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## **TASER Device Liability and Litigation Risk**

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### **Introduction**

Every law enforcement use of force creates some risk of civil and criminal liability and litigation. For force equipment manufacturers and distributors, there is civil product liability litigation risk. For law enforcement agencies there is civil risk and for individual officers there are civil and criminal excessive use-of-force liability and litigation risks under 42 U.S.C. § 1983 and state specific causes of action.

Law enforcement use-of-force risks and device manufacturer risks are separate and distinct liability and litigation risks—manufacturers and distributors are not liable for excessive force claims and law enforcement agencies and individual officers are not liable for product liability claims.

The liability and litigation risk profile varies among the different use-of-force tools and techniques used by law enforcement. As a general rule, the greater the risk of injury to suspects caused by the use-of-force tool, the greater the risk of liability and litigation. Since the TASER® brand Electronic Control Device (ECD) has proven to significantly reduce injuries to suspects by up to 79%, and an estimated 9,000 lives have been saved by use of the TASER ECD, it has one of the lowest liability and litigation risk profiles of any use-of-force tool or technique. Courts have generally held that proper use of the TASER ECD is not excessive use of force and the reduction in use-of-force claims against law enforcement resulting from use of the TASER ECD is well documented and is one of the economic benefits of deploying TASER ECDs.

### **TASER Product Liability Litigation Risk**

While TASER International, Inc. has been named in a number of product liability lawsuits arising from law enforcement use of the TASER ECD, TASER International is also successful in getting dismissals, summary judgment or favorable jury verdicts in 51 lawsuits to date with more expected. The suspect injury or death lawsuits are frivolous and the plaintiffs have been unable to prove that the TASER ECD is defective or was an unjustified cause of any injury or death, both of which are essential elements to establish product liability. Autopsy reports and medical experts have determined that the cause of in-custody deaths have been due to complications from drug intoxication or pre-existing medical conditions and not from the TASER ECD.

The key to our success in defending this litigation is the fact that the general safety of the TASER ECD has been well established by over 80 medical and safety studies and innumerable historical related research and literature. Included are studies performed by the United States Department of Defense, the governments of the United Kingdom, Canada, Australia, as well as the University of Minnesota Medical School, University of Missouri, University of Washington School of Medicine, Harvard Medical School, University of California San Diego Department of Emergency Medicine, University of Wisconsin-Madison, the U.S. Army Center for Health Promotion and Preventive Medicine, Penn State Applied Research Laboratory, Medical University of Vienna, The Alfred Hospital, Hennepin County Medical Center, the Potomac Institute, Zurich Switzerland Police Scientific Service, and the University of Ottawa Heart Institute, among others.

In addition, we have over 40 nationally and internationally renowned medical and scientific experts who have all determined that TASER ECDs have had no causal relationship in any suspect injury or death. With the overwhelming evidence supporting the general safety of TASER technology and the inability of the plaintiffs to show a product defect or any causation between the TASER ECD and an injury or death, we currently have not lost any product liability lawsuit.

As a result, there has been a marked decrease in the rate of new litigation filed against TASER International, the number of pending lawsuits is decreasing, and we plan to add to the 51 lawsuits that have already been dismissed or verdicts rendered in favor of TASER International.

### **Law Enforcement Excessive Use of Force Liability and Litigation Risk**

Law enforcement agencies battle excessive use of force litigation. These lawsuits are brought under *42 U.S.C. § 1983*, and related state law claims, which encourages litigation against law enforcement agencies since plaintiff's attorneys are entitled to an award of attorneys fees under the Attorneys' Fees Award Act of 1976 (*42 U.S.C. § 1988*). In addition to **civil liability** under these Federal and state statutes (including punitive damages), law enforcement officers who use force on people are also subject to **criminal prosecution** (federal and/or state) and **employment practices liability** (disciplinary actions against officers for use of force, including termination).

The TASER ECD has played an important role in reducing excessive use-of-force litigation against law enforcement agencies and individual officers and, consequently, related criminal prosecution of officers and employment practices liability. Statistics from law enforcement agencies show a marked decrease in excessive use-of-force claims when TASER ECDs have been deployed. The reason is simple: Suspects are not getting injured as often in the course of arrest or control when the TASER ECD is used.

The risk of injury to suspects during arrest has increased in recent years due to the U.S. drug epidemic. Fresno (CA) and Olympia (WA) report that over half of the suspects arrested were under the influence of drugs or alcohol. A suspect high on drugs typically will not comply with law enforcement commands, will resist arrest and can be impervious to pain. As a result, pain compliance tools such as impact weapons and pepper spray are often ineffective and injuries typically ensue when additional and higher escalations of force are resorted to. For example, Denver (CO) reports a 100% injury rate to suspects from canines, 71% injury rate from impact weapons, and a 66% injury rate from strikes and takedowns.

The TASER ECD has a distinct advantage since it is effective in causing incapacitation from a safe distance by overriding the central nervous system, and does not rely on pain compliance. The five-second TASER cycle affords officers a window of opportunity to capture, control and handcuff the suspect, with decreased risks of injury to the suspect or officer, and without the need to resort to higher uses of force. Steve Ashley, a retired law enforcement officer who works as a risk manager, stated that "...some people don't respond to pain, and in the past that often led to use of force that resulted in death. The TASER provides an option for control that doesn't rely upon pain compliance." Also, the court in *Wylie v. Overby*, Slip Copy, 2006 WL 1007643, E.D. Mich. (April 14, 2006) noted that, "The proper use of a TASER requires neither close proximity nor carries any serious risk of lasting injury to the subject."

Statistics from law enforcement agencies confirm this reduction in injuries when TASER ECDs are used. For example, Charlotte-Mecklenburg (NC) Police reported a 79% decrease in suspect injuries for the period 2002-2004; Phoenix (AZ) Police reported a 67% decrease in suspect injuries in 2004 and a 54% reduction in use of deadly force; Austin (TX) Police reported a 82% decrease in suspect injuries in 2004; Cincinnati (OH) Police reported a 35% decrease in suspect injuries in 2004, a 50% reduction in citizen complaints in 2003 and a 50% reduction in overall use of force from TASER deployment; Seattle (WA) Police reported a 100% decrease in officer involved shootings in 2003 compared to the prior 15 years; Miami (FL) Police reported zero firearm discharges in 2003, the first year of TASER ECD deployment, compared to 54 firearm discharges for the prior 3 years; Chico (CA) reported only 2% of suspects exposed to the TASER ECD were injured while 79% of suspects who were batoned were injured and 53% of suspects who were physically taken to the ground were injured; and Columbus (OH) Police reported a 25% reduction in impact weapon use, a 32% reduction in strikes, kicks and punches and a 38% decrease in use OC spray from TASER ECD deployment.

Charles Mesloh, PhD, a researcher with Florida Gulf Coast University, looked at every TASER ECD incident in Orange County (FL) Sheriff's Office from 2000-2003 and compared TASER ECDs with the use of police canines, batons and chemical agents like pepper spray. He found that there were fewer injuries related to TASER ECD use.

TASER technology is saving lives as well. Houston (TX) Police reported that in 39 instances between December 2004 and October 2006, incident involved officers would have been justified in using deadly force instead of stunning them; Dallas (TX) Police reported that in 23 events, the TASER X26 prevented the high likelihood of deadly force; Charlotte-Mecklenburg (NC) Police reported 19 incidents where deadly force was averted in 2004 with TASER ECDs; Columbus (OH) Police noted that 14 lives may have been saved with TASER ECDs; St. Paul (MN) Police credit TASER ECDs for saving at least four lives, including an officer's; and Maui (AZ) Police report two lives saved with the TASER ECD.

In addition, Madison (WI) Police Department's TASER ECD field data from January 2005 had the following results:

- "Madison PD's deployment of the TASER has reduced injuries to officers and suspects resulting from use-of-force encounters."
- "Madison PD's deployment of the TASER has reduced Madison PD officers' utilization of deadly force."
- "The TASER has proven to be a safe and effective use-of-force tool."
- "Citizen complaints concerning TASER devices: 0"
- "Avoidance of lethal force by deploying TASER devices: 6"

Since TASER ECDs reduce injuries to suspects, reduce citizen complaints, reduce use of impact weapon, strikes, kicks and punches, reduce utilization of deadly and lethal force and saves lives; there will also be a reduction in use of force, and associated liability claims and litigation from use of the TASER ECD.

Courts have recognized the importance of reduced suspect injuries in ruling on excessive use of force claims. For example, the court in *Draper v. Reynolds*, 369 F.3d 1270 (11th Cir. 2004) held that use of the TASER ECD on a belligerent truck driver was not excessive use of force and considered the following factors to determine if the force used was reasonable: (1) the need for the application of force; (2) the relationship between the need and amount of force used; and (3) the extent of the injury inflicted.

Similarly, in the case of *Ewolski v. City of Brunswick*, 287 F.3d 492 (6th Cir. 2003) the court also held that use of the TASER ECD was not excessive use of force and noted that in cases in which officers must choose among alternative use-of-force options, police must reasonably opt for a use-of-force that entails a lower total risk than the available alternatives. The use-of-force alternative with the lowest risk of injury is the best alternative with the least risk of liability. In the case of *Bennett v. Cambra*, 1997 U.S. Dist. LEXIS 1584 (N.D. Cal 1997) the court stated that a stun gun is less dangerous to all involved than hand to hand confrontation.

Statistics from our customers also confirm that TASER ECDs can reduce excessive use-of-force claims and litigation. Los Angeles (CA) Sheriff's Department Sgt. Mike Harding compared three liability cases prior to TASER ECD deployment with actual field uses and concluded that had the TASER ECD been available in these three cases, injuries and death to the subject may have been averted. He estimated the potential liability savings from these incidents with use of a TASER ECD at \$2,500,000.

Glendale (CO) Police reported a 75% reduction in drawing their service firearms with no reports of injuries to officers or suspects from use of the TASER ECD and no complaints of excessive use of force in 2003, the first year of TASER ECD deployment.

Austin (TX) Police reported that serious injuries to suspects decreased 80% from 2002 to 2004 with the TASER ECD and that excessive use-of-force complaints decreased 32.1% per 1,000 custody arrests from 2002 to 2004.

In 2003 the Michigan Municipal Risk Management Authority, which represents 151 law enforcement agencies in Michigan with a total of 6,346 officers employed by those agencies, were so convinced that the use of a TASER ECD by their member agencies would reduce their excessive force claims, that they implemented a grant program under which they would reimburse their agencies up to 50% of the cost of a TASER ECD deployment. In 2004, which was the first full year of the program, there was a 62% reduction in use-of-force claims compared to 2000 and a 54% reduction in use-of-force claims compared to 2003, with no excessive use-of-force claims attributed to use of a TASER ECD.

Existing case law has routinely held that the TASER ECD is an appropriate use of force and does not per se constitute excessive use of force. Please see *Draper v. Reynolds*, 369 F.3d 1270 (11<sup>th</sup> Cir. 2004); *Lifton v. City of Vacaville*, 2003 U.S. App. LEXIS 16286 (9th Cir. 2003); *Ewolski v. City of Brunswick*, 287 F.3d 492 (6th Cir. 2003); *Hernandez v. Terhume*, 2000 U.S. Dist. LEXIS 18080 (ND Cal. 2000); *Drummer v. Luttrell*, 75 F. Supp. 2d 796 (WD Tenn. 1999); *Bennett v. Cambra*, 1997 U.S. Dist. LEXIS 1584 (N.D. Cal 1997); *Nicholson v. Kent County Sheriff's Dep't*, 839 F. Supp. 508 (W.D Mich. 1993); *Walker v. Sumner*, 1993 U.S. App. LEXIS

26517 (9th Cir 1993); *Dennis v. Thurman*, 959 F. Supp. 1253 (C.D. Cal. 1997); *Munoz v. California Dep't of Corrections*, 1996 U.S. Dist. LEXIS 17759 (C.D. Cal 1996); *Jackson v. Carl*, 1991 U.S. Dist. LEXIS 11617 (N.D. Cal. 1991); *Alford v. Osei-Kwasi*, 203 Ga. App. 716, 721, 418 S.E.2d 79 (1992), cert. denied, 1992 Ga. LEXIS 494 (June 10, 1992); *Russo v. Cincinnati*, 953 F.2d 1036 (6th Cir. 1992); *Caldwell v. Moore*, 968 F.2d 595 (6th Cir. 1992); *Jolivet v. Cook*, 1995 U.S. App. LEXIS 3950 (10th Cir. 1995); *Michenfelder v. Sumner*, 860 F.2d 328 (9th Cir. 1988); *Parker v. Asher*, 701 F. Supp. 192 (Nev. 1988); *Carroll v. County of Trumbull*, Slip Opinion, 2006 WL 1134206 (N.D. Ohio April 25, 2006); *Willkomm v. Mayer* (WI Dells) USDC WDWI (Slip Copy 2006 WL 582044) March 9, 2006); *McBride v. Clark*, USDC WDMO (Slip Copy 2006 WL 581139) March 8, 2006; *Devoe v. Rebant*, Slip Copy, 2006 WL 334297, E.D. Mich. (Feb 13, 2006); *Wylie v. Overby*, Slip Copy, 2006 WL 1007643, E.D. Mich. (April 14, 2006).

In the case of *Stanley v. City of Baytown, Texas*, Slip Copy, 2005 WL 2757370 (S.D. Tex.), No. Civ.A. H-04-2106, U.S. Dist. Ct, S.D. Texas, Houston Division, decided Oct. 25, 2005, the Court held: "Under the totality of these circumstances, (Officer) Elizondo's use of the TASER was not unreasonably disproportionate to the need for force. In fact, Elizondo's decision to use the TASER may well have prevented much greater harm to Stanley and/or to other people in the ambulance had Elizondo engaged in a physical struggle to restrain Stanley."

In its June 20, 2005 report on "Electronic Control Weapons in Georgia", the Georgia Association of Chiefs of Police discussed the cases of *Draper v. Reynolds*, 369 F.3d 1270 (11th Cir. 2004) and *Alford v. Osei-Kwasi*, 203 Ga. App. 716 (1992) and stated that: "These two cases are significant because they demonstrate that the Georgia courts recognize the utility of an electronic control weapon. Both courts stated in their opinions that using an electronic control weapon may have prevented the injuries associated with the use of other nondeadly weapons. Consequently in Georgia, the use of an electronic control weapon to control a resistant individual who is either not cooperating with lawful requests of detention facility personnel or refusing to obey lawful requests of an officer **is not excessive force**" (*emphasis added*).

In conclusion, court rulings and statistics from law enforcement agencies confirm that the deployment of a TASER ECD does not *per se* constitute excessive use of force and plays a key role in reducing excessive use-of-force liability claims and litigation against law enforcement. The savings that results from this reduction in excessive use-of-force liability claims and litigation is a very important economic benefit to law enforcement agencies that deploy TASER ECDs.