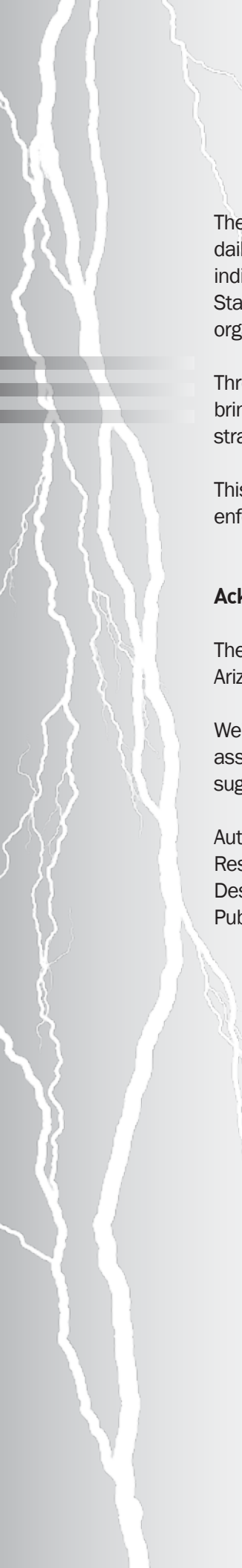


★ JUNE 2011 SPECIAL REPORT ★



# A Force to be Reckoned With

Taser use and policies in 20 Arizona law enforcement agencies



The American Civil Liberties Union of Arizona is the state's premier guardian of liberty, working daily in the courts, Arizona Legislature and communities statewide to defend and preserve individual rights and freedoms guaranteed to all by the Constitution and the laws of the United States and Arizona. The ACLU of Arizona is an affiliate of the ACLU, the largest civil liberties organization in the country, with more than 500,000 members nationwide.

Through litigation, public education and targeted advocacy, the ACLU of Arizona is working to bring about change intended to improve police-community relations and implement successful strategies to increase police accountability.

This special report is designed to educate the public, policymakers and members of law enforcement about the need to implement meaningful reforms surrounding the use of Tasers.

### **Acknowledgements**

The data analysis for this report was completed by Dr. Frances P. Bernat, Emeritus Faculty, Arizona State University and Professor and Chair, Texas A&M International University.

We'd also like to thank Heather Winkeller and Samantha Blons for their outstanding research assistance on this project. Finally, we would like to thank John Burton for his insight and suggestions, and his excellent advocacy on behalf of victims of Taser misuse.

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Published by the ACLU of Arizona, June 2011



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# A Force to be Reckoned With

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## Table of Contents

Executive Summary	4
<b>Part I</b>	
<b>Introduction and Overview</b>	8
What is a Taser?	9
A False Dichotomy	10
A Liability for Police Agencies	11
Unsupported Claims and Questionable Marketing Practices by TASER International	13
<b>Part II</b>	
<b>Getting Behind the Rhetoric: the ACLU's Survey of Arizona Law Enforcement Agencies</b>	15
<i>Finding #1</i> Tasers Are Widespread Among Arizona Law Enforcement	15
<i>Finding #2</i> Equipping Officers with Tasers Does Not Result in Lower Levels of Use of Lethal Force	17
<i>Finding #3</i> Officers Receive Inconsistent Guidance on When It Is Appropriate to Use Tasers	21
<i>Finding #4</i> Agencies Lack Clear Guidance on Taser Safety Considerations, Including the Use of Tasers Against Vulnerable Populations	24
<i>Finding #5</i> Agencies Over-Rely on TASER International for Training	28
<i>Finding #6</i> Agencies Lack Data Collection and Other Mechanisms to Monitor Taser Use	29
<b>Part III</b>	
<b>Recommendations</b>	31
<b>Conclusion</b>	33
<b>Appendix A</b>	
<b>Copy of Public Records Request</b>	34
<b>Endnotes</b>	36

## Executive Summary

This special report represents the most comprehensive survey of Taser use by law enforcement agencies in Arizona to date. To our knowledge, it is also the first independent examination of the relationship between Taser use and the frequency of deployment of lethal force by police in Arizona.

Police use of Tasers has been controversial since the release of TASER International's first high-powered Electronic Control Weapons (ECWs) to agencies in the early 2000s. While billed as an alternative to lethal force including firearms, according to Amnesty International at least 330

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people have lost their lives after being exposed to police Tasers between 2001 and 2008. In addition, a 2011 report by the National Institute of Justice (NIJ) – a branch within the U.S. Department of Justice – found that Tasers have indirect or secondary effects, such as injury from falling, that can result in death. The NIJ cautioned that the effects of Tasers on certain vulnerable populations, such as small children, pregnant women, the elderly, and people with heart conditions, are not well understood.

As more incidents involving Tasers have come to light in the age of YouTube and the 24-hour news cycle – from the 2007 University of Florida episode that coined the phrase “Don’t Tase Me, Bro,” to ongoing reports of tragic deaths and serious injuries inflicted by Tasers – criticism of police use of the weapon has mounted around the country. Arizona has not escaped this controversy.

Many U.S. law enforcement and correctional agencies in the United States are using Tasers today. In Arizona, where TASER International has its corporate headquarters, the American Civil Liberties Union (ACLU) of Arizona asked large police departments and sheriff’s offices about the number and percentage of officers armed with a Taser; virtually every sworn officer is provided with one.

The ACLU of Arizona supports the responsible use of less-lethal weapons such as Tasers. We recognize that there are times when police officers must use such force to protect their lives and the lives of others. However, all too often, Tasers are used “preemptively” against citizens that do not present an imminent safety threat, and even offensively as a pain compliance tool. What’s more, both TASER International training materials and agency policies anticipate that officers will use the weapon as a pain compliance tool.

The purpose of this report is to illuminate specific facts about Taser use by Arizona law enforcement officers and to use those facts as a starting point for a conversation about the need for meaningful reform.

## *Findings and Recommendations*

To learn more about the use of Tasers in Arizona law enforcement agencies, the ACLU of Arizona filed records requests with 20 agencies across the state, including all of the larger agencies, between December 2008 and January 2010. Some additional data was collected in April and May 2010. The records requests sought information about:

- Department policies and procedures governing the use of Tasers;
- Training materials;
- The number of officers in each agency equipped with Tasers;
- Statistical data about Taser use and other uses of force in each agency; and
- Complaints and investigations of Taser use that led to injury or death.

The key findings include:

### **Finding #1 > Tasers Are Widespread Among Arizona Law Enforcement**

Tasers are almost ubiquitous among the agencies surveyed. In addition, it appears that on the whole, city and state police officers are more likely to carry Tasers than their counterparts at county sheriffs' offices.

### **Finding #2 > Equipping Officers with Tasers Does Not Result in Lower Levels of Use of Lethal Force**

One of the most striking and more significant findings that came out of the ACLU of Arizona's study is that, contrary to claims by Taser proponents, the frequency of deployment of lethal force has not declined with the advent of Tasers. These findings highlight the need for a more honest and sensible dialogue about the role of Tasers in Arizona law enforcement.

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### **Finding #3 > Officers Receive Inconsistent Guidance on When It Is Appropriate to Use Tasers**

Only six out of 20 agencies specified for officers where Tasers fell on the use-of-force continuum. In addition to Tasers' placement on the use-of-force continuum, the 20 agencies reported different results as to what factors should be considered before determining whether to deploy the Taser and the situations in which Taser use would not be justified.

### **Finding #4 > Agencies Lack Clear Guidance on Taser Safety Considerations, Including the Use of Tasers Against Vulnerable Populations**

Recognizing the increased risk when dealing with certain populations or when certain safety hazards are present, law enforcement agencies often caution officers against deploying Tasers in such high risk situations. However, the ACLU's survey of Arizona law enforcement agencies revealed that jurisdictions have adopted a patchwork of inconsistent policies regarding the Tasing of pregnant, young or elderly suspects, use of Tasers near a flammable substance, using Tasers on intoxicated people, and deploying the Taser multiple times on an individual.



**Finding #5 > Agencies Over-Rely on TASER International for Training**

The ACLU found that agencies' training on Tasers generally fell into three categories: six agencies supplemented the TASER International training with their own materials; five agencies created their own training materials; and nine agencies reported relying solely on TASER International's training or provided materials that were nearly identical to the TASER International training.

While TASER International's latest training materials address some of the concerns that the ACLU and other civil and human rights organizations have expressed over the years, it is clear that the company's own claims are fluid and evolving, and law enforcement agencies cannot depend on TASER International to always present the facts about Tasers.

**Finding #6 > Agencies Lack Data Collection and Other Mechanisms to Monitor Taser Use**

Many of the agencies that responded to our records requests reported that they could not provide us with use-of-force data because the information was not systematically collected or analyzed. If such information was not available to the ACLU, it follows that the same information would not be available to supervisors within the agency charged with monitoring officers' behavior. These reports were disturbing. So long as data about Taser use remains unavailable, the debate about Taser safety and effectiveness remains hopelessly skewed.

Based on these findings, the ACLU of Arizona makes the following recommendations:

**Recommendation #1**

**Implement Strong Accountability Mechanisms for Taser Use, Including Data Collection**

An agency's ability to limit Taser use to lawful and appropriate circumstances depends first and

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*Transparency will also promote positive community relations in light of controversy surrounding Taser use, and the high number of reports of injuries and deaths.*

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foremost on meaningful supervision and oversight. As with firearms, officers should complete a use-of-force report every time a Taser is brandished or fired (even accidentally). Those reports should then be compared to data downloaded from Tasers to ensure accuracy and completeness in reporting. Agencies should collect this data in a format (such as electronically) that allows supervisors to periodically review it for warning signs of misuse or overuse.

In addition to making data about Taser use available to supervisors, agencies should make the same data available to the public. Basic information should be available on an agency's website without having to file a public records request. This will allow the community to assess for itself what the impact Tasers have had on other uses of force and overall

public safety. Any useful discussion about the role of Tasers in law enforcement begins from this point. Transparency will also promote positive community relations in light of controversy surrounding Taser use, and the high number of reports of injuries and deaths.

**Recommendation #2**

**Revisit Tasers' Place on the Use-of-Force Continuum and Update Agency Policies**

Tasers clearly are not "non-lethal" weapons, and should always be referred to as "potentially lethal" or "less-lethal" weapons. Agencies should only permit Taser use in the face of imminent threats of physical harm to the officer or other individual or, at a minimum, active aggression. Passive resistance or non-threatening active resistance, such as evasive actions to avoid being handcuffed, should not justify the use of a Taser.



### **Recommendation #3**

#### **Mandate Regular Training That Meaningfully Incorporates Agency Rules and Philosophies Regarding Taser Use**

Agencies should not rely exclusively on TASER International, a profit-driven company, to prepare their officers to use this potentially lethal weapon in the field. TASER International's materials have focused primarily on technical proficiency, while exaggerating the weapon's safety and downplaying the potential physiological risks associated with their use.

Reliance on TASER International's materials will also not shield an agency for liability in the case of a serious injury or death. Agencies with strapped budgets can hardly afford additional lawsuits, not to mention high-dollar judgments. As a matter of fiscal as well as professional and ethical responsibility, agencies should invest in training that inculcates officers with the agency's own policies on Taser use. Such training should educate officers on the potentially serious consequences of Taser exposure (including death) and how use of the Taser relates to other force options.

### **Recommendation #4**

#### **Establish a Statewide Body to Review Taser Use and Develop Policy Recommendations and Training Resources for Agencies**

In addition to the above changes, the ACLU invites agencies to partner with us to advocate for a statewide task force to monitor trends in Taser use in Arizona and provide policy and training recommendations. Such a task force could include members of the community, experts, researchers and representatives from law enforcement. Their mission would be to gather data on Taser use from state and local law enforcement agencies, analyze trends in officer behavior, and make recommendations to agencies that are consistent with the best practices in the field.

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*...the ACLU invites agencies to partner with us to advocate for a statewide task force to monitor trends in Taser use in Arizona and provide policy and training recommendations.*

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### **Conclusion**

This report shows that there are serious issues concerning the use of Tasers in Arizona, and that the lack of adequate training and accountability endangers the public and exposes law enforcement agencies to potentially debilitating liability claims.

The Taser is almost certainly here to stay. When used appropriately and responsibly, it can be an effective tool in the law enforcement arsenal. However, it should never be forgotten that the Taser is a potentially lethal weapon, with potentially tragic consequences for its use and misuse.

## Part I: Introduction and Overview

Law enforcement and correctional agencies in the United States today regularly use Electronic Control Weapons (ECWs), also known as “Tasers.”<sup>1</sup> Approximately 260,000 Tasers have been issued to law enforcement officers across the country.<sup>2</sup> More than 15,000 law enforcement and military agencies use Tasers.<sup>3,4</sup> In Arizona, where TASER International bases its corporate headquarters, it seems virtually every sworn officer is provided with one.

Police use of Tasers has been controversial since the release of TASER International’s first high-powered ECW to agencies in the early 2000s. While billed as an *alternative* to lethal force, including firearms, according to Amnesty International, at least 330 people have lost their lives after being exposed to police Tasers between 2001 and 2008.<sup>5</sup> In addition, a 2011 report by the National Institute of Justice (NIJ) – a branch within the U.S. Department of Justice – found that Tasers have indirect or secondary effects, such as injury from falling, that can result in death.<sup>6</sup> The NIJ cautioned that the effects of Tasers on certain vulnerable populations, such as small children, pregnant women, the elderly, and people with heart conditions, are not well understood.<sup>7</sup>

As more incidents involving Tasers have come to light in the age of YouTube and the 24-hour news cycle – from the 2007 University of Florida episode that coined the phrase “Don’t Tase

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*Amnesty International’s report prompted the ACLU of Arizona to take a closer look at Taser use in its own backyard.*

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Me, Bro,”<sup>8</sup> to ongoing reports of tragic deaths and serious injuries inflicted by Tasers – criticism of police use of the weapon has mounted around the country. Arizona has not escaped this controversy. Indeed, Amnesty International’s recent 127-page report highlighting deaths associated with Taser use found that the county in the United States with the highest number of reported deaths was Arizona’s own Maricopa County.<sup>9</sup>

Amnesty International’s report prompted the ACLU of Arizona to take a closer look at Taser use in its own backyard. We asked 20 of the state’s leading police departments and sheriff’s offices for policies and data on their agencies’ use of Tasers. The purpose of this report is not to rehash the findings about Tasers contained in earlier reports,<sup>10</sup> but to illuminate specific facts about Taser use by Arizona’s law enforcement officers as a starting point for meaningful reform.

This report represents the most comprehensive survey of Taser use by law enforcement agencies in Arizona to date. To our knowledge, it is also the first independent examination of the relationship between Taser use and the frequency of deployment of lethal force by police officers in Arizona.

The ACLU of Arizona supports the responsible use of less-lethal weapons such as Tasers. We recognize that there are times when police officers must use such force to protect their lives and the lives of others.<sup>11</sup> However, all too often, Tasers are used “preemptively” against citizens that do not present an imminent safety threat, and even offensively as a pain compliance tool. What’s more, both TASER International training materials and agency policies anticipate that officers will use the weapon as a pain compliance tool.



When deployed in compliance with clear and comprehensive department policies, appropriate training, effective accountability mechanisms and regular data collection, Tasers have the potential to be a force for good. Whether or not they ultimately fulfill that potential, however, remains to be seen. For now, they present a force to be reckoned with.

### *What is a Taser?*

Tasers are hand-held, battery-powered devices that deliver an electronic charge through darts (or probes) fired from a distance or through electrodes applied directly to the skin.<sup>12</sup> They are the most common brand of ECWs used by law enforcement agencies in the United States.<sup>13</sup>

This report focuses on the M26 and X26 models of Tasers, the two models that comprise

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*TASER International took advantage of this categorization to aggressively market the weapon as an alternative to lethal force... Tasers and other similar devices have therefore generally remained free of federal regulation and control.*

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nearly all of the Tasers used by Arizona law enforcement officers. Both are manufactured by TASER International. The M26 went on the market first, in 1999. The X26 model, introduced four years later, delivers approximately the same electrical charge, though it has a smaller and lighter body.<sup>14</sup> In 2009, TASER International released a newer model of the Taser, the X3 model. The X3 model is capable of firing three shots, compared X26's single shot.<sup>15</sup> The Arizona Department of Public Safety has already purchased 1,000 of the newer X3 models.<sup>16</sup> Just two months ago, in April 2011, the company released yet another model, the X2, which fires two shots and is smaller than the X3.<sup>17</sup>

TASER International is based in Scottsdale, Arizona. The company first acquired the weapon in 1993, along with various licenses and patents, from inventor Jack Cover, an electrical engineer who developed the device in 1974. Cover named the weapon after the 1911 novel *Tom Swift and his Electric Rifle*, part of a series of adventure stories for boys; he later added the "A" to "TSER."<sup>18</sup>

Modern Tasers resemble handguns in shape and appearance,<sup>19</sup> but they are not regulated as such. In 1994, TASER International, Inc. changed the weapon's propellant from gunpowder to nitrogen, thus removing the product from regulation by the Bureau of Alcohol, Tobacco, and Firearms.<sup>20</sup> TASER International took advantage of this categorization to aggressively market the weapon as an alternative to lethal force. The Consumer Products Safety Commission, which currently regulates Tasers, has conducted no testing of the products, nor offered opinions regarding their safety.<sup>21</sup> Tasers and other similar devices have therefore generally remained free of federal regulation and control.



Tasers function in two modes. In the dart mode, the Taser's barbed darts are propelled using compressed nitrogen in a replaceable cartridge.<sup>22</sup> Once the barbs penetrate an individual's clothing or skin, they carry an electrical charge of 50,000 volts in order to ensure the delivery of a peak 1200 volts into the body.<sup>23</sup> On the X26 model, this charge overrides the subject's nervous system, paralyzing his or her muscles and incapacitating the subject for the duration of the shock.<sup>24</sup> In addition to being incapacitated, the shock causes excruciating pain. As long as both barbs remain embedded in the subject, the operator can inflict additional shock cycles by continuing to hold down the trigger. The only technical limit to the number or length of the electrical cycles is the life of the battery, which can last ten minutes or more.<sup>25</sup>

Tasers can also be used in "touch stun" or "drive stun" mode by applying the electrical barbs directly onto the skin at close range.<sup>26</sup> The touch stun mode does not immediately incapacitate the nervous system; however, it still inflicts a great deal of pain and can be deployed repeatedly. While the Police Executive Research Forum (PERF) has warned that using Tasers to achieve pain compliance "may have limited effectiveness" and has discouraged officers from using Tasers for pain compliance,<sup>27</sup> TASER International's training materials<sup>28</sup> and some police department policies allow and, in some places encourage, Tasers to be used in drive stun mode for this purpose.

Advanced models are equipped with a data port that allows a log of each instance the Taser is fired (including information such as date, time, and duration of deployment) to be downloaded onto a computer.<sup>29</sup> The X26 can also be fitted with an audio/video recorder.<sup>30</sup>

### *A False Dichotomy*

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*However, the reality is that the majority of Taser shocks fired by officers do not take the place of gunshots, but rather other, less-lethal uses of force, such as baton strikes, chemical sprays, and the like.*

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The central claim of TASER's marketing campaign has always been that Tasers are a safe alternative to the use of lethal force. Indeed, the company's slogan, "Saving Lives Every Day," is emblazoned on its corporate headquarters in Scottsdale and can be seen from nearby Highway 101.<sup>31</sup>

The problem with this claim is that it assumes Tasers are used only in situations where an officer would otherwise use lethal force. In such situations, the use of a Taser can almost always be presented as a less deadly alternative.

However, the reality is that the majority of Taser shocks fired by officers do not take the place of gunshots, but rather other, less-lethal uses of force, such as baton strikes, chemical sprays, and the like. As the ACLU of Arizona's law enforcement survey suggests, Tasers are routinely deployed in situations where lethal force would not be justified (i.e., in the absence of an immediate threat to officer or public safety.)



In a 2004 special report, *The Arizona Republic* analyzed use-of-force reports from the Phoenix Police Department for 377 incidents involving a Taser and found that in nearly nine out of 10 cases, the subjects had not threatened officers with any weapon before a Taser was used.<sup>32</sup> Included among the subjects were:

- A shoplifter who stole four cans of soup from a Food City, and fled on a bike who was shocked as officers dragged him to the ground;
- A 15-year-old boy at Alhambra High School who was shocked in the back as officers attempted to arrest him on a marijuana charge; and
- An intoxicated man who ignored commands to leave a bar and was shocked in the back as he walked away.<sup>33</sup>

Virginia police consultant James Ginger, who has worked with the U.S. Department of Justice to monitor police department reform efforts, reports that even though most departments bought Tasers to avoid lethal confrontations, the devices are regularly used in situations that do not justify lethal force, including to short-circuit arguments and end chases and potential fights.<sup>34</sup>

In Houston, for example, a 2007 investigation revealed that in 95 percent of more than 1,000 incidents over two years, Tasers were “not used to defuse situations in which suspects wielded weapons and deadly force clearly would have been justified.”<sup>35</sup> In approximately 35 percent of the cases examined by the *Houston Chronicle*, no crime was committed at all. And of those people charged with crimes, most were accused of misdemeanors or nonviolent offenses. Officers shocked members of the public during such routine encounters as investigating a complaint about fireworks, confronting a litterer and stopping a bicyclist riding with no light.<sup>36</sup> The Houston Police Department started using Tasers after former Phoenix police chief, Harry Hurtt, became the department head in late 2004.


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### ***A Liability for Police Agencies***

Police departments and county sheriff’s offices have been paying more attention to their Taser practices in the wake of controversial incidents involving Tasers, some of which have led to costly legal disputes. The Fourth Amendment to the U.S. Constitution, which protects individuals from “unreasonable seizures,” also protects those who come into contact with the police from being subjected to an unreasonable amount of force.<sup>37</sup> There should be no question that Tasers inflict a significant level of force against those that are subjected to their shocks.<sup>38</sup> Courts have found that deployment of a Taser constitutes “excessive force” – violative of the Fourth Amendment – when used in contexts that do not warrant such tactics.<sup>39</sup> Indeed, in 2007, the United Nations Committee Against Torture (CAT), acknowledged that Taser use could constitute a “form of torture” and “can even provoke death.”<sup>40</sup>



The appropriate level of force that an officer may use depends on the facts and circumstances surrounding each case.<sup>41</sup> A recent opinion by the Ninth Circuit Court of Appeals, which covers Arizona, provides officers with a helpful roadmap when considering whether or not to use a Taser. In that case, *Bryan v. McPherson*, Carl Bryan was stopped by a California police officer for a seatbelt infraction.<sup>42</sup> Though he was yelling expletives, hitting his thighs, and was wearing only boxer shorts and tennis shoes, Bryan posed no immediate threat to the officer or anyone else.<sup>43</sup> The Court first noted that the physiological effects and high levels of pain associated with the Taser make it more severe than other non-lethal uses of force, such as pepper spray.<sup>44</sup> Therefore, Taser use must be justified by weightier governmental interests.<sup>45</sup> In Carl Bryan's case, the Court found that Taser use was not justified.

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*...the time may be ripe for Arizona law enforcement agencies to revisit their policies and training on Tasers to ensure that they are consistent with developments in the law.*


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Some of the factors the Court stated should be considered before Tasers are used include whether the subject poses any immediate threat to life or safety, the severity of the offense, and whether the subject actively resists police action.<sup>46</sup> Bryan was unarmed and facing away from the officer when he was Tased, and therefore posed no threat to the officer.<sup>47</sup> The offenses being investigated included only a traffic violation and nonviolent misdemeanors.<sup>48</sup> And his alleged "resistance" was, at best, a passive resistance, insufficient to warrant a Taser shock.<sup>49</sup>

The Court also found relevant the officer's failure to warn Bryan that he was going to use the Taser before firing it and his failure to consider alternative ways to resolve the situation.<sup>50</sup> Finally, the Court rejected the officer's argument that the use of the Taser was justified because he believed Bryan to be mentally disturbed. The Court found that the

officer's interest in deploying the Taser was *lesser*, not greater, in that case, as "the problems posed by, and thus the tactics to be employed against, an unarmed, emotionally distraught individual who is creating a disturbance or resisting arrest are ordinarily different from those involved in law enforcement efforts to subdue an armed and dangerous criminal who has recently committed a serious offense."<sup>51</sup>

Two subsequent decisions by the Ninth Circuit have been less helpful. In *Mattos v. Agarano*, an officer responding to a domestic disturbance call end up Tasing the wife of a suspect, most likely in drive stun mode.<sup>52</sup> In upholding the use of the weapon in that case, the Court noted that it felt handicapped by an incomplete record about the kind of force or injury Tasers inflict.<sup>53</sup> In *Brooks v. City of Seattle*, an officer Tased a pregnant motorist in drive stun mode for refusing to sign a speeding ticket.<sup>54</sup> The panel distinguished the case from *Bryan* by downplaying the impact of the Taser in drive stun mode.<sup>55</sup> Police agencies should not rely on the conclusions in either of these cases, however, since they were recently reheard by the Ninth Circuit and a decision is still pending.<sup>56</sup>



To the extent that Taser deaths or injuries can be attributed to agency-wide policies or failures in supervision or training, municipalities (cities, towns and counties) can be on the hook for any damage that results.<sup>57, 58</sup> In determining whether a police department or sheriff's office should pay damages, courts will look at an agency's policy governing Taser use and use-of-force generally.<sup>59</sup> They also consider the decisions and, statements of the head of an agency.<sup>60</sup> The failure of an agency to adopt adequate internal procedures to address a problem regarding Tasers has been viewed as condoning such acts, giving rise to liability.<sup>61</sup> Finally, courts are likely to examine the training that officers receive on Tasers to determine whether it provided adequate guidance concerning their lawful obligations in the field.<sup>62</sup> A governmental entity will be liable if the training is so deficient that it constitutes "deliberate indifference" to the rights of those that officers come in contact with.<sup>63</sup>

The recent decisions by the Ninth Circuit suggest that the time may be ripe for Arizona law enforcement agencies to revisit their policies and training on Tasers to ensure that they are consistent with developments in the law.

### *Unsupported Claims and Questionable Marketing Practices by TASER International*

TASER International initially insisted on calling its weapons "non-lethal."<sup>64</sup> However, in doing

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*The claim [that Tasers are a non-lethal use of force] was misleading and has contributed to the misuse of the weapon.*

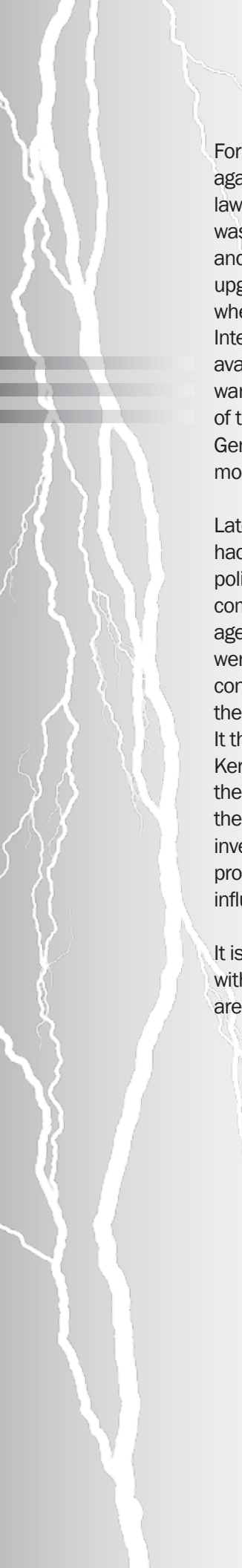
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so, the company was glibly relying on the military definition of the term "non-lethal." According to the U.S. Department of Defense (DOD), any weapon that is intended to "significantly reduce the probability of... fatalities or injuries as compared with traditional military weapons which achieve their effects through the physical destruction of targets" can be called "non-lethal."<sup>65</sup> Notably, the DOD policy does not expect or require non-lethal weapons "to have a zero probability of producing fatalities or permanent injuries."<sup>66</sup>

Thus, the military's "non-lethal" is everybody else's "less lethal."<sup>67</sup> TASER International's claim that Tasers are a non-lethal use of force therefore relied on the fact that most people do not read the fine print.

The claim was misleading and has contributed to the misuse of the weapon. As James Ginger aptly put it, "It is not that we should take the Taser away and tell officers not to use it. Most departments have Taser in the wrong place on the use-of-force (scale)."<sup>68</sup> Tasers do not belong at the low end of the use of force continuum, opposite firearms as lethal weapons at the high end. Given the numerous reports of tragic deaths and injuries associated with Taser use, Tasers belong closer to the firearms end of the continuum.

TASER International's semantic gymnastics points to larger issues around the company's credibility. Taser has badly damaged its public image through numerous well-documented scandals that run the gamut from slick marketing practices<sup>70</sup> and offering stock options to officers who promote the weapon, to launching legal assaults on anyone who dares to criticize them.<sup>71</sup>



For instance, in January 2005, TASER International's shareholders filed a class-action suit against the company, alleging they had been misled about the safety of its products (the lawsuit was settled the following year for nearly \$22 million).<sup>72</sup> Meanwhile, TASER International was mired in ethical investigations by the U.S. Securities and Exchange Commission (SEC) and the Arizona Attorney General's Office over its safety claims. The SEC inquiry, which was upgraded to a formal investigation in September 2005, examined, among other things, whether the company's product safety statements were true to the scientific studies TASER International had cited. Shortly after the SEC announcement, in an effort to forestall the avalanche of negative publicity, Taser offered to increase product warnings, change some of its broad claims of safety and limit the use of the term "non-lethal" to describe its products.<sup>73</sup> The Arizona Attorney General's inquiry ended after Taser made similar formal agreements to modify its marketing language.<sup>74</sup>

Later that year, news investigations revealed that TASER International had given thousands of dollars in stock options to six active-duty police officers between 2001 and 2003 for helping to oversee the company's police department training program and for promoting agencies' purchases of the weapon.<sup>75</sup> Four of the six officers involved were later given jobs with TASER International. According to *Forbes* magazine, "the options controversy first erupted in 2004, when President George W. Bush picked Bernard Kerik, the former New York City police commissioner, to run the Homeland Security Department. It then emerged that TASER International had paid Kerik 85,000 options to join its board. Kerik says he promoted the weapon to law enforcement and made more than \$6 million on the options. TASER International had repeatedly refused to disclose which other cops got the stock incentives."<sup>76</sup> As John Gavin, president of the newsletter *SEC Insight*, wrote: "The investigation of a Minneapolis police officer for an undisclosed financial relationship with Taser provides reasonable basis for political leaders across the country to begin asking if 'persons of influence'... were, in essence, bought by Taser."<sup>77</sup>

It is telling that Steven Ijames, a police major and strong supporter of Tasers who has consulted with the International Association of Chiefs of Police (IACP) has said, "The most serious wounds are self-inflicted, and in the case of Taser and its credibility, we've done it to ourselves."<sup>78</sup>

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*"The most serious wounds are self-inflicted, and in the case of Taser and its credibility, we've done it to ourselves."*

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## Part II: Getting Behind the Rhetoric: the ACLU's Survey of Arizona Law Enforcement Agencies

To learn more about the use of Tasers in Arizona law enforcement agencies, the ACLU of Arizona filed records requests with 20 agencies across the state (including all of the larger agencies) between December 2008 and January 2010. Some additional data was collected in April and May 2010. The records requests sought information about:

- Department policies and procedures governing the use of Tasers;
- Training materials;
- The number of officers in each agency equipped with Tasers;
- Statistical data about Taser use and other uses of force in each agency; and
- Complaints and investigations of Taser use that led to injury or death.

The ACLU did not request information about Taser use on individuals already in custody including jail detainees and prisoners. A copy of the records request is attached to this report as Appendix A.

While each of the departments responded to the records request, not all of them provided complete responses to every item. The charts that follow capture the major findings of the survey based on the information that was provided.

### **Finding #1 > Tasers Are Widespread Among Arizona Law Enforcement**

The ACLU asked agencies for the total number of sworn officers, the total number of Tasers they had, and the percent of officers who carry Tasers. Each of the agencies provided at least some of this information, allowing the ACLU to capture or estimate the proportion of officers who carry Tasers. For agencies that did not provide the total number of sworn officers, we consulted public sources.<sup>79</sup> If the number of Tasers owned by the department exceeded the number of sworn officers, we estimated the percent who carry at 100%. The results are displayed on page 16.

The results reveal that Tasers are almost ubiquitous among the agencies surveyed. In addition, it appears that on the whole, city and state police officers are more likely to carry Tasers than their counterparts at county sheriffs' offices.

## Percent of Officers Carrying Tasers

Agency	Total Sworn Officers	% Who Carry Tasers
Chandler Police Department	332	100%
Cochise County Sheriff's Office	85	67%
Coconino County Sheriff's Office	63	67%
Douglas Police Department	34	76%
Department of Public Safety	1200 (approx.)	100%
Flagstaff Police Department	113	66%**
Glendale Police Department	452	100%
Gilbert Police Department	219	100%
Maricopa County Sheriff's Office	881	57%
Mesa Police Department	829	75%
Peoria Police Department	181	100%
Phoenix Police Department	3356	88%**
Pima County Sheriff's Office	542	97%
Pinal County Sheriff's Office	218	100%
Scottsdale Police Department	420	91%
Tempe Police Department	353	96%
Tucson Police Department	1001	12%**
Yavapai County Sheriff's Office	128	97%
Yuma County Sheriff's Office	219	43%**
Yuma Police Department	157	100%

\*\* These agencies did not provide the percent of officers who carried Tasers. The ACLU estimated this percentage based on the number of officers and the number of Tasers owned by the agency.



## **Finding #2 > Equipping Officers with Tasers Does Not Result in Lower Levels of Use of Lethal Force**

Proponents of Taser use argue that officers who use the weapon are able to avert the use of deadly or lethal force against combative suspects. One of the most striking and more significant findings that came out of the ACLU of Arizona's study is that, contrary to claims by Taser proponents, the frequency of deployment of lethal force has not declined with the advent of Tasers.

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*The information provided by departments thus suggests that Tasers have been deployed in situations where lethal force would not be allowed, and where less severe uses of force are available.*

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Use-of-force statistics provided by three of the largest police departments in Maricopa County (the Glendale, Mesa and Phoenix Police Departments) are displayed on the following pages. These departments are among those that provided enough data to compare Taser use to other uses of force over time. They also reported the highest absolute number of Taser incidents. Together, these departments serve a community of some 2.3 million residents – more than one third of the population of the state.<sup>80</sup>

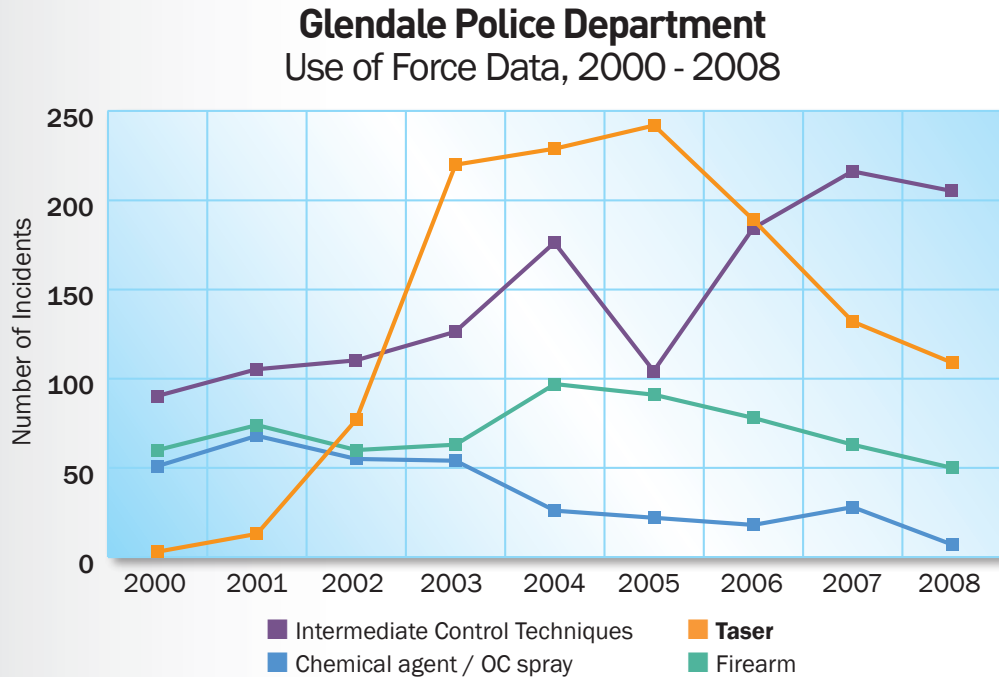
In each department, Taser use experienced a sharp spike during its initial deployment. Its use would usually peak within several years, sometimes sooner. However, after the initial deployment phase – and in particular after 2005, when controversies surrounding TASER International began to surface – Taser use plateaued, and then dropped off.

These results show that Taser deployment was apparently not phased in by departments (as recommended by the IACP<sup>81</sup> and others), but rather issued to a large number of officers at once, before its effects could be fully known. The high initial figures also suggest that TASER International's aggressive and questionable marketing strategies – as noted above<sup>82</sup> – accomplished their purpose. As time wore on and the novelty of the weapon wore off, officers appear to have found it to be less useful than originally believed.

The frequency of lethal force did not decline with the advent of Tasers. In fact, the data revealed no relationship between the deployment of Tasers and the use of firearms. At the same time, officers began using Tasers as frequently as other non-lethal force techniques, so that deployment of a Taser became as routine as pepper spray and batons. The information provided by departments thus suggests that Tasers have been deployed in situations where lethal force would not be allowed, and where less severe uses of force are available. These findings highlight the need for a more honest and sensible dialogue about the role of Tasers in Arizona law enforcement.

## Glendale Police Department

In Glendale, Taser use started out slowly in 2001 and then spiked as the department went to full deployment in 2003. Usage fell off sharply after 2005.



The use of firearms dipped slightly during the period after Tasers were first introduced, but then rose as Tasers became available to more officers. The use of firearms eventually fell back to pre-Taser levels, but not because Tasers were being deployed more frequently (Taser use experienced a parallel decline during this period).

As Taser use spiked, the rate of intermediate control techniques (such as baton and flashlight strikes, hand strikes, kicks, beanbags and grounding) also grew initially and then dropped. As Taser use later declined, the rate of intermediate control techniques again grew markedly, this time to unprecedented highs for the 8-year period.

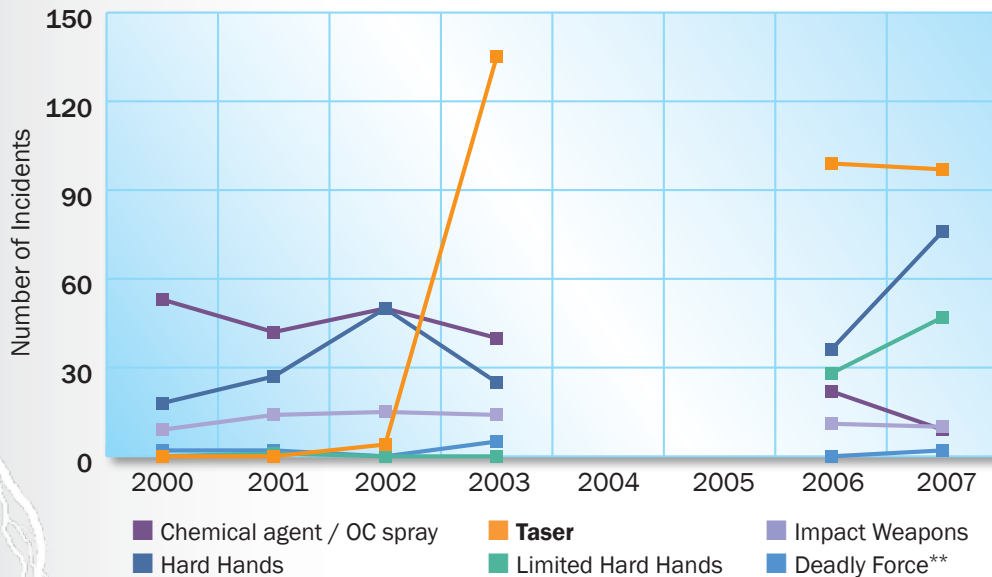
These numbers indicate that Tasers did not serve as an alternative to lethal force. Officers were just as reliant on lethal force during the time period studied. To the extent that use of lethal force initially declined, so too did Taser use. Tasers seemingly took the place of other less-lethal and non-lethal uses of force. In the end, Taser use likely added to the total amount of force applied by this department. The only category of force that declined steadily as Taser use became routine was chemical agents and pepper spray. And when Taser use eventually fell, officers seemed to turn back to the more traditional, heavy-handed intermediate control techniques.

The Glendale Police Department reported 109 incidents of Taser use in 2008. This is a higher number of incidents in relation to the number of sworn officers in the Department (24.1 incidents per 100 officers) than Phoenix Police Department (7.2 incidents per 100 officers in 2007-2008) or Mesa Police Department (11.7 incidents per 100 officers in 2007). Further research is necessary to better understand the reasons for the relatively high rate of deployment of Tasers by Glendale officers.

### *Mesa Police Department*

In Mesa, Tasers went to full deployment at the end of 2001 and their use spiked sharply between 2002 and 2003 before dropping off in 2006 and 2007. Data was not available for the years 2004 and 2005.

**Mesa Police Department**  
Use of Force Data, 2000 - 2003, 2006 - 2007

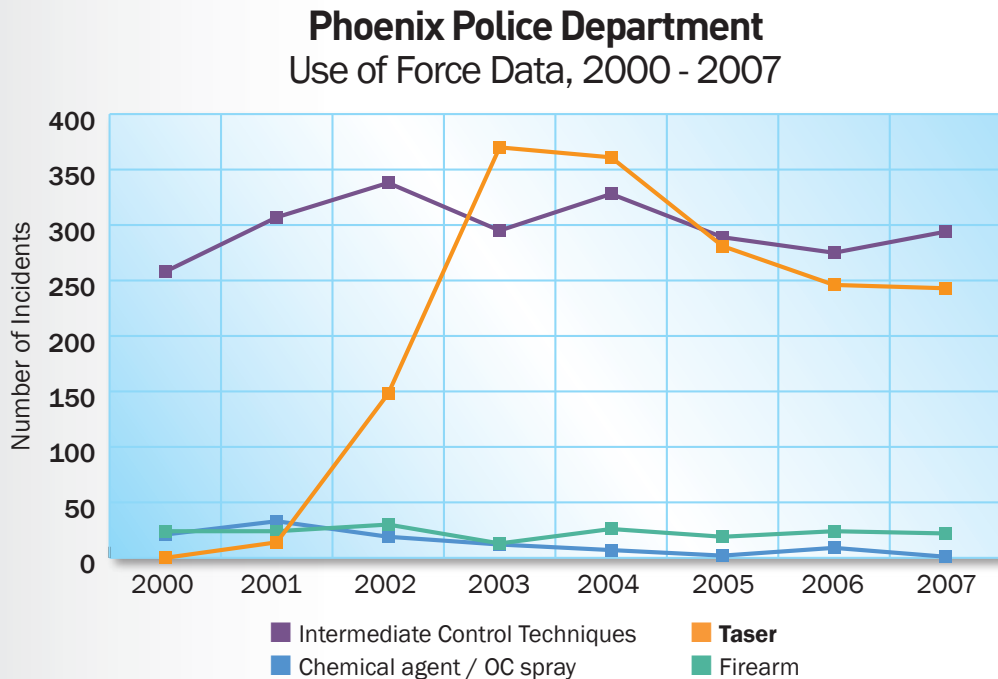


\*\* Deadly Force is an estimate of firearm use, because the 2000-2001 'deadly force' total includes both firearm use and carotid artery technique.

The frequency of deadly force (firearm use and the carotid artery restraint technique) did not decline with the advent of the Taser and in fact rose slightly during the initial Taser deployment period. It was the use of both "hard hands"<sup>83</sup> and chemical sprays that dropped as Tasers became more popular. As with the Glendale Police Department, as Taser use eventually declined in the Mesa Police Department, the frequency of intermediate control methods such as "hard hands" and "limited hard hands"<sup>84</sup> rose sharply, though the use of impact weapons such as batons remained steady.

## Phoenix Police Department

Phoenix Police Chief Harry Hurtt took his officers to full Taser deployment in 2003.<sup>85</sup> Taser use initially spiked, and then fell off after two years.



Firearm use declined slightly in 2003, but then rose again in 2004, remaining fairly steady after that. The use of intermediate control techniques – such as impact weapons (baton or flashlight), hard empty hands, and the stunbag shotgun – declined somewhat during the initial period of Taser deployment and eventually overtook Taser as the most common use of force. The use of chemical agents and pepper spray declined initially with the introduction of Tasers and remained steady in subsequent years.

Thus, the Phoenix Police Department shows a similar pattern as in Glendale and Mesa. When officers were first issued Tasers, they used them frequently. After two years, Taser use fell off, but other intermediate tactical control methods took their place. The introduction of Taser did not result in a decline in firearm usage.

The Phoenix Police Department also provided the ACLU with data about the number of times officers used Tasers in “touch stun” or “drive stun” mode (applying barbs directly onto the skin). The Department reported that in over one-third of Taser encounters between 2007 and 2008, officers used the Taser in “touch stun” mode. This suggests that Phoenix police officers are using the Taser as a pain compliance tool, a use that has been discouraged by PERF<sup>86</sup> and Amnesty International.<sup>87</sup> It also suggests that officers were close enough to employ alternative methods of force less severe than the Taser.

### **Finding #3 > Officers Receive Inconsistent Guidance on When It Is Appropriate to Use Tasers**

A comprehensive and strong use-of-force policy that provides officers with clear rules on when particular uses of force are allowed is a pre-requisite for ensuring that officers only employ Tasers when necessary. Many agencies have a “use of force continuum” – developed from Federal Law Enforcement Training Center (FLETC) guidelines – that serves as a visual tool to help officers determine whether certain uses of force are appropriate under the circumstances.<sup>88</sup>

In 2005, the U.S. General Accounting Office (GAO) issued a report examining the use-of-force policies of seven major police agencies in the country as they pertained to Tasers. One of the jurisdictions studied was the Phoenix Police Department.<sup>89</sup> The report found that agencies have substantially different policies with respect to when Tasers can be used. Two agencies studied allowed Tasers to be used only when the subject engages in assaultive behavior or otherwise presents a risk of physical injury to another human being.<sup>90</sup> Four jurisdictions, including Phoenix, allowed Tasers to be used against non-threatening behaviors (such as against a resisting subject). One jurisdiction allowed Tasers to be used in situations where the subject was only passively resisting.<sup>91</sup> In other words, the placement of Tasers on the agencies’ use-of-force continuums varied widely.

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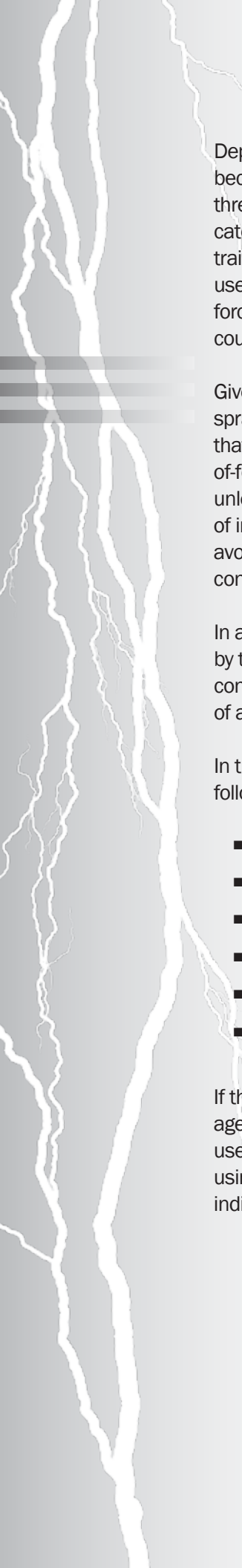
*...the placement of Tasers on the agencies’ use-of-force continuums varied widely.*

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The GAO’s findings were consistent with what the ACLU found in Arizona. Among the 20 agencies surveyed, almost all of them treated the Taser as an intermediate use of force. Many of them, however, did not specify where Tasers would fall on the use-of-force continuum in relation to other intermediate uses of force. This fails to provide officers with sufficient guidance, as intermediate uses of force can comprise anything from chemical sprays to hard empty hand techniques to impact weapons.

Of the six agencies that did specify for officers where Tasers fell on the use-of-force continuum, only two agencies, Mesa and Tempe, considered Tasers to be an intermediate-high use of force. In other words, they considered Tasers to be a greater level of force than chemical sprays but less serious than (or on par with) impact weapons. Other agencies, such as Tucson, included language that Tasers should only be used in situations where the suspect displays active aggression. Three agencies, Coconino, Cochise, and DPS, considered Tasers to be soft-intermediate uses of force, e.g., on par with chemical sprays. Gilbert also categorized Tasers with chemical sprays and control holds, but specified that they could only be used against active resisters.

To the extent that some departments are treating Tasers on par with chemical sprays or control holds, they are likely out of step with the Ninth Circuit’s recent ruling in *Bryan*, which found Tasers to constitute “an intermediate, significant level of force.”<sup>92</sup> The *Bryan* court specifically stated that Taser use was a more severe intrusion (and therefore had to be justified by more severe circumstances) than pepper spray and other uses of force that cause only localized pain or injury.<sup>93</sup>



Departments that do not specify where Tasers fall on the continuum are vulnerable to criticism because officers can interpret this to mean that Tasers are considered equal to and no less threatening or dangerous than all other uses of force that fall into the broad “intermediate” category. A group of experts convened to examine Taser use found that, “best practices in training include, first, an emphasis on *decision-making*. Officers must know not only *how* to use force, but *when* – that is, what situations call for what level of force. This is why the use-of-force continuum has become an expected part of police standards and practices all over the country.”<sup>94</sup>

Given that Tasers have rapidly overtaken other intermediate uses of force, such as pepper sprays, and sometimes at inappropriately low levels of suspect resistance,<sup>95</sup> it is imperative that agencies reevaluate the policies and place Tasers at an appropriate place on the use-of-force continuum. PERF has stressed that Tasers should not be deployed against suspects unless they are exhibiting active aggression or active resistance of a nature that creates a risk of injury.<sup>96</sup> The FLETC has also advocated for a standardized training program on Tasers to avoid inconsistency among law enforcement agencies as to where Tasers are placed on the continuum.<sup>97</sup>

In addition to Tasers’ placement on the use-of-force continuum, the 20 agencies surveyed by the ACLU of Arizona reported different results as to what factors they ask their officers to consider before deploying the Taser. Many also failed to specify situations in which deployment of a Taser would not be justified.

In the chart on the next page are the details of each agency’s policies with respect to the following circumstances:

- Subject is handcuffed
- Subject is suspected of a serious crime
- Subject has a violent history
- To coerce/intimidate a subject
- Subject is a serious threat to others
- Subject is fleeing

If the policy made some mention of the circumstance, we indicated whether officers with that agency are “not allowed” to use the Taser, “discouraged from” using the Taser, “allowed” to use the Taser if reasonable and necessary, or asked to “consider” the circumstance before using the Taser. If an agency’s policy provided no guidance on that specific circumstance, we indicated that the policy was “silent.”

## Factors Considered before Deploying Tasers

Agency	Handcuffed	Serious Crime	Violent History	To Coerce/ Intimidate	Serious Threat	Fleeing Subject
Chandler	Not allowed	Silent	Silent	Not allowed	Silent	Considered
Cochise	Discouraged	Silent	Silent	Not allowed	Silent	Silent
Coconino	Silent	Silent	Silent	Silent	Silent	Silent
DPS	Silent	Silent	Silent	Silent	Silent	Silent
Douglas	Not allowed	Silent	Silent	Not allowed	Silent	Silent
Flagstaff	Silent	Silent	Silent	Silent	Silent	Silent
Gilbert	Discouraged	Silent	Silent	Silent	Silent	Silent
Glendale	Discouraged	Silent	Silent	Not allowed	Silent	Silent
Maricopa	Silent	Silent	Silent	Silent	Silent	Silent
Mesa	Discouraged	Silent	Allowed	Not allowed	Considered	Discouraged
Peoria	Discouraged	Considered	Considered	Not allowed	Considered	Discouraged
Phoenix	Discouraged	Considered	Considered	Not allowed	Considered	Not allowed
Pima	Discouraged	Silent	Silent	Not allowed	Silent	Silent
Pinal	Discouraged	Silent	Considered	Not allowed	Considered	Silent
Scottsdale	Silent	Silent	Silent	Not allowed	Silent	Silent
Tempe	Silent	Silent	Silent	Silent	Silent	Silent
Tucson	Considered	Silent	Silent	Not allowed	Silent	Silent
Yavapai	Discouraged	Silent	Silent	Not allowed	Silent	Silent
Yuma County	Allowed	Considered	Considered	Not allowed	Considered	Discouraged
Yuma Police	Silent	Considered	Silent	Silent	Considered	Silent

The question of whether a subject poses an immediate safety threat was treated as the “most important” factor in determining whether Taser use was justified in *Bryan*.<sup>98</sup> Subjects who are already handcuffed are unlikely to pose any threat to officers or other individuals. As can be seen from the chart, however, only two agencies specifically prohibited officers from Tasing subjects who are handcuffed, although 10 agencies discouraged it or stated that it should be considered. Five agencies asked officers to consider whether the subject had a violent history and six agencies asked them to consider generally whether the subject was a serious threat to others.

In addition, only five agencies mentioned or disallowed officers from Tasing subjects that are fleeing. PERF has recommended that agencies instruct officers not to Tase individuals if the sole basis for doing so is that they are fleeing.<sup>99</sup>

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*...only four agencies explicitly instructed officers to consider whether the subject was suspected of a serious crime. Only 13 agencies prohibit the use of Tasers as a form of coercion or intimidation, while seven agencies were silent on the issue.*

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The *Bryan* court also found the severity of the suspected offenses to be relevant to the determination of whether Taser use was lawful.<sup>100</sup> However, only four agencies explicitly instructed officers to consider whether the subject was suspected of a serious crime. Finally, only 13 agencies prohibit the use of Tasers as a form of coercion or intimidation, while seven agencies were silent on the issue.

Seven agencies’ policies were silent on the question of whether Tasers could be used to coerce or intimidate subjects.


**Finding #4 > Agencies Lack Clear Guidance on Taser Safety Considerations, Including the Use of Tasers Against Vulnerable Populations**

There is a general consensus that the risk of death or injury from Taser use can increase when the subject is a vulnerable person or other safety hazards exist. Indeed, according to the NIJ, officers should exercise heightened caution when deploying Tasers against certain populations, if they are used at all:

*The effects of CED exposure in [small children, those with diseased hearts, the elderly, those who are pregnant and other at-risk individuals] are not clearly understood and more data are needed. The use of a CED against these populations... should be minimized or avoided unless the situation excludes other reasonable options.<sup>101</sup>*

Recognizing the increased risk when dealing with certain populations or when certain safety hazards are present, law enforcement agencies often caution officers against deploying Tasers in such high-risk situations. However, the ACLU’s survey of Arizona law enforcement agencies revealed that jurisdictions have adopted a patchwork of inconsistent policies regarding such situations.





In the chart on page 26 we detail each agency's policies with respect to the following circumstances:

- Suspect has gun/explosive
- Suspect is intoxicated
- Pregnant suspect
- Young suspect
- Elderly suspect
- Presence of a fall hazard
- Suspect is near a flammable substance
- Officer using other sprays or devices (that have the potential to combust)
- Officer deploying Taser multiple times
- Suspect is operating a vehicle

The chart also displays agency policies with respect to the preferred target area for a Taser, including specific areas that agencies encourage officers to target or avoid.

## Agency Policies in High-Risk Situations

Agency	Gun/ Explosive	Intoxicated	Pregnant	Young	Elderly	Fall Hazard
Chandler	Silent	Not allowed	Considered	Considered	Considered	Considered
Cochise	Silent	Not allowed	Silent	Silent	Silent	Silent
Coconino	Silent	Silent	Silent	Silent	Silent	Silent
DPS	Silent	Silent	Silent	Silent	Silent	Silent
Douglas	Discouraged	Silent	Not allowed	Discouraged	Discouraged	Not allowed
Flagstaff	Silent	Silent	Silent	Silent	Silent	Silent
Gilbert	Silent	Silent	Silent	Silent	Silent	Silent
Glendale	Not allowed	Not allowed	Discouraged	Discouraged	Discouraged	Discouraged
Maricopa	Silent	Silent	Silent	Silent	Silent	Silent
Mesa	Silent	Not allowed	Discouraged	Discouraged	Discouraged	Not allowed
Peoria	Not allowed	Not allowed	Silent	Silent	Silent	Not allowed
Phoenix	Not allowed	Not allowed	Discouraged	Discouraged	Discouraged	Not allowed
Pima	Discouraged	Discouraged	Discouraged	Silent	Silent	Discouraged
Pinal	Not allowed	Not allowed	Not allowed	Considered	Considered	Not allowed
Scottsdale	Silent	Not allowed	Not allowed	Silent	Silent	Not allowed
Tempe	Silent	Silent	Silent	Silent	Silent	Silent
Tucson	Discouraged	Silent	Not allowed	Considered	Silent	Not allowed
Yavapai	Discouraged	Not allowed	Discouraged	Silent	Discouraged	Not allowed
Yuma County	Not allowed	Not allowed	Silent	Silent	Silent	Silent
Yuma Police	Considered	Silent	Silent	Considered	Considered	Silent

Agency	Flammable Substance	Sprays/ Devices	Multiple Deployments	Operating Car	Preferred Target Area
Chandler	Not allowed	Allowed	Discouraged	Not allowed	Back
Cochise	Not allowed	Silent	Silent	Silent	Upper Torso
Coconino	Silent	Silent	Silent	Silent	Silent
DPS	Silent	Silent	Allowed	Silent	Avoid Vital or Sensitive Areas
Douglas	Not allowed	Not allowed	Allowed	Discouraged	Avoid Vital or Sensitive Areas
Flagstaff	Silent	Silent	Silent	Silent	Silent
Gilbert	Not allowed	Silent	Discouraged	Silent	Silent
Glendale	Not allowed	Silent	Silent	Silent	Back
Maricopa	Silent	Silent	Silent	Silent	Silent
Mesa	Not allowed	Not allowed	Discouraged	Not allowed	Back Below the Neck, Not Genital
Peoria	Not allowed	Not allowed	Not allowed	Not allowed	Area
Phoenix	Not allowed	Discouraged	Allowed	Not allowed	Back
Pima	Discouraged	Silent	Silent	Silent	Silent
Pinal	Not allowed	Silent	Silent	Not allowed	Back
Scottsdale	Not allowed	Silent	Discouraged	Not allowed	Back
Tempe	Not allowed	Silent	Silent	Silent	Avoid Vital or Sensitive Areas
Tucson	Not allowed	Silent	Silent	Silent	Back
Yavapai	Not allowed	Silent	Silent	Discouraged	Avoid Vital or Sensitive Areas
Yuma County	Silent	Silent	Allowed	Silent	Back
Yuma Police	Silent	Silent	Silent	Silent	Silent

The results show that:

- A surprisingly high number of agencies were silent on whether officers may Tase vulnerable persons such as pregnant women, young people or the elderly. For example, 10 agencies were silent on whether officers may Tase pregnant women and only four expressly prohibited the practice. 12 agencies were silent on whether officers may Tase a young or elderly person, and only one expressly prohibited the practice. While it may seem obvious to some that pregnant women, 10-year-old children, or elderly people who don't present a threat should not be Tased, the reality is that it happens all too often, in Arizona and elsewhere, and sometimes with tragic results.<sup>102,103</sup>
- 10 out of 20 agencies prohibited use of the Taser on an intoxicated suspect, while nine were silent. The IACP National Law Enforcement Policy Center has noted that persons who are intoxicated with drugs or alcohol are already in a precarious physical state and are among those at highest risk of sudden death from Tasers.<sup>104</sup> These individuals are also often mistaken for being combative, when those that are unarmed usually present no imminent threat.
- 14 out of 20 agencies prohibited or discouraged deployment of the Taser in proximity to flammable substances, and nine prohibited or discouraged officers from using a Taser when the suspect had a gun or explosive. However, 15 out of 20 agencies were silent when it came to using Taser with pepper sprays (and one allowed it). Pepper sprays have been known to combust when a Taser is deployed.<sup>105</sup>
- 11 out of 20 agencies were silent on whether officers could Tase people multiple times, while four departments allowed it and four discouraged it. Only one agency banned multiple Taser deployments outright. Both NIJ<sup>106</sup> and PERF<sup>107</sup> have cautioned against multiple activations of the Taser, recognizing that multiple or repeated applications of Tasers (along with prolonged applications beyond 15 seconds) are the factors most commonly associated with ECW-induced deaths.
- Six agencies had no policy whatsoever on preferred Taser target area. Five instruct officers to avoid vital or sensitive areas, including the genital area, seven specify that they should target the back area, and one specified that they should target the upper torso. After concerns arose about cardiac arrest resulting from Taser exposure, TASER International released a training bulletin advising officers not to aim for the chest.<sup>108</sup> However, nor should officers be encouraged to shoot the subject in the back, as that implies the subject is facing away from the officer or running away and, therefore, less likely to pose a threat.

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*While it may seem obvious to some that pregnant women, 10-year-old children, or elderly people who don't present a threat should not be Tased, the reality is that it happens all too often, in Arizona and elsewhere, and sometimes with tragic results.*

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Agencies that provide officers with clear restrictions on the use of Tasers against vulnerable populations and in situations where there is an increased safety risk should be commended. Those agencies with policies that fail to address these risks, however, may be inviting officers to use Tasers in situations that are more likely to lead to serious injury and death. They are also increasing their vulnerability to lawsuits and public criticism.

## Finding #5 > Agencies Over-Rely on TASER International for Training

The ACLU of Arizona asked agencies to provide copies of their training materials on Taser use, or, if they used only the training provided by TASER International, to indicate so.

As can be expected, larger police departments and sheriffs' offices tended to be the ones that supplemented TASER International's training with their own materials (six agencies total) or created their own curriculum altogether (five agencies total). With the exception of the Maricopa County Sheriff's Office, every agency with over 500 sworn officers did so.

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*Law enforcement agencies should reconsider their heavy reliance on TASER International's training materials, and seek to develop, at a minimum, supplemental materials that clearly set forth their own agency's rules regarding Taser use.*

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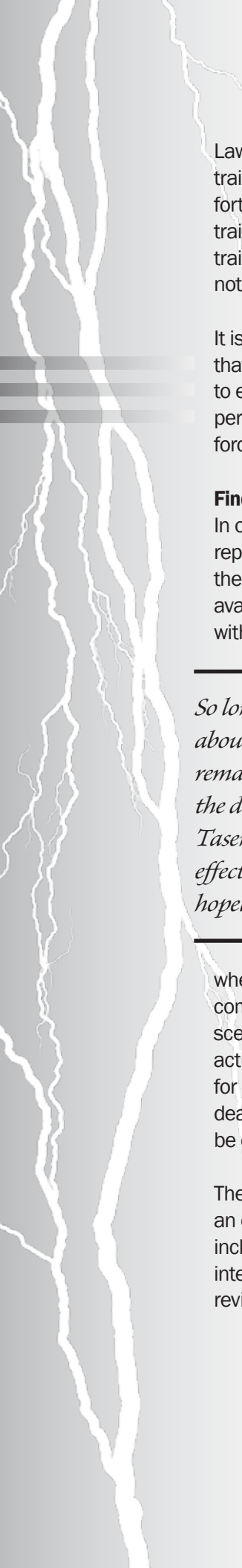
However, even if smaller agencies cannot afford to develop their own curriculum, at a minimum, they should provide sufficient supplemental training so that officers are aware of where their own agency's policies add to or depart from TASER International's training. We reviewed a number of policies that provide additional guidance in areas where the TASER International training was silent or contradictory. Nine agencies reported relying solely on TASER International's training or utilized materials that were nearly identical to the TASER International training. This contradicts PERF's recommendation that agencies not rely solely on training provided by the manufacturer.<sup>109</sup>

As part of its study, the ACLU reviewed TASER International's most current training manuals, Versions 16 and 17.<sup>110</sup> We also reviewed an October 2009 TASER International Training Bulletin<sup>111</sup> and an "update" to the Version 17 training described as a "User Recertification" module.<sup>112</sup>

Compared to earlier versions of TASER International's training materials, these new materials have adjusted a number of troubling earlier claims that were inaccurate, contradictory, or attempted to minimize or sidestep completely the life and safety risks associate with Tasers.<sup>113</sup> For example, TASER International no longer asserts (as it did in one version analyzed by the ACLU of Northern California in 2005) that no person has ever been killed or suffered long-term injuries from exposure to the weapon.<sup>114</sup> However, even as it cautions officers to avoid aiming for the subject's chest area, the company continues to deny that Tasers can cause cardiac arrest or other cardiac events.<sup>115</sup>

In addition, while previous TASER International training materials encouraged officers to use Tasers to induce pain compliance, such as by depicting a naked, unarmed man surrounded by armed police officers, being shocked simply so that he will roll over on the ground,<sup>116</sup> newer training materials caution officers not to use pain compliance "if circumstances indicate that pain is ineffective."<sup>117</sup> However, TASER International materials still clearly contemplate that Tasers will be used for pain compliance.<sup>118</sup>

TASER International's new materials thus address some of the concerns that the ACLU and other civil and human rights organizations have expressed over the years (though not all). Nevertheless, it is clear that TASER International's own claims are fluid and evolving, and law enforcement agencies cannot depend on the company to always present the facts about Tasers. After all, it has a product to sell and will continue to be motivated first and foremost by its "bottom line."



Law enforcement agencies should reconsider their heavy reliance on TASER International's training materials, and seek to develop, at a minimum, supplemental materials that clearly set forth their own agency's rules regarding Taser use. Agencies relying on TASER International's training materials should also make every effort to use only the most recent version of the training, in light of the fact that older versions have contained inaccurate information and do not take into account best practices or subsequent court decisions.

It is also important for agencies' training materials to contain scenario-based training so that officers can practice applying the rules regarding Taser use to situations they are likely to encounter in the field. Finally, officers should be adequately trained on how to deal with persons who are mentally ill or in crisis, and know how to transition from the Taser to other force options, so that they are less likely to overuse the Taser.

**Finding #6 > Agencies Lack Data Collection and Other Mechanisms to Monitor Taser Use**

In our follow-up correspondence with agencies to which we sent the records requests, many reported that they could not provide us with the use-of-force data we had requested because the information was not systematically collected or analyzed. If such information was not available to the ACLU, it follows that the same information would not be available to supervisors within the agency charged with monitoring officers' behavior.

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*So long as data about Taser use remains unavailable, the debate about Taser safety and effectiveness remains hopelessly skewed.*

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These reports are disturbing. So long as data about Taser use remains unavailable, the debate about Taser safety and effectiveness remains hopelessly skewed. It is even more disturbing because such data would be easy to collect: both the M26 and X26 Taser models come with a feature that can record the date and time of each use, the duration of the deployment and a way to track a probe to the specific weapon which fired it. The device can also be purchased with an integrated video camera to record the events leading up to, and following, the use of a Taser on a subject.<sup>119</sup>

In addition, few departments had a policy requiring each incident where a Taser was deployed to be reviewed by a supervisor to ensure that officers are complying with agency rules. PERF recommends that supervisors respond to all incident scenes where a Taser is deployed, and that they conduct an initial review of every Taser activation.<sup>120</sup> Given the preliminary findings in this report, this type of review would be critical for detecting anomalies or patterns of misconduct before they result in a serious injury or death. Any officers that present a problem should be required to attend additional training, or be disciplined.

There was also little mention by the agencies of what to do if a complaint is filed against an officer. Agencies should have a clear procedure that governs the investigation process, including the circumstances that will trigger an investigation, the persons that should be interviewed, and the forensic evidence that should be gathered. Such incidents should be reviewed by someone outside the officer's chain of command.



Finally, to the extent that agencies gather data on Tasers and other uses of force, such data should be easily accessible to the public (along with agency policies), so that the community can be better informed about the role of Tasers in law enforcement.<sup>121</sup> Agencies can present the data and policies in a format that does not reveal any sensitive information.



## Part III: Recommendations

To ensure that Taser deployment is aligned with the serious repercussions that can arise from its use on members of the public, the ACLU urges that Arizona law enforcements adopt the following recommendations:

### **Recommendation #1**

#### **Implement Strong Accountability Mechanisms for Taser Use, Including Data Collection**

An agency's ability to limit Taser use to lawful and appropriate circumstances depends first and foremost on meaningful supervision and oversight.

As with firearms, officers should complete a use-of-force report every time a Taser is brandished or fired (even accidentally). Those reports should then be compared to data downloaded from Tasers to ensure accuracy and completeness in reporting. Agencies should collect this data in a format (such as electronically) that allows supervisors to periodically review it for warning signs of misuse or overuse. Supervisors should respond to the scene each time a Taser is deployed (this is particularly important for newer recruits). In the case of a citizen complaint, injury, death, or a Taser deployment that appears to deviate from agency policy and training, there should be a full investigation completed.

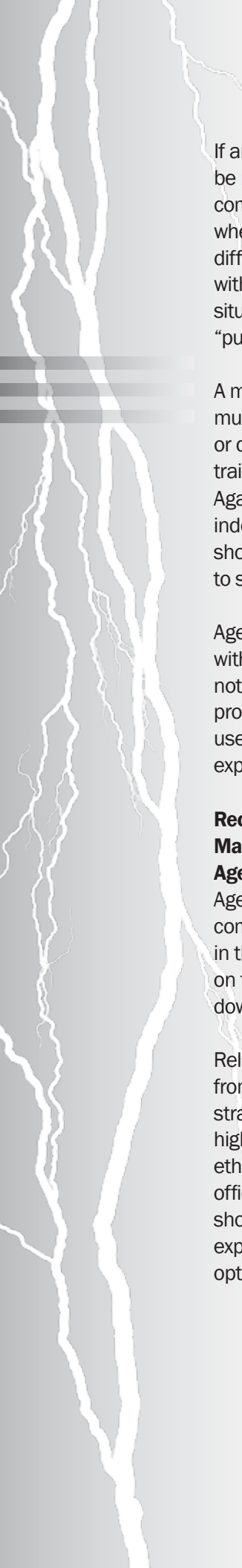
In addition to making data about Taser use available to supervisors, agencies should make the same data available to the public. Basic information should be available on an agency's website without having to file a public records request. This will allow the community to assess for itself what the impact Tasers have had on other uses of force and overall public safety. Any useful discussion about the role of Tasers in law enforcement begins from this point. Transparency will also promote positive community relations in light of controversy surrounding Taser use, and the high number of reports of injuries and deaths.

### **Recommendation #2**

#### **Revisit Tasers' Place on the Use-of-Force Continuum and Update Agency Policies**

Tasers clearly are not "non-lethal" weapons, and should always be referred to as "potentially lethal" or "less-lethal" weapons. Agencies should only permit Taser use in the face of imminent threats of physical harm to the officer or other individual or, at a minimum, active aggression. Passive resistance or non-threatening active resistance, such as evasive actions to avoid being handcuffed, should not justify the use of a Taser.

In addition, policies should clearly instruct officers to consider the seriousness of a subject's the alleged offense whenever possible, e.g. before someone is Tased while fleeing or for resisting apprehension. Tasers should rarely – if ever – be used in "drive stun" mode to induce "pain compliance." If the officer feels comfortable enough to be so close to a subject, a less severe use of force can accomplish the officer's objective in almost all cases.



If an officer has no choice but to use the Taser to induce compliance, the officer should be required to document his or her efforts to use less severe techniques, such as verbal commands, control holds, and warnings. In addition, officers should be instructed to consider whether intoxication, mental illness, or other circumstances would make voluntary compliance difficult. Agencies should make sure that officers have enough training and preparation to deal with intoxicated or emotionally disturbed individuals, so that they are able to de-escalate a situation without resorting to force. Under no circumstances should the Taser ever be used to “punish” or “intimidate” a subject.

A majority of the agencies surveyed were silent on whether officers could Tase individuals multiple times. However, multiple deployments are much more likely to cause serious injury or death, and, in many instances, have been found to be unlawful. Past TASER International training materials de-sensitized officers and even encouraged them to fire more than once.<sup>122</sup> Against this background, it is even more important for agencies to ensure that officers can independently justify each application of the Taser. They should be instructed to administer shocks for as short a time as possible and to stop and evaluate the situation after each cycle to see if additional shocks are necessary.

Agency policies should more completely describe when Taser use is discouraged or disallowed with respect to vulnerable populations. Pregnant women, children, and the elderly should not be Tased. Using Tasers on intoxicated or other persons at risk of cardiac arrest or health problems should be discouraged. Policies should also identify additional situations where Taser use is discouraged because of the existence of a safety hazard, such as a flammable liquid, explosive, pepper spray, restraints, fall hazard or water hazard.

**Recommendation #3**  
**Mandate Regular Training That Meaningfully Incorporates Agency Rules and Philosophies Regarding Taser Use**

Agencies should not rely exclusively on TASER International, a profit-driven company, to prepare their officers to use this potentially lethal weapon in the field. TASER International’s materials have focused primarily on technical proficiency, while exaggerating the weapon’s safety and downplaying the potential physiological risks associated with their use.

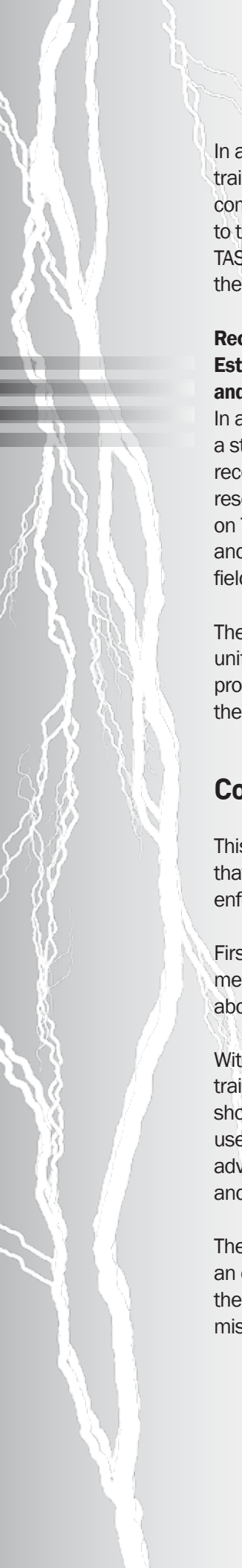
Reliance on TASER International’s materials will also not shield an agency from liability in the case of a serious injury or death. Agencies with strapped budgets can hardly afford additional lawsuits, not to mention high-dollar judgments. As a matter of fiscal as well as professional and ethical responsibility, agencies should invest in training that inculcates officers with the agency’s own policies on Taser use. Such training should educate officers on the potentially serious consequences of Taser exposure (including death) and how use of the Taser relates to other force options.

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*As a matter of fiscal as well as professional and ethical responsibility, agencies should invest in training that inculcates officers with the agency’s own policies on Taser use.*

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In addition, re-certification training should be required on at least an annual basis. Such training should include a review of the documentation procedures for Taser use, and how complaints and rule violations will be handled. However, any changes to the policies or updates to the training should be circulated to officers immediately. To the extent that agencies rely on TASER International for training, they should make sure to use only the most current version of the materials.

#### **Recommendation #4**

##### **Establish a Statewide Body to Review Taser Use and Develop Policy Recommendations and Training Resources for Agencies**

In addition to the above changes, the ACLU invites agencies to partner with us to advocate for a statewide task force to monitor trends in Taser use in Arizona and provide policy and training recommendations. Such a task force could include members of the community, experts, researchers and representatives from law enforcement. Their mission would be to gather data on Taser use from state and local law enforcement agencies, analyze trends in officer behavior, and make recommendations to agencies that are consistent with the best practices in the field.

The task force should make recommendations for state-level legislation on subjects such as uniform data collection. In addition, it could undertake the creation of a standardized training program (as recommended by the FLETC) to assist agencies with fewer resources to develop their own training rather than rely exclusively on TASER International for training.

## **Conclusion**

This report shows that there are serious issues concerning the use of Tasers in Arizona, and that the lack of adequate training and accountability endangers the public and exposes law enforcement agencies to potentially debilitating liability claims.

First and foremost, we reiterate our call for implementation of stronger accountability mechanisms for Taser use, including data collection. As stated above, any useful discussion about the role of Tasers in law enforcement begins from this point.

With regard to officer training, we commend TASER International for recent updates to its training materials that respond to criticisms and concerns. However, law enforcement agencies should not rely solely on TASER International, a profit-driven company, to guide them in the use of this potentially lethal weapon. We therefore urge agencies to partner with the ACLU to advocate for a statewide task force to monitor trends in Taser use in Arizona and provide policy and training recommendations.

The Taser is almost certainly here to stay. When used appropriately and responsibly, it can be an effective tool in the law enforcement arsenal. However, it should never be forgotten that the Taser is a potentially lethal weapon, with potentially tragic consequences for its use and misuse.

# Appendix A

## Sample ACLU Public Records Request

ALESSANDRA SOLER MEETZE  
EXECUTIVE DIRECTOR  
ACLU OF ARIZONA



[DATE]

[NAME OF AGENCY]

[ADDRESS OF AGENCY]

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION  
OF ARIZONA

Re: Public Records Request

P.O. Box 17148  
Phoenix, AZ 85011

To Whom It May Concern:

Tel: 602-650-1854  
Fax: 602-650-1376

Pursuant to Arizona's Public Records Law, A.R.S. § 39-121 et seq., the ACLU of Arizona ("ACLU-AZ") hereby requests the right to examine and copy, or to be furnished with copies, of certain public records in the possession of the [NAME OF AGENCY].

<http://www.acluaz.org>

Arizona Public Records Law carries with it a presumption that all records are "open to the public for inspection as public records." *Carlson v. Pima County*, 141 Ariz. 487,490,687 P.2d 1242 (1984). If the request is denied in part or in whole, please justify any redactions by referencing the specific grounds on which information is withheld under the Public Records Law. All segregable portions of otherwise exempt material must be produced. We reserve the right to appeal your decision to withhold any information.

These records are not sought for any commercial purpose. The ACLU-AZ is a non-profit civil rights organization and this information will inform our investigation of Taser policies in light of growing public concern about their use.

We seek all records (including in written, electronic, audio, video, CD-Rom, or other format) containing the following:

**Request No.1:** All department policies and procedures currently in force that govern the use or display, training, (re)certification, inspection, monitoring, or reporting on uses and/or displays of Tasers.\* This includes, but is not limited to, general orders, formal or informal directives, instructions, manuals, bulletins, guidelines and memoranda. It includes any documents that address Tasers specifically or permissible uses of force generally.

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\* The term Tasers in this request is being used in the generic sense and refers to any electro-shock weapon. If your department uses an electro-shock weapon other than the Taser, please specify which weapon is being used.

**Request No. 2:** All training materials currently in force regarding the use or display, training, (re)certification, inspection, monitoring, or reporting on uses and/or displays of Tasers. This includes the training itself as well as any materials used as part of the training, including sample forms and documents. To the extent that the training manual is provided to your agency by TASER International, please simply inform us of the edition or version used.

**Request No. 3:** Records reflecting the number of officers in your agency (both the raw number and as a percentage of the all sworn officers) and the rank/type of officers who use or carry Tasers, as well as the total number of Tasers in the agency's possession by type/model. If you do not have records reflecting this information, but know the answer to these questions, please provide the answers in your response.

**Request No. 4:** Records containing statistical data about the reported uses of force – including, but not limited to, Tasers, firearms, batons, OC and/or chemical agents, control holds or other forms of physical control—for the two years preceding the deployment of Tasers and for every year after the deployment of Tasers, whether maintained/compiled by your agency or an outside body.

**Request No. 5:** Records pertaining to any complaint, investigation, or incident involving injury, hospitalization, or death following the use or testing of a Taser by an officer in your agency. We do not seek the names or biographical information of any individual or officer identified in the records.

You may contact us to inform us when the records have been compiled, or if there are ways we can narrow the request to expedite processing. However, if we do not hear from you within thirty (30) days, we will deem the request denied.

Thank you very much for your prompt attention.

Sincerely,



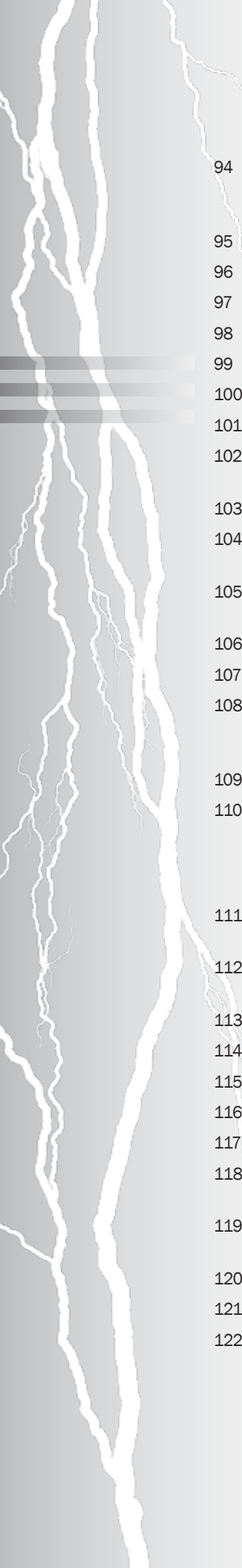
## Endnotes

- 1 Various other terms have been used to describe the family of weapons that Tasers fall into, such as controlled electronic devices (CEDs), electro-muscular disruption technology (EMDT), electro-muscular incapacitation devices (EMIs), conducted electrical weapons (CEWs), and electronic control devices (ECDs). This report focuses on Tasers because they are the weapon most prevalent in Arizona. However, many of the concerns documented in this report also apply to other such weapons.
- 2 National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption*, (2011): vii, available at <http://www.ncjrs.gov/pdffiles1/nij/233432.pdf>. (Hereinafter, “National Institute of Justice Study of Deaths 2011”).
- 3 National Institute of Justice, *Police Use of Force, Tasers and Other Less-Lethal Weapons*, (2011): 1, available at <http://www.ncjrs.gov/pdffiles1/nij/232215.pdf>. (Hereinafter, “National Institute of Justice Police Use of Force 2011”).
- 4 While the numbers of departments and officers armed with Tasers are not specifically known, some indication of their prevalence can be found in other articles, including: Braidwood Commission on Conducted Energy Weapon Use, *Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia*, (2009): 50, available at [www.braidwoodinquiry.ca](http://www.braidwoodinquiry.ca); Janyce M. Sanford and others, “Two patients subdued with a taser® device; cases and review of complications,” *Journal of Emergency Medicine* 40, no. 1 (2008): 28-32, doi:10.1016/j.jemermed.2007.10.059; Michael D. White and Justin Ready, “The Impact of the Taser on Suspect Resistance: Identifying Predictors of Effectiveness,” *Crime & Delinquency* 56, no. 1 (2010): 70-102, doi:10.1177/0011128707308099.
- 5 Amnesty International, *‘Less than Lethal’? The Use of Stun Weapons in US Law Enforcement*, (2008): 1-121, <http://www.amnesty.org/en/library/info/AMR51/010/2008/en>.
- 6 National Institute of Justice Study of Deaths 2011, 6.
- 7 Ibid. at 24.
- 8 Sarah Lai Stirland, “Don’t Tase Me, Bro! Jolts the Web,” *Wired.com*, Sept. 19, 2007, <http://www.wired.com/threatlevel/2007/09/dont-tase-me-br/>.
- 9 Amnesty International 2008, 27.
- 10 Prior to the Amnesty International report, the ACLU of Northern California released a report surveying Taser use among Northern California law enforcement agencies. ACLU of Northern California, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, (2005): 1-25, [http://www.aclunc.org/issues/criminal\\_justice/police\\_practices/stun\\_gun\\_fallacy\\_how\\_the\\_lack\\_of\\_taser\\_regulation\\_endangers\\_lives.shtml#special\\_report\\_stun\\_gun\\_fallacy.shtml](http://www.aclunc.org/issues/criminal_justice/police_practices/stun_gun_fallacy_how_the_lack_of_taser_regulation_endangers_lives.shtml#special_report_stun_gun_fallacy.shtml). The Use of Force Working Group of Allegheny County Pennsylvania, assembled by District Attorney Stephen Zappala, and the Maryland Attorney General’s Task Force on Electronic Weapons, also issued reports, available at <http://www.law.pitt.edu/files/harris/Taser-Working-Group.pdf> and <http://www.oag.state.md.us/Reports/ECWReport.pdf>, respectively.
- 11 For example, there is some empirical support for the claim that Tasers, when used correctly, have been associated with a decline in injury rates among officers and suspects. See Taylor, Bruce, et al. 2009. “Comparing Safety Outcomes in Police Use-of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted Energy Devices and a Matched Comparison Group That Have Not: A Quasi-Experimental Evaluation.” Report submitted to the National Institute of Justice. Washington, D.C.: Police Executive Research Forum, available at [http://meetings.policeforum.org/upload/CED%20Outcomes\\_193971463\\_10232009143958.pdf](http://meetings.policeforum.org/upload/CED%20Outcomes_193971463_10232009143958.pdf).
- 12 While the term “Taser” is often used generically to refer to a stun gun, Tasers differ from stun guns in that they can be fired from a distance of up to 35 feet and do not require contact with the skin to deliver a charge.
- 13 National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption: Interim Report*, (2008): 8, available at <http://www.ncjrs.gov/pdffiles1/nij/222981.pdf>. The interim report, which preceded the full-length report by the National Institute of Justice in 2011, will hereinafter be referenced as “NIJ Interim Study of Deaths 2008”.
- 14 U.S. Government Accountability Office, *Taser Weapons: Use of Tasers by Selected Law Enforcement Agencies*, (2005): 5-6, <http://www.gao.gov/new.items/d05464.pdf>.
- 15 “Arizona Department of Public Safety orders 1,000 new Tasers,” *Phoenix Business Journal*, Jan. 6, 2011, <http://www.bizjournals.com/phoenix/news/2011/01/06/arizona-department-of-public-safety.html>.

- 16 Ibid.
- 17 John Yantis, "Second-shot Taser stun gun hits the market," *The Arizona Republic*, Apr. 20, 2011, <http://www.azcentral.com/business/consumer/articles/2011/04/20/20110420arizona-new-taser-stun-gun-hits-market.html>.
- 18 Elaine Woo, "Jack Cover Dies at 88; scientist invented the Taser stun gun," *Los Angeles Times*, Feb. 13, 2009, available at <http://www.latimes.com/news/printedition/california/la-me-jack-cover13-2009feb13,0,4344955.story>.
- 19 U.S. Government Accountability Office 2005, 5-6.
- 20 John Burton and Peter M. Williamson, "Representing Clients Injured by TASER International Electrical Control Devices," *Civil Rights Litigation Handbook*, (2010): 29.
- 21 Ibid. supra, note 13, at footnote 11.
- 22 Amnesty International 2008, 12.
- 23 See *Bryan v. McPherson*, 630 F.3d 805, 824 n.4 (9th Cir. 2010) (superseding opinion dated Dec. 28, 2009 and denying rehearing en banc).
- 24 Amnesty International 2008, 6-8. For the earlier M26 models, the duration of the cycle stopped at approximately 5 seconds. However, later models of the M26 and the X26 allow officers to extend the activation cycle for as long as they pull the trigger. Police Executive Research Forum and U.S. Department of Justice Office of Community Oriented Policing Services, *PERF 2011 Electronic Control Weapon Guidelines* (2011): 13, available at <http://www.policeforum.org/library/use-of-force/ECWguidelines2011.pdf>. (Hereinafter "Police Executive Research Forum ECW Guidelines 2011").
- 25 Amnesty International 2008, 12.
- 26 U.S. Government Accountability Office 2005, 8.
- 27 Police Executive Research Forum ECW Guidelines 2011, 14.
- 28 TASER International, *TASER X26 User Course*, Version 17 (2010): 164,169.
- 29 Ibid. at 80.
- 30 Data about the number of departments that use this feature is not available.
- 31 "TASER Headquarters," TASER International, last modified September 8 2010, <http://www.taser.com/company/pages/building.aspx>.
- 32 Robert Anglen, "Police expand use of Taser: safety questions create call for restrictions on stun gun," *The Arizona Republic*, Nov. 7, 2004, <http://www.azcentral.com/12news/news/articles/1107tasermain07-CP.html>.
- 33 Ibid.
- 34 Ibid.
- 35 Roma Khanna, "The Taser Effect: Two years after HPD armed itself with the stun guns, questions linger over how and how often the weapon is being used," *Houston Chronicle*, Jan. 14, 2007, <http://www.chron.com/disp/story.mpl/metropolitan/4464516.html>.
- 36 Ibid.
- 37 See *Graham v. Connor*, 490 U.S. 386, 395-96 (1989).
- 38 See *Bryan*, 630 F.3d at 825 ("The physiological effects, the high levels of pain, and foreseeable risk of physical injury lead us to conclude that the X26 and similar devices are a greater intrusion than other non-lethal methods of force we have confronted."); *Beaver v. City of Federal Way*, 507 F.Supp.2d 1137, 1144 (W.D.Wash. 2007).
- 39 See, e.g., *Bryan*, 630 F.3d at 832 ("Bryan was neither a flight risk, a dangerous felon, nor an immediate threat . . . Officer MacPherson's desire to quickly and decisively end an unusual and tense situation is understandable. His chosen method for doing so violated Bryan's constitutional right to be free from excessive force."); *Oliver v. Fiorino*, 586 F.3d 898, 907 (11th Cir. 2009) (holding that "repeated tasing of Oliver into and beyond his complete physical capitulation was grossly disproportionate to any threat posed and unreasonable under the circumstances"); *Oliver v. City of Orlando*, 574 F.Supp.2d 1279, 1285-86 (M.D.Fla. 2008); *Beaver*, 507 F.Supp.2d at 1144-46.
- 40 "Tasers a form of torture, says UN," *Daily Telegraph*, Nov. 24, 2007, <http://www.dailytelegraph.com.au/news/breaking-news/tasers-a-form-of-torture-says-un/story-e6freuz9-1225758523986>.

- 41 *Graham*, 490 U.S. at 396-97.
- 42 *Bryan*, 630 F.3d at 822. The original Ninth Circuit opinion in the case was issued on December 28, 2009. *Bryan v. McPherson*, 590 F.3d 767 (9th Cir. 2009). Six months later, on June 18, 2010, the Ninth Circuit withdrew the opinion, granting qualified immunity but leaving the finding that the use of the Taser was excessive intact. *Bryan v. McPherson*, 608 F.3d 614 (9th Cir. 2010). Rehearing en banc was subsequently denied and superseding opinion issued on November 30, 2010 that leaves the body of the opinion virtually unchanged. *Bryan*, 630 F.3d 805. This report cites to and quotes from the superseding opinion.
- 43 *Id.* at 826-27.
- 44 *Id.* at 825-26.
- 45 An earlier version of the *Bryan* opinion, which was withdrawn by the Ninth Circuit, was more specific. It noted that Taser use could only be justified “a strong government interest [that] *compels* the employment of such force.” 608 F.3d at 622 (internal quotation omitted).
- 46 *Bryan*, 630 at 826-30.
- 47 *Id.* at 826-28.
- 48 *Id.* at 828-29.
- 49 *Id.* at 829-30.
- 50 *Id.* at 831.
- 51 *Id.* at 829 (quoting *Deorle v. Rutherford*, 272 F.3d 1272, 1282-83 (9th Cir. 2001)).
- 52 590 F.3d 1082 (9th Cir. 2010).
- 53 *Id.* at 1087.
- 54 599 F.3d 1018 (9th Cir. 2010).
- 55 *Id.* at 1027-28.
- 56 The en banc panel heard oral arguments on Dec. 14, 2010.
- 57 *Monell v. Dept. of Soc. Serv’s*, 436 U.S. 658 (1978); see also *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005).
- 58 TASER International has also been held liable for injuries resulting from use of its product. See, e.g., *Heston v. TASER International, Inc.*, Nos. 09-15327 & 09-15440, 2011 WL 1707048 (9th Cir. May 5, 2011) (non-precedential) (affirming award of wrongful death damages to parents of decedent and reversing other components of jury award).
- 59 See *Monell*, 436 U.S. at 661; *Menotti*, 409 F.3d at 1147.
- 60 See *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *Menotti*, 409 F.3d at 1147.
- 61 *Oviatt By and Through Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992).
- 62 See *Bd. of County Comm’rs v. Brown*, 520 U.S. 397, 409-10 (1997) (municipality that fails to provide officers with specific tools in the face of a “high degree of predictability” that a constitutional violation will occur can be held liable for the consequence).
- 63 See generally *City of Canton v. Harris*, 489 U.S. 378 (1989).
- 64 In 2005, the company started to back away from this terminology. Sturke, James and Rosalind Ryan, “Police stun-gun may be lethal, firm says,” *The Guardian*, Oct. 3, 2005, available at: <http://www.guardian.co.uk/uk/2005/oct/03/ukcrime.jamessturcke>.
- 65 U.S. Department of Defense, “Policy for Non-Lethal Weapons,” *Department of Defense Directive Number 3000.3*, (1996), certified current as of November 2003, <http://www.dtic.mil/whs/directives/corres/pdf/300003p.pdf>.
- 66 *Ibid.*
- 67 The Police Executive Research Forum has stated that Tasers should be considered “less-lethal” weapons. Police Executive Research Forum ECW Guidelines 2011, 11.
- 68 Anglen, “Police expand use of Taser.”
- 69 National Institute of Justice Study of Deaths 2011, vii.

- 70 See generally, ACLU of Northern California 2005.
- 71 Robert Anglen, "Judge rules for Taser in cause-of-death decisions," *The Arizona Republic*, May 2, 2008, <http://www.azcentral.com/news/articles/2008/05/02/20080502taser0503.html>.
- 72 TASER International, "TASER International Reaches Agreements to Settle Securities Class Action and Derivative Litigation," Aug. 9, 2006, <http://phx.corporate-ir.net/phoenix.zhtml?c=129937&p=irol-newsArticle&ID=894370&highlight=>.
- 73 Robert Anglen, "Taser set to change marketing, state says," *The Arizona Republic*, Sept. 28, 2005, <http://www.azcentral.com/arizonarepublic/news/articles/0928taser28.html>.
- 74 "AG drops inquiry after changes," *The East Valley Tribune*, Dec. 23, 2005, [http://www.eastvalleytribune.com/article\\_fc2e2e85-3118-5031-a151-6cbc9a747af4.html](http://www.eastvalleytribune.com/article_fc2e2e85-3118-5031-a151-6cbc9a747af4.html).
- 75 Robert Anglen, "Taser defends giving stock options to police," *The Arizona Republic*, Sept. 24, 2005, <http://www.azcentral.com/arizonarepublic/news/articles/0924taserOLP24a1.html>.
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