

USE OF TASERS BY LAW  
ENFORCEMENT AGENCIES:  
GUIDELINES AND  
RECOMMENDATIONS

PREPARED FOR THE  
CITY OF MOUNTAIN VIEW  
HUMAN RELATIONS COMMISSION

BY  
THE STANFORD CRIMINAL JUSTICE CENTER

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# INTRODUCTION

The use of tasers by law enforcement agencies in general, and by police officers in particular, has become one of the most controversial issues in the area of criminal justice policy. This is in part because the issues are at the same time extremely straightforward (in that the only real question is the extent to which the use of tasers is and should be authorized) and uncomfortably complex (in that this question is by no means an easy one to answer).

There are a number of premises upon which all interested parties should be able to agree. First, it is preferable to incapacitate a violent individual than to kill that individual. Second, the use of tasers should be permitted to the extent that such use is necessary to protect officer safety while minimizing the risk of physical injury to suspects. Third, police officers should have some understanding of the effects that using a weapon is likely to have upon a suspect before deploying the weapon in question. Unfortunately, however, agreeing on the validity of these premises does not lead anyone to any obvious conclusions regarding the legitimate use of tasers by police officers.

At the outset, we note that this report is directed solely to the question of when, and under what circumstances, police officers should be authorized (and perhaps required) to use a taser on a suspect. This report will not address the question of when, and under what circumstances, a jail guard or correctional officer should be permitted or required to use a taser on an inmate. It will also not address questions regarding the extent to which a state or municipality might want to restrict the ability of individual citizens to own, possess, carry, or transfer tasers. All of these questions are critical to law enforcement professionals, and local and state governments need to address them. However, the issues that arise in connection with these questions differ in both scope and substance from this report's main concern; therefore, in the interest of brevity and clarity, this report is limited to offering guidance on the question of the legitimate use of tasers by police officers.

The first section of this report provides a brief summary of the effects of taser use on the human body. The report assumes that readers will have some familiarity with this issue, and that a thorough analysis would be redundant. Therefore, the explanation of this issue is somewhat brief, and references to more detailed information will be provided where appropriate.

The second section provides a summary and analysis of the legal issues that have arisen in connection with the use of tasers in the United States, and of the existing case law that addresses these legal issues. As the members of the Commission may know, there is fairly little case law governing the use of tasers, which is one of the reasons why it has been difficult for municipalities to enact guidelines to aid the law enforcement community in understanding when it is appropriate to use them. Nonetheless, this report will endeavor to offer an explanation of the case law that does exist, and to interpret the

case law in a way that will be helpful to municipalities attempting to enact such guidelines.

The final section of the report will offer some guidance regarding the possible appropriate uses of tasers and some recommendations for the Commission to consider in advising the City Council on guidelines for taser use, follow-up treatment, and reporting.

As the members of the Commission may already be aware, the International Association of Chiefs of Police (IACP) has published a report urging law enforcement agencies to reevaluate their taser policies and offering guidance on how to do so.<sup>1</sup> The city of Mountain View deserves praise for undertaking this process of enacting regulations on taser use, and for working to ensure that any policies on the use of tasers protect law enforcement officers, criminal suspects, and the wider community. We hope that this report will be instructive and useful in this regard.<sup>2</sup>

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<sup>1</sup> International Association of Chiefs of Police, “Electro-Muscular Disruption Technology: A Nine Step Strategy for Effective Deployment,” April 4, 2005 (“IACP Report”), <http://www.iacp.org/research/CuttingEdge/EMDT9Steps.pdf>.

<sup>2</sup> The Stanford Criminal Justice Center (<http://www.law.stanford.edu/programs/academic/criminaljustice/>) serves as Stanford's vehicle for promoting and coordinating the study of criminal law and the criminal justice system, including legal and interdisciplinary research, curriculum development, and preparation of law students for careers in criminal law. The center is headed by faculty director [Robert Weisberg](#) and executive director Kara Dansky. Faculty, staff, and students associated with the SCJC prepare reports similar to this one for government and nonprofit agencies; our goal in this endeavor is to offer the best possible legal analysis of the subjects we're asked to comment on, and to remain neutral regarding any related political issues.

# THE EFFECTS OF TASER USE ON THE HUMAN BODY

The vast majority of tasers purchased and used by law enforcement agencies are manufactured by Taser International ([www.taser.com](http://www.taser.com)), which makes essentially two models of tasers, the M26 and the X26. Both models can be used in one of two modes, which produce different effects on the body.

When used in firing mode, both the M26 and the X26 fire two probes up to a distance of 21 feet. They are programmed to deploy five-second bursts of electricity, although the charge can be prolonged indefinitely if the operator's finger remains on the trigger. The probes are attached to copper wires, which remain connected to the weapon. The shock can be repeated countless times, so long as both probes remain attached to the subject. Both models contain a cartridge of compressed nitrogen that fire the probes, and which must be reloaded every time the officer wants to fire. Both models have laser sights for accurate targeting and a built-in memory to record the time and date of each firing. Both models operate on 26 watts of electric output. Both deliver a 50,000-volt shock, which is designed to override the subject's central nervous system, causing uncontrollable contraction of the muscle tissue and instant collapse. The primary difference between the two models appears to be in design (the X26 is 60% smaller than the M26), although Taser International reports that the X26 has an incapacitating effect that is 5% greater than the M26.

When used in "drive-stun" mode (at point blank range), the taser attacks the sensory nervous system. Rather than causing a complete override of the central nervous system, the weapon is essentially used as a pain-compliance technique. In this mode, the taser is used without the air cartridge. It applies shocks directly to the subject's body, skin, or clothing. The duration is the same as when the taser is used in firing mode (five seconds unless the officer keeps his hand on the trigger for longer).

The clear consensus of the research is that a one-time five-second shock does not seriously or permanently injure a healthy and sober young adult who is not pregnant. However, the few studies that have been conducted, as well as the anecdotal evidence, suggest that there are some serious health risks involved when individuals not falling within that category are tasered.

Taser International includes the following product warnings on its website<sup>3</sup>:

- The TASER device can cause strong muscle contractions that may cause physical exertion or athletic-type injuries to some people. These muscle contractions can result in strain-type injuries such as hernias, ruptures, or

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<sup>3</sup> Presumably, the company also includes these warnings when it delivers the weapons themselves to a law enforcement agency; however, this has not been confirmed.

other injuries to soft tissue, organs, muscles, tendons, ligaments, nerves, joints, and stress/compression fractures to bones, including vertebrae. People with pre-existing injuries or conditions such as osteoporosis, osteopenia, spinal injuries, diverticulitis, or previous muscle, disc, ligament, or tendon damage may be more susceptible to these types of injuries.

- These strong muscle contractions usually render a subject temporarily unable to control his or her movements and may result in secondary injuries. Under certain circumstances, this loss of control can elevate the risk(s) of serious injury or death. These circumstances may include, but are not limited to, use of the TASER device on a person who is physically infirm or pregnant, or a person on an elevated or unstable platform, operating a vehicle or machinery, running or in water where the inability to move may result in drowning.
- When practicable, avoid prolonged or continuous exposure(s) to the TASER device electrical discharge. The stress and exertion of extensive repeated, prolonged, or continuous application(s) of the TASER device may contribute to cumulative exhaustion, stress, and associated medical risk(s). Severe exhaustion and/or over-exertion from physical struggle, drug intoxication, use of restraint devices, etc. may result in serious injury or death. The TASER device causes strong muscle contractions, usually rendering a subject temporarily unable to control his or her movements. Under certain circumstances, these contractions may impair a subject's ability to breathe. If a person's system is already compromised by over-exertion, drug intoxication, stress, pre-existing medical or psychological condition(s), etc., any physical exertion, including the use of a TASER device, may have an additive effect in contributing to cumulative exhaustion, stress, cardiovascular conditions, and associated medical risk(s).
- TASER probes can cause significant injury if deployed into sensitive areas of the body such as the eyes, throat, or genitals. If a TASER probe becomes embedded in an eye, it could result in permanent loss of vision. Repetitive electrical stimuli can induce seizures in some individuals.
- In most areas of the body, wounds caused by TASER probes will be minor. TASER probes have small barbs.
- Use of a TASER device in drive (or touch) stun mode can cause marks, friction abrasions, and/or scarring that may be permanent depending on individual susceptibilities or circumstances surrounding TASER device use and exposure.<sup>4</sup>

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<sup>4</sup> See Taser International website, Product Warnings for Law Enforcement. [www.taser.com/safety/](http://www.taser.com/safety/). Warnings 6-12. Note, the warnings given to civilian taser owners differ slightly from the warnings given to law enforcement officers. Details regarding those differences are beyond the scope of this paper.

There are several things worth noting about these warnings. First, in most instances, an officer will find it nearly impossible to anticipate whether a subject suffers from any of the conditions listed. For example, except where pregnancy is fairly advanced, an officer is not likely to know a woman is pregnant. No officer would likely be able to discern that an individual suffers from a pre-existing injury or condition such as osteoporosis, osteopenia,, spinal injuries, diverticulitis, or previous muscle, disc, ligament, or tendon damage. An officer is unlikely to know whether a subject suffers from a respiratory impairment such as asthma,<sup>5</sup> or from a pre-existing cardiovascular condition.

Moreover, with respect to pregnancy, Taser International warns against use of a taser on a pregnant woman because of the risk that she would suffer from involuntary muscle contractions, thereby increasing the risk that she will fall and damage the fetus. The warnings listed above do not include any mention of risk to the fetus of the electrical shock itself. Nevertheless, there have been cases in which women have miscarried after being tasered. In the City of Chula Vista, Cindy Grippi was six-months pregnant when she was tasered and she miscarried twelve hours after being shot. The autopsy report did not conclude that the electro-shock was the cause of death; nonetheless, some studies have suggested a link between electro-chock and miscarriage and the city was sufficiently concerned about these studies that it paid her \$675,000 to settle her lawsuit.

There are three overarching scenarios that cause concern regarding the possibility of a taser delivering a fatal shock. One is the possibility that a shock could occur during the “vulnerable period” of a heart beat cycle. Essentially, this means that there is a section of a heart beat cycle (specifically, three percent of the cycle) during which an electro-shock is highly likely to cause ventricular fibrillation, “a state in which the heart muscles spasm uncontrollably, disrupting the heart’s pumping function and causing death.”<sup>6</sup> Second, certain individuals, such as children, the elderly, people with pre-existing cardiovascular problems, drug users, and individuals who take certain psychiatric medications, are naturally more susceptible to ventricular fibrillation than healthy young adults. Third, multiple and/or prolonged applications of a taser can increase the risk of cardiac arrest either by simply increasing the chances that a charge will shock the heart during the vulnerable period or by increasing the level of acid in the blood, which, in turn, decreases respiration and increases the risk of ventricular fibrillation.

Finally, there have been several reported fatalities in the state of California that have involved the use of tasers, most often in cases in which the subject was under the influence of drugs. Andrew Washington died in Vallejo in September 2004 after being tasered seventeen times. The cause of death was reported as “cardiac arrest associated

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<sup>5</sup> Notably, while it appears to be widely acknowledged that repeated or prolonged use of tasers can cause respiratory problems in healthy people, there appears to be almost no literature addressing the effects of tasers on individuals with pre-existing respiratory impairments such as asthma.

<sup>6</sup> ACLU of Northern California, “Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives,” September 2005 (“ACLU Report”), p. 4, citing Russel Sabin, “Heart Expert Warns About Using Tasers,” San Francisco Chronicle, January 5, 2005.

with excitement during the police chase and cocaine and alcohol intoxication, occurring shortly after Taser<sup>7</sup>. Gregory Saulsbury died in Pacifica in January 2005, after being tasered eleven times. He had been using cocaine. Carlos Casillas Fernandez died in Santa Rosa in July 2005 after being tasered six times. He had been using methamphetamine.

In sum, tasers pose some grave risks that warrant significant research and study. Not enough is known about the risks of taser use to children, the elderly, pregnant women, or those under the influence of drugs. From what little scientific research exists, it appears that prolonged and/or multiple use of a taser dramatically increases the risk of ventricular fibrillation and consequent cardiac arrest, even in healthy adults. In addition, there appears to be a risk of vision impairment if a subject is tasered in the eye, and of seizure if a subject is tasered in the head. It is unclear whether there are medical risks associated with the barbs that are left in a subject's body once the probes are removed. There also appear to be permanent, if not fatal, dermatological impairments associated with the use of a taser in stun mode.

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<sup>7</sup> ACLU Report at 3.



# LEGAL ISSUES

Taser International has published a Memorandum of Law<sup>8</sup> citing and purporting to explain the legal relevance of several state and federal court opinions. Presumably, in writing this memo Taser International intended to provide municipalities with arguments that they can raise in their defense of actions brought on behalf of individuals injured or killed by a taser.<sup>9</sup> However, Taser International's legal analysis is substantially flawed, and we conclude that no municipality can safely rely on its conclusions to avoid liability in such an action.

The U.S. Court of Appeals for the Sixth Circuit made one of the earliest legal rulings addressing the use of tasers in 1992. In that case, *Russo v. City of Cincinnati*,<sup>10</sup> members of the Thomas Bubenhofer estate sued the city of Cincinnati after Mr. Bubenhofer was shot to death by Cincinnati police officers. Mr. Bubenhofer had shut himself up in his apartment after being released by his mental health facility on a day pass and the family contacted the police. When the police arrived, Mr. Bubenhofer, a diagnosed paranoid schizophrenic, was in the apartment armed with two knives. Several times he approached officers, threatening them with the knives. Mr. Bubenhofer was eventually shot with both a taser and a firearm and subsequently died. The Sixth Circuit eventually held that the officers were entitled to "qualified immunity" and ruled that all the claims must be dismissed.

Taser International hails this as a major victory for proponents of Taser use. But there is little legal basis for such a view, for several reasons.

First, in 1992, the Department of Alcohol, Tobacco, and Firearms classified tasers as firearms. Therefore, the court was looking at the plaintiff's claims as a matter of the justifiable use of firearms in general. The ATF no longer classifies tasers as firearms, so it is not clear how, if at all, the case would apply to the use of tasers.<sup>11</sup> Second, the court did not hold that the use of the taser was justified, required, harmless, or permissible. Rather, in granting qualified immunity, the court simply held that the officer who fired the taser could not be held liable because the use of the taser did not violate clearly established law because there simply was no clearly established law regarding taser use at

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<sup>8</sup> See <http://www.taser.com/law/download/memo.htm>. (Taser Memo).

<sup>9</sup> "The legal concerns usually raised regarding the TASER conducted energy weapon generally fall into two categories: 1. What are the legal restrictions on the use of a TASER conducted energy weapon; and 2. What is the impact of a TASER conducted energy weapon on legal liability in a use of force incident. The purpose of this Memorandum of Law is to address these issues in the context of U.S. Federal and State regulations and case law." Taser Memo at 1.

<sup>10</sup> 953 F.2d 1036 (6<sup>th</sup> Cir. 1992).

<sup>11</sup> General Accounting Office, "Taser Weapons: Use of Tasers by Selected Law Enforcement Agencies." Report to the Chairman, Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, House of Representatives (GAO Report), p. 18, May 2005.

the time the officer fired one.<sup>12</sup> In sum, *Russo* does not in any way protect police officers from liability for injuries caused by use of a taser.

Taser International also cites *Ewolski v. City of Brunswick*<sup>13</sup> as legal support for the liberal use of tasers by police officers. In its memo, Taser International states that the court “held that the defendant police officer’s use of Taser non-lethal force to subdue a potentially homicidal individual did not transgress clearly established law” and that the court “further held that the use of Taser non-lethal force against an armed and volatile suspect does not constitute excessive force and concluded that the defendant police officers are entitled to qualified immunity on the Plaintiff’s excessive use of force claim.”<sup>14</sup> These statements are at best misleading and at worst entirely false. The officers involved in the *Ewolski* case did not even use tasers. In that case, the court held that the officers in question were entitled to qualified immunity for their use of a battering ram and tear gas in a hostage situation involving a man who had been threatening to shoot any officer who entered his home and who had, in fact, already shot one officer.<sup>15</sup> The court does quote language from the *Russo* case addressing the standard to be applied in evaluating a defense of qualified immunity. However, to state that the court upheld *Russo* and concluded that a use of a taser was justified is a mischaracterization of both the facts of the case and the relevance of its legal conclusions. No municipality should rely on Taser International’s analysis of this case in defending an excessive force claim regarding the use of tasers.

The other cases addressed by Taser International are *Lifton v. City of Vacaville*, 2003 U.S. App. LEXIS 16286 (9<sup>th</sup> Cir. 2003), *Michenfelder v. Sumner*, 860 F.2d 328 (9<sup>th</sup> Cir. 1988), *Jolivet v. Cook*, 1995 U.S. App. LEXIS 3950 (10<sup>th</sup> Cir. 1995), *Walker v. Sumner*, 1993 U.S. App. LEXIS 26517 (9<sup>th</sup> Cir. 1993), *Caldwell v. Moore*, 968 F.2d 595 (6<sup>th</sup> Cir. 1992), *Hernandez v. Terhume*, 2000 U.S. Dist. LEXIS 18080 (N.D. Cal. 2000), *Hinton v. City of Elwood*, *Drummer v. Luttrell*, 75 F.Supp.2d 796 (W.D. Tenn. 1999), *Bennett v. Cambra*, 1997 U.S. Dist. LEXIS 1584 (N.D. Cal. 1997), *Alford v. Osei-Kwasi*, 203 Ga. App. 716 (1992), *Nicholson v. Kent County Sheriff’s Dep’t*, 839 F.Supp. 508 (W.D. Mich. 1993), and *Parker v. Asher*, 701 F.Supp. 192 (Nev. 1988). No municipality can safely rely on Taser International’s analysis of these cases in defending an excessive force claim regarding the use of tasers.

*Lifton* is unpublished and, therefore, not binding. In its opinion, the court does not set out any of the underlying facts; therefore, the case provides no guidance on when and under what circumstances the Ninth Circuit Court of Appeals would consider use of a taser acceptable. *Michenfelder* was a 1998 case raising an Eighth Amendment challenge to prison guards’ use of a taser to compel inmate strip searches and is therefore inapplicable to the questions presented within the context of this report.<sup>16</sup> *Jolivet* is an

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<sup>12</sup> See *Russo*, 953 F.2d at 1045.

<sup>13</sup> 287 F.3d 492 (6<sup>th</sup> Cir. 2002).

<sup>14</sup> Taser Memo at 3.

<sup>15</sup> See *Ewolski*, 287 F.3d at 507-08.

<sup>16</sup> In fact, in upholding the use of tasers in the prison context, the Court cited favorably two earlier cases that had both warned *against* the unrestricted use of tasers. See *Michenfelder*, 860 F.2d at 335 n.4 (“*Cf. People v. Sullivan*, 116 A.D.2d 101, 500 N.Y.S.2d 644, 647 (1986) (In discussing police officers’

unpublished (and, therefore, not binding) case holding that the use of a taser in a prison did not violate the Eighth Amendment. *Caldwell v. Moore* is a 1992 case holding that the use of a taser in a prison did not violate the Eighth Amendment because the use was not “maliciously and sadistically to cause harm.”<sup>17</sup> *Hernandez* and *Bennett* are both unpublished federal district court cases that address Eighth Amendment challenges to the use of tasers in the prison context. The company’s citation to *Hinton* is erroneous, since the case cannot be located in the Westlaw database. *Drummer* did not even involve a taser; the federal district court merely cited *Caldwell v. Moore* for the proposition that the use of a taser in a prison may, under certain circumstances, not violate the Eighth Amendment. The remaining cases are similarly unhelpful in guiding a municipality in developing guidelines for the appropriate use of tasers by law enforcement officers.

The City of Mountain View should also be aware that several municipalities have paid substantial amounts to settle excessive force actions brought by individuals who were injured by police use of tasers. The city of Chula Vista, California, paid \$675,000 to settle a claim brought by a woman who lost her baby after being shot by a taser.<sup>18</sup> The officer involved had tasered the woman in the back, as she was attempting to enter her house.<sup>19</sup> She had not been engaged in criminal activity and was not armed.<sup>20</sup> The city of Portland, Oregon, paid \$145,000 to settle an action brought by a 71-year-old woman who had been tasered.<sup>21</sup> The woman had refused to obey orders that she not enter a trailer, so the officers involved hit her in the head with a taser, knocking her to the ground, and then shot her three times with the taser.<sup>22</sup>

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alternatives for subduing/controlling dangerous persons, court noted “although the [taser] was introduced in 1971, there has been great concern about the impact on people with heart problems and its use has been outlawed in this State.”); *McCranie v. State*, 172 Ga.App. 188, 322 S.E.2d 360, 361 n. 1 (1984) (“Apparently, at the time of the incident at issue, taser guns were not considered by prison officials to constitute deadly force. They have, however, since been classified as such at the [Georgia State] prison.”).

<sup>17</sup> 968 F.2d at 601.

<sup>18</sup> Amnesty International, “Excessive and Lethal Force? Amnesty International’s Concerns About Deaths and Ill-treatment Involving Police Use of Tasers,” § 1(7). See

<http://www.amnestyusa.org/countries/usa/document.do?id=1A01E91E134A327080256F190042408D>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

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

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

*A note on international standards:*

This report focuses on American (federal and state) legal rules that might apply to tasers. But we also note that tasers have also received attention from the perspective of broader human rights commentary, as guided by international law or convention. Amnesty International has stated that there are three over-arching human rights issues associated with police use of tasers. One is that because tasers are portable and easy to use, they are particularly open to abuse by unscrupulous officers. The second is that police officers appear to be using tasers as a routine force option, rather than as an alternative to lethal force (there are numerous incidents in which tasers have been used to subdue people who aren't posing a serious danger to officers, against unruly schoolchildren, on unarmed mentally ill and intoxicated people, and on suspects fleeing minor crime scenes or failing to comply immediately with commands). The third is that there appears to be a growing number of fatalities associated with police use of tasers. Amnesty International states that the inappropriate use of tasers may violate the United Nations Code of Conduct for Law Enforcement Officers, the Basic Principles on the Use of Force by Law Enforcement Officials, and the United Nations Convention on the Rights of the Child. The city of Mountain View should also note that in the United Kingdom, only a small number of specially trained officers are permitted to carry tasers, and are permitted to use them only under circumstances in which use of a firearm would also be permitted.

Additional information regarding the applicability of international human rights law to the use of tasers can be found at <http://www.amnestyusa.org/countries/usa/document.do?id=1A01E91E134A327080256F190042408D>.

# RECOMMENDATIONS

**1. *The Use of Tasers by Police Officers should be limited to circumstances under which the use of lethal force would also be permitted.***

First, here is a snapshot of the established law on the authorized use of force by police: Police can always use reasonable, non-deadly force to thwart any crime or to seize anyone the police officer reasonably believes to be fleeing from the commission of a crime or attempting to evade a lawful arrest. As for deadly or “lethal” force – usually defined to mean force intended to or likely to cause either death or grievous bodily harm – police can use this to *prevent* completion or commission of a felony only if the felony is one that normally poses serious physical danger to victims or bystanders (robbery, rape) but not for other, non-violent felonies. In addition, under the Supreme Court rules established in *Tennessee v. Garner*, 471 U.S. 1 (1985), police may only use deadly force to *apprehend* or to ensure the arrest of someone fleeing from the commission of a felony if the officer reasonably believes that the fleeing person at the time of flight poses a threat of death or serious bodily injury to others.

We recommend that the city of Mountain View adopt a specific policy limiting police use of tasers to situations in which they would also be permitted to use deadly or lethal force. Because the health effects of tasers have not been adequately studied, we contend that the use of a taser in any other situation would constitute excessive force. Courts that have been confronted with this question have tended to hold that police officers who injure or kill suspects with a taser are entitled to qualified immunity. As more becomes known regarding the health effects of tasers, however, this may change. Moreover, the availability of qualified immunity holdings does not protect a city from being in the unfortunate position of having to settle a lawsuit brought by a citizen who has been severely injured by the police use of a taser. For these reasons, tasers should be considered as a lethal force option on the use of force continuum.<sup>23</sup>

We also recommend, consistent with the above, that police officers be encouraged to use tasers as an alternative to lethal force. Tasers should be the preferred method of use of force in life-threatening situations, and should not be used otherwise.

This recommendation represents a cautious assessment of the costs and benefits of taser use. Assuming that tasers are efficacious in constraining people from committing or fleeing crimes, tasers are no less beneficial to police than are firearms. They are less costly to society in that they will prevent the death or grievous injury that would occur were firearms used in deadly force situations where something else than death or grievous injury would be sufficient to achieve the police purpose. Tasers may also be more beneficial to law enforcement in two senses: First, since some feeling felons try to seize the guns of police officers and use the guns against the officers or other innocent

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<sup>23</sup> See <http://www.cpoa.org/forcechart.html> for a visual representation of the use of force continuum generally followed by law enforcement agencies. See GAO Report for more information on this issue generally.

people, that risk is reduced if the officer does not take out a gun against the felon. Second, assuming that within the gray legal zone of permissible use of deadly force some police officers will be understandably conservative in deciding whether to shoot, they will be more effective in thwarting or capturing felons if they are more comfortable in using tasers than guns.

Two alternative positions are conceivable. First, one could take a less cautious view of the current research and conclude that taser use does not pose much risk, if any, of death or grievous bodily harm, and therefore should not be treated as “deadly force” under the law. We think it very unwise to read the current research that way.

Second, one could argue that because tasers, even if sometimes lethal, surely cause death or grievous bodily injury *less often* than do guns, the police ought to be authorized to use them even in situations where deadly force is not authorized. We believe that given the current uncertainty about the measurable risk of death or grievous injury posed by tasers, and given the difficulty, if not impossibility, of police officers on the street discerning whether the target is an especially vulnerable victim, this is an unwise and unworkable legal position.

## 2. *Training*

Taser International provides training materials to law enforcement agencies and at least fifty-two law enforcement agencies in the state of California use them as their sole source of training. At least four agencies in the state of California create and use their own training materials.<sup>24</sup> This is inappropriate. The city of Mountain View should solicit assistance and information from law enforcement agencies that have developed their own materials and *not* rely on those provided by Taser International. Taser International’s training materials downplay the risks associated with taser use, encourage multiple firings in inappropriate circumstances, and misrepresent the studies that have been done regarding the health effects of tasers.

The city of Mountain View should also require its law enforcement agencies to follow the recommendations and training protocols set forth by the International Association of Chiefs of Police.<sup>25</sup> This is a nine-step policy and training protocol that the IACP developed in response to concerns raised by the law enforcement community about the use of tasers. The recommendations are generally sound and are in accord with established legal and civil rights principles.

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<sup>24</sup> See ACLU Report at 8.

<sup>25</sup> IACP Report. <http://www.iacp.org/research/CuttingEdge/EMDT9Steps.pdf>.

### **3. *Tasers should NEVER be used under certain circumstances***

There has not been sufficient independent testing on the safety of tasers on vulnerable populations such as children, pregnant women, the elderly, the mentally ill, and those under the influence of drugs. Therefore, the city of Mountain View should strongly consider adopting a policy prohibiting the knowing use of tasers on such individuals. Clearly, a police officer may not know whether a woman is pregnant or whether any particular individual is taking psychiatric medications. Therefore, such a policy need not punish officers who inadvertently injure a suspect whom he or she did not know was a member of such a vulnerable population. Nonetheless, a sound policy would advise police officers that the use of tasers on such individuals may be extremely dangerous and that knowingly using a taser on such an individual is never appropriate.

The purpose of tasers and other weapons is to subdue violent and dangerous individuals. Therefore, the city should adopt a policy prohibiting the use of tasers for the purpose of inflicting punishment or pain.

Tasers should be used only on dangerous individuals and never on individuals who are passively resisting arrest.<sup>26</sup>

### **4. *Other recommendations***

The San Jose Police Department requires officers to transport subjects hit with taser barbs to a hospital so that medical personnel can remove the barbs. Many agencies call EMTs to the scene of a taser use so that they can monitor the subject and remove the barbs if doing so is appropriate. Mountain View should establish a specific policy on this issue requiring the intervention of some type of medical personnel. Permitting officers to remove the barbs is inappropriate.

Police officers should be required to document every use of a taser, including situations in which a taser is shown or threatened, even if not used. The documentation should include identifying information regarding the subject such as age, race, physical health, degree of intoxication if any, and medications taken if any. The documentation should also include information regarding the circumstances of the taser use itself, including the actions of the subject, the basis for the use of the taser, whether the individual was arrested, the number of times the taser was used, and whether it was used in stun gun mode or shot from a distance. Collecting such information can only assist municipalities in developing and revising guidelines regarding taser use.

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<sup>26</sup> The Police Executives Research Forum, a non-profit organization that advises and educates law enforcement agencies on appropriate use-of-force protocols, agrees with this recommendation. PERF has published a report intended to guide law enforcement agencies on appropriate taser use. The report can be found at <http://policeforum.mn-8.net/default.asp?link=>.

## CONCLUSION

The use of tasers by law enforcement officers is almost entirely unregulated. Therefore, any municipality or state that endeavors to implement a policy guiding law enforcement agencies in the appropriate use of tasers should be commended.

We hope that the information provided in this report has been useful, and that the city of Mountain View will adopt some of the recommendations provided here.