

Building Bridges with Law Enforcement: Safer Policies for TASER Use

INTRODUCTION

Law enforcement use of TASER stun guns has increased dramatically in recent years in North Carolina and throughout the country. In fact Taser International, the manufacturer of these weapons, claims that they are in use in over 11,000 law enforcement agencies nationwide, and almost a third of those agencies give TASERs to every patrol officer.¹ Touted by the company as a device that saves lives, TASER use has resulted in numerous injuries and has been proximate to several deaths in North Carolina and hundreds across the country. **(CITE)**

Since 2001, when deployment of the TASER became increasingly popular due to technological advances and marketing strategies, over 280 people have died proximate to being stunned with a TASER – 10 deaths have occurred in North Carolina alone since 2006,² and in that year, the state had the unfortunate distinction of being involved in more TASER-proximate deaths in a one-year period than any other state in the country, except California and Florida.³

Purchase and deployment of the TASER are exempt from the regulatory oversight required for firearms, and state and federal legislation on TASERs is nonexistent, which places the onus on law enforcement agencies to set their own standards for appropriate use. North Carolina law enforcement – starting with Sheriffs' offices – must take the lead to adopt proper safety standards for TASER use that protect the public as well as the deputy sheriffs who use TASERs, given the increasing number of deaths associated with TASER use; the lack of independent studies on critical safety issues regarding vulnerable populations; and the lack of appropriate policy regulating the use of the weapon.

In 2007 several organizations working throughout North Carolina came together to discuss these issues in light of increasing news reports regarding the TASER. They became the members of the TASER Safety Project, a coalition of concerned groups who serve the state's vulnerable populations including children, people with physical disabilities, people with mental disabilities and the elderly, and people whose rights are routinely underrepresented in the field of civil liberties. Multiple reports of contact with TASERs came from these various communities, and led the group to believe more public education was needed on the matter, eventually leading to a statewide survey beginning with TASER use in Sheriffs' offices. Following up on the survey with Sheriffs' offices statewide led to productive dialogue with many members of law enforcement as well as amended policies in several counties. This project, the publication of results recommendations for advocacy, is intended to lead local advocates, organizations, and individuals to use the information provided in this report to begin building bridges with law enforcement in local towns, areas and counties for better TASER policies in North Carolina.

This report is divided into three sections: Section I provides an overview of TASER technology, and the weapons' use in North Carolina. Section II offers a description of populations especially vulnerable to TASER use and sets forth the results of our coalition's survey of all 100 North Carolina Sheriffs' offices for TASER policies,

comparing the policies and procedures of offices that use TASER with guidelines nationwide. Section III concludes the report with a summary and suggests opportunities for continued action.

SECTION I: TASERs: A Brief Overview

The TASER, invented in 1969, works by delivering a high-voltage, low-current electrical shock to temporarily paralyze a person by causing electrical interruption of the body's normal energy pulses. TASER stands for "Thomas A. Swift's Electric Rifle" – a nod to inventor and adventure hero Tom Swift, the central character in several series of young adult science fiction novels.⁴ In the 1990s the TASER was made more powerful and marketed to law enforcement by Air Taser, a company that later changed its name to Taser International.⁵ TASERs designed for law enforcement users now cost between about \$800 to about \$1300 per weapon⁶ and are increasingly popular. Other models, which cost around \$350.00⁷ and are designed for the public, are also currently on the market.

The TASER is shaped like a gun and is loaded with cartridges that shoot two small hooked metal electrodes capable of reaching a target up to 35 feet away in law enforcement models, and up to 15 feet away in models created for the general public. When fired, the electrodes hook into the skin or clothing to prevent removal and distribute a charge of about 1200 volts in electrical pulses at a rate of 19 pulses per second.⁸ After the first shock, which automatically lasts five seconds, the device is controlled manually and can be activated for any amount of time. Law enforcement models also enable an officer to remove the cartridge and hold the device directly against an individual's body to produce the charge – this is known commonly as the TASER's "Drive Stun" mode.

The TASER was initially marketed as completely safe; but within the first decade of its use, multiple injuries, deaths and lawsuits stemmed from TASER use.⁹ In a 2003 investigation of the Miami Police Department, the United States Department of Justice evaluated the TASER for its place on the continuum of force, and suggested it be located just below deadly force, and described as a "less lethal" instead of a non-lethal weapon.¹⁰ As a result, the company produced additional warnings; for example that the risk of death to an individual – especially one who is under the influence of drugs – is greater if shocked multiple times with a TASER.¹¹

The original TASER used gunpowder to propel the electrodes and was thus regulated by the United States Bureau of Alcohol, Tobacco and Firearms (ATF). However the 1990s overhaul of the weapon replaced gunpowder with nitrogen cartridges, at which time the agency certified that the TASER was no longer a firearm, rendering it exempt from ATF regulation. This shifted the responsibility of TASER regulation to the agencies that deploy the weapon. Policies and procedures vary widely across the state and the nation.

In North Carolina, road deputies in 69 counties carry TASERs. Two additional counties use TASERs only in county jails, and 28 counties reported that TASERs are not currently in use. County guidelines regarding TASER use range from no policy at all in four counties¹² to a few counties with comprehensive policies that provide guidance for a multitude of situations. In general, however, North Carolina trails significantly behind the national averages with respect to TASER regulation.

SECTION II: TASER's Human Toll

Over the past year, the TASER Safety Project (the Project) has conducted considerable research on the issue of TASER use in North Carolina and the consequences of potential misuse. The Project's main concerns, detailed below, revolve around stun gun use in certain circumstances and on particularly vulnerable populations.

The Project surveyed all 100 North Carolina sheriff's offices to inquire as to whether or not their deputies use TASERs, and if so, to obtain a copy of the relevant policies governing their deployment. Responses were received from all 100 counties, 71 of which reported TASER use. Among the provisions the Project looked for in the policies reviewed were prohibitions or restrictions on tasing obviously pregnant women, children, the elderly, disabled persons, passively resisting suspects, and suspects already in handcuffs. The majority of sheriff's offices nationwide currently prohibit the use of TASERs on these groups or restrict their use to the most extreme of circumstances.¹³

In addition, the Project investigated whether policies placed restrictions on multiple tasings, the deployment of TASERs against suspects operating motor vehicles, suspects standing in elevated positions, or use of a Taser in the presence of flammable materials. These, too, are relatively standard provisions, found in most TASER policies nationwide.

Health Concerns

Pregnant Women

Ever since police in Chula Vista, California paid \$675,000 to Cindy Grippi, a pregnant mother who delivered a stillborn girl in December 2001 after being shot with a TASER,¹⁴ law enforcement offices nationwide have reached the conclusion that tasing pregnant females presents such a profound risk that its practice must be limited to only the most extreme of circumstances. To that end, at least 82.5% of Sheriffs nationwide currently maintain policies restricting or prohibiting the use of TASERs against obviously pregnant women.¹⁵ North Carolina, in contrast, lags almost 50% behind the national average, with only 43.5% of TASER-deploying counties placing restrictions on use against pregnant females.

Even TASER International itself quietly acknowledges the danger TASERs pose to pregnant women. According to the *TASER International Instructor and User Warnings, Risks, Liability Release and Covenant Not to Sue*, a document the company

requires law enforcement officers to sign before subjecting themselves to TASER exposure, “Persons who are . . . pregnant are among those who may be at higher risk” of “serious injury or death.”¹⁶ The electrical current from contact with a TASER poses unique dangers to fetal development, but also the risk of a fall connected with associated muscle contractions could be dangerous. As Fabrice Czarnecki, an emergency physician and staff doctor with the Police Policy Studies Council, has warned, “If you are hit by a TASER you are likely to fall. We know even minor trauma during pregnancy, like a fall, is dangerous and could be fatal to the fetus.”¹⁷

Minors

The last few years have seen numerous instances of children and teenagers killed or seriously injured in TASER-proximate encounters. Dr. Wayne McDaniel, who led a TASER International study to examine the weapon’s effect on the heart, has said he “didn’t design the experiments with kids in mind,” and that he had not thought the TASER would be used on small children.¹⁸

Unlike most TASER arrests involving adults, media accounts relating to the stunning of children often make note of the fact that TASER use is known to induce vomiting. In 2005, Miami police were heavily criticized after firing a TASER at a six-year-old boy at school, whose mother said he subsequently vomited from the shock.¹⁹ Seventeen year-olds Kevin Omas and Roger Holyfield also reportedly vomited before each of them died after being stunned with a TASER.²⁰ In the case of Omas, the Tarrant County, Texas, Medical Examiner, Dr. Nizam Peerwani made public his belief that the use of the TASER was “a contributory factor in the death.”²¹

Nationally, TASER regulation with respect to use on children still has much room for improvement, with just 61.1% of counties reporting restrictions on using TASERs against minors. North Carolina, however, restricts the use of TASERs against children in just 34.8% of counties in which TASERs are currently deployed. At a minimum, the Project believes that every Sheriff’s Office in the state should restrict use against minors to only the most extreme of circumstances, if not opt ban their use outright.

The Elderly, People with Disabilities, and the Mentally Ill

The Project has similar concerns about the effects of TASERs on elderly persons, people with disabilities and the mentally ill. Earlier this year, Jacksonville, Florida Associate Medical Examiner Valerie Rao ruled that TASER use was a “contributing factor” in the death of a 56-year-old Green Cove Springs woman who was confined to a wheelchair.²² TASER International’s aforementioned liability release also addresses the potential dangers associated with firing a TASER at “those with pre-existing conditions and/or special susceptibilities,” noting that “it is conceivable that the muscle contractions [associated with TASER use] may impair a subject’s ability to breathe.”²³

Once again, North Carolina Sheriffs are well below the national average with respect to TASER regulations governing use on the elderly and disabled. More than six in ten Sheriffs nationwide restrict or prohibit their deputies from using TASERs on the elderly, while in North Carolina only 34.8% of TASER-deploying counties employ

similar restrictions. Anson, Cherokee, Cleveland and Gaston counties prohibit the practice outright. Similarly, while at least half of all Sheriffs nationwide restrict use against disabled persons, fewer than one in three North Carolina Sheriffs' policies have similar restrictions.

In addition, while conducting the statewide survey, the Project asked numerous law enforcement agencies for copies of their policies for apprehending individuals thought to have mental disabilities or identified as mentally ill. Unlike the Project's other requests, the response rate for this inquiry was very low. For reasons of public safety, all counties that currently deploy TASERS should also have in place policies and guidelines that instruct law enforcement on best practices for defusing difficult situations involving the mentally ill. As it stands, many Sheriffs' policies currently recommend TASERS as an ideal tool for dealing with this population and its use is quite common. The Project has concerns that in some circumstances TASERS are being used in lieu of equally effective, less violent means.

Situational Concerns

Passive Resisters

Currently in most jurisdictions there is nothing that prevents law enforcement officers from deploying a TASER against a completely non-violent individual. The Project has fielded numerous complaints from people around the state who report being tased or threatened with a TASER for doing nothing more than "going limp." In fact, the Greensboro Police Department was heavily criticized earlier this year for abuse after one of their officers elected to fire a TASER at an anti-Iraq War protestor who "refused to move" from a city intersection. Officer K.B. Johnson told the Greensboro *News & Record*, "I told him I would TASER him if he did not move. . . . When you have a crowd situation like that, you have to start with someone."²⁴ Use of a TASER on an individual who is doing no more than offering passive resistance to an officer is inappropriate and unwarranted.

The good news is, there is evidence to suggest that many departments are starting to prohibit the use of TASERS in similar circumstances. Of the 25 largest police departments in the state, nearly 30% have explicitly instructed their officers not to use the device on passive resisters.²⁵ The number is lower among North Carolina Sheriffs' Offices, with only 18.6% of TASER-deploying counties reporting that they restrict or prohibit the practice in their use of force policies. **Only six counties (Alexander, Columbus, Dare, New Hanover, Richmond and Rockingham) have gone so far as to issue an explicit prohibition in all circumstances.** Seven additional counties have policies in place prohibiting the use of TASERS against passive resisters, but those policies are filled with caveats that make adhering to the policy difficult because it is hard to understand. The Project believes that the public and law enforcement are best served by unambiguous policies that clearly delineate what constitutes appropriate and inappropriate use of a TASER when at all possible.

Multiple Firings

The lack of regulation in North Carolina with respect to multiple TASER firings is alarming. While some Sheriffs' Offices place restrictions on the number of successive times a TASER may be deployed against a single individual, most do not. In North Carolina, The Project has confirmed that at least three of the six people who died in 2006-07 in the course of TASER-proximate arrests were fired upon multiple times.

TASER International itself cautions users that multiple firings can be hazardous to human health. In a 2005 Training Bulletin, the company warned that "[r]epeated, prolonged, and/or continuous exposure(s) to the TASER electrical discharge may cause strong muscle contractions that may impair breathing and respiration."²⁶ But the dangers are not limited to respiratory problems. The *New York Times* reported in the fall of 2007 that a healthy 38-year-old North Carolina police officer suffered numerous spinal fractures from a single 5-second TASER discharge during a training exercise.²⁷ According to the *Annals of Emergency Medicine*, which did a case study on the officer, the fractures were caused by the intense muscle contractions induced by the TASER.²⁸

Members of the Project have fielded numerous complaints from across North Carolina from citizens who have been hit with a TASER more than once. In almost all of these cases, the individuals asserted that after the first firing they wanted and attempted to comply with police orders but were physically unable to do so in the seconds after tasing due to extreme muscle contractions. One complainant, Kyle Ross of Asheville, who was struck three times with a TASER (and subsequently received a monetary settlement from the Asheville Police Department) in a case of mistaken identity, asserts that despite her best efforts she was physically unable to follow officers' demands to move herself into a submissive position. Because of this, the officers fired the TASER at Ms. Ross again for lack of compliance. Because of the overwhelming uncertainty surrounding the safety of successive TASER deployments, the Project would like to see a workable policy solution that would serve both the interests of law enforcement and the general public.

Flammables

Given the recent death of Richard McKinnon, the Cumberland County man who died as a result of burns that he sustained after being shot with a TASER in the presence of flammable materials, there is good reason for all Sheriffs' Offices that deploy TASERs to have written policies in place prohibiting the use of the devices in situations where they may cause someone's body or clothing to ignite. While it may strike many as common sense not to fire a TASER under similar circumstances, just this year a Texas man, Juan Flores Lopez, "burst into flames after dousing himself in petrol and then being shot with a TASER."²⁹ Like Mr. McKinnon, Mr. Lopez subsequently died of his injuries.

While nationally more than 91% of Sheriffs' Offices maintain written policies that explicitly prohibit the use of TASERs around flammables, in North Carolina only 58% of counties that employ TASERs do the same.

Restrained Suspects

The Project also has grave concerns about the use of TASERs on handcuffed persons, given recent deaths in Georgia³⁰, Nevada³¹ and Oklahoma,³² in which officers subjected suspects to multiple firings of the TASER even after they had been restrained.

Nationwide, Sheriffs have become increasingly aware of the danger—not to mention liability—inherent in firing a device that induces muscle contractions at someone in a position of limited mobility.³³ To that end, 69.1% of Sheriffs nationwide have adopted policies restricting the use of TASERs against people in handcuffs or restraints. In North Carolina, a mere 18.6% of counties have taken similar steps.

People in Elevated Areas

Because TASERs induce severe muscle contractions, there is a strong associated risk of injury from a fall if the individual is in a precarious position when stunned. As TASER International itself has warned, “[t]his loss of control, or the inability to catch oneself, can in special circumstances increase the risk(s) of serious injury or death.”³⁴ Fewer than half of North Carolina counties (43.5%) place restrictions on firing TASERs at people in high places, and most of those prohibit the practice outright. Comparatively speaking, North Carolina is well behind the national average, as nearly three in four Sheriffs nationwide (73.8%) restrict the use of TASERs on people in elevated areas. Somewhat like the use of the device around flammables, regulation of the weapon might seem unnecessary because of common-sense operation in such scenarios. But these situations have occurred before – in the case of 43-year old Bruce Bellemore, it cost the city of Mesa, Arizona police over \$2 million dollars to settle the associated legal claims after Bellemore was paralyzed as a result of such an injury.³⁵ Simple and practical steps could be taken to reduce the likelihood of the next person suffering a fall-related injury as a result of being stunned with a TASER. Most departments nationwide are taking this precaution. Law enforcement in North Carolina should do so as well.

SECTION III: Conclusion

In October 2007, representatives of the Project met with the North Carolina Sheriff’s Association (NCSA) to discuss the status of TASER regulation in the state, and the possibility of a joint- or NCSA-led drafting of model policies to suggest best practices throughout the state. The Project received notice after an NCSA Executive Committee meeting in February that the NCSA decided not to draft a model policy for counties to use as a standard, stating “North Carolina Sheriffs’ Association recognizes the authority of each Sheriff to establish policies as deemed appropriate by that Sheriff.”³⁶

In the meantime, the Project followed up with all sheriffs to share with them the results of the survey and to suggest changes that might be made to their respective policies in the interest of public safety. A number of offices have been receptive to the efforts of the Project, and have notified the Project of their intent to review and make changes to their current policies. At press time, the Project has received revised policies from a dozen out of 70 Sheriff’s offices statewide that report using TASERs, with many positive changes that recognize the special needs of vulnerable populations and other specific circumstances in law enforcement encounters.

A policy on TASER use must clearly define situations for appropriate firing of the TASER as well as circumstances in which TASER use is limited or prohibited. Specifically policies must address use of the weapon in consideration of health concerns, limiting use against children, obviously pregnant women, senior citizens and people with disabilities. Additionally, policies should be amended to address situations in which

TASER use has increased risk of injury, restricting multiple firings and use against passive resisters, people in elevated areas, restrained individuals and people around flammables. As TASER International states, it is the “responsibility of each agency to set their own policy upon their community standards.”³⁷ TASER regulation is in the hands of the North Carolina Sheriffs who deploy TASERs – and they must consider public safety and expectations in potentially health- and life- threatening circumstances, as well as the safety and liability of their own officers.

¹ TASER International web site, www.taser.com/research/Pages/LawEnforcementFAQs.aspx

² This number is the result of extensive research performed in 2007 and updated by a member of the TASER Safety Project.

³ Based on reports of all known TASER-proximate deaths from January 2006 to January 2007 – 6 total – catalogued by the Arizona Republic newspaper and the New York office of Amnesty International.

⁴ TASER International web site, Company Trivia, www.taser.com/company/Pages/trivia.aspx.

⁵ Rick Smith, CEO Taser International, Taser International Website, History of TASER Devices, www.taser.com/research/Science/Pages/HistoryofTASERDevices.aspx.

⁶ Stanley B. Chambers, Jr., “Durham police review Taser policy,” News and Observer, March 6, 2008, www.newsobserver.com/news/crime_safety/story/986292.html (Reporting that the city of Durham, NC has purchased 100 Tasers at a cost of \$135,000); Ian Bauer, “Police will use grant to buy more Tasers,” Milpitas Post, January 30, 2008, www.themilpitaspost.com/local/ci_8120768 (City of Milpitas, CA reported to purchase 19 Tasers at \$1,266 each); Susan L. Oppat, “Ypsilanti Police to get Tasers,” Ann Arbor News, September 17, 2007, www.blogmlive.com/annarbornews/2007/09/Ypsilanti_police_to_get_tasers.html (City of Ypsilanti, MI reportedly plan to purchase 45 tasers at a total cost of \$50,000); David Hench, “Tasers join arsenals,” Portland Press Herald, July 10, 2007, www.pressherald.mainetoday.com/story.php?id=119711&ac=PHnws&pg=2 (Reporting that addition of Tasers to Portland, ME police agencies cost about \$800 each, plus \$400 each for additions such as video attachments).

⁷ Taser International Web Site, Products for Consumers, www.taser.com/products/consumers/Pages/default.aspx.

⁸ Mark W. Kroll and Patrick Tchou “How a Taser Works,” IEEE [Institute of Electrical and Electronics Engineers] Spectrum Online; For Tech Insiders, December 2007, www.spectrum.ieee.org/dec07/5731.

⁹ For example, see Alan Gathright, “Taser sued over ‘non-lethal’ claim,” San Francisco Chronicle, March 1, 2004; Matthias Gafni, “Autopsy Reveals Taser Use,” Velejo Times-Herald, January 6, 2005, Robert Anglen and Dawn Gilbrtson, “Taser Safety Claims Draw State Scrutiny,” Arizona Republic, January 8, 2005.

¹⁰ Ltr. from Steven H. Rosenbaum, Chief Special Litigation Section, U.S. Dept. of Justice Civil Rights Division to Alejandro Vilarello, City Attorney, City of Miami, FL (March 13, 2003), www.usdoj.gov/crt/split/documents/miamipd_techletter.pdf.

¹¹ Law Enforcement News, “Taser sings new tune on safety,” Vol. XXI, No. 636, September 2005, John Jay College of Criminal Justice/CUNY, www.lib.jjay.cuny.edu/len/2005/09/index.html#1, (reporting that in August 2005 Taser International “issued a warning to practitioners that repeatedly stunning or administering a prolonged shock to a subject can be potentially life-threatening”).

¹² These counties have been notified by the TASER Safety Project that their lack of TASER regulation is an aberration. Offices responded with either a request for sample policies, or a statement that a draft TASER policy was “under review.”

¹³ Susan Stefan, “The Use of Tasers on Individuals with Psychiatric Disabilities: Advocacy Tools for Banning Tasers in Hospital, School and Residential Settings,” *Center for Public Representation and the Training and Advocacy Support Center (TASC)*, www.ndrn.org, August 2007.

¹⁴ Heather Hollingsworth, “Experts Dispute Risks of Using Stun Guns on Pregnant Women,” *Associated Press*, 31 January 2007.

¹⁵ [Do we have a cite for these stats?](#)

¹⁶ TASER International, *Instructor and User Warnings, Risks, Liability Release and Covenant Not to Sue*, 2.

¹⁷ Hollingsworth, “Experts,” *see Supra* Note 4.

¹⁸ Lisa Arthur, Susannah A. Nesmith and Jacob Goldstein, “Experts dispute data on stun guns,” *Miami Herald*, December 5, 2004.

¹⁹ “Police Review Policy After TASERs Used on Kids,” *CNN.com*, 15 November 2004.

²⁰ See “Teen’s Death By Stun Gun Probed,” *CBS News*, 31 October 2006; and “Amnesty International’s Continuing Concerns About TASER Use,” *Amnesty International USA*, February 2006.

²¹ *Amnesty*, “Continuing Concerns,” *see Supra* Note 11.

²² Dana Treen, “State Rules TASER Death Homicide,” *The Florida Times-Union*, 31 February 2007.

²³ TASER International, *Instructor and User Warnings*, 1-2, *see Supra* Note 7 (emphasis and alterations added).

²⁴ Joe Killian, “Nine Arrested in Protest of Iraq Decision,” *News & Record*, 12 January 2007.

²⁵ Responses to a survey conducted in the summer of 2007 by the American Civil Liberties Union of North Carolina and supported by the TASER Safety Project.

²⁶ TASER International, *TASER International Training Bulletin 12.0 – 04*, June 28, 2005, 1.

²⁷ Eric Nagourney, "Safety: In Stun Gun Training, Officer's Spine is Fractured," *New York Times*, 18 September 2007.

²⁸ James E. Winslow, MD, William P. Bozeman, MD, Michael C. Fortner, MD and Roy L. Alson, PhD, MD, "Thoracic Compression Fractures as a Result of Shock From a Conducted Energy Weapon: A Case Report," *Annals of Emergency Medicine* (2007): Corrected Proof.

²⁹ "Man Bursts Into Flames After Being Shot by a TASER Gun," *The Daily Mail*, 20 June 2007.

³⁰ Jerry Carnes, "No Charges in TASER Gun Death," *NBC News, WXIA-Atlanta*, 29 April 2005.

³¹ Frank Geary, "County Coroner's Office Keeping Close Eye on Fatal Chicago TASER Case," *Las Vegas Review-Journal*, 7 August 2005.

³² Associated Press, "Death of Handcuffed Oklahoma Woman Raises Questions About Police Use of Stun Guns," *North County Times*, 11 June 2007.

³³ Steven Kreytak, "Federal suit against officer, former officers under way," *Austin American-Statesman*, March 24, 2008.

³⁴ TASER International, *Instructor and User Warnings*, 2, *see Supra* Note 7.

³⁵ Senta Scarborough, "Mesa Pays \$2.2 Mil in Stun Gun Case," *The Arizona Republic*, 30 March 2005.

³⁶ Ltr. from Edmond W. Caldwell, Jr., Executive Vice President and General Counsel, NC Sheriffs' Association to Sarah Preston, Legislative Dir., ACLU of North Carolina (TASER Safety Project member organization), February 29, 2008.

³⁷ www.taser.com/research/Pages/LawEnforcementFAQs.aspx