Hamilton County
Association Of
Chiefs Of Police

Committee Findings for CEWs:

A REPORT TO PROVIDE ASSISTANCE WITH THE DEVELOPMENT AND CREATION OF POLICIES AND PROCEDURES FOR THE IMPLEMENTATION OF CONDUCTED ELECTRICAL WEAPONS WITHIN A LAW ENFORCEMENT ORGANIZATION

November 6, 2013

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FOREWARD

This report was the vision of the Hamilton County Association of Chiefs of Police and its member agencies. The desire to be at the forefront of safety with respect to less lethal technologies illustrates the commitment of this organization to provide support to the law enforcement community within Hamilton County, Ohio.

The committee wishes to thank the members of the Hamilton County Association of Chiefs of Police and especially the executive board members for their support throughout the development of this report. Without their leadership, the creation of this document would not have been possible.

The Committee Members
June 28th, 2013

LIABILITY STATEMENT

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INTRODUCTION

This report was prepared in response to recent media attention over Taser deployments in which suspects subsequently died. Locally the story was driven by plaintiffs' attorney Alphonse A. Gerhardstein who authored a position paper[1] titled "Taser Risks in Hamilton County". The executive summary of that paper suggests that a specific "Electronic Control Weapon", the Taser, is an asset to law enforcement when used "appropriately" but when used "inappropriately", opines that the "risk of death or serious injury of the subject greatly increases."

This position paper proposed that a typical injury or death associated with a Taser deployment occurs by one of two ways:

(1) The CEWs voltage when applied to a subject's body captures the subject's normal heart rhythm and causes ventricular fibrillation[2], or;

(2) A secondary injury occurs due to the NeuroMuscular Incapacitation (NMI) of the subject as he falls and strikes an object.

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[1] http://www.gbfirm.com/litigation/documents/54_TaserRisksReport.pdf

[2] The position paper relies on the findings of the Douglas P. Zipes article," *Sudden Cardiac Arrest and Death Following Application of Shocks from a TASER Electronic Control Device"*, 125 Cardiac 2417 (2012) to support his theory. This report only deals with a total of eight cases in which Zipes appeared as a paid consultant to support this theory, and has not been broadly accepted.

It is not disputed that during Taser deployments where NMI is achieved, subjects in many cases collapse or fall to the ground, leaving them susceptible to secondary injury caused by the ground or objects along the way. However, the position paper does not give any statistics indicating what percentage of subjects have either died or sustained serious injury because of secondary impacts due to a CEW deployment. Instead his paper relies almost exclusively on anecdotal evidence to support the theory that because a suspect died in close proximity to the time of their Tasing, the death then must be related to the application of the Taser.

Taser Death Still Festers in Vermont
Thetford, Vermont

Taser death lawsuit settled
Hurricane City, Utah

SBI Now Investigating Halifax County Taser Death
Halifax County, North Carolina

UC pays $2 million in Taser death case
Cincinnati, Ohio

Euless woman sues over son's Taser death
Euless, Texas

The belief that Tasers cause death, which is promulgated by the media, plaintiffs'

attorneys, physicians (*some of whom routinely work as expert witnesses in TRD cases for attorneys*), has motivated some law enforcement agencies to remove the Taser from their agencies, limiting the defense options an officer has available to deal with subjects who can be dangerous, uncooperative, violent, and unwilling to submit to lawful civilian authority.

This report was prepared in an effort to provide support and guidance relative to the deployment of Conducted Electrical Weapons (CEW), specifically TASER-brand CEWs, by Law Enforcement Agencies. The goal of the Committee was to present information that would be available to local agencies to assist them in incorporating CEWs into the arsenal of tools their officers can employ. It is our hope that the information contained herein will facilitate the creation and / or updating of policies and procedures that are in place for local agencies' CEW programs.

EXECUTIVE SUMMARY

The Committee identified three (3) areas that need to be addressed in this report. They are:

Training;

Maintenance; and,

Deployment.

This report will discuss issues relating to each in that order.

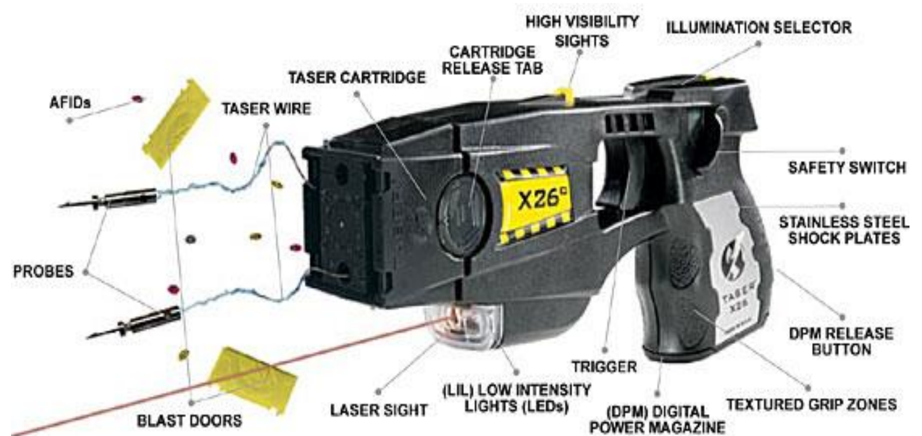
COMMITTEE FINDINGS

Police enforce social order through the legitimized use of force.[3] The United States Supreme Court ruled in the 1989 Landmark Case Graham v. Connor, that the determination of objective reasonableness must be judged from the perspective of the officer on the scene, allowing for the fact that the officer must make split-second judgments with respect to force options, in situations that are tense, uncertain, and rapidly evolving. As such, there are those instances where suspects who have defied lawful authority, the officers sworn and statutorily obligated to enforce the peace, and sometimes both parties have become injured during their interaction.

There are many reasons for police agencies to strive to reduce injuries sustained by suspects and police: (Reduction in liability, maintain workforce, health and safety of police personnel, continuity of staffing levels, negative perception by public, etc.). As such, law enforcement administrators are always looking for advancements in technology to assist

[3] National Institute of Justice website, "http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/welcome.htm"

officers in accomplishing their mission. One such advancement was the Taser. "The TASER X26 is a software upgradable electronic control device manufactured by TASER International, Inc. Electronic Control Devices (ECD) use propelled wires or direct contact to conduct energy to affect the sensory and motor functions of the nervous system."[4]



A 2011 study by the US Department of Justice (NIJ)[5] on the use of ECDs (referred to as CEDs in their report) included the following conclusions:

- *"All evidence suggests that the use of CEDs carries with it a risk as low as or lower than most alternatives"*

- *"There is currently no medical evidence that CEDs pose a significant risk for induced cardiac dysrhythmia in humans when deployed reasonably."*

- *"The risks of cardiac arrhythmias or death remain low and make CEDs more favorable than other weapons."*

- *"The literature suggests a substantial safety margin with respect to the use of CEDs when they are used according to manufacturer's instructions."*

- *"90% less suspect Injuries"*

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[4] Taser X26E Operating Manual, page 4. Copyright 2007 Taser International, Inc.
[5] http://www.nij.gov/topics/technology/less-lethal/incustody-deaths.htm

- *"CED use is associated with a significantly lower risk of injury than physical force, so it should be considered as an alternative in situations that would otherwise result in the application of physical force."*

Statistics gathered by Taser International reinforce those findings, pointing to there being one (1) death per 2.5 million deployments. Their numbers factor in estimates of 1,854,800 field uses / suspect applications (estimating 904 per day), and 1,351,891 training / voluntary applications (as of 04/09/2013).

TRAINING

The most basic fundamental in matters involving the use of force is training. As it relates to the CEW, this involves not only arming the officers with the information that relates to the use of the device, but also empowering them with the various aspects of its practical application.

1. Only officers who have been trained and certified on the use of the CEW will have the device made available to them.

2. Each officer who has the CEW available to them as a control device should receive training on an annual basis.

3. Training should include the manufacturer's current recommendations for use of the device.

4. Officers should be instructed to check the device (visually observe the arc, and listen for the clicks) at the beginning of every shift, to ensure

that it is working properly. That check should be noted according to department policy (i.e. on detail / time sheet).

5. Deployment of the device should be presented in the context of where it fits into each individual department's independent use of force policy, along with other available options.

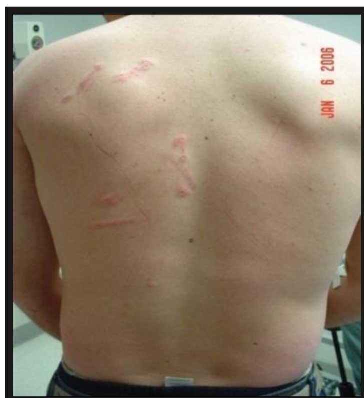
6. Officers need to be aware that the use of a CEW may carry the risk of injury or death to the offender.

7. The officer should, when possible, announce their intention to use the CEW prior to its deployment.

8. The training should also address the possibility that if deployment does not create the desired effect, the officer could disengage from the offender and consider their other use of force options.

9. Once the offender has been taken into custody, an officer should monitor and document the offender's behavior and physical condition. The observation should continue until such time as the offender is no longer in their custody.

10. Trained medical personnel should be summoned to check the offender's vital signs. An officer should be present and record the information.



11. Photos should be taken of the probe contact point(s) prior to their removal.

12. Officers should be instructed that following a deployment, any detailed narratives should include not just the elements of the criminal charges, but also the factors that led them to use the particular level of force (why they deemed it necessary). They should document their observations relating to visual cues, as well as statements made by the offender.

13. Requesting and listening to the recording of radio traffic from the event can be a useful tool for recalling details that they might otherwise have left out.

14. Any use of a CEW by an officer other than a laser-sighting or an arc display should be documented in a use of force report and investigation in the same manner as each individual agency's use of force policy requires for any non-trivial use of force.

Training should be documented relative to the Date, Topic, Content, and Attendees. The documentation should be stored with personnel files.

MAINTENANCE

Making sure that the CEW is functioning properly is critical to the safety of both the officer and the offender. There are steps that the officer can take to ensure that the device is operating as intended.

1. Manufacturer's guidelines state that the CEW should be checked (see Training point 4) at the beginning of each tour of duty.

2. Information from each CEW should be downloaded at least bi-annually, after deployment, or when a unit has been in and out of service.

3. Should there be an incident that involved serious physical harm or death, the CEW should be tested. If the department has access to equipment, the units should be checked annually. Once an accepted protocol is developed (IEC 62-792), units should be tested relative to those standards.

4. A unit not functioning properly should be taken out of service immediately and not returned to service unless and until the problem has been identified and corrected.

DEPLOYMENT

One of the stated goals of a police department is to protect the public, while maintaining the safety of the officers. Our primary tool for protecting the public is to aggressively pursue and apprehend violators. The unfortunate reality is that the most common cause of officer injury involves those occasions where an offender makes the decision to resist arrest.

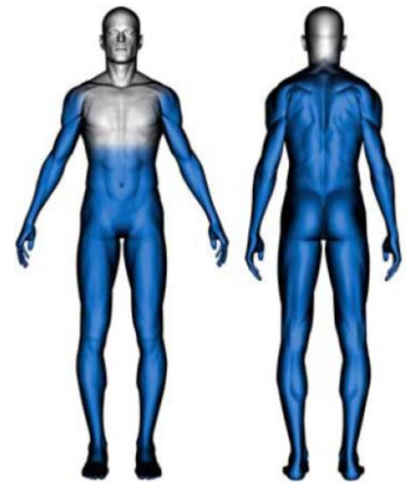
1. A CEW is designed to enable the officer(s) to take an offender into custody, while minimizing injury to the officer, the offender, or other members of the public. This allows the officer to gain control of the offender, thus facilitating their being taken into custody without the need for further hand-to-hand combat.

2. Use of the CEW should be limited to those instances wherein the offender presents a threat or inherent risk of harm to themselves, the officer, or others.

3. Consideration needs to be given to risks presented by the environment and / or bystanders.

4. The officer should announce their intention to use the CEW prior to its deployment, whenever possible.

5. Officers should not use a CEW for pure pain compliance on a subject who is passively resisting or simply verbally non-compliant. Drive stuns can be used if necessary on a subject who is engaged in defensive or active resistance. In the event a drive stun is used, officers should give a verbal warning, if possible, and an opportunity for compliance before and between applications.



6. Current manufacturer's targeting protocols should be followed in placement of the projectiles / probes.

7. Location of where the probes made contact should be documented, and contained in any subsequent reports involving the deployment. Photos of the site(s) where each probe entered should be taken when possible, and when appropriate steps have been taken to ensure the offender's modesty.

8. The probes should be removed by personnel who have completed the Taser training.

9. The EMT/EMS squad should be summoned to

take and record vitals as soon as practicable to the deployment and subsequent custody of the offender. This can be performed at the scene, or at a neutral location should the scene not be conducive.

CONCLUSION

This report is a compilation of information gathered from committee members, manufacturer's recommendations, as well as other officials, civilians, and private counsel.

The statements, perspectives, and opinions contained herein do not necessarily reflect the official policies of the Hamilton County Association of Chiefs of Police, the committee members individually, or their respective police agencies or organizations.

The intention of the Hamilton County Association of Chiefs of Police and this committee is for this report to be available as a reference and tool to assist in the formulation, development, and drafting of use of force policies which include CEWs. The committee concurs with the conclusions of the United States Department of Justice which found the use of a CEW enhances safety to both the public and police when officers are involved in confrontations which may result in physical harm to themselves and/or the offender.

Hamilton County Association Of Chiefs Of Police