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# TRENDS AND CASE LAW ON THE USE OF TASERS®

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# Trends and Case Law on the Use of Tasers



- Background
- Case Law Evaluation
- Medical Studies
- Policy



# BACKGROUND

# Taser X26



# Background

- Developed by a NASA scientist in the 1970's as an alternative to lethal weapons to reduce injuries and deaths
- Uses electrical current for pain compliance and to disrupt voluntary control of muscles (neuromuscular incapacitation or "NMI")
- Fires two dart-like electrodes propelled by compressed nitrogen cartridges and connected to gun by conductive wire up to 35 feet
- 50,000V (open circuit arc) and 1,900V peak voltage across body
- 5 second shock cycle capable of repeated shocks
- Can be used in drive stun mode

# Increasing use throughout the world

- 11,500 law enforcement agencies have acquired approximately 260,000 devices in operational settings

*Source: National Institute of Justice Interim Report on Deaths Following Electro-Muscular Disruption, June 2008*

- In 2008, estimated 1070 human exposures daily worldwide. More than 780,000 training exposures and 630,000 field uses (total over 1.4 million)

*Kroll, Physiology and pathology of Taser electronic devices, Journal of Forensic and Legal Medicine, 16 (2009) pp. 173-177 (member of Taser medical and advisory board)*

# Increasing use (cont'd)

- Survey of 288 Sheriffs' Departments nationwide:
  - 65% have some type of CED (conducted energy devices)
    - Over 90% use projectile mode CED
    - 77% projectile mode is primary option
  - 31% don't authorize CEDs
  - 5% have discontinued CEDs
  - 60% used arcing as a warning – effective deterrent
  - 78% point dot as a warning – effective deterrent

*Conducted Energy Devices: Use in a Custodial Setting, A Collaborative Study*  
[www.sheriffs.org](http://www.sheriffs.org)

# Pros and Cons



- According to Taser International, its product has reduced injuries by nearly 80% and saved 9,000 lives and residual cost savings in civil liability cases.
- Taser has high track record of defeating product liability claims.
- Taser won recent case overturning coroner's findings.

Source: Taser International, Inc., [www.taser.com](http://www.taser.com)



# Pros and Cons (cont'd)

- National Sheriffs' Association

- “[D]ecisions about the use of CEDs (conducted energy devices) should be left to individual sheriffs’ offices, but . . . any use of such devices or other less-lethal alternatives should be ‘supported by research, adequate policies, continuous training and appropriate and prompt follow-up.’”

*Conducted Energy Devices: Use in a Custodial Setting, A Collaborative Study by Police Executive Research Forum, National Sheriffs' Association, and Bureau of Justice Assistance,*  
[www.sheriffs.org](http://www.sheriffs.org)

# Pros and cons (cont'd)

- International Association of Chiefs of Police

- “Based on the research completed to date, there is not a basis to establish that EMDT (Electro-Muscular Disruption Technology) poses unacceptable health risks when used appropriately on healthy persons. Independent data does not yet exist concerning in-custody deaths, the safety of EMDT when applied to drug or alcohol-compromised individuals, or other critical issues.”

*IACP, Electro-Muscular Disruption Technology, A Nine-Step Strategy for Effective Deployment, <http://theiacp.org/PublicationsGuides/Research>*

# Pros and Cons (cont'd)

## □ Public Agency Training Council

- “Overall, the cases where Taser has been utilized and the arrestee subsequently dies are limited and because of what has been a lack of consensus by the medical community they have been more of a media phenomenon than a legal one.”

- Ryan, J., Electronic Restraining /Compliance Devices,  
<http://.patc.com/weeklyarticles/taser.html>

# Pros and Cons (cont'd)

- Amnesty International has called for a moratorium on Taser use, citing more than 334 deaths of persons between 2001 and 2008.

Source: <http://www.amnestyusa.org/print.php>

- In-custody death rate increases six-fold in first year after adoption of conducted energy devices in police agencies and sheriff departments.

Source: Lee, et al., *Relation of Taser (electrical stun gun) deployment to increase in in-custody sudden deaths*. *Am. J. Cardiol* 2009, available at <http://www.ajconline.org>

# Pros and Cons (cont'd)

## □ *Arizona Republic*

- Analysis of police reports of Taser-related incidents from 2003 found that Phoenix police were far more likely to use stun guns as mere compliance tools (to avoid physical confrontations and chases) than to combat violent offenders.
- Raises concerns about deaths following use of Taser
- Cites forensic engineer's study that Taser exposure can cause delayed cardiac arrest

<http://www.azcentral.com/special43/articles/0305taserpolice05.html>

more colors



**Don't  
Tase Me,  
Bro!**

# Man Drives Distance With Taser Dart in His Back

Updated 5:30 PM CST, Mon. Jan 24, 2010

## Revealed: The shocking truth about Tasers

A commuter in a diabetic coma, an 89-year-old man and children as young as 12 - just some of the targets of British police armed with skin-piercing 50,000-volt Taser guns. As the Home Office investigates bringing an even more powerful rifle version to Britain, Jason Bennett reports on the slow creep of arms onto our streets.

By Jason Bennett

## Prison officer zaps children with 50,000-volt stun gun 'to show them what a day at work is like'

At least 280 Tasers are used by Chicago police officers and just sergeants are authorized to use them. No officers are allowed to carry them. No Tasers will be used on children, including one for the department's 28 additional officers.

## Chicago Police Defend Use of Taser on Chicago Public School Student

The Chicago Police Department says its officers were justified in using a Taser on a 14-year-old Chicago Public School student. Police say Keaira Matthews, 14, punched an officer in the face during an arrest for aggravated battery and resisting arrest. The officer used the Taser on Matthews' arm.

CHICAGO TRIBUNE UPDATE

## Former cop indicted in Taser death

By Howard Witt

A former Chicago police officer was indicted on charges of murder in the death of a man who was struck by a Taser. The officer, who was a sergeant at the time of the incident, was charged with murder after the man died from a Taser strike. The man's family had filed a lawsuit against the police department.

MARCH 11, 2010 | SECTION 1 | FROM PAGE ONE | CHICAGO TRIBUNE

### Man bursts into flames after Taser shock

- Story Highlights
- Man bursts into flames after Taser shock

YAHOO! NEWS

PRINT Back to story

Police use excessive force, ER docs say

Wed Dec 24, 2009  
NEW YORK

## U.S. study raises more questions about stun gun safety

Last Updated: Sunday, January 25, 2009 | 4:30 PM ET Comments 124 Recommended

## Deputy's Three Taser Jolts to Handcuffed Motorist Not Excessive, Says Split 11th Circuit

R. Robin McDonald  
09-15-2008

An officer smelled marijuana and found a small amount of the drug on the motorist.

## Tasers under scrutiny after claims of death and injury

## Man dies after Midlothian cops use Taser on him

March 10, 2010 1:22 PM | 8 Comments | UPDATED STORY

A Riverdale man died early this morning after being subdued by police with a Taser following a traffic stop, authorities said.

Jaesun Ingles, 31, of the 14300 block of South Normal Avenue, was pronounced dead at MetroSouth Hospital in Blue Island at 12:31 a.m., according to the Cook County medical examiner's office. An autopsy today was inconclusive, pending further investigation.

Officers used a Taser on Ingles in an attempt to subdue him, Midlothian police said. The man was taken to the hospital and pronounced dead.



# ASSOCIATION v. CAUSATION

- Problem with media attention:
  - ▣ Links temporal association with causation
  - ▣ Implies that injury/death means unreasonable or excessive force was used
  
- Judicial system does not work this way.
  - ▣ Plaintiff has to prove, through evidence, that constitutional use of force standard has been breached, and that injuries were proximately caused by that breach.



September 27, 2005 - The Tennessean (TN)

## **Protest Decries Death After Taser Hits**

### **Friends, Family Lead Questions Over Use Of Stun Guns To Subdue Young Man At Club**

[Return to  
Drug War  
News: Don't  
Miss Archive](#)

**By Christian Bottorff, Staff Writer**

Family and friends of a Nashville man who died Saturday after being repeatedly shocked by police Taser stun guns gathered at the base of the state Capitol yesterday to protest his death and the continued use of the controversial devices by Metro officers.

About 50 supporters held signs, passed out leaflets and reminisced about Patrick Lee, 21, who was pronounced dead Saturday afternoon, two days after a bizarre confrontation with Metro officers outside of Mercy Lounge, a nightclub on Cannery Row near Eighth Avenue South.

Police said they tried to restrain Lee after he was removed from the club and began running through the streets naked. At one point, officers shocked him multiple times with Taser stun

# Lee v. Metro. Gov't of Nashville



- The jury disagreed with the media portrayal and found in favor of the officers.
- Used the lowest standard for excessive force – Fourth Amendment reasonableness inquiry.
- The court upheld the jury verdict, noting that there was considerable evidence that many of the Taser activations were not effective in subduing Lee and that it was undisputed that Lee was under the influence of LSD.

*Lee v. Metropolitan Government of Nashville*, 2009 WL 2462209 (M.D. Tenn. Aug. 10, 2009)



Tuesday, May 10, 2005

## Pregnant woman 'Tasered' by police is convicted

Pi

By HECTOR CASTRO  
SEATTLE POST-INTELLIGENCER REPORTER

She was rushing her son to school. She was eight months pregnant. She was about to get a speeding ticket she didn't think she deserved.

So when a Seattle police officer presented the ticket to her, she refused to sign it. In the ensuing confrontation, she was Tasered, an electric stun device that delivers 50,000 volts.

"Probably the worst thing that ever happened to me," Brooks said that morning during her criminal trial last week on charges of resisting arrest.

She was found guilty of the first charge because she refused to sign the ticket. The Seattle Municipal Court jury could not decide whether the reason the Taser was applied.

To her attorneys and critics of police use of Tasers, Brooks' case is an example of police overreaction.

"It's pretty extraordinary that they should have used a Taser in this case," said Lisa Daugard, a public defender familiar with the case.

Law enforcement officers have said they see Tasers as a tool that can benefit the public by reducing injuries to police and the citizens they arrest.

Seattle police officials declined to comment on this case, citing concerns that Brooks might file a civil lawsuit.

But King County sheriff's Sgt. Donald Davis, who works on the county's Taser policy, said the use of force is a balancing act for law enforcement.

"It just doesn't look good to the public," he said.

Brooks' run-in with police Nov. 23 came six months before Seattle adopted a new policy on Taser use that guides officers on how to deal with pregnant women, the very young, the very old and the infirm. When used on such subjects, the policy states, "the need to stop the behavior should clearly justify the potential for additional risks."

"Obviously, (law enforcement agencies) don't want to use a Taser on young children, pregnant women or elderly people," Davis said. "But if in your policy you deliberately exclude a segment of the population, then you have potentially closed off a tool that could have ended a confrontation."

Brooks was stopped in the 8300 block of Beacon Avenue South, just outside the African American Academy, while dropping her son off for school.

In a two-day trial that ended Friday, the officer involved, Officer Juan Ornelas, testified he clocked Brooks' Dodge Intrepid doing 32 mph in a 20-mph school zone.

He motioned her over and tried to write her a ticket, but she wouldn't sign it, even when he explained that signing it didn't mean she was admitting guilt.

Brooks, in her testimony, said she believed she could accept a ticket without signing for it, which she had done once before.

"I said, 'Well, I'll take the ticket, but I won't sign it,'" Brooks testified.

Officer Donald Jones joined Ornelas in trying to persuade Brooks to sign the ticket. They then called on their supervisor, Sgt. Steve Daman.

He authorized them to arrest her when she continued to refuse.

The officers testified they struggled to get Brooks out of her car but could not because she kept a grip on her steering wheel.

And that's when Jones brought out the Taser.

Brooks testified she didn't even know what it was when Jones showed it to her and pulled the trigger, allowing her to hear the crackle of 50,000 volts of electricity.

The officers testified that was meant as a final warning, as a way to demonstrate

*"To her attorneys and critics of police use of Tasers, Brooks' case is an example of police overreaction."*

# Brooks v. City of Seattle



In the civil case, however, the Ninth Circuit Appellate Court found the officer's use of the Taser in drive-stun mode three times was reasonable – despite the fact that Brooks was not violent, was arrested only for a traffic violation, and was seven months pregnant.

Judge Berzon dissented, stating that such Taser use was unreasonable.

*Brooks v. City of Seattle*, No. 08-35526 (9<sup>th</sup> Cir. 2010)



# TASERS IN JAIL: A CASE LAW EVALUATION

# *Use of Force:* Constitutional Standards



There are three separate provisions of the Constitution which govern the use of force by law enforcement and correctional officers:

- 4<sup>th</sup> Amendment
- 8<sup>th</sup> Amendment
- 14<sup>th</sup> Amendment

# 4<sup>th</sup> Amendment



“The right of the people to be secure in their persons, houses, papers and effects, against **unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

# 8<sup>th</sup> Amendment



“Excessive bail shall not be required, nor excessive force imposed, nor *cruel and unusual punishments* be inflicted.”



# 14<sup>th</sup> Amendment

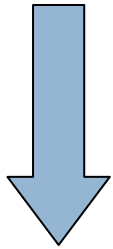


“Section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws.”

# Which standard applies depends on the person's status within the system

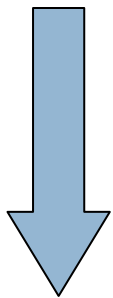
- 4<sup>th</sup> Amendment

- Applies at the time of arrest or stop, before charging



- 14<sup>th</sup> Amendment

- Applies to pretrial detainees before conviction but, in the 7<sup>th</sup> Circuit, also applies after conviction before sentencing





- 8<sup>th</sup> Amendment

- Applies after a convicted person is sentenced in the 7<sup>th</sup> Circuit

# On the street vs. In jail



**On the street**  4<sup>th</sup> amendment “search and seizure” provision is most relevant  
*arrests, stops, searches incident to arrest, etc.*

**In jail**  8<sup>th</sup> amendment “cruel and unusual punishment” and 14<sup>th</sup> amendment “due process” provisions are most relevant  
*cell extractions, searches of cells and persons, lockdowns, etc.*

# EXCESSIVE FORCE:

## The Standard



Force may be exercised on an inmate ***in a good faith effort to restore order or maintain discipline in the jail;***

force may not be used maliciously and sadistically to cause harm or solely to inflict pain on an inmate.

*Hudson v. McMillian* (Supreme Court 1992)

# EXCESSIVE FORCE:

## The Standard (*cont.*)

There are 2 separate inquiries:

(1) *Objectively*, is the injury sufficiently serious to deprive the prisoner of the minimal civilized measure of life's necessities?

-and-

(2) *Subjectively*, was the prison official's actual state of mind one of "deliberate indifference" to the deprivation?

*Farmer v. Brennan* (Supreme Court 1994)

## *Lewis v. Downey* (7<sup>th</sup> Circuit 2009)

In *Lewis v. Downey*, the Court of Appeals for the 7<sup>th</sup> Circuit found that ***tasing is more than a de minimis use of force.***

Thus, in the 7<sup>th</sup> Circuit, the court will assume that an inmate who has been tased satisfies the first objective inquiry,

and the court will turn to the second inquiry: *the officer's subjective state of mind at the time of the tasing.*

# EXCESSIVE FORCE:

## Factors Considered

In evaluating the conduct of a correctional officer, ***including the use of a Taser***, courts consider:

- **The need for application of force,**
- **The amount of force used,**
- **The threat reasonably perceived,**
- **Efforts made to temper the severity of the force used, and**
- **The extent of injury to the inmate.**

*Whitley v. Albers* (Supreme Court 1986).

# Whitley factor #1:

## The need for force

### □ ***Inmate resistance is required***

#### □ **Cannot tase a cooperative inmate**

*Lewis v. Downey* (7<sup>th</sup> Cir. 2009), *Boganegra v. Books* (N.D. Ind. 2008)

#### □ **Types of Resistance:**

- Physical resistance/struggling
- Confrontational demeanor
- Inmate's behavior poses risk of harm to himself or others
- Erratic or irrational behavior



# Whitley factor #1:

## The need for force (cont.)

### □ ***Inmate Resistance (cont.)***

#### □ **Physical resistance**

- Inmate is biting and spitting at officers, tasing warranted.

*Bailey v. County of Kittson* (D. Minn. 2009)

- Inmate kicking cell door and screaming for seven hours, tasing warranted.

*Caldwell v. Moore* (6<sup>th</sup> Cir. 1992).

#### □ **Confrontational demeanor**

- Inmate threatened and lunged at guard.

*Jasper v. Thalacker* (8<sup>th</sup> Cir. 1993)

# Whitley factor #1:

## The need for force (cont.)

### ***Inmate Resistance (cont.)***

#### **▣ Risk of inmate harming himself or others may warrant tasing**

- Inmate stuffed paper, plastic into body orifices.

*Bowers v. Pollard* (7<sup>th</sup> Cir. 2009)

- Inmate banging head against cell wall.

*Dye v. Lomen* (7<sup>th</sup> Cir. 2002)

- Inmate stuffed wrong medicine into mouth.

*Henderson v. Gordineer* (D.S.C. 2007)

- Inmate wrapped trashbag around his head and swung at officers.

*Wallace v. Thomas* (D.S.C. 2007)

- Inmate cutting himself with razor.

*Jefferson v. Cruse* (9<sup>th</sup> Cir. 2009)

# Whitley factor #1:

## The need for force (cont.)

### ▣ Erratic or irrational inmate behavior

- Tasing may be warranted where officers cannot reason with an inmate.
- Hallucinating, paranoid inmate who is resisting. *Spears v. Cooper* (E.D. Tenn. 2009) (inmate refused to cooperate because he believed dogs were in his cell and were “after him”)

# Whitley factor #1:

## The need for force *(cont.)*

### □ ***Inmate who is merely disobeying an order***

#### ▣ This is a highly fact-intensive inquiry:

- What was the order?
- Was the order security-related?
- How long has the inmate been refusing to comply?
- How many warnings was the inmate given?
- What is the inmate's disciplinary history?

# Whitley factor #1:

## The need for force (cont.)

### ***Inmate disobeying an order (cont.)***

- ▣ Some courts have held that an inmate may be tased for refusing to comply with security-related orders (i.e. cell extraction, searches, etc.), even in the absence of aggression.
  - Where inmate refused to submit to a strip search tasing warranted.  
*Michenfelder v. Sumner* (9<sup>th</sup> Cir. 1989).
  - Where inmate refused multiple orders to lockdown.  
*Cintora v. Downey* (C.D. Ill. 2010)

# Whitley factor #1:

## The need for force (cont.)

### ***Inmate disobeying an order (cont.)***

- ▣ In the absence of physical resistance, tasing is not permitted where an inmate refuses to:
  - Sweep his cell. *Hickey v. Reeder* (8<sup>th</sup> Cir. 1993)
  - Pick up food from the floor. *Preston v. Pavlushkin* (D. Colo. 2006).
  - Don jail garb. *Stephens v. City of Butler* (11<sup>th</sup> Cir. 2008).

# Whitley factor #1:

## The need for force (*cont.*)

### Key 7<sup>th</sup> Circuit decisions:

#### ***Forrest v. Prine* (C.D. Ill. 2009)**

- Tasing of inmate who refused to submit to a strip search was not an 8<sup>th</sup> Amendment violation.
- Inmate had a violent history in the jail, was yelling obscenities at the officers and had clenched fists.
- The officers gave the inmate multiple warnings and opportunities to comply.
- Compliance with strip search is important because of dangers posed by weapons and contraband smuggled into the jail.

# Whitley factor #1:

## The need for force (cont.)

Key 7<sup>th</sup> Circuit decisions (cont.):

### **Lewis v. Downey (7<sup>th</sup> Cir. 2009)**

- Inmate tased after refusing to get out of bed.
- Court of Appeals reversed summary judgment for officer.
- Court of Appeals had several problems with the use of a taser in this situation, specifically:
  - the absence of any agitation or threat from the inmate,
  - the short passage of time between the order and the tasing,
  - the fact that the order was given only once, and
  - the absence of any warning that the taser would be used.



# Whitley factor #1:

## The need for force (cont.)

- ❑ **Cannot use taser merely to harass, humiliate, or retaliate against an inmate. Cannot tase an inmate just “to teach him a lesson.”**

- ❑ Cannot tase for past misbehavior where inmate is no longer resisting.

*Morrison v. Stephenson* (S.D. Ohio 2008)

- ❑ Cannot tase inmate just because inmate complained.

*Willis v. Atkinson* (W.D. Ark. 2009)

- ❑ Courts are especially concerned about retaliatory tasing or tasing as torture because tasers leave minimal or no marks on inmates.

*Hickey v. Reeder* (8<sup>th</sup> Cir. 1993)

## Whitley factor #2:

### The Amount of Force Used

- Number of times Taser is deployed:

- ▣ Was inmate tased more times than necessary?

*Preston v. Pavlushkin* (D. Colo. 2006)

- ▣ Did officers continue using Taser after inmate was subdued? If so, officers better have a good explanation.

*Council v. Sutton* (11<sup>th</sup> Cir. 2010)

*Higgs v. Sanford* (W.D. Ky. 2009)

*Vasquez v. Gempeler* (W.D. Wis. 2008)

## Whitley factor #3:

### Threat reasonably perceived

#### □ Inmate's physical size

- ▣ Tasing may be warranted by resisting inmate's large physical size and strength.

*Cotton v. Danner* (N.D. Cal. 2007)

#### □ Inmate's violent history

- ▣ Recent physical altercation with guards.

*Hunter v. Young* (10<sup>th</sup> Cir. 1997)

- ▣ Long history of disciplinary problems and disruptive behavior including threats to jail staff and other inmates warranted tasing.

*Honorable v. Osborne* (W.D. Ky. 2005)

- ▣ Inmate had bitten officer during prior incident.

*Burkett v. Alachua County* (11<sup>th</sup> Cir. 2007)

## Whitley factor #3:

### Threat reasonably perceived (cont.)

- Uniquely dangerous characteristics of inmate may justify tasing

- Resisting inmate had hepatitis C and threatened to infect officers.

*Bailey v. County of Kittson* (D. Minn. 2009)

- Presence of other inmates and danger of a riot situation may justify tasing

- Fight between officer and detainee attracted crowd of inmates who refused to lock down.

*Davis v. Lancaster County* (D. Neb. 2007)

- Prisoner and two other inmates refused multiple orders to return to their cell during incident.

*Boone v. Hannah* (M.D. Ga. 2007)

# Whitley factor #4:

## Efforts to Temper Force

- **Verbal taser warnings should be given**

- *Patterson v. Abney* (D.S.C. 2009)

- *Price v. Austin* (W.D. Tex. 2007)

- **Inmate should be given a sufficient opportunity to comply after the verbal warning**

- *Lewis v. Downey* (7<sup>th</sup> Cir. 2009)

- *Forrest v. Prine* (C.D. Ill. 2009)

# Whitley factor #5:

## Injury to the Inmate

- Pain, not injury, is the measure of an excessive force claim.

*Lewis v. Downey* (7<sup>th</sup> Cir. 2009).

- Lack of any injury from the tasing *weighs in favor* of a finding that tasing was justified.

- *Patterson v. Abney* (D.S.C. 2009)

- *Henderson v. Gordineer* (D.S.C. 2007)

- A taser injury that requires medical treatment *weighs against* a finding that tasing was justified.

- *Council v. Sutton* (11<sup>th</sup> Cir. 2010): Severely swollen elbow and hand injury resulted from tasing and required medical treatment, appellate court affirmed the denial of officers' summary judgment motion.

# *Cintora v. O'Connor*



- Inmate disobeyed multiple orders over an intercom to lockdown.
- Officer entered the cell block and gave one last order for inmate to lockdown.
- Inmate failed to comply and was immediately tased.
- Inmate had a history of violence and disobedience at the jail.
- Officer followed the jail's policy that inmates be tased before going hands-on.
- Jury verdict in favor of the correctional officer.



# MEDICAL STUDIES



## Specific Medical Concerns Relating to In-Custody Deaths Following Taser Exposure



- Ventricular fibrillation leading to heart failure
- Acidosis (respiratory and metabolic)
- Rhabdomyolysis (breakdown of muscle tissue released into bloodstream which can lead to kidney damage)

# Independent Medical Study of Deaths Following CED Exposure

- Although CED's are not risk free, there is no conclusive medical evidence that indicates a high risk of serious injury or death or a significant risk for induced cardiac dysrhythmia.
- Warned against use on certain at-risk populations, i.e., small children, elderly, pregnant women and those with diseased hearts.
- Cautioned that associated risks with continuous or repeated discharges are unknown
- Law enforcement need not refrain from deploying devices subject to national guidelines. Decision best left to tactical judgment of officers at the scene.

*U.S. Dept. Justice, National Institute of Justice Special Interim Report on Deaths Following Electro Muscular Disruption (June 2008)*

# Medical Studies

- Observational study of 1201 subjects in 6 police departments:
  - ▣ Mild or no injuries were observed after use of a conducted electrical weapon use in 1,198 subjects (99.75%).
  - ▣ Of mild injuries, 83% were superficial puncture wounds from probes.
  - ▣ Significant injuries occurred in 3 subjects (0.25%), (two intracranial injuries from falls and one case of rhabdomyolysis).
  - ▣ Two subjects died in police custody; **medical examiners did not find conducted electrical weapon use to be causal or contributory in either case.**

Bozeman, et al., *Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects*, *Annals of Emergency Medicine*, Volume 53, No. 4 pp. 480-489 (April 2009)

# Medical Studies (cont'd)

- Examined data from use of force reports and medical records from all CEW uses by one police department during a 6 year period.
- 1,101 individuals subjected to Taser X26 and M26
- Significant injuries were rare and there were no deaths.
- Large percentage of those subjected to CEW use had diagnoses of substance abuse and/or psychiatric conditions.
- Most hospital admissions following CEW use were unrelated to law enforcement restraint.

Strote, et al., *Conducted Electrical Weapon Use by Law Enforcement: An Evaluation of Safety and Injury*, (12/22/09) (abstract)

# Medical Studies (cont'd)

- Review of all known cases of Taser use in Canada where death has been temporally associated
- All cases included an individual presenting with aggressive behavior, many in a state of excited delirium precipitated by either drugs or a psychiatric condition.
- Sudden collapse occurred at least several minutes up to hours after the Taser shock.
- None became vital signs absent immediately as would be expected.
- All cases were determined to be a consequence of drug toxicity or complications of excited delirium, rather than due to Taser use.

Lucas, et al., *Lethality of Tasers – The Canadian experience*, *Proceedings of the American Academy of Forensic Sciences*, February 2006

# Medical Studies (cont'd)

- Study of Health Risks of Taser X26 Exposure During Training
  - Multi-site study of 7 different training facilities in 6 states
  - 118 officers exposed to Taser X26 for up to 5 second cycle
  - For most trainees, Taser exposure does not represent a significant health risk
  - No evidence that X26 exposure induced direct injury to cardiac and skeletal muscle tissue

Van Meenan, KM, *Cardiovascular Evaluation of Electronic Control Device Exposure in Law Enforcement Trainees: A Multisite Study*, J. Occup. Environ. Med., 2010 Feb;52(2):197-201 (supported by NIH grant)

# Medical Studies (cont'd)

- Examined 21 healthy police officer volunteers before and after a 5-second Taser exposure, checking cardiorespiratory and blood parameters for 60 minutes after a 5 second Taser exposure.
- 5-second Taser exposure does not appear to cause clinically significant physiological changes.

*Bouton, Physiological Effects of a Five Second Taser Exposure, Univ. Calif. San Diego Medical Center, Emergency Dept. (2005) (funded by NIJ)*

# Medical Studies (cont'd)

- Volunteer police officers underwent a 5, 3, and 1-second exposure to Taser X26 while ECG monitoring was performed and blood pressure was measured.
- Mean heart rate increased by 10.9 beats per minute. Mean blood pressure increased from 138.6/82.8 mm Hg at rest to 145.8/85.6 mm Hg after 5 second discharge.
- Taser X26 exposure produced no detectable dysrhythmias or a statistically significant increase in heart rate.

Bozeman, et al., *Immediate Cardiovascular Effects of the Taser X26 Conducted Electrical Weapon*, *Emergency Medicine Journal*, Vol. 26, pp. 567-570 (2009)



# Medical Studies (cont'd)

- A 5-second exposure of a Taser following vigorous exercise to healthy individuals does not result in clinically significant changes in heart rate, blood pressure or respiratory related parameters in healthy subjects.

*Vilke, et al., Physiologic effects of the Taser after exercise, Academy of Emergency Medicine, Vol. 16, Issue 8, pp. 704-710 (Aug. 2009)*

- Prolonged CEW application on exhausted humans was not associated with worsening change in pH or troponin. Worsening acidosis theories due to CEW use not supported by this study.

*Ho, et al., Prolonged Taser use on exhausted humans does not worsen markers of acidosis, American Journal of Emergency Medicine, Volume 27, Issue 6, pp. 747-749 (July 2009)*

# Medical Studies (cont'd)



- Factors other than CED are responsible for in-custody deaths, including drug use and excited delirium

*Jauchem, Deaths in Custody: Are some due to electronic control devices (including Taser devices) or excited delirium? J. For. And Legal Med. 17 (2010) 1-7.*

*Vilke, Tactical and Subject Considerations of In-Custody Deaths Proximal to Use of Conductive Energy Devices, Amer. J. For. Med and Path., Vol. 30, No.1, March 2009.*

# Braidwood Commission on CEW use

- The Braidwood Commission on Conducted Energy Weapon Use was conducted following the death of an individual at the Vancouver International Airport in October of 2007.
- Thomas R. Braidwood, who headed the commission, is a retired justice, not a scientist or medical doctor. He conducted no studies of his own. The commission convened to hear 61 presentations in informal public forums.
- Looked at medical risks:
  - ▣ Cardiac
  - ▣ Respiratory
  - ▣ Mental Illness
- Concluded that, on balance, society is better off with these weapons in use than without them.

For more information, see <http://www.braidwoodinquiry.ca/report/>

# Taser Modifies Target Zone

- Taser issued training bulletin in 2009 lowering the recommended point of aim from center of mass to the lower center of mass for frontal discharges
- Why?
- Taser is more effective when engaged in muscles of pelvic triangle
- Moving target area away from heart reduces the already extremely low risk of a cardiac event
- Avoidance of litigation

*The Target Zone, Policy & Training, PATC, Nov. 2009, by Jack Ryan, J.D.*

<http://www.patc.com/weekly/articles/print/taser2009.pdf>



# POLICY

# Jail Policy



- Little to no direct research on CEDs in jails or prisoner transport or court situations.
- 56% of Sheriffs' Departments with policies use general use of force policy
- 39% have stand alone policies

*Conducted Energy Devices: Use in a Custodial Setting, A Collaborative Study*  
[www.sheriffs.org](http://www.sheriffs.org)

# Model Policy

- ❑ Only officers who satisfactorily completed approved training
- ❑ Device shall be carried opposite service handgun (non-dominant side)
- ❑ Evaluate other options and use caution before deploying on young children, the elderly, pregnant women, elderly persons, and individuals with apparent physical disabilities impairing their mobility
- ❑ Do not intentionally aim at head, neck or groin
- ❑ CED authorized on handcuffed person, or otherwise secured person, who presents a Level 4 active physical resistance
- ❑ Do not use around flammable or explosive material
- ❑ Center mass of back should be primary target; center mass of chest and legs are secondary target
- ❑ Minimize activations

*Recommended General Order for Use of Conducted Energy Devices, [www.sheriffs.org](http://www.sheriffs.org)*

# Use of Force Continuum

- Place at the same justification level as Oleoresin Capsicum (OC).

*IACP, Electro-Muscular Disruption Technology, A Nine-Step Strategy for Effective Deployment,, IACP National Law Enforcement Policy Center, Electronic Control Weapons, Concepts and Issues Paper (rev. Aug. 2005).*

<http://theiacp.org/PublicationsGuides/Research>

- CED authorized when Level 4 (Active Physical Resistance) or higher resistance is encountered

*Recommended General Order for Use of Conducted Energy Devices,*

[www.sheriffs.org](http://www.sheriffs.org)



# Sample Sheriffs' Policy



- Kane County GO 96-13:
  - ▣ Active resistance and aggression following verbal or physical compliance
  - ▣ May be used within a cell or cellblock to effect removal of inmate who refuses a lawful command to vacate cell or desists in a disturbance; prior approval of supervisor needed
  - ▣ Prior verbal warning required whenever practical and reasonable

# Sample Sheriffs' Policy (cont.)



- Dekalb County GO 40-20
  - Actively resistant, assaultive or violent subject
  - Equivalent to use of OC
  - When required to use physical force to take a person into custody, to protect against physical assault, to protect subject from hurting himself or others, and against animals that pose a serious threat
  - Prior to use of Taser, deputies shall, if practical, give fair warning to the subject

# Sample Sheriffs' Policy (cont.)



- Kankakee County Sheriff's Department
  - ▣ If practical, announce "Taser" in a loud voice.
  - ▣ Use after all means of verbal commands have been exhausted, but before any physical handling.

# Reporting

- Notify supervisor of deployment
- Record use of CED in case report and, if applicable, use of force report
  - ▣ Articulate rationale for use, including specific factors, i.e., severity of offense, immediate threat to security/safety, active resistance
- Notify medical personnel for evaluation
- Document injuries (photograph if possible) or lack of injuries
- Downloading data/video/audio

*Recommended General Order for Use of Conducted Energy Devices,*  
[www.sheriffs.org](http://www.sheriffs.org)

# Other Considerations



- Annual refresher training
- Document body location where device applied
- If applicable, document ineffective deployment
- Explicitly prohibit non-authorized uses:
  - ▣ Solely to inflict pain or discomfort
  - ▣ Unauthorized demonstrations
  - ▣ Horseplay
  - ▣ Interrogations

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"You kids have it easy. When I was in college, you were beaten with a billy club."

# Biographies

- Michael W. Condon is a 1986 graduate of the John Marshall Law School, where he was the Executive Lead Articles Editor of the Law Review. For the past twenty-four years, Michael has represented public officials and various units of local government across the State of Illinois at both the trial and appellate levels. Michael has successfully tried numerous jury cases in federal court on behalf of police officers and their employers. In addition to his federal trial practice, Michael also has substantial experience in litigating administrative matters involving units of local government. He has successfully represented police chiefs and other officers in disciplinary proceedings before local Fire and Police Commissions.
- Michael D. Bersani received an undergraduate degree from the University of Illinois in 1985 and a law degree from The John Marshall Law School in 1988. Upon completing law school, Mike served as a judicial clerk to a state appellate court judge. He entered private practice in 1990 and has concentrated in representing local governments and public officials in civil rights litigation. His practice areas include police misconduct, jail litigation, wrongful termination and employment discrimination.
- Mr. Condon and Mr. Bersani would like to thank HC&B associates, Zrinka Rukavina, Yordana Sawyer, and Kathleen McNamara, for their invaluable assistance in helping to research and prepare this presentation.