sup> Furthermore, to uphold a Section 1983 action against the municipality for inadequate police training, the plaintiff must show that the municipality’s failure to train its employees amounted to “deliberate indifference”<sup>110</sup> of their constitutional rights.<sup>111</sup> A showing that a particular police officer “may be unsatisfactorily trained will not alone suffice to fasten liability” on a municipality.<sup>112</sup> Neither will it suffice to show that with better training the police officer could have avoided injuring the plaintiff.<sup>113</sup> Moreover, where the police officer’s actions are objectively reasonable, the municipality is generally not liable, regardless of whether the municipality’s policies might have conceivably authorized excessive force.<sup>114</sup> A municipality may be liable, however, where “police, in exercising their discretion, so often violate constitutional rights” or the need for further training is “so obvious” that failure to do so amounts to deliberate indifference.<sup>115</sup>

Generally, courts have held that where a police department has inadequate training requirements, lacks a policy on when to use Tasers, or lacks a system of reviewing a police officer’s use of Tasers, there is a basis for Section 1983 liability.<sup>116</sup> For instance, in *Mckenzie v. City of Milpitas*, the court denied the city’s motion for summary judgment where the police department’s policy allowed officers to resort to Taser deployment immediately after verbal warnings, failed to adequately train officers in the constitutional standards and health hazards associated with Tasers, supplied Tasers to officers with limited experience, and was silent on arrest procedure.<sup>117</sup> On the other hand, in *DeSalvo v. City of Collinsville*, the court held

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circumstances. But judge and jury, doing their respective jobs, will be adequate to the task.

*Id.*

<sup>109</sup>*See* *Floyd v. Waiters*, 133 F.3d 786, 795 (11th Cir. 1998).

<sup>110</sup>Deliberate indifference requires a showing of more than gross negligence. *Harris*, 489 U.S. at 389-391. In addition, the liability must be closely related to the injury. *Id.*

<sup>111</sup>“Only where a municipality’s failure to train its employees in a relevant respect evidences a ‘deliberate indifference’ to the rights of its inhabitants can such a shortcoming be properly thought of as a city ‘policy or custom’ that is actionable under § 1983.” *Harris*, 489 U.S. at 388.

<sup>112</sup>*Id.* at 390.

<sup>113</sup>*See id.*

<sup>114</sup>*See* *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *see also* *Hinton v. City of Elwood*, 997 F.2d 744, 780 (10th Cir. 1993).

<sup>115</sup>“Thus, the need to train officers in the constitutional limitations on the use of deadly force, can be said to be ‘so obvious,’ that failure to do so could properly be characterized as ‘deliberate indifference’ to constitutional right.” *Harris*, 489 U.S. at 390.

<sup>116</sup>*See* *Mckenzie v. City of Milpitas*, 738 F. Supp. 1293, 1300 (N.D. Cal. 1990).

<sup>117</sup>*Id.* at 1297.

City taser training includes distributing copy of the City’s taser policy and discussing it with the officers. The officers are also trained to take all tasered subjects to an emergency room for medical clearance and to have the taser darts removed. No



that where the municipality has a policy indicating when to use a Taser on a suspect and where the police officer has received four hours of training on how and when to use the Taser, the municipality is entitled to qualified immunity.<sup>118</sup>

### C. Eighth Amendment Cases

The “unnecessary and wanton infliction of pain” by correction offices using excessive force upon an inmate is a violation of the Eighth Amendment’s prohibition of “cruel and unusual punishment.”<sup>119</sup> This standard applies only to incarcerated individuals and is less protective than the Fourth Amendment’s “objective reasonableness” standard for excessive force in making an arrest.<sup>120</sup> Specifically, the Eighth Amendment analysis necessitates both a subjective and objective component.<sup>121</sup>

The central subjective inquiry into determining a violation of the Eighth Amendment is whether the use of force by a correction officer was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.<sup>122</sup> In making such a determination, relevant factors to consider may be the need to use force, the amount of the force in relationship to the need, the threat reasonably perceived by the correction officer, and efforts made to mitigate the severity of force.<sup>123</sup>

The objective determination of whether use of force violates Eighth Amendment is if “the deprivation suffered or injury inflicted on [the] inmate was sufficiently serious.”<sup>124</sup> A valid excessiveness claim, however, does not require severe or significant injury.<sup>125</sup> All that is required is proof they suffered more than de minimis harm.<sup>126</sup> Even if there is no enduring injury, the pain itself can satisfy this burden.<sup>127</sup>

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Milpitas police officer may use a taser without first taking the taser training course and passing a written test. A refresher course is given to each officer every year.

*Id.*

<sup>118</sup>*DeSalvo v. City of Collinsville*, No. 04-CV-0718-MJR, 2005 U.S. Dist. LEXIS 23180, \* 19 (S.D. Ill. Oct. 7, 2005).

<sup>119</sup>*See, e.g., Hudson v. McMillan*, 503 U.S. 1, 5 (1992); *see also Ingraham v. Wright*, 430 U.S. 651, 670 (1997). “The unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” *Id.*

<sup>120</sup>*See Graham v. Connor*, 490 U.S. 386, 398 (1989).

<sup>121</sup>*See Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996). *See also Wilson v. Seiter*, 501 U.S. 294, 302 (1991).

<sup>122</sup>*See Hudson*, 503 U.S. at 7.

<sup>123</sup>*See Whitley v. Albers*, 475 U.S. 312, 320-21 (1986). *Williams*, 77 F.3d at 761.

<sup>124</sup>*Williams*, 77 F.3d at 761.

<sup>125</sup>*See Hudson*, 503 U.S. at 9-10. *See also Williams*, 77 F.3d at 761-62.

<sup>126</sup>“The Eighth Amendment’s prohibition of cruel and unusual punishment necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind.” *Hudson*, 503 U.S. at 9-10 (quotations omitted).

<sup>127</sup>*Williams*, 77 F.3d at 761.

Overall, courts have held that while the deployment of Tasers is not a per se violation of the Eighth Amendment, the appropriateness of the weapon's use must be analyzed on the facts of each case, keeping in mind that the use may amount to cruel and unusual punishment without proof of permanent or serious injury.<sup>128</sup> Generally, however, courts have found no violation of the Eighth Amendment where correctional officers use a Taser in a good-faith effort to subdue disruptive inmates who refuse to obey orders.<sup>129</sup> For instance, in *Osei-Kwasi v. Alford*, the court granted qualified immunity for an officer who used a stun gun on a pregnant prisoner who had created a disturbance by incessantly kicking a door.<sup>130</sup> In *Caldwell v. Moore*, the court held that the use of a stun gun to subdue an inmate who refused to stop shouting and kicking for seven hours did not violate the Eighth Amendment.<sup>131</sup> In *Manier v. Cook*, officers were granted qualified immunity in deploying a Taser on an inmate who refused to return to his cell as ordered, was verbally abusive, and had a history of self-harm.<sup>132</sup> In granting qualified immunity, the court also took into consideration that the officers used two Taser shots rather than a continuous triggering and decided not to Taser the plaintiff a third time.<sup>133</sup>

Courts have also found no violation of the Eighth Amendment where officers "threaten" to use a Taser to compel compliance with legitimate prison regulations or penological interest.<sup>134</sup> For example, in *Michenfelder v. Sumner*, the court held that the threatened use of a Taser to enforce compliance with a strip search was not a constitutional violation.<sup>135</sup> The court found that the reasonable security purpose of strip searches, to discover hidden weapons and contraband, "justifies the force necessary to induce compliance by difficult inmates."<sup>136</sup> In *Walker v. Sumner*, the

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<sup>128</sup>*See id.*

<sup>129</sup>*See, e.g., Osei-Kwasi v. Alford*, 418 S.E.2d 79 (Ga. Ct. App. 1992); *Caldwell v. Moore*, 968 F.2d 595, 600 (6th Cir. 1992); *see also Bennet v. Parker*, 898 F.2d 1530, 1533 (11th Cir. 1990) (holding that "guards may use force when necessary to restore order and need not wait until disturbances reach dangerous proportions before responding").

<sup>130</sup>The guard stated that he used the Taser to minimize possible injuries to all concerned, including the plaintiff and her unborn child. *Osei-Kwasi*, 418 S.E.2d at 85. *See also Rubins v. Roetker*, 737 F. Supp. 1140, 1142-44 (D. Colo. 1990).

<sup>131</sup>*Caldwell*, 968 F.2d at 600. The court also found that the lack of a policy regulating the use of stun guns in correctional facilities does not render the use of stun guns per se a violation of the Eighth Amendment. *Jolivet v. Cook*, No. 94-4069, 1995 U.S. App. LEXIS 3950, \*5 (10th Cir. Mar. 1, 1995) (holding that a "violation of prison regulations does not give rise to an Eighth Amendment violation absent evidence the prison official's conduct failed to conform to constitutional standard").

<sup>132</sup>*Manier v. Cook*, 394 F. Supp 2d 1282, 1285 (E.D. Wash. 2005).

<sup>133</sup>*Id.* at 1288. "Prison administration should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.*

<sup>134</sup>*See Michenfelder v. Sumner*, 860 F.2d 328, 336 (9th Cir. 1988).

<sup>135</sup>*Id.*

<sup>136</sup>*Id.* "Employing the alternative suggested by *Michenfelder*—allowing prisoners who refused to be strip searched to be restrained, taken to their cells and searched there—could

court held that the threatened use of a Taser to compel a prisoner to take an AIDS test did not violate his constitutional rights.<sup>137</sup> The court found that the compelling need to prevent the spread of the AIDS virus justified the threatened use of the Taser.<sup>138</sup>

Courts, however, have not granted qualified immunity in every circumstance where a prisoner or an inmate is “actually” tasered for refusing to comply with orders.<sup>139</sup> For instance, in *Hickey v. Reeder*, the court held, as matter of law, that the use of a stun gun on an inmate to enforce an order to sweep his cell violated the Eighth Amendment.<sup>140</sup> The court found that while “summary applications of force are constitutionally permissible when prison security and order, or safety of inmates or officers has been placed in jeopardy,” the use of summary force is not acceptable “as the de jure method of discipline where security concerns are not immediately implicated.”<sup>141</sup>

Courts have also found cognizable claims of cruel and unusual punishment where correctional officers threaten an inmate with a Taser for malicious purpose of inflicting gratuitous fear.<sup>142</sup> For example, in *Parker v. Asher*, the court upheld an inmate’s claim for violation of his Eighth Amendment rights where a correctional officer threatened to shoot him with a Taser for no legitimate penological reason.<sup>143</sup> Furthermore, in *Shelton v. Angelone*, the court held that evidence of correction officers beating and stunning a restrained prisoner, without justification, satisfied a claim for excessive force under the Eighth amendment.<sup>144</sup>

## VI. TASER DEBATE: CONTROVERSY AND CONCERNS OVER THE SAFETY OF TASERS

### A. General Background

Taser International and law enforcement agencies endorse Tasers as the safest and most effective non-lethal technology on the market.<sup>145</sup> However, several media outlets and civil rights organizations have released critical reports questioning the

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have a ripple effect throughout the prison, necessitating the use of additional prison staff if other prisoners joined in the passive resistance.” *Id.*

<sup>137</sup>See *Walker v. Sumner*, No. 92-15297, 1993 U.S. App. LEXIS 26517, at \*2 (9th Cir. July 14, 1993).

<sup>138</sup>*Id.*

<sup>139</sup>See, e.g., *Hickey v. Reeder*, 12 F.3d 754, 759 (8th Cir. 1993).

<sup>140</sup>*Id.*

<sup>141</sup>*Id.*

<sup>142</sup>See, e.g., *Paker v. Asher*, 701 F. Supp. 192, 194 (D. Nev. 1988); see also *Shelton v. Angelone*, 183 F. Supp 2d 830, 835 (W.D. Va. 2002).

<sup>143</sup>*Paker*, 701 F. Supp. at 194. “According to *Parker*, he was complying with *Asher*’s previous order when *Asher* loaded the taser gun and ‘intentionally, maliciously, and sadistically’ pointed at him. These allegations suggest that *Asher* was not using the taser gun to enforce security or discipline, but merely to inflict gratuitous fear and punishment.” *Id.*

<sup>144</sup>*Shelton*, 183 F. Supp 2d at 835.

<sup>145</sup>See *infra* Part V.E.

safety and efficacy of the weapon. For instance, in 2004, Amnesty International released a ninety-seven page report, titled *United States of America, Excessive and Lethal Force? Amnesty International's concerns about deaths and Ill-treatment involving police use of Tasers*, documenting abuses and deaths that have occurred in association with Tasers.<sup>146</sup> Amnesty International's report also criticizes the amount or lack of independent and rigorous research into the medical and safety effects of Tasers.<sup>147</sup> Similarly, in 2005, the American Civil Liberties Union (ACLU) released a twenty-five page report, titled *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, questioning Taser International's marketing practices and medical research and questioning law enforcement's policies and training on Taser use.<sup>148</sup>

Amnesty International has recommended that federal, state, and local authorities suspend all use of Tasers, pending an independent and impartial investigation into the weapon's safety.<sup>149</sup> Where law enforcement and correction agencies refuse to suspend the use of Tasers, Amnesty International recommends that officers restrict Taser deployment to situations where the alternative would be use of deadly force.<sup>150</sup> Likewise, the ACLU also recommends that law enforcement agencies restrict Taser use to only life-threatening situations.<sup>151</sup>

### B. In-Custody Deaths

In the last five years, there have been reports of nearly one hundred in-custody deaths following the use of Tasers.<sup>152</sup> Concerned about the role of Tasers in some of those fatalities and whether a Taser shock could have contributed to cardiac arrest, along with other factors such as drug ingestion, violent exertion, or use of other force

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<sup>146</sup>See Amnesty International, *supra* note 11.

<sup>147</sup>See *id.*

<sup>148</sup>See ACLU of Northern California, *supra* note 11, at 2.

<sup>149</sup>See Amnesty International, *supra* note 11, at 2.

<sup>150</sup>In March 9, 2005, during a public debate between Taser International and Amnesty International, the executive director of Amnesty International, William Schulz, changed the position to focus more on research:

First we're asking that independent, comprehensive medical tests be conducted to determine whether there is certain populations like people with cardiac or neurological conditions or people on drugs who are more vulnerable to the user of Tasers or perhaps whether there are certain applications of the Taser gun, say firing multiple times, that increase the danger of the subject. Second, we are simply asking that when those tests are completed, police departments adopt guidelines and protocols for the use of Tasers that are consistent with those recommendations, that minimize the risk that people will die or suffer severe injury after they have been Tased.

Amnesty International, *supra* note 11.

<sup>151</sup>See ACLU Northern California, *supra* note 11, at 2.

<sup>152</sup>The reported number of deaths has varied from ninety to one hundred forty-eight. See Amnesty International, *supra* note 11, at 2.

applications, Amnesty International has produced a report chronicling seventy-four of those in-custody deaths.<sup>153</sup>

Overall, Amnesty International's records reveal significant trends and patterns. All of the individuals who died were male and between the ages of eighteen and fifty-nine, with one exception involving the death of a female fetus.<sup>154</sup> Most of those who died displayed disturbed or combative behavior when arrested.<sup>155</sup> Approximately thirty individuals died as a direct result of drug overdoses.<sup>156</sup> In at least forty-four cases, multiple use of force was evident, including "hogtying," baton use, chemical spray, and Taser deployment.<sup>157</sup> The average number of Taser applications received per individual was two to three shocks.<sup>158</sup>

No medical examiners have implicated Tasers as a direct cause of death.<sup>159</sup> Only one case reports Taser as the sole application of force, in which the deceased individual fell and sustained a fatal injury to the head.<sup>160</sup> In at least five cases, however, coroners have found the weapon to be a salient contributory cause of death, along with other factors such as drug intoxication and underlying heart conditions.<sup>161</sup> For example, a Los Angeles coroner would not rule out Tasers as the cause of death of Eddie Alvarado, noting a temporal link between the Taser shock and cardiac arrest.<sup>162</sup> In November 2003, an autopsy report on James Borden listed shocks from a Taser as one of three contributory causes for his death.<sup>163</sup> In August 2004, a coroner found that the added stress of a Taser shock was proximal to the cardiac arrhythmia that contributed to William Teasley's death.<sup>164</sup> In Las Vegas, a coroner ruled that the electrical jolts from a Taser shock played a role in the death of William Lomax.<sup>165</sup>

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<sup>153</sup>Amnesty Reports were based on a range of sources, including twenty-one autopsy reports. *Id.* However, there are some inconsistencies based on reporting standards across jurisdictions. *See id.* at 1.

<sup>154</sup>*Id.* at 42-45. The death of the female fetus resulted after a pregnant mother was tasered, and the case is discussed in *Osei-Kwasi v. Alford*, 418 S.E.2d 79, 83 (Ga. Ct. App. 1992).

<sup>155</sup>Amnesty International, *supra* note 11, at 42-45.

<sup>156</sup>*Id.*

<sup>157</sup>*Id.*

<sup>158</sup>*See id.* However, one deceased individual received thirteen stun applications. *See also* POTOMAC INSTITUTE FOR POLICY STUDIES, EFFICACY AND SAFETY OF ELECTRICAL STUN DEVICES (2005).

<sup>159</sup>Amnesty International, *supra* note 11, at 42-45.

<sup>160</sup>*Id.* at 42-45.

<sup>161</sup>*Id.* at 72. The Taser was activated five times, while the suspect was hogtied. *Id.*

<sup>162</sup>*Id.* at 76. The deceased had a pre-existing heart condition and may not have taken diabetic medication. *Id.*

<sup>163</sup>*Id.* at 77. Suspect had a medical history that included heart disease. *Id.*

<sup>164</sup>*Id.* at 78.

<sup>165</sup>Taser International, Taser Technology Summary With Q&A's, [http://www.taser.com/documents/TASER\\_press\\_kit.pdf](http://www.taser.com/documents/TASER_press_kit.pdf) (last visited Dec. 20, 2005).

*C. Lack of Regulation and Policy*

Although first introduced a quarter century ago, the deployment of Tasers by law enforcement agencies has increased significantly in the last five years.<sup>166</sup> To date, law enforcement agencies have purchased 150,000 Tasers and have actually used Tasers against well over 200,000 individuals.<sup>167</sup> In some law enforcement agencies, it has become the most prevalent use-of-force option.<sup>168</sup> A recent study by the ACLU of fifty-six law enforcement agencies revealed that only four departments regulated the number of times an officer may use a Taser or created any of their own training materials.<sup>169</sup> Furthermore, only ten departments had a policy prohibiting or regulating the use of Tasers on passive resisters and the unconscious; only twenty-three departments had a policy of regulating Taser deployment on pregnant women; only nineteen departments had a policy on stunning the elderly; and only fourteen departments had a policy on stunning already restrained individuals.<sup>170</sup>

With no national standards on the deployment of Tasers and varying use-of-force and safety guidelines between states and law enforcement agencies, Amnesty International and the ACLU are concerned about the potential for overuse and abuse.<sup>171</sup> In particular, there is concern that Tasers have become a routine enforcement tool rather than a life saving weapon, and Tasers are used too frequently in situations where deadly force, or other impact weapons, would not be warranted.<sup>172</sup>

For instance, a May 2004 study in Denver, Colorado, on the Denver Police Department's Taser deployment found that officers commonly used Tasers against passively resisting or fleeing suspects.<sup>173</sup> In at least ninety percent of the cases, the suspects were unarmed, and in more than two-thirds of the cases, the suspects were only cited for misdemeanors.<sup>174</sup> The study also found that Denver police officers used Tasers on sixteen juveniles and suspects already restrained.<sup>175</sup> Similarly, in May 2005, a study of Tasers used in Palm Beach County revealed that police officers used Tasers on three pregnant women, juveniles, an eighty-six-year-old man, and

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<sup>166</sup>See *supra* Part I.A-B. See also Amnesty International, *supra* note 11, at 1.

<sup>167</sup>Taser revenue has increased from \$2.2 million in 1999, to an estimated \$67 million in 2004. Taser.com, [http://www.taser.com/documents/Taser\\_press\\_hi2.pdf](http://www.taser.com/documents/Taser_press_hi2.pdf) (last visited Dec. 20, 2005).

<sup>168</sup>See ACLU of Northern California, *supra* note 11.

<sup>169</sup>*Id.* The ACLU surveyed seventy-nine law enforcement departments. *Id.* Of those, fifty-six departments used Tasers, and fifty-four provided their Taser deployment policies and/or training materials. *Id.* at 21.

<sup>170</sup>See Amnesty International, *supra* note 11, at 1. See also ACLU of Northern California, *supra* note 11, at 2.

<sup>171</sup>See Amnesty International, *supra* note 11, at 1. See also ACLU of Northern California, *supra* note 11, at 2.

<sup>172</sup>See Amnesty International, *supra* note 11, at 15.

<sup>173</sup>*Id.*

<sup>174</sup>*Id.*

<sup>175</sup>*Id.* at 13.

237 passively resistant or fleeing suspects.<sup>176</sup> In Amnesty International's report, there are additional accounts of police using Tasers on unruly children, pregnant women, the elderly, passively resistant individuals, and mentally disturbed or intoxicated, but non-dangerous individuals.<sup>177</sup> The organization believes that many of these tasing incidents constitute excessive use of force and violate international standards on the law enforcement use-of-force as well as the prohibition against torture or other cruel, inhuman, or degrading treatment.<sup>178</sup>

#### D. Inadequate Independent Research

Amnesty International and the ACLU are concerned that, despite the growing number of police officers deploying Tasers and the increase of fatalities connected to the weapons, there remains a lack of rigorous and independent research into the safety and medical effects of Tasers.<sup>179</sup> Furthermore, both organizations question the independent research that Taser International has cited in supporting the weapon's safety.<sup>180</sup> Amnesty International and the ACLU argue that a majority of the studies have been limited to surveying past medical literature on earlier models of Taser, anecdotal evidence from law enforcement agencies, and tests on animals commissioned by Taser International, which have not been subject to peer review.<sup>181</sup> Furthermore, both organizations cite similar medical opinions that question the safety of Tasers on certain at-risk populations, such as people under the influence of drugs, or suffering from underlying heart problems.<sup>182</sup>

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<sup>176</sup>*Id.*

<sup>177</sup>*See* Amnesty International, *supra* note 11. For instance, police officers tased a fourteen-year-old boy who allegedly broke a window and tried to flee; a fifty year-old man who refused to give police his date of birth; a man standing on the sidewalk yelling and screaming at the sky, who refused to be quiet; a thirteen-year-old girl who threw a book at a teacher and was verbally assaultive towards the police; a man who refused to discard his drink and refused to turn around to be handcuffed; and a fifteen-year-old girl who was tased and pepper-sprayed after arguing with officers. *Id.*

<sup>178</sup>*Id.* at 2. The standards are set out under 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. *Id.* The standards require that officers apply only the minimum amount of force necessary, the force must be proportionate to the threat posed, and avoid unwarranted pain or injury. *Id.*

<sup>179</sup>*Id.* at 61-66; *see also* ACLU of Northern California, *supra* note 11, at 8.

<sup>180</sup>*See* Amnesty International, *supra* note 11, at 61-66; *see also* ACLU of Northern California, *supra* note 11, at 2.

<sup>181</sup>Amnesty International and the ACLU have also raised concerns that one of the major studies on Advanced Tasers may have been compromised because one of the main researchers was a Taser International employee and had stock options in the company. *See* Amnesty International, *supra* note 11; *see also* ACLU of Northern California, *supra* note 11, at 2.

<sup>182</sup>*See* ACLU of Northern California, *supra* note 11, at 6. For instance, according to Dr. Tseng, a cardiologist from the University of California, "I think they are dangerous . . . you are shocking someone repeatedly, it becomes a bit like Russian Roulette. At some point, you may hit that vulnerable period." Sabin Russell, *Heart Expert Warns About Using Tasers: UCSF Doctor Says Jolt Can Interrupt Pumping of Blood*, SAN FRANCISCO CHRONICLE, Jan. 5, 2005.

*E. Taser International's Rebuttal*

## 1. Taser: The Safest, Most Effective Non-Lethal Weapon

Taser International has produced several press releases addressing Amnesty International and the ACLU's concerns and allegations.<sup>183</sup> The company asserts that while Tasers are not risk free, the weapon is among the safest use-of-force option available.<sup>184</sup> They estimate that Tasers have saved over six thousand lives and has significantly reduced the number of injuries to both officers and suspects.<sup>185</sup> Additionally, Taser International believes that local law enforcement agencies are in the best position to determine individual use-of-force policy, not Amnesty International or the ACLU.<sup>186</sup>

In support of the weapon, Taser International has publicized several law enforcement reviews on Taser deployment. Every study revealed significant reductions in police and suspect fatality and injury rates.<sup>187</sup> For instance, the Cincinnati Police Department found that suspect injuries fell by forty percent and police officer assaults and injuries declined by seventy percent since the department started using Tasers.<sup>188</sup> Another study by the Cape Coral Police Department, in

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<sup>183</sup>Taser International responded to the ACLU's report:

The [ACLU] report is an emotional, onesided collection of newspaper clippings along with a survey of law enforcement training practices. The ACLU-NC report has only two citations from the medical literature, but a whopping 49 from news clippings. Hence, the "study's" contents are based upon sources that are 96 percent emotion and innuendo (popular media), and only 4 percent science.

Taser International, *Deadly Rhetoric: How the ACLU of Northern California's Fight Against Law Enforcement Control Tools Endanger Communities*, <http://www.taser.com/savinglives/documentsDeadly%20Rhetoric%20VII.pdf> (last visited Feb. 22, 2007) [hereinafter *Deadly Rhetoric*].

<sup>184</sup>*Id.*

The TASER device is a weapon and not a toy. It is used in dangerous situations with dangerous, violent people when there is no better alternative. Data suggests that about two out of every 1000 subjects of TASER usage sustain injuries related to the TASER use. These are usually injuries related to falling to the ground. There was even one tragic fatality when a subject fell and sustained a lethal head wound when his head hit a street curb.

*Id.* at 37.

<sup>185</sup>*Id.* at 37. The estimate of 6000 lives is based on 685 specific incidents reported to Taser International, and the statistical analysis that approximately one out of ten force reports are submitted to Taser International. *Id.*

<sup>186</sup>*See id.*

<sup>187</sup>*Id.* at 10. At least nine police departments have submitted full reports to Taser International reflecting Taser deployment and injury/death rates. *Id.*

<sup>188</sup>*Deadly Rhetoric supra* note 183, at 10. The Cincinnati Police Department provides Tasers to every police officer. *Id.*



Florida, found that Tasers reduced injuries to police officers by eighty-three percent, and to suspects by forty percent.<sup>189</sup>

## 2. Research and Independent Reviews: Reaffirm Safety

Taser International believes that the overall body of medical and scientific research support the claim that Tasers are among the safest and most effective use-of-force option available.<sup>190</sup> In response to criticism about lack of independent research, Taser International asserts that no other non-lethal weapon has been more extensively researched and analyzed than Tasers.<sup>191</sup> The company also notes that of the eighty research studies on Taser-type technology or similar electro-shock science, Taser International provided financial support to only seven studies and assisted researchers in only five studies.<sup>192</sup>

Furthermore, Taser International claims that numerous recent independent studies in the United States, the United Kingdom, Switzerland, Canada, Australia, and other nations, reaffirm the life saving value and medical safety of Tasers.<sup>193</sup> For instance, an independent study conducted by the United States Department of Defense (DOD), involving approximately twenty medical and research doctors, found that the increased deployment of Tasers “has decreased the overall injury rate of both police officers and suspects in conflict situations when compared to alternatives along the use-of-force continuum” and concluded that Tasers are “likely not the primary causative factor in reported fatalities.”<sup>194</sup> Another study by Dr. Wayne McDaniel of the University of Missouri stated that “the probability of inducing ventricular fibrillation . . . to be very small.”<sup>195</sup>

## 3. In-Custody Deaths: No Significant Relationship

Taser International believes that there is no significant relationship between the deployment of Tasers and in-custody deaths.<sup>196</sup> The company claims that the in-custody deaths would have happened, independent of Tasers, as a result of drug overdoses or excited delirium syndrome.<sup>197</sup> Taser’s claim implies that deaths resulted because of multiple contributing factors overwhelming the cardiovascular-pulmonary system and not heart failure produced through electric shock.<sup>198</sup> For instance, in 2004, over fifty percent of in-custody deaths involved no use of

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<sup>189</sup>*Id.* The Cape Coral Police Department also reported eight incidents where the situation could have escalated to deadly force, or where deadly force was inevitable, without the Taser. *Id.*

<sup>190</sup>*Id.*

<sup>191</sup>*See id.* *See also supra* Part I.D.

<sup>192</sup>*See* Deadly Rhetoric, *supra* note 183.

<sup>193</sup>*Id.*

<sup>194</sup>*Id.*

<sup>195</sup>*Id.*

<sup>196</sup>*Id.*

<sup>197</sup>*Id.*

<sup>198</sup>Deadly Rhetoric, *supra* note 183.

intermediate weapons, such as pepper spray or Tasers.<sup>199</sup> Moreover, the company claims that independent medical experts have disputed the findings of the few autopsies that have listed Tasers as a possible contributing factor in the deaths.<sup>200</sup>

#### 4. Law Enforcement: Best Position To Determine Policies

In response to criticism that there is a lack of policy, training, and regulation on Taser deployment, Taser International believes that local law enforcement agencies are in the best position to determine individual use-of-force policy—not Amnesty International or the ACLU.<sup>201</sup> Moreover, the company believes that Taser’s unique monitoring technology, which includes micro-identification tags that disperse on the scene where the Taser is discharged and on-board computer systems that store the date and time of every discharge, provides a powerful deterrent of abusive behavior and oversight of law enforcement activities.<sup>202</sup>

### VII. WHAT ROLE SHOULD TASERS HAVE IN LAW ENFORCEMENT?: SOME RECOMMENDATIONS

The deployment of Tasers by law enforcement offers promising benefits in saving lives and preventing harm. Indeed, almost every law enforcement agency that has implemented Tasers into their artillery has seen a dramatic decrease in police and suspect injuries.<sup>203</sup> In addition, there are numerous documented cases of officers using Tasers instead of firearms in life-threatening situations, thereby preventing possible fatalities.<sup>204</sup>

There are, however, legitimate concerns about the safety of Tasers. Although the evidence is not conclusive, Tasers may have adverse effects on individuals under the influence of drugs or with underlying heart conditions.<sup>205</sup> Additional research needs to be conducted.<sup>206</sup> Furthermore, there are legitimate concerns about the lack of a standard policy, training, and regulation on Taser deployment.<sup>207</sup> Taser’s unique capabilities of incapacitating suspects, without any threat of harm to the police officer or identifiable injury to the suspect, make using force more attractive. As

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<sup>199</sup>*Id.*

<sup>200</sup>*Id.* at 13.

<sup>201</sup>*But see* INT’L ASS’N OF CHIEFS OF POLICE *supra* note 50, at 12. “Heightened public concern warrants that deployment plans be carefully developed with full recognition that community acceptance is essential to their success. Police Departments need to be extremely sensitive to community perceptions about the use of this technology.” *Id.*

<sup>202</sup>*Id.*

<sup>203</sup>*See supra* Part V.E.

<sup>204</sup>*Id.*

<sup>205</sup>*See supra* Part V.B.

<sup>206</sup>*See* Dennis K. McBride, *Efficacy and Safety of Electrical Stun Devices* (2005), available at <http://www.potomac institute.org/research/stunintro.htm>. “We strongly recommend that additional research be conducted at the organism, organ, tissue, and cell levels.” *Id.*

<sup>207</sup>*See supra* Part V.D.

seen in several studies, if this power goes unchecked and unregulated, law enforcement officers may increasingly overuse Tasers in situations that do not warrant any force, or where traditional, less painful methods, such as dialogue and empty hand controls, would suffice.<sup>208</sup>

Nevertheless, these unknown risks and concerns weighed against the clear benefits of Tasers do not justify the wholesale rejection of Tasers, or the strict mandate that Tasers act only as an alternative to deadly force. The majority of the risks and concerns can be mitigated by increased training, detailed use-of-force policies, and government regulated standards. For instance, in 2003, following high profile trials of Miami police officers and an ongoing Department of Justice investigation into alleged patterns of excessive force, the Miami Police Department redesigned their use-of-force policies to include a more stringent use-of-force continuum and increased oversight.<sup>209</sup> Since the new policies were implemented, there has been a decrease in police shootings and allegations of excessive force.<sup>210</sup>

Moreover, there are no other forms of non-lethal force that compare to the safety and effectiveness of Tasers.<sup>211</sup> If law enforcement eliminated or restricted Tasers to only life-threatening situations, police officers would have to resort to chemical sprays, batons, punches, kicks, and restraint holds to neutralize an actively resistant suspect. Numerous studies have shown that these force options often result in escalated amounts of violence towards police officers and increased injuries to all parties involved.<sup>212</sup>

The following are recommendations to help ensure the safest and most effective use of Tasers. The recommendations are based upon reviews of case law, medical research, and field studies involving Taser deployment, as well as recommendations and policies designed by influential law enforcement research organizations, such as the National Institute of Justice, International Association of Chiefs of Police, and Police Executive Research Forum.

#### A. Detailed Use-of-Force Policies

Law enforcement agencies should create a written and detailed use-of-force policy that clearly outlines how and when to use Tasers. Determinations about training requirements, medical evaluations, legal constraints, operational protocols, and use-of-force records should be written into this policy. In addition, the policy should address key issues and concerns associated with Tasers such as the number of permissible discharges; whether to use Tasers on fleeing suspects; whether to use Tasers as a tool for compliance; whether to use Tasers on persons with known or

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<sup>208</sup>See *supra* Part V.C.

<sup>209</sup>See Amnesty International *supra* note 11, at 10.

<sup>210</sup>*Id.*

<sup>211</sup>Taser International, [http://www.taser.com/documents\\_press\\_kit](http://www.taser.com/documents_press_kit) (last visited Dec. 20, 2005).

<sup>212</sup>Posting of Mark Godsey to CrimProf Blog, [http://lawprofessors.typepad.com/crimprof\\_blog/2005/10/law\\_enforcement.html](http://lawprofessors.typepad.com/crimprof_blog/2005/10/law_enforcement.html) (last visited Dec. 20, 2005). "It has to be controlled, but to say there should be a moratorium on it, that would throw us back to the days of giving an officer a choice between a service baton and deadly force. We need to find a middle ground." Quote from Chuck Wexler, executive director of Law Enforcement Forum. *Id.*

visible health impairments, such as drug intoxication or heart disease; whether to use Tasers on mentally challenged persons; and whether to use Tasers on vulnerable populations, such as children, the elderly, and pregnant women.

The policy should also include a force continuum designed specifically for Tasers, which provides guidelines and hypothetical scenarios on when the deployment of Tasers may be appropriate. Moreover, the use-of-force continuum should focus on using the minimum amount of force necessary to obtain lawful objectives.

#### *B. Improve Training*

Much of the controversy and civil liability surrounding Taser deployment could be eliminated if officers refrained from using Tasers on passively resistant suspects, who do not pose a threat. Training should encourage officers only to use Tasers against suspects who are actively resistant or pose a threat. On the other hand, less painful and significant methods of force, such as the officer's presence, verbal commands, and use of soft hand techniques, should be encouraged against passively resistant suspects.

#### *C. Create National Standards*

Currently, there is no national or uniform testing for non-lethal weapons, such as Tasers. As result, there is a lack of oversight and guidance about the non-lethal weapons market. Law enforcement agencies must rely on private research or manufacture information to determine the weapon's safety. This problem will only become worse as more companies get into the business of creating non-lethal weapon technology.<sup>213</sup>

The federal government should establish a regulative agency to gather information about the safety, reliability, and effectiveness of stun devices and other non-lethal weapons. In addition, this agency should establish minimum standards for the safety of electro-shock weapons, and formal evaluation and certification programs would assure that the weapons meet those standards.

#### *D. Additional Independent Research*

Although significant studies and reviews have found Tasers to be relatively safe on healthy individuals, there needs to be further research into the specific effects Tasers may have on at-risk populations, such as people under the influence of drugs or with heart disease. In addition, there needs to be further investigation into the long-term effects of Tasers. This research, however, should be conducted by entities not associated with Taser International. Moreover, law enforcement agencies should adopt guidelines and policies for Taser deployment that are consistent with future research findings and recommendations.<sup>214</sup>

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<sup>213</sup>Recently, new companies have developed stun like devices for law enforcement. LDAP sound taser, <http://www.wattre.com> (last visited Dec. 20, 2005); TBO-Tech self-defense products, [www.tbotech.com/stun-guns.htm](http://www.tbotech.com/stun-guns.htm) (last visited Dec. 20, 2005); security and safety supply, <http://www.securityandsafetysupply.com/> (last visited Dec. 20, 2005).

<sup>214</sup>*See Michenfelder v. Sumner*, 860 F.2d 328, 336 (9th Cir. 1988).

Our affirmance of the district court is not, however, to be taken as holding that the use of a device whose long term effects are unknown would never violate the eighth

## VIII. CONCLUSION

Law enforcement officers risk their health and lives every day. Increasingly, they are subjected to physical confrontations and assaults. Last year in the United States alone, 150 officers were killed in the line of duty and an additional 57,000 were assaulted. New technology, such as Tasers, can help to minimize these deaths and injuries, by providing an officer with the ability to regain control of a dangerous situation, safe and effectively.

Nevertheless, it is crucial that this new technology undergoes rigorous research to ensure that it is safely being used. It is also crucial that the weaponry does not overshadow or get ahead of police training, policies, and regulation. This challenge will only become more complicated as technology continues to change and more companies become involved. This challenge, however, justifies caution and safeguards, not outright prohibition.

SHAUN H. KEDIR<sup>\*</sup>

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amendment, nor that research could not uncover evidence of adverse long-term effects that would call into question the use of tasers.

*Id.*

<sup>\*</sup>J.D., 2007, Cleveland-Marshall College of Law, Cleveland State University. The author would like to express his deep gratitude to his family and friends for their support and encouragement. In particular, he would like to thank Sabrina Hehon, Christopher Taarick, and Todd Tucker for their editorial insights and guidance regarding the development of this note. Lastly, the author would like to thank Professor Sheldon Gelman for offering his time and expertise as a note advisor.