



Taser®

Position Paper of the Police Training Institute

University of Illinois

August, 2004

TASER®

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Executive Summary

In response to requests from several client agencies, staff of the Police Training Institute (PTI) undertook a project to review issues related to conducted energy weapons, specifically Tasers, as a less-lethal weapon available to law enforcement officers. Members of PTI's instructional staff reviewed relevant legal statutes and cases, available literature describing the effects of Tasers, and practical operational concerns relating to Tasers.

PTI does not take a position of advocacy with regard to incorporation of Tasers within the use of force options available to officers. Rather, we attempted to examine relevant literature and law and determine its placement on PTI's Use of Force Scale.

As a result of this examination, it appears that Tasers are a viable option for use as a less-lethal device. The likelihood of serious injury as a result of a Taser's employment appears to be no greater than other less-lethal options currently in use, and probably less likely. This does not mean it is impossible for a suspect to be seriously injured in an incident in which a Taser is used.

A review of literature both cited by Taser International, Inc. and otherwise revealed that the level of electrical output or shock delivered by a Taser is very unlikely to cause permanent injury. In addition, recovery from a Taser shock is almost instantaneous, as opposed to other less-lethal options that may result in longer term recovery or require decontamination. Our limited research also revealed that Tasers may be an effective deterrent to resistance when simply deployed; that is, displayed with the intent to use if compliance is not immediately gained.

A review of several law enforcement policies regarding Tasers reveals that use of force policies should be carefully constructed to assure the devices are only used when justified and in such a manner that officer safety is enhanced and not jeopardized. However, our research provided a level of confidence to PTI management such that Taser certification is now offered as an option to all agencies using PTI for Basic Law Enforcement training.

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Introduction

The Taser is a hand held “conducted energy weapon” that uses propelled (i.e., shot) wires to send out or conduct energy that affects the sensory and motor functions of the central nervous system. Although the term “Taser” has been used generically to describe electronic incapacitation devices, Taser® is a registered Trademark of Taser International, Inc. (i.e., “Taser” is a brand name).

A Taser differs from a stun gun, which also is a conducted energy weapon, in that a stun gun requires the user to physically touch the intended target, while a Taser allows the user to fire two wire-tethered darts at the intended target from a distance currently up to 21 feet. Thus, a Taser user is able to engage the intended target from a distance, with the conducting energy being transmitted through the wires to the target. If the two wire-tethered darts hit the intended target, currently available models of the Taser—the M26 and the X26—stun and override the central nervous system, which causes uncontrollable contractions of the muscle tissue and incapacitation.² According to Taser training materials, a stun gun jams the central nervous system with “electrical noise” and generally works through pain compliance. Because Tasers are designed to affect both the sensory and motor nervous systems of the body, they are reportedly more effective than stun guns due to the resulting incapacitation of the targeted subject. Additionally, so long as the wire-tethered darts remain attached to the targeted subject, another cycle can be applied to the subject without reloading and firing another cartridge. After firing its probes, both the Taser M26 and X26 can act as stun gun (requiring physical contact with the subject) as a backup weapon.

Both the Taser M26 and the X26 have a dataport that stores the time and the date when the unit was fired. The X26, which was released by Taser in May of 2003, has an “enhanced dataport” that also records the duration of each discharge with the temperature at the time of use for reportedly 2,000 firings. The X26’s dataport also connects through a USB cable to most modern computers, and it has a digitally encrypted data file to protect data for possible admissibility as evidence in court.

Several of PTI’s client agencies have expressed interest in information concerning various aspects of the Taser. Many agencies have already adopted the Taser as an option within their use of force policies. Others are considering doing so. The purpose of this position paper is to define our position as to the Taser’s placement on PTI’s Use of Force Scale. Although we refer to various tests, research, and anecdotal evidence that suggest that Tasers, in comparison to other traditional police devices and restraint techniques (e.g., firearms, impact weapons, chemical sprays, and physical restraint techniques), are relatively safe, effective, and reduce injuries to both the subject being controlled and to the officers engaging the subject, we do not intend to express any conclusions (medical or otherwise) as to the ultimate safety of Tasers. However, it is important to note that all

² In certain instances, the Taser devices may be effective with only one probe attached to the targeted subject. Additionally, the devices may be effective even if the probes do not penetrate the targeted subject’s skin.

less-lethal devices and techniques have some degree of risk to both the subject being controlled and to the officers employing the device or technique.

PTI gathered and reviewed information from a variety of sources in producing this position paper with regard to legal and operational issues relating to Tasers. While the information contained herein is not exhaustive, we believe it fairly represents the current status of research and law relating to the use of Tasers.

PTI reviewed literature believed to be relevant to determining the placement of the Taser on PTI's Use of Force Scale, as well as background literature regarding the proper usage of the Taser, its history, and its relative safety. Some of the literature was produced or subsidized by Taser International, Inc., and thus may not be considered unbiased. For example, much of the testing of the Tasers' safety involved porcine subjects that were used to approximate weight and physiology of humans. The tests produced no indications of anticipated fatal results, even at higher fibrillation levels and longer duration. Taser also has compiled anecdotal information that it claims supports the devices' relative safety as a less-lethal use of force option.

Recently, however, there have been questions of the safety of Tasers. In an article written by Robert Anglen in the July 18, 2004 edition of *The Arizona Republic*, it was reported that there have been several deaths of suspects who died in police custody where medical examiners have cited Tasers as a cause or contributing factor in the suspects' deaths. In other cases, Anglen reported, Tasers could not be ruled out as a cause of death. Likewise, questions about the safety of Tasers were raised in a July 18, 2004 article that was published in the *New York Times* and in an article published on August 16, 2004 by the *Chicago Daily Herald*. Taser International, Inc. published a response to the *New York Times* article on its website, dated July 22, 2004, in which it states, among other things, that Taser devices have never been found to be the sole or primary cause of a single death and that Taser devices have been successfully used on approximately 100,000 volunteers and 50,000 field uses.³

As part of our research, PTI "tested" the Taser X26 on several members of its instructional staff. Several PTI instructors received voluntary exposures from the X26, which included two instructors being shot with the wire-tethered probes and receiving the complete five-second cycle. No injuries were incurred other than the small puncture marks left by the probes and some redness around the entry wounds. However, precautions were taken to minimize the risk of a secondary injury that could have been

³ As part of our research, we have informally contacted or attempted to contact law enforcement agencies who have cited Tasers as effective restraint devices and in reducing injuries and liability claims. We also have contacted local agencies that have implemented Tasers as a use of force option, as well as individual officers from those agencies. Of the agencies and officers that have responded, all have indicated that the modern Taser devices are very effective. We also learned that these agencies, as part of their training, required some sort of exposure to the device as part of their training. We are not aware of any significant training injuries from these departments involving Tasers, albeit the scope of our research was fairly limited. It is not our goal or focus to prove these devices are safe. Indeed, Taser International, Inc. itself recognizes that there can be potential injuries (just like any other police restraint device), and Taser suggests that departments develop policies to address such concerns.

sustained as a result of a fall caused by the incapacitation of the intended targets (i.e., our instructors). Additionally, the instructors were in relatively good physical condition, had no known heart-related problems, and were not under the influence of any controlled substances or alcohol. While our instructors described the experience as extremely unpleasant—and effective—their recovery was almost immediate. Again, it is important to note that PTI is not making any recommendation as to the propriety of including Tasers as a less-lethal option by departments or whether Tasers are unfailing safe.⁴

PTI also reviewed the use of force policies of several client agencies that already utilize Tasers. Some of the agencies, perhaps out of an abundance of caution, have adopted use of force policies that allow the use of Tasers in situations that are more restrictive than what we believe the law may permit. Certainly that is an option, one which is understandable in our litigious society.

Lastly, PTI instructors reviewed Illinois use of force statutes and the available case law related to use of force in general as well as specifically addressing the use of Tasers. This included a review of case law from both federal and state courts throughout the country, as well as PTI's previous position on the use of pepper spray (i.e., Oleoresin Capsicum, which is sometimes referred to as "O.C. spray").

Based on PTI's review, it appears that Taser devices are a legal and effective option for use by Illinois law enforcement officers when used against non-compliant subjects. More specifically, based upon a review of case law and the Illinois Compiled Statutes, it is PTI's opinion that the use of Taser devices falls within Level III of PTI's Use of Force Scale. PTI also would support utilizing Taser devices at Level II—against a passive resister—where a custodial arrest is being made or if a subject is already in custody and, if feasible, a warning to comply has been provided to the intended target. We would include (but not limit) as a warning either the display and/or activation of the device in a stunning mode or a verbal warning by itself.

Our review did identify several issues that may have bearing on decisions regarding adoption of Tasers by an agency and the development of department policy with regard to the circumstances under which they are appropriately employed. Those issues are discussed in this paper.

In response to requests from client agencies, and relying on the information that resulted from our research, PTI has commenced offering Taser certification as an option of any

⁴ PTI also has conducted its first class on Taser use, which was taught by an adjunct instructor (a full-time police officer) who is a Taser-certified instructor. The students who participated received "user certification," which means that they will be able to utilize Tasers as law enforcement officers if their individual departments allow them to do so. Currently, like many other less-lethal devices, there is no state mandated training for Taser use. However, the training provided by PTI was conducted in accordance with guidelines set forth by the manufacturer, Taser International, Inc. All of the students took "hits" from the Taser X26, although the duration of the hits varied depending on student preference. Some students took the full five-second cycle, while others elected for a shorter duration. To the best of PTI's knowledge, none of the students incurred any permanent or serious injury. All of the students were walking around shortly, if not immediately, after receiving the "hit."

officer attending our Basic Law Enforcement (BLE) course. We will soon have several of our staff certified as Taser instructors.

Review of Relevant Literature

- Taser International, Taser X26 User Certification Course, Version X.1 (Released Dec. 2003).
- Taser product brochures: Advanced Taser M26 and Taser X26 Product Specifications, available at <http://www.airtaser.com/>.
- David Griffith, Recharged, Police, The Law Enforcement Magazine, Vol. 27, No. 6 (June 2003).
- Anthony Bleetman & Richard Steyn, The Advanced Taser: a Medical Review (April 27, 2003), available at <http://www.airtaser.com/pages/pr/medical/tasersubmit.pdf>.
- Robert Stratbucker, Max Herhem, & Wayne McDaniels, Cardiac Safety of TASER Conducted Energy Weapon Discharges.
- Robert Anglen, Taser Safety Claim Questioned, Arizona Republic, July 18, 2004.
- Alex Berenson, Police Use of Tasers Rises, Questions Over Safety Increase, N.Y. Times, July 18, 2004.
- Fernando Diaz, Taser Use Rising, But are They Safe?, Daily Herald, August 16, 2004, available at http://www.dailyherald.com/search/main_story.asp?intid=3821518.
- Rick Smith & Tom Smith, Taser® International Strongly Refutes New York Times Article, (July 22, 2004), available at http://www.airtaser.com/nyt/NYT/taser_nyt.html (law enforcement bulletin issued by Taser International in response to article on Taser published in the N.Y. Times on July 18, 2004).
- Sheriff Takes 50,000-Volt Hit for Taser Gun, Demonstrations Come Amid Controversy Over Use of Tasers, WKMG News (posted June 4, 2004), available at <http://www.local6.com/news/3379373.html>.
- Police Taser Use Grow, Controversy Continues, WKMG News (posted May 4, 2004), available at <http://www.local6.com>.
- Phillip Ewing, Leon Law Enforcement Turns to Tasers, Tallahassee Democrat (posted July 30, 2004), available at <http://www.tallahassee.com>.
- Champaign County, Illinois Sheriff's Office, Use of Force Policy, last revised Jan. 21, 2004.
- Rantoul, Illinois Police Department, Use of Force Policy.
- The Effectiveness and Safety of Pepper Spray, Nat'l Inst. of Justice (April 2003).
- Pepper Spray Update: More Fatalities, More Questions, ACLU of Southern California (June 1995).
- Use of Force Scale, Police Training Institute, University of Illinois (2004).
- Evaluation of Guidelines for Use of Force Training, State of Illinois, Illinois Law Enforcement Training and Standards Board (Dec. 1999).

Legal

The case law concerning use of force and legal liability issues involving Tasers generally have involved liability claims brought by offenders or prisoners under Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983. However, there may be other state law claims that suspects or prisoners may allege.

Claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other seizure of a free citizen are analyzed under the Fourth Amendment and its reasonableness standard. Graham v. Connor, 490 U.S. 386, 395 (1989); see also Soller v. Moore, 84 F.3d 964, 968 (7th Cir. 1996) (claims of excessive force are analyzed under the objectively reasonable standard of the Fourth Amendment). In reviewing a claim of excessive force, a court looks to the “totality of the circumstances” to determine whether the manner of the arrest was reasonable. Tennessee v. Garner, 471 U.S. 1, 8-9 (1985). “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Connor, 490 U.S. at 396; see also Deering v. Reich, 183 F.3d 645, 650 (7th Cir. 1999). “A police officer’s use of force is unconstitutional if, judging from the totality of the circumstances at the time of the arrest, the officer used greater force than was reasonably necessary to make the arrest.” Payne v. Pauley, 337 F.3d 767, 778 (7th Cir. 2003) (citations and internal quotations omitted). In determining whether there has been a constitutional violation, a court may consider several factors, such as the severity of the crime, whether the suspect poses an immediate threat to the officer or others, and whether the suspect is actively resisting or attempting to evade arrest. Id. A court also may consider whether the suspect was under arrest or was suspected of committing a crime, or was interfering or otherwise attempting to interfere with the execution of the officer’s duties. Jacobs v. City of Chicago, 215 F.3d 758, 773 (7th Cir. 2000).

Claims brought by convicted prisoners are generally analyzed under the less protective Eighth Amendment standard involving claims of cruel and unusual punishment. Connor, 490 U.S. at 398; see also Wilson v. Williams, 83 F.3d 870, 875 (7th Cir. 1996) (“[I]n cases involving convicted prisoners, the ‘cruel and unusual punishment’ or ‘unnecessary and wanton infliction of pain’ standard of the Eighth Amendment is used”) (citing Whitley v. Albers, 475 U.S. 312, 318-22 (1986)). The Eighth Amendment standard only applies “after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.” Connor, 490 U.S. at 398 (quoting Ingraham v. Wright, 430 U.S. 651, 671 n. 40 (1977)). The central question in prisoner abuse cases is “whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” Fillmore v. Page, 358 F.3d 496, 503 (7th Cir. 2004) (citations omitted). In making such a determination, relevant factors may include whether there was a need for the application of the force, the threat the officer reasonably perceived, the effort made to temper the severity of the force used, and the extent of injury caused to the inmate. Id. at 504.

There is yet a third standard applied for excessive force claims brought by pretrial detainees, which is governed by due process clause of the Fourteenth Amendment.⁵ Wilson, 83 F.3d at 875. Because pretrial detainees have not been found guilty of a crime, they may not be “punished” by the state in any way. Bell v. Wolfish, 441 U.S. 520, 535 (1979). Thus, “pretrial detainees must arguably be afforded a higher standard than that provided by the Eighth Amendment.” Wilson, 83 F.3d at 875. However, it does not appear that the United States Supreme Court has decided whether the “reasonableness” standard of the Fourth Amendment, or some other intermediate standard, applies to pretrial detainees. Id.

In the Seventh Circuit, which includes Illinois, a pretrial detainee “must prove that the defendant(s) acted deliberately or with callous indifference, evidenced by an actual intent to violate the plaintiff’s rights or reckless disregard for his rights.” Id. (citations and internal quotations omitted). Generally, the Seventh Circuit has stated that excessive force claims for pretrial detainees “will track the Fourth Amendment,” and the “court must ask whether the officials behaved in a reasonable way in light of the facts and circumstances confronting them.” Id. (quoting Titran v. Ackman, 893 F.2d 145, 147 (7th Cir. 1990)). However, in Wilson v. Williams, the Seventh Circuit recognized that convicted prisoners and pretrial detainees are often housed together in correctional facilities, and that it is problematical to apply a separate standard for these two groups in the context of a jail disturbance.⁶ 83 F.3d at 876. Thus, without deciding, the Seventh Circuit assumed that in the context of prison security, the applicable standard for excessive force claims is governed by the Eighth Amendment. Id. at 876-77.

There does not appear to be a statutory prohibition of the use of Tasers or other conducted energy weapons in Illinois. See 720 ILCS 5/7-1 to 5/7-14. Illinois specifically allows a peace officer to “use ... any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes is necessary to defend himself or another from bodily harm while making the arrest.” 720 ILCS 5/7-5(a). Significantly, neither the Fourth Amendment nor Illinois law require law enforcement officers to use the least or less intrusive means in search and seizure case. Plakas v. Drinksi, 19 F.3d 1143, 1149 (7th Cir. 1994) (citations omitted); 720 ILCS 5/7-5. Instead, the force used by an officer to effect the seizure simply must be objectively reasonable. See Payne, 337 F.3d at 778. Thus, it would appear that if an Illinois law enforcement officer can articulate the need to use a Taser or other conducted energy weapon, as long as the belief is objectively reasonable, the use of such a device is not prohibited.

While there is no Illinois statutory prohibition on the use of conducted energy weapons in making lawful seizures, questions remain as to when such devices should or can be used.

⁵ Pretrial detainees are individuals who have been arrested but not yet convicted for their alleged crimes. Wilson, 83 F.2d at 875.

⁶ Indeed, in many jails, it may be extremely difficult for a correctional officer to distinguish between a convicted prisoner and a pretrial detainee, especially when force must be used in a volatile situation to restore order. Furthermore, as noted by the Seventh Circuit in Wilson, the Supreme Court has said that there is no reason to differ between pretrial detainees and convicted prisoners “in reviewing challenged security practices because there is no basis to conclude that pretrial detainees pose any less security risk than convicted inmates.” 83 F.3d at 876 (citing Bell, 441 U.S. at 546 n. 28).

There does not appear to be any controlling case law in either Illinois or in the Seventh Circuit regarding use of force determinations specifically involving Tasers.⁷ However, in Gibbons v. Higgins, 73 F.3d 364, 1995 WL 761743, *8 (7th Cir. 1995) (unpublished opinion), the Seventh Circuit cited with approval two cases, Michenfelder and Caldwell, infra, in which Eighth Amendment claims by prisoners were rejected involving the use or threatened use of a Taser and a stun gun.

In Gibbons v. Higgins, the Seventh Circuit denied the inmate's implicit excessive force claim, stating that that Mr. Gibbons failed to submit any evidence that the guards acted maliciously or sadistically to cause him harm in the face of his refusal to obey direct orders. 1995 WL 761743, at *8. Mr. Gibbons, who was standing naked in his cell during a shake down of cells and a strip search, refused an order to submit to a visual body cavity search to bend over and spread his buttocks. Id. at *1. Instead, Mr. Gibbons simply wished to squat and cough, which was the procedure used in previous visual body cavity searches. Id. The prison's quick response team responded by hitting Mr. Gibbons with several blasts from a high-powered water hose, and Mr. Gibbons then shielded himself with his mattress. Id. After several more blasts, Mr. Gibbons was removed from his cell and handcuffed and shackled. Id.

While the guards in the Gibbons case did not use a conducted energy weapon, its facts are somewhat helpful in determining a prospective use of force level. First, one of Mr. Gibbons' claims was that the guards had used excessive and unnecessary force. Id. at *4, *6. This is akin to excessive force claims made under Fourth Amendment seizures, such as an arrest. Second, there were no facts that suggested Mr. Gibbons made any threatening movements toward the guards. See id. at *1. Instead, the facts recited merely indicate that Mr. Gibbons was refusing to respond to a lawful order; i.e., he was a passive resister (at least up until the point he shielded himself from the water blasts). See id. This is helpful because under PTI's Use of Force Scale, Level II force techniques are directed at passive resisters.

Under PTI's Use of Force Scale, a passive resister can be described as "a person who exhibits no resistive movement in response to verbal or other direction by the officer." Other Level II techniques include (but are not limited to) high gooseneck, handshake control, rear wristlock, armlock, and other control applications. Each of these techniques requires a physical "hands-on" by the officer, and work through pain compliance and joint manipulation. Such techniques pose a potential risk of injury to the officer, bystanders, and the subject being subdued, which could include muscular injury, joint injury, ligament injury, and abrasions and scratches. Evaluation of Guidelines for Use of Force Training, State of Illinois, Illinois Law Enforcement Training and Standards Board (Dec. 1999). Additionally, while not specifically listed in PTI's Use of Force Scale, the use of pepper mace has previously been determined by PTI personnel to fall within Level II of PTI's Use of Force Scale. It also falls within the second level of the Illinois Law Enforcement Training and Standards Board's (ILETSB) advisory guidelines, which is similar to PTI's Use of Force Scale. Evaluation of Guidelines for Use of Force Training,

⁷ The final determination of the appropriateness of the use of force should be determined by the facts and circumstances of the case. Soto v. Dickey, 744 F.2d 1260, 1270 (7th Cir. 1984).

State of Illinois, Illinois Law Enforcement Training and Standards Board (Dec. 1999); see also Soto v. Dickey, 744 F.2d 1260, 1270 (7th Cir. 1984) (“The use of the substance (tear gas) in small amounts may be a necessary prison technique if a prisoner refuses after adequate warning to move from a cell or upon other provocation presenting a reasonable possibility that slight force will be required”) (citations and internal quotations omitted). Use of pepper spray also comes with the additional risk to everyone in the immediate area, including law enforcement officers, of temporary chemical contamination. Of course one of the benefits of pepper spray—in addition to its effectiveness—is that it generally considered safe, with no long lasting effects.⁸ See generally The Effectiveness and Safety of Pepper Spray, Nat’l Inst. of Justice, at 13 (Apr. 2003).

While the Gibbons case is instructive—suggesting that use of a Taser (or other conducted energy weapon), like pepper mace, can be justified at Level II—it is not dispositive of a Fourth Amendment seizure (such as an arrest or a temporary detention) because (as previously noted) the Eighth Amendment provides less protection than the Fourth Amendment. Connor, 490 U.S. at 398. But, while there do not appear to be any decisive cases in the Seventh Circuit federal court or in the Illinois state courts, there are a number of published cases involving Tasers (or other conducted energy weapons) and use of force issues that are helpful in determining, prospectively, the appropriate use of force level. E.g., Draper v. Reynolds, 369 F.3d 1270 (11th Cir. 2004) (affirming district court’s grant of summary judgment, which found use of Taser during traffic stop was not excessive force); Michenfelder v. Sumner, 860 F.2d 328, 336 (9th Cir. 1988) (policy of allowing use of Tasers on inmates who refuse to submit to strip search does not constitute cruel and usual punishment); Russo v. Cincinnati, 953 F.2d 1036, 1045 (6th Cir. 1992) (finding that officers were entitled to qualified immunity for use of Taser while attempting arrest); Caldwell v. Moore, 968 U.S. F.2d 595, 600-01 (6th Cir. 1992) (use of stun gun and straight jacket on inmate who refused to obey correctional officers’ orders did not violate Eighth Amendment); Alford v. Osei-Kwasi, 418 S.E.2d 79, 85 (Ga. Ct. App. 1992) (holding that officer who used Taser on pregnant female who was creating a disturbance did not violate prisoner’s Eighth Amendment rights). While each of these cases is helpful, Draper is particularly instructive.

In Draper v. Reynolds, the plaintiff, Stacy Allen Draper, sued Deputy Sheriff Clinton Reynolds under 42 U.S.C. § 1983 and state law for alleged civil rights violations

⁸ Although pepper mace is generally considered to be safe and fairly effective, the consequences of the use of pepper spray, like any other use of force, can never be predicted with certainty. See generally The Effectiveness and Safety of Pepper Spray, Nat’l Inst. of Justice, at 12-13 (Apr. 2003). PTI also trains its recruit officers in the use of pepper spray. PTI has had no significant injuries caused by the spray itself. Much like as is advertised with Tasers, PTI has found that injuries sustained during pepper spray training are generally minor and caused by secondary events such as a fall or running into something while temporarily blinded. It also should be noted that, based upon PTI instructors’ experiences, subjects who are hit with pepper spray can often fight through its effects and can still be a threat. The same may be true for Tasers, which may require multiple applications or use of other devices. E.g., Russo v. Cincinnati, 953 F.2d 1036, 1044-46 (6th Cir. 1992) (ineffective use of Taser in attempt to apprehend potentially homicidal and suicidal subject; deadly force was ultimately used and subject was shot 22 times). However, the modern Tasers are reportedly more effective.

resulting from a traffic stop on Draper's tractor-trailer for a tag light that was allegedly not properly illuminated. 369 F.3d at 1272. Mr. Draper asserted that the deputy used excessive force in effectuating an arrest for obstructing a law enforcement officer, after Draper allegedly refused to comply with numerous requests by the deputy to retrieve documents. The Eleventh Circuit found that the use of the Taser "was reasonably proportionate to the difficult, tense and uncertain situation that [Deputy] Reynolds faced in the traffic stop, and did not constitute excessive force." Id. at 1278. The court found that the deputy asked Mr. Draper to retrieve documents from the truck's cab no less than five times, but each time Draper refused to comply. Id. The court noted that Mr. Draper accused the deputy of harassing and blinding him with a flashlight, that Mr. Draper used profanity, moved around and paced in agitation, and that he repeatedly yelled at the deputy. Id. The court said that, because of Mr. Draper's actions, starting with an arrest command was not required. Id. "More importantly, a verbal arrest command accompanied by attempted physical handcuffing ... may well have, or would likely have, escalated a tense and difficult situation into a serious physical struggle in which either Draper or [Deputy] Reynolds would be seriously hurt." Id. The court, which noted that Mr. Draper was shown in a video tape to be standing up, handcuffed, and coherent shortly after he was stunned by the Taser, held that under the "totality of the circumstances" the deputy's use of the Taser did not constitute excessive use of force and did not violate Draper's constitutional rights. Id.

The facts of Draper fall within Level III of PTI's Use of Force Scale and, indeed, are likely within the parameters of a Level II (passive) resister.⁹ Under PTI's Use of Force Scale, Level III techniques are directed at "Active Resisters." An active resister can be described as "a person who exhibits resistive movement to avoid physical control." Use of Force Scale, Police Training Institute (2004). Other Level III techniques include stunning techniques (with or without control instruments), take-downs, chemical agents, and canine deployment. Id.; see also Evaluation of Guidelines for Use of Force Training, State of Illinois, Illinois Law Enforcement Training and Standards Board (Dec. 1999). The risk of harm to officers and bystanders of employing such techniques may include muscular injury, joint injury, ligament injury, abrasions and scratches, lacerations, and possibly the effects of chemical agents. Evaluation of Guidelines for Use of Force Training, State of Illinois, Illinois Law Enforcement Training and Standards Board (Dec. 1999). The risk of injury to the subject being subdued is the same, with of course a heightened risk of temporary chemical contamination if a chemical agent such as pepper spray is used on the active resister. Id.

In determining at what use of force level Tasers generally fall, it is important to remember that there is no requirement under the Fourth Amendment or Illinois law that an officer "use the least intrusive or even less intrusive alternatives in search and seizure

⁹ Based upon the description of Mr. Draper's actions, we believe his actions can be described somewhere between a passive resister (Level II use of force) and an active resister (Level III use of force) on PTI's Use of Force Scale. Significantly, at no time did Mr. Draper actively resist any physical force applied to him by the deputy, although his actions, as noted by the court, were hostile, belligerent, and uncooperative. 369 F.3d at 1276-77. Deputy Reynolds also subjectively believed that Mr. Draper was going to fight. Id. at 1274.

cases.” Plakas, 19 F.3d at 1149; see also 720 ILCS 5/7-5. Thus, an officer is not required to put “hands-on” or start at Level I before escalating force options. Nor is an officer required to put himself or herself in harm’s way before escalating force options. Just because a suspect may be able to be subdued through contact control tactics (such as a high gooseneck or some type of joint manipulation), or may be able to be overcome by sheer numbers or brute force, there is no requirement under the law that officers do so. Indeed, to do so may not be tactically sound and may actually increase the risk of harm to the officers and the subject being subdued.

One of the advantages of Tasers, as touted by the manufacturer but which was also recognized by the Draper court, is that it may prevent physical struggles and serious harm to both offenders and officers. Taser International, Inc. cites anecdotal evidence that suggests that use of Tasers by law enforcement agencies has decreased officer injuries, suspect injuries, reduced the use of lethal force, and saved departments millions of dollars in liability claims. Life Saving Defense Technology, Taser International, Inc., available at <http://www.airtaser.com/>. In this regard, Tasers are similar to the effectiveness of pepper mace, which has been recognized as reducing injuries to officers and the subjects being subdued. E.g., Soto, 744 F.2d at 1263 (uncontradicted testimony that, since the use of mace rather than physical force, the number of injuries to staff and inmates was drastically reduced). Indeed, our own instructors who received the full five-second “ride” from the Taser X26 had almost immediate recovery. That being said, no device is unfailingly effective and safe, Plakas, 19 F.3d at 1150 n. 6 (referring to devices available for non-lethal control, including the Taser), and in-custody deaths may still occur. However, much like with the wide-spread implementation by law enforcement agencies of pepper spray, in-custody deaths occurred before its use and occur when it is not used. The Effectiveness and Safety of Pepper Spray, Nat’l Inst. of Justice, at 12 (Apr. 2003).

Based upon a review of the case law and statutes described above, it is PTI’s opinion that the use of Taser devices falls well within Level III (active resister) of PTI’s Use of Force Scale. PTI also would support utilizing Taser devices at Level II (passive resister) where a custodial arrest is being made or if a subject is already in custody and, if feasible, a warning to comply has been provided to the intended target. We would include (but not limit) as a warning either the display and/or activation of the device in a stunning mode or a verbal warning by itself. Additional or other warnings may also support (or further support) an officer’s reasonable use of force.

We believe the 11th Circuit case of Draper v. Reynolds, and the Seventh Circuit case of Soto v. Dickey, along with PTI’s and ILESTB’s use of force guidelines pertaining to pepper mace, support placing usage of Taser devices by law enforcement officers at Level II of PTI’s Use of Force Scale.¹⁰ Because PTI serves such a wide variety of departments, many of which will likely restrict Taser deployment and employment to higher use of force levels, PTI will train that Tasers may be used (in general) at Level III of PTI’s Use of Force Scale. PTI, however, supports its usage at Level II, with a warning

¹⁰ This may eliminate some of the concern of which legal standard applies to excessive force claims brought by suspected offenders, pretrial detainees, and convicted prisoners. Arguably, however, the use of Taser devices in a correctional facility is less restrictive.

if feasible, and will so advise the Use of Force Committee of the Illinois Law Enforcement Standards and Training Board.

Incorporation of Tasers into a law enforcement agency's use of force policy should include a review of other less-lethal options that are available and that would not require physical contact with combative suspects. The ILETSB Use of Force Committee has not reviewed the use of Tasers or other conducted energy weapons within the context of model use of force policies. In all cases, this issue probably warrants review by a jurisdiction's legal counsel.

Operational and Related Issues

Policy should be constructed to allow officers to deploy or employ Tasers only when circumstances warrant use of force. It also should be emphasize that Tasers should not be used as an alternative to deadly force when use of deadly force is the only viable solution to an incident. If Tasers are used in a situation that would otherwise justify deadly force, or one that appears likely to escalate to that level, it should only be done under circumstances where the presence of another officer allows the deadly force option to be immediately available. In such situations, the officer should not use a Taser if on the scene alone.

The danger of injuries to suspects or officers when Tasers are employed seem to be minimal, although not nonexistent. There are several possible situations in which a suspect may receive an injury, which are not directly related to the electrical output. Perhaps the greatest risk appears to be the possibility of a suspect falling and being injured after the Taser is employed. This is particularly true of pregnant women; however, Taser International, Inc. training materials indicate that the electrical output of its Tasers are not harmful to fetuses.¹¹ Taser also strongly suggests that head, face, and throat shots be avoided. However, because of the spread of the wire-tethered barbs (especially with longer shots), and because use of force on any subject is unpredictable and never certain, such shots may occur. According to Taser, the barbs that attach to a targeted subject should generally not cause significant injury or discomfort unless they strike a targeted subject in a sensitive area. Taser suggests that only emergency room staff remove probes embedded in sensitive areas, such as the neck, throat, face, breast, and groin. Significant injury also can occur if a person is struck in an eye with a barb. Similarly, the laser sight on the Tasers may cause eye damage if directed into the eyes. Taser also warns that conducted energy weapons could ignite gas fumes, methamphetamine labs, or other flammable liquids or combustibles. Taser training

¹¹ While certainly not dispositive of the issue of harm to a fetus, in Alford v. Osei-Kwasi, 418 S.E.2d 79, 82 (Ga. Ct. App. 1992), defendant, a deputy sheriff who was sued under 42 U.S.C. § 1983 for violating plaintiffs' rights, stated that he decided the Taser was the most appropriate device to subdue Ms. Alford, who had disobeyed jail personnel orders and was creating a disturbance, because he believed it would not cause permanent injury and would avoid an altercation with her that might result in injuries to Ms. Alford, her unborn child, and jail personnel. Indeed, Ms. Alford was subsequently taken to the jail clinic, after being subdued with a Taser, where she was found to be without injury except for where she was struck with the Taser dart. Id. It should also be noted that there was no credible evidence presented that the Taser ever caused Ms. Alford or her son (who was apparently born without incident) any serious injury. Id. at 84.

materials suggest as target areas center mass and the fleshy areas of the lower body, but with the back being most desirable target. Optimal target distance is described as 7 to 15 feet, although cartridges are currently available that have a range up to 21 feet.

It is highly unlikely that an officer on the scene when a Taser is employed would be seriously injured unless he or she was inadvertently struck. Even then, the direct risk to the officer from the Taser itself would be no more than the risk to a targeted subject. Of course, there would be an additional risk if an officer was temporarily immobilized, which (like any other technique gone awry) may allow a suspect to gain control of the officer and/or his or her firearm. Inadvertent contact with the wire or the probes during firing also can result in electrical shock, but again with no different effects than if one was the intended target. One seeming advantage to Tasers is that recovery time is very short as opposed to injuries from impact weapons or pepper spray.

Training

PTI believes that all officers authorized to carry Tasers should receive the minimum training required by the manufacturer. At this time PTI does not see a need for additional or state mandated requirements.

Taser International, Inc. offers courses to both “users” and for instructors, which are available through its website. Taser suggests the following for “user” certification: (1) a user must be certified annually; (2) a 4-hour minimum training requirement (with additional time left to the discretion of each agency); (3) a certified instructor must teach the course in order for a user to be certified or re-certified; (4) it is highly recommended (although not required) that a user receive a sample “hit” in order to receive the initial certification or for re-certification; (5) each user should fire a minimum of two cartridges (with four cartridges recommended) for certification or re-certification; (6) each user is required to pass a written examination, with a minimum pass rate of 80%; and (7) each user is required to submit to an oral examination with a pass/fail grade provided at the discretion of the instructor.¹²

Additional Research

PTI is continuing to obtain additional information relating to incidents that have been cited in some media in which Tasers have been identified as playing a role in deaths. In those incidents we have been able to examine, the deaths appear to have resulted from direct causes other than Taser.¹³ In order to provide a timely summary of our research, we decided to offer this paper “as is.” We will continue to monitor issues relating to the relative safety of Tasers.

¹² The user training requirements were provided by Jami Hill, Training Manager at Taser International, Inc., via a request by Officer Shane Cook of the Rantoul, Illinois Police Department. Officer Cook is a Taser-certified instructor.

¹³ PTI has not done any independent review of any death associated with any Taser employment. PTI staff have merely reviewed the literature available to the general public, much of which has been provided or subsidized by Taser International, Inc.

Those most supportive of inclusion of Taser among the less-lethal options available to officers cite its effectiveness in resolving volatile situations without resort to other use of force options that cause more permanent damage to suspects and increase the likelihood of injury to officers. Opponents appear to focus primarily on two concerns. First, fear that Tasers will be used in situations in which no weapon is required. Second, some continue to express concern over the safety of the device as a less-lethal option, citing incidents in which fatalities have occurred in which Tasers were involved. While our review of literature and anecdotal evidence indicated deaths in those incidents were likely related to other factors (e.g., drug-related conditions, injury from other weapons, or a fall), this concern remains. Again, however, no use of force device or technique is perfectly safe for everyone. Moreover, it would appear that many of the concerns over the safety of the device neglect to address the risk to officers and others from a non-compliant subject. The only way to completely eliminate risk to everyone, i.e., the targeted subject, law enforcement officers, and bystanders, is unconditional compliance by the suspect or prisoner. Unfortunately, there is no way to be certain that even a compliant subject will remain compliant once an officer attempts to handcuff the subject.

If funding were available, it would be instructive to design and conduct a careful review of a sampling of cases in which Tasers were used nationally and even internationally. Once the incidents were categorized, subject matter experts could legitimately offer opinion as to what the outcome would have been, to include other weapons being employed, if Tasers had not been available. Hopefully, agencies currently authorizing Tasers would cooperate by providing sanitized, random reports of Taser employments.

Conclusion

It is clearly not our role to advocate specific less-lethal weapons as more desirable than others. We are happy to serve all of our clients both in delivery of training and in offering advice on policy when requested. In this manner, PTI hopes it can serve as valued “staff” for all departments.

The proper use of Tasers and other conducted energy weapons appear to be lawful devices that can be incorporated into a use of force policy; however, we defer in that determination to other legal advisors who more correctly may influence policy for individual agencies. This brief report will be shared with the Use of Force Committee of the Illinois Law Enforcement Training and Standards Board in an effort to solicit their input as well.