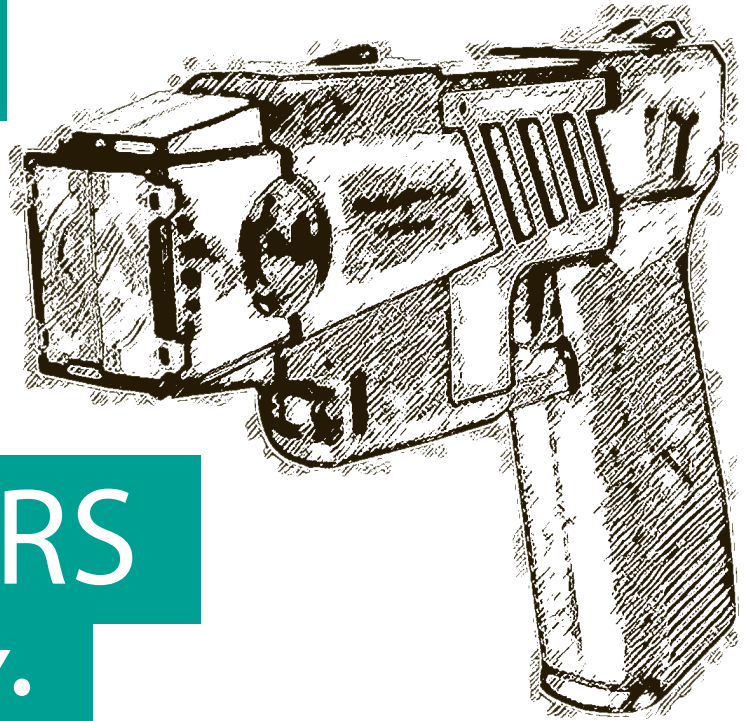


NEW YORK CIVIL LIBERTIES UNION

TAKING
TASERS
SERIOUSLY:



**The Need for
Better Regulation
of Stun Guns
in New York**



NEW YORK CIVIL LIBERTIES UNION

125 Broad Street, 19th Floor

New York, NY 10004

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ACKNOWLEDGMENTS

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ABOUT THE NEW YORK CIVIL LIBERTIES UNION

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, we are a not-for-profit, nonpartisan organization with eight chapters and regional offices and nearly 50,000 members across the state.

Our mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers.

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TAKING TASERS SERIOUSLY: The Need for Better Regulation of Stun Guns in New York

2011

CONTENTS

1 Executive Summary

5 Introduction

7 PART I: Taser Dangers: A Growing Recognition

Concerns about Lethality

Concerns about Taser Abuse

The Courts' Increasingly Serious Approach

Nationwide Calls for Reevaluation

17 Part II: Tasers in New York: Overuse and Dangerous Deployment

The Use of Tasers Where the Suspect Poses No Danger or Risk of Injury to Anyone

Excessive Number and Duration of Shocks

Targeting of Dangerous and Sensitive Areas of the Body

Failure to Warn Prior to the Use of a Taser

Over-Reliance on Drive-Stun Mode

Targeting At-Risk Populations and Using Tasers in Dangerous Situations

The Disproportionate Use of Tasers on People of Color

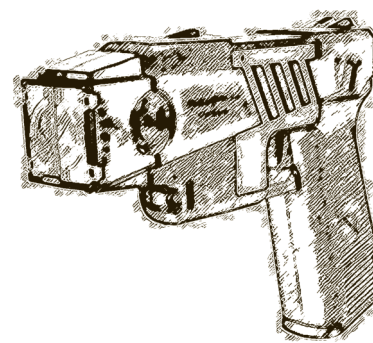
27 Part III: Recommendations

Recommendation 1

Recommendation 2

Recommendation 3

31 End Notes



In 1911, intrepid adventurer Tom Swift “invents” an Electric Rifle, with which he slays rhinos, elephants and other fearsome African beasts, in Volume 10 of the beloved science-fiction series.

In the late 1960s, physicist John (Jack) Higson Cover—who earned his doctorate at the University of Chicago studying under renowned nuclear physicists Enrico Fermi and Edward Teller—invented a real electric weapon, and named it for his childhood hero: He called it the Thomas A. Swift Electric Rifle, or TASER.

A century after the novel’s release, Tasers are near-ubiquitous in law enforcement. How they are used, and how officers and their superiors monitor their use, are the subjects of this report.

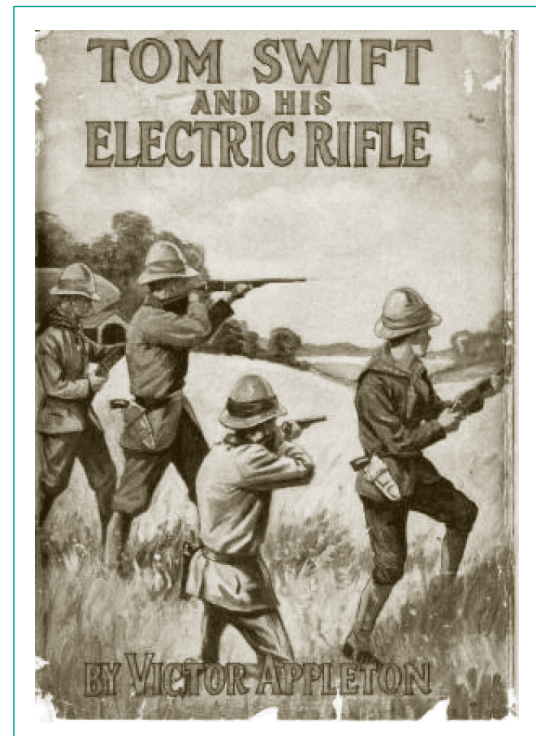
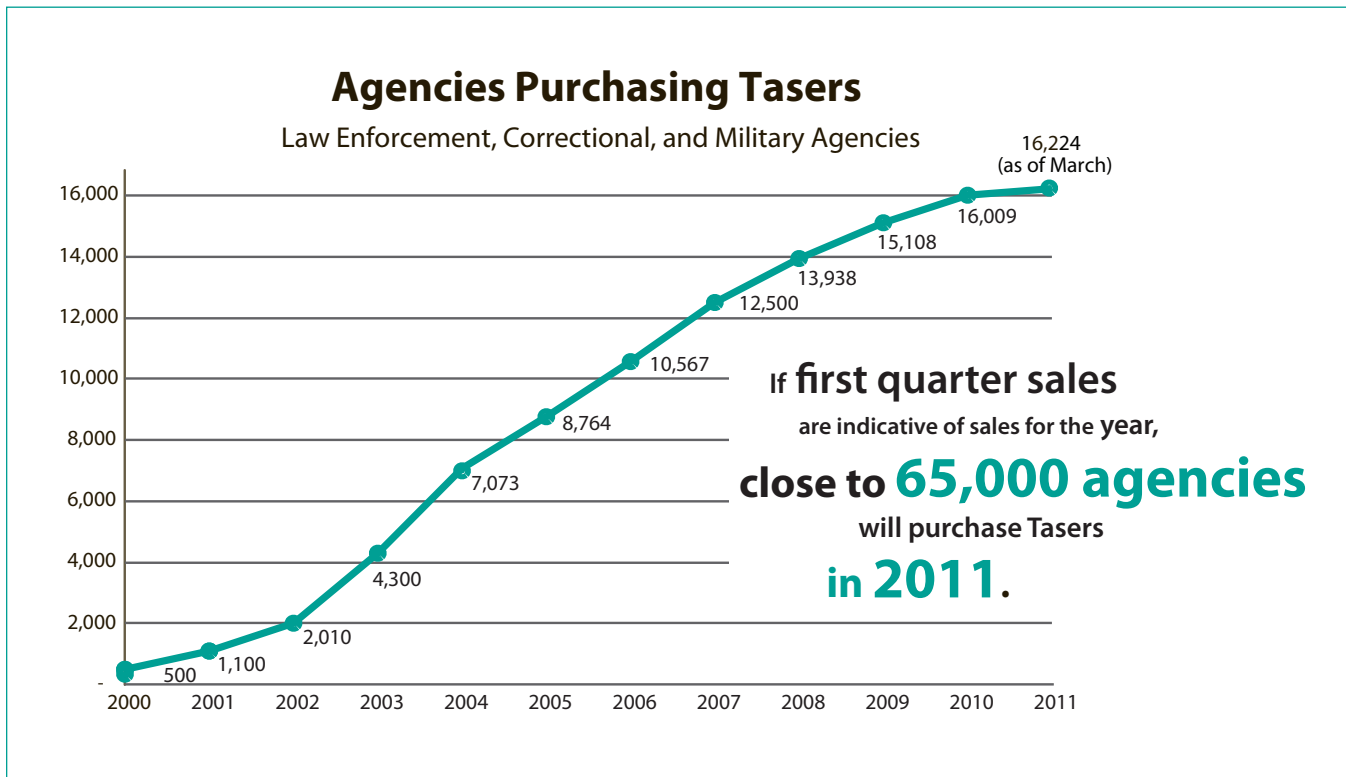


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Executive Summary

Tasers or “stun guns,” deliver up to 50,000 volts of electricity intended to incapacitate their victims. Long lauded as safer alternatives to deadly force, Tasers are in use by 16,000 law enforcement agencies in the U.S.—including 350 in New York State—and have been linked with hundreds of deaths.



More than a dozen New Yorkers have died after Taser shocks, some in police custody and others with mental illness whose families turned to law enforcement for help, only to suffer mortal loss. Since February 2004, news reports have documented five deaths after Taser shocks in Suffolk County alone. Scores more across the state have been hurt or humiliated when officers, lacking consistent guidelines and thorough training, deployed Tasers inappropriately.

To better identify and understand patterns of Taser use in New York State, the New York Civil Liberties Union analyzed 851 Taser incident reports from eight departments across the state as well as 10 departments' guidelines for Taser use, obtained through the state Freedom of Information Law and public sources. These records show that officers misuse and overuse these weapons, resorting directly to Tasers rather than less intrusive police tactics to calm, subdue or arrest people they encounter. They also suggest a lack of awareness of the risks of multiple, prolonged shocks; of the particular danger Tasers pose to vulnerable populations; and of the need to avoid sensitive areas of the body, including the chest. While some studies tout the benefits of Tasers as a tool for law enforcement, the absence of sound policy, training and guidelines to direct the powerful weapons' proper, lawful use contributes to this disturbing pattern of misuse and overuse and puts the state's residents and visitors at unnecessary and unjustifiable risk.

The NYCLU's analysis found:

- **Nearly 60 percent of reported Taser incidents did not meet expert-recommended criteria** for justifying Taser use—criteria that limit the weapon's use to situations where law enforcement officers can document active aggression or a risk of physical injury.
- **Fifteen percent of incident reports indicated clearly inappropriate Taser use**, such as officers shocking people who were merely passively or verbally noncompliant with a police order, or where a suspect was already handcuffed or restrained.
- **Only 15 percent of documented Taser incidents involved people who were armed** or who were thought to be armed, belying the myth that Tasers are most frequently used as an alternative to deadly force.
- **More than one-third of Taser incidents involved multiple or prolonged Taser shocks**, which experts link to an increased risk of injury and death.
- **More than 1 in 4 (27 percent) of Taser incidents involved shocks directly to subjects' chest area**, despite explicit 2009 guidelines by the weapon's manufacturer instructing users to avoid firing Tasers at the chest area, citing a risk of "potential cardiac consequences."

February 2004, Southampton Village, Suffolk County.

David Glowczenki, 35, died after being Tasered nine times in a confrontation with police on Southampton Village’s Main Street. Glowczenki’s family had called the Southampton Village Volunteer Fire Ambulance Corps because he became agitated after learning that his family sought to place him in a psychiatric hospital for treatment of his schizophrenia. Glowczenki, carrying a Bible, fought with police officers, knocking one officer to the ground. In the struggle that followed, Glowczenki was beaten, maced, sprayed with pepper spray and shocked nine times with the Taser. “He had no weapon and

committed no crime,” said his sister, Jean Griffin, after her brother’s death.

An independent pathologist conducted an autopsy on Glowczenki’s body and documented evidence of excessive force, including electrical burns consistent with Taser shocks.

(A \$75 million civil lawsuit was filed by the family against four village police officers, the Suffolk County Medical Examiner, the Southampton Volunteer Ambulance Corps and the Suffolk County Police, and a second lawsuit filed against Taser International, for \$55 million.)

- **In 75 percent of incidents, no verbal warnings were reported,** despite expert recommendations that verbal warnings precede Taser firings. Half of the jurisdictions surveyed do not, in fact, require officers to issue verbal warnings.
- **Forty percent of the Taser incidents analyzed involved at-risk subjects.** Taser experts caution against Taser use on children, the elderly, the visibly infirm and individuals who are seriously intoxicated or mentally ill — “the very individuals” most likely to be in contact with police, according to the International Association of Chiefs of Police. Of these incidents, 30 percent involved situations where officers were called to assist with a mentally disturbed individual with *no indication or suggestion of criminal activity*.
- **People of color are overwhelmingly represented in Taser incidents.** Of all incidents in which race was recorded, 58 percent involved black or Latino New Yorkers. In Albany, where 28 percent of the population is black, 68 percent of Taser incidents involved black subjects; similar disproportionalities were evident in Syracuse and Rochester.

As the NYCLU’s analysis demonstrates, these problems are directly linked to the fact that use-of-force policies governing the use of Tasers lack consistency and, with the exception of the NYPD, do not comply with the recommendations of national law enforcement experts that have developed model policies for Taser use. Moreover, seven of the eight jurisdictions surveyed by the NYCLU analysis appear to rely exclusively on training materials provided by TASER International, the weapon’s manufacturer—an approach that experts widely condemn as inadequate preparation for crucial decisions in the field.

In addition to these fundamental flaws in policy and training, law enforcement agencies are not doing enough to monitor and supervise the use of Tasers in the field. The incident reports obtained by the NYCLU showed grossly inconsistent and incomplete record-keeping, a significant obstacle to accountability and proper assessment of the risks and rewards of Tasers.

Defining and practicing the “appropriate use” of Tasers remains the outstanding challenge in the effort to ensure that Tasers do not cause more harm than good. Accordingly, the NYCLU **recommends the following:**

1. New York State law enforcement agencies must reform use-of-force policies and Taser training programs to comply with nationally recognized expert guidelines, such as the guidelines created by the United States Department of Justice and the Police Executive Research Forum.
2. The State of New York must play an active role in promoting and achieving universal adoption of these expert-recommended policies and guidelines, and in ensuring that local agencies coordinate their Taser policies and training programs.
3. The State of New York and local law enforcement agencies must require accurate, complete reporting and robust monitoring of Taser use. Such reporting should be made available to the elected officials responsible for oversight of law enforcement agencies and to the citizens whose taxes support them. ■

Introduction

Since their widespread introduction more than two decades ago, Tasers have been lauded by their manufacturer and by law enforcement as a safe and effective way of subduing criminal suspects. At the same time, they have been condemned by critics as dangerous and routinely misused. The U.S. Department of Justice (DOJ) recently noted that more than 200 Americans have died after being shocked by Tasers.¹

Notwithstanding the controversy, Tasers are here to stay: In the U.S., 16,000 law enforcement agencies now use Tasers, including 350 in New York State.²

**Reform
use-of-force policies
and Taser
training programs.**

Despite their widespread use, there has been little systematic reflection by state law enforcement or other government officials on the use of Tasers. National experts have developed comprehensive model use-of-force policies and training recommendations, but no studies have compared how New York's varied policies and training programs compare to those models and recommendations. And there has been no meaningful examination of whether the thousands of New York law enforcement officers who carry Tasers deploy them safely and consistently, within sound use-of-force guidelines.

This report is a first step to filling the research gap. Between April of 2009 and January of 2010, the New York Civil Liberties Union requested, pursuant to New York's Freedom of Information Law, use-of-force policies and training materials governing Tasers from 10 law enforcement agencies representing urban, suburban and rural areas of the state.³ In addition, the NYCLU requested reports detailing individual incidents in which officers used or

displayed a Taser from eight police departments statewide.⁴ Combined, the eight departments provided 851 individual reports.

Our review reflects poorly on New York. The incident reports show that many officers use Tasers in inappropriate and potentially dangerous ways. The policies we examined are inconsistent and, with the notable exception of the NYPD's policy, generally fail to comply with the recommendations of national law enforcement experts, particularly those recommendations designed to avoid dangerous and inappropriate Taser use. Most departments queried rely solely on training materials prepared by the weapon's manufacturer, Taser International—a widely-condemned approach that fails to fully prepare officers for when and how to deploy Tasers. ■

PART I: Taser Dangers: A Growing Recognition

Tasers have two modes: In “probe mode,” an electro-shock projectile delivers up to 50,000 volts in a series of pulses through barbed wires shot at a person. In “drive-stun mode,” the stun gun delivers its charge at close range directly from metal contacts on the weapon.

March 2008, Clay, outside of Syracuse. *Police officers summoned to the Norstar apartments were confronted by a resident, Christopher H. Jackson, shortly after 9 p.m. Officers used a Taser to subdue Jackson. Within 90 seconds of the Taser shock, Jackson was unresponsive to direct questions, witnesses said, and paramedics were summoned. Jackson experienced cardiac arrest in the ambulance and was pronounced dead at St. Joseph’s Hospital and Health Center.*

In probe mode, the weapons are designed to disrupt the central nervous system and temporarily incapacitate the subject. The barbed wires attach directly to the skin or clothing of the subject to deliver the electrical charge and the barbs are meant to be removed only by a medical professional.⁵ In drive-stun mode, which does not require the use of barbed wires, the electric shock is designed to cause sufficient pain to induce compliance. Taser International, the weapons’ primary manufacturer, has aggressively marketed Tasers as a safe method of controlling dangerous or combative subjects.

Concerns about Lethality

As Taser use spread in the United States, so did reports of their lethality. A 2005 report from the American Civil Liberties Union of Northern California documented several fatalities associated with Tasers and highlighted the lack of independent medical studies of their effects, especially the effect of multiple shocks.⁶ That same year, the *Arizona Republic* reviewed

autopsy reports in several dozen Taser-related deaths. In at least 18 cases, the medical examiner listed Tasers as a cause or contributing factor.⁷

In 2006, both the United Nations Committee Against Torture and the United Nations Human Rights Committee raised concerns about American law enforcement's Taser use, and Amnesty International called for a Taser moratorium.⁸ In 2008, Amnesty linked Tasers to the deaths of 334 people in the United States,⁹ and Canadian authorities undertook a comprehensive review of their policies and practices following reports of a high number of Taser-linked fatalities.¹⁰

Even today, with nearly two decades of experience, scientific evidence of Taser safety is lacking. In May 2011, an independent study published by the DOJ raised serious concerns about the possibility of serious injury and death from continuous or prolonged Taser activations, as well as their use in and around water or hazardous materials and on vulnerable populations such as persons prone to dangerous falls, persons with pacemakers or defibrillators, intoxicated or mentally disturbed persons, and “small children, those with diseased hearts, the elderly, pregnant women and other potentially at-risk individuals.”¹¹ These are not merely exceptional situations; according to the International Association of Chiefs of Police, mentally disturbed, intoxicated, stressed and otherwise “unhealthy” subjects are “the very individuals most likely to come into contact with police.”¹²

Academic studies acknowledge Tasers' potential lethality and have raised concerns about the ongoing lack of authoritative studies establishing their safety.¹³ Concerns over lethality increased in October 2009, when Taser

June 2008, Southampton, Suffolk County. *Brooklyn native Tony Curtis Bradway, 26, died shortly after police officers shocked him twice with a Taser. The officers had been called to a Southampton home on unrelated matters when one noticed a plastic bag of white powder, thought to be cocaine. Bradway tried to swallow the plastic bag as police officers Tasered him. The coroner's report said Bradway's death was due to cardiac arrest, although it could not be determined whether possible cocaine ingestion or shock-induced ventricular fibrillation—a disturbance of the heartbeat linked to Taser use—was the primary cause.*

March 2005, Guilderland.

Fifteen-year-old Stephen Bishop, a student at Colonie High School, and a 16-year-old friend were at the Crossgates Mall food court when a mall security guard called them “fruit loops” and asked them to leave. The boys complained to mall security; security personnel then called the security officer who had asked them to leave and two police officers. When Bishop’s friend, whose name has not been released, reached for a book, an officer mistook his gesture and grabbed his arm, causing a scuffle, in which both teenagers were shocked twice with Tasers and handcuffed. Both boys were charged with resisting arrest, misdemeanor assault and obstruction of justice. “He was only hit twice,” Police Chief James Murley said later of Bishop. His friend, who weighed 114 pounds at the time, was left with burns and significant bruises.

International’s new targeting guide recommended that officers avoid firing in the chest area due to potential cardiac consequences.¹⁴

Nonetheless, several studies link Tasers with reduced injury rates among both law enforcement personnel and the people they encounter, as well as reductions in the use of lethal force.¹⁵ These studies suggest that, despite their risks, Tasers can be important and useful tools, provided they are deployed with appropriate training and within adequate use-of-force policies. The question then becomes whether Tasers are deployed appropriately in practice.

Concerns about Taser Abuse

The DOJ recently noted that Tasers “are rapidly overtaking other force alternatives. Although injury findings suggest that substituting [Tasers] for physical control tactics may be useful, their ease of use and popularity among officers raise the specter of overuse.”¹⁶

This concern is not hypothetical. Amnesty International has documented multiple incidents of repeated or prolonged shocks, in which subjects were unarmed and did not appear to present a serious threat and in which subjects were handcuffed or otherwise already restrained.¹⁷ The ACLU of Northern California’s study noted that most police department policies fail to limit multiple shocks, permit Tasers against passive subjects and those already handcuffed or restrained, and do not prevent the use of Tasers on particularly vulnerable people, including pregnant women, small children and the elderly.¹⁸

Expert guidelines caution against multiple shocks and require officers to justify each additional application of force. Here, the young man was Tasered twice, but the arresting officer provided no justification for the need to administer a second Taser application.

TASER® USE REPORT **Internal Document** DR# 08-133745

Date/Time: 1/29/08 0315 TASER Officer's Name: HELTERLINE R W

E-mail: _____ Department: SYR P.P.

Dept Address: 511 S. STATE ST Phone: 442-5200

On Scene Supervisor: HEISE, P. Officer(s) Involved: BEARDON/WILLIAMS/HILTON

TASER Model: TASER X26 TASER Cartridge #: H06 - ~~103745~~ 492521

If an ADVANCE TASER M26 Was Used, What Battery Type: ___ Alkaline ___ NiMH

Air Cartridge Type(s): ___ 21-ft Standard 21-ft XP ___ 15-ft

TASER Serial #: 591 Medical Facility: CCM/ROBERT Doctor: _____

Nature of the Call or Incident: BOMW Charges: CCA/RESIST Booked: Y/N

Type of Subject: Human ___ Animal Subjects Name: _____

Location of Incident: Indoor () Outdoor () Jail () Hospital

Type of Force Used (Check all that apply): () Physical () Baton () Impact Munition () Chemical () Firearm

Nature of the Injuries and Medical Treatment Required: _____

Admitted to Hospital for Injuries: Y/N Admitted to Hospital for Psychiatric: Y/N

Medical Exam: Y/N Suspect Under the influence: Alcohol / Drugs (specify): NO

Was an officer/law enforcement employee injured other than by TASER? Y/N

Incident Type (circle appropriate response(s) below):

Civil Disturbance Suicidal Suicide by Cop Violent Suspect Barricaded Warrant Other

Age: 14 Sex: M Height: 509 Race: BLACK Weight: 140

TASER use (circle one): Success / Failure Suspect wearing heavy or loose clothes: Y/N

Number of Air Cartridges fired: 1 Number of cycles applied: 2

Usage (check one): () Arc Display Only () Laser Display Only TASER Application

TASER: Is this a dart probe contact? Y/N Is this a drive stun contact: Y/N

Approximate target distance at the time of the dart launch: 10 feet

Distance between the two probes: 20 inches Need for an additional shot? Y/N

Did dart contacts penetrate the subject's skin? Y/N Probes removed on scene: Y/N

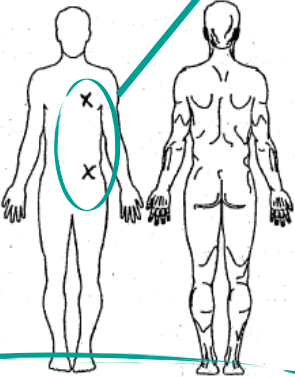
Did TASER application cause injury: Y/N If yes, was the subject treated for the injury: Y/N

DESCRIPTION OF INJURY: _____

Expert guidelines caution against multiple shocks and require officers to justify each additional application of force. Here, the young man was Tasered twice, but the arresting officer provided no justification for the need to administer a second Taser application.

The young man was Tasered in his chest and lower torso, despite Taser International's warning that shocking someone in the chest area creates a heightened risk of cardiac arrest.

APPLICATION AREAS
(Place "X's" where probes hit suspect AND "O's" where stunned)



SYNOPSIS:
TASER USED TO ARREST UNCOOPERATIVE PERSON FOR OGA.

Need for additional applications? Y N Did the device respond satisfactorily? Y N

If the TASER deployment was unsuccessful was a DRIVE STUN followup used? Y / N

Describe the subject's demeanor after the device was used or displayed?
UNCOOPERATIVE UPON DISPLAY. COOPERATIVE AFTER DEPLOYMENT

Chemical Spray: Y N Baton or Blunt Instrument: Y N

Authorized control holds: Y N If yes, what types: _____

Describe other means attempted to control the subject: _____

Photographs Taken Y / N Report Completed by: B.W. HETERLINE # 887

ADDITIONAL INFORMATION

1. Save this file to your hard drive and for your department archives.
2. Submit this report to the national TASER technology incident database.
3. This information will be submitted to the IACP and NTOA to track use of force. Results of uses are reviewed by TASER Int'l to adjust training issues and concerns as well.
4. If you cannot email, please fax a copy of this report to: (480) 991-0791 Attn: Shawn Spencer (Ph: 800-978-2737 ext. 2077).

This report shows that the arresting officer did not attempt any other police tactics before Tasering the young man in the chest. There was no documented threat of violence toward the officer or the public. This is a prime example of how officers often default to using Tasers even when other options are available.

A 2006 study by the *Louisville Courier-Journal* showed that officers “used the weapons in dozens of situations in which neither they nor others appeared to be at risk,” including situations of “verbal non-compliance,” and when subjects showed no active resistance or aggression or were handcuffed.¹⁹ Tasers were frequently used against the mentally ill, juveniles and people fleeing after minor crimes, such as shoplifting.²⁰ That same year, the PERF noted that the results of studies then available showed that “multiple and continuous” Taser activations “may increase the risk of death or serious injury, and that there may be a higher risk of death in people under the influence of drugs.”²¹ The review “indicated a real need for more attention to the issues related to [Taser] activation on persons operating vehicles, handcuffed persons, and fleeing suspects.”²²

The Courts’ Increasingly Serious Approach

Advocates and law enforcement experts are not alone in raising concerns about Taser misuse. Courts, too, acknowledge Tasers’ potential dangers in evaluating the liability of law enforcement officers and municipalities for injuries caused by their use.

The use of Tasers, like any use of force by law enforcement officers, is governed by constitutional principles that prohibit excessive and unreasonable force.²³ *Graham v. Connor*²⁴ makes clear that the use of force is constitutional only if it is objectively reasonable under the Fourth Amendment.²⁵

In the first generation of Taser litigation, some courts credited now-abandoned, overbroad claims about the safety of, and relatively minimal harm caused by, Tasers.²⁶ In recent years, however, as the public, law enforcement experts, medical professionals and advocates have become better educated about the risks Tasers pose, so too have the courts. Police officers who deploy Tasers do so knowing that the Taser inflicts extreme pain and may cause serious injury or death. An officer may be liable for an unreasonable Taser use and municipalities may be liable for policies that promote Taser overuse or misuse, and for the failure to adequately supervise and train their officers.

September 2008, Brooklyn. *Iman Morales, 35, had a long history of emotional disturbance and mental illness. When police arrived in response to Morales' mother's call for help, saying he had stopped taking his antipsychotic medications, a naked and agitated Morales stepped out of his mother's Bedford-Stuyvesant apartment building and onto a narrow second-floor ledge, brandishing an 8-foot fluorescent light bulb as if it were a light saber. As his mother pleaded with officers not to shoot her son, saying "he's sick," Emergency Services Officer Nicholas Marchesona fired his Taser at Morales, on the orders of Lt. Michael Pigott.*

No air bag was in place to break Morales' fall (officers had radioed for an airbag; it hadn't arrived). Morales fell 10 feet to the pavement and died. "He just fell face first," said a neighbor, Sean Brown. Morales was pronounced dead on arrival at Kings County Hospital. "His mother called

911," another neighbor, Sharonnie Perry, said. "She called for assistance and the assistance she got was her son being killed."

On the day of Morales' funeral, Lt. Michael Pigott took his own life with another officer's handgun. Earlier, Pigott, a 21-year veteran officer who was distraught since Morales' death, apologized to Morales' family for the Taser death and asked that Officer Marchesona not be blamed for Pigott's decision. A suicide note found near Pigott's body said that he did not want his three children to see him in handcuffs, as he feared arrest. Pigott died on his 46th birthday.

The NYPD analysis later said that "the order to employ the Taser . . . appears to have violated guidelines" that were issued in June 2008, including directions that prohibit Taser use "when the subject is in a position where a fall may cause substantial injury or death."

In *Tennessee v. Garner*, the Supreme Court prohibited deadly force “unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”²⁷ While a Taser may not always be a deadly weapon, it clearly constitutes the use of deadly force. For example, courts have held that use of a Taser on a person who is standing at a substantial height constitutes the use of deadly force.²⁸ In addition, prolonged or multiple Taser discharges may be recognized by courts as deadly force, particularly when applied in combination with face-down restraint or to at-risk individuals such as the mentally ill and individuals under the influence of narcotics.²⁹ Courts also recognize the “increased potential for possibly lethal results created by newer models” of Tasers.³⁰

Even when not used in a manner that constitutes deadly force, Tasers may still “pose a risk of permanent or significant injury.”³¹ As early as the mid-1980s, a New York court noted with regard to Tasers that “there has been great concern about the impact on people with heart problems”³² Courts have specifically recognized that Tasers cause “serious and substantial harm” to persons taking psychotropic medication and the mentally ill.³³ (It is important to note that it is the risk of injury that is important to the Fourth Amendment analysis, not whether that risk was realized.)³⁴

The pain Tasers inflict is another factor in determining reasonable force under the Fourth Amendment. Courts have described the effect of a Taser discharge as “shocking, burning, and even rendering numb its target;”³⁵ and “a painful and frightening blow, ... temporarily ... rendering the victim helpless.”³⁶ Courts agree that a Taser used in drive-stun mode causes acute, significant and severe physical pain.³⁷ One court cited the testimony of a law enforcement officer who compared a Taser shock to “being hit on the back with a ‘four-by-four’ by Arnold Schwarzenegger.”³⁸

The growing legal consensus about the serious risk of pain, injury and death with Taser use parallels an increasing number of court decisions finding Taser use unconstitutional and sanctioning officers and law enforcement

agencies for their improper use. Courts have found Taser use unconstitutional in scenarios that New York police departments appear to have implicitly or explicitly permitted (see Parts II and III below.) For example, courts have held it is unconstitutional to use a Taser multiple times on an already restrained person³⁹ and on a mentally unstable individual who was not suspected of a crime and posed no immediate threat to officers.⁴⁰ It is also unconstitutional to use a Taser even once on a nonviolent, noncompliant person suspected of only a minor crime,⁴¹ or a nonviolent person suspected of a traffic violation who was not threatening or fleeing.⁴²

Law enforcement agencies that fail to provide officers with appropriate training and guidance about constitutional Taser use may be held responsible for the misuse of the weapons. For example, courts have permitted claims against municipalities where a police department failed to provide timely periodic trainings after the manufacturer updated safety information,⁴³ where a police department failed to train officers regarding the use of Tasers on the mentally ill;⁴⁴ and where Taser use was authorized against individuals who were “passively resisting” police orders.⁴⁵ Law enforcement agencies must appropriately instruct and train their officers on the use of Tasers and must require sufficient reporting on Taser use to promptly analyze, identify and correct any misuse.

Nationwide Calls for Reevaluation

Departmental policies often exacerbate the dangers of Taser misuse and provide insufficient guidance to officers on the weapons’ proper use. A 2005 study of use-of-force policies by the United States Government Accountability Office (GAO) showed enormous inconsistency among law enforcement agencies as to when it is appropriate to use Tasers.⁴⁶ Some policies permitted use only when there is a risk of physical harm. Other policies are much broader, permitting Taser use when a person is passively resisting an officer, for example. As a result, the GAO report concluded that “a standardized training program on the use of Tasers is needed.”⁴⁷

Some law enforcement agencies have begun to reevaluate the rush to adopt Tasers. In Maryland, the Attorney General’s Task Force on Electronic Weapons issued a 2009 report urging greater accountability and community involvement in local decisions to adopt Tasers, as well as more stringent training and use-of-force policies.⁴⁸ The report noted that training materials provided by the Taser manufacturer “tended to significantly understate the risks.” Underestimating risk, coupled with the ease of Taser use, “appears to have led to over-reliance on [Tasers]... particularly in response to low-level threats of harm and situations that have now been shown to involve a heightened risk of injury or death.”⁴⁹

In light of this nationwide controversy surrounding Tasers, there is strong reason to believe that New York law enforcement authorities should carefully evaluate their approach to these weapons, consider measures to decrease over-reliance on Tasers and limit their misuse, and monitor policies and practices governing the use of these weapons. To date, however, no such efforts have occurred. ■

Part II: Tasers in New York: Overuse and Dangerous Deployment

The NYCLU’s review of several hundred incident reports involving Tasers, as well as the policies and procedures governing Taser use, paints a disturbing picture. Inconsistent and incomplete reporting means that the data presented here only provide a rough sense of the reality on the ground. Nonetheless, the information that can be gleaned from these reports and policies shows that improperly trained law enforcement officers are using Tasers in ways that are ineffective, unnecessary and expose people in New York to the risk of serious injury or death.

The pattern of misuse and overuse of Tasers fall into seven distinct categories: the use of Tasers where the suspect poses no demonstrated danger or risk of injury to any person; the administration of excessive numbers of or excessively long shocks; dangerous targeting of vulnerable areas of the body, such as the chest, neck or genitals; the failure to warn a subject prior to using a Taser; the over-reliance on drive-stun as opposed to probe mode; the use of Tasers on vulnerable populations or in dangerous situations; and the disproportionate use of Tasers on people of color.

These failings can be linked directly to inadequate policies and training governing the use of Tasers in New York. Drawing on recommendations and model policies prepared by national law enforcement experts, the NYCLU found that the policies and training of New York police departments are severely lacking, specifically with regard to the issues identified above. While a few departments across the state, including the NYPD, comply with expert recommendations, most miss almost every mark. On the whole, the policies

January 2009, Salina, Onondaga

County. *Onondaga County Deputy Sean Andrews pulled Audra Harmon, 38, over on a routine traffic stop, charging that she had been speaking on her cell phone while driving, which she denied. Andrews next said Harmon was speeding, asserting that she had driven 50 miles an hour in a 45 mph zone. Harmon stepped out of her van to confront Andrews. He told her to get back into the minivan, but asked her to step outside her vehicle shortly thereafter. (A video camera on Andrews' squad car captured the scene.)*

Harmon, accompanied by her 15-year-old son and 5-year-old daughter, was frightened by what she perceived as Andrews' erratic behavior. She clung to the steering wheel. Andrews pulled Harmon out of the van by her arm as

her children protested. When Harmon resisted his efforts, he used his Taser to shock her twice, landing a barb in her upper left chest, despite Harmon's plea to stop: "Don't do this in front of my children," she begged. After the second Taser shock, Harmon fell to her knees. Andrews pushed her to the ground and handcuffed her. Andrews took Harmon into custody on charges of disorderly conduct and resisting arrest. Her children were left unattended in the family van until their father arrived, 40 minutes later. Prosecutors dropped all charges against Harmon after they viewed the video from Deputy Andrews' squad car.

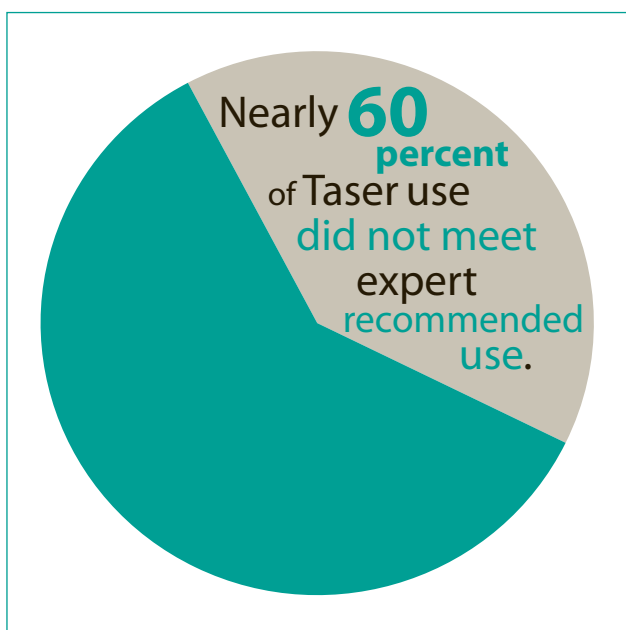
(In December, 2009, Onondaga County legislators unanimously agreed to award a \$75,000 settlement in response to a lawsuit Harmon filed.)

surveyed revealed a patchwork of inconsistent and often inadequate policies. Most departments appear to rely solely on training materials prepared by the manufacturer of these weapons, suggesting that officers are not receiving proper guidance on when and how to use Tasers.

Each of these issues is discussed in more details in the sections that follow.

The Use of Tasers Where the Suspect Poses No Danger or Risk of Injury to Anyone

Experts and advocates alike agree that Tasers should be used only where there is active aggression by a subject or a documented threat of physical harm to another person.⁵⁰ Unfortunately, less than half of the incident reports reviewed (42 percent) documented facts showing such a justification for the use of the



Taser. In 35 percent of incident reports reviewed, documentation provided in the reports indicated that the subject was only engaged in defensive or passive resistance, establishing that the use of the Taser affirmatively did not conform to expert recommendations. Fifteen percent of incident reports reviewed involved officers firing Tasers without documenting any justification for the weapon's use beyond the fact that the subject was fleeing or non-compliant with a police order. This misuse appears to be widespread. With the exception of Nassau County, every law enforcement agency surveyed reported at least one incident of Taser use against a merely passively resisting or verbally noncompliant person.

Particularly disturbing were the number of incidents in which Tasers were used on people in flight or in handcuffs, a use of force condemned by law enforcement experts.⁵¹ In 7 percent of incidents, officers' reports showed that subjects were handcuffed or otherwise restrained, and 4 percent of the reports indicated that the individual was merely fleeing from the officers.

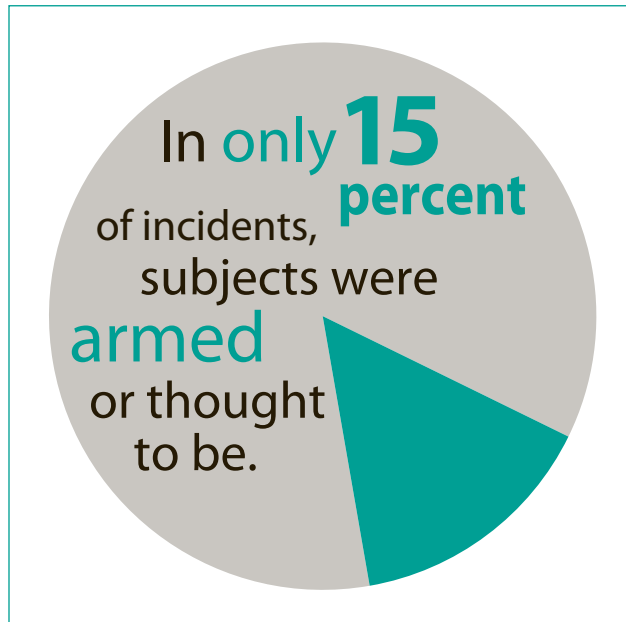
The data, while imperfect,⁵² shatter the illusion that Tasers are primarily used as an alternative to deadly force on armed or otherwise dangerous subjects. Indeed, only 15 percent of Taser incidents reviewed for this report involved a subject who was armed or thought to be armed.

These disturbing statistics reflect the fact that almost none of the departmental use-of-force policies reviewed for this report complied with expert recommendations governing the appropriate circumstances for the use of Tasers.⁵³ Most of the policies surveyed defined the proper use of Tasers far more broadly than experts recommend or in a vague manner not reflective of the careful recommendations of experts, creating the likelihood if not the certainty of overuse and abuse of Tasers.

The Glens Falls Police Department, for example, permits the use of a Taser whenever it is deemed “reasonable and necessary,” in light of the “totality of circumstances surrounding the incident.” Indeed, some policies authorized



In at least **7 percent** of incidents, subjects were already **restrained**.



Tasers in circumstances specifically condemned by experts, such as use on already restrained or handcuffed individuals.

A few departments admirably specify that Tasers may never be used for punitive or coercive purposes. Fewer still say that Tasers may not be used to compel compliance with a police order. But even these departments fail to

require documentation of a specific threat of harm or injury. Such vague and facially inappropriate policies make it inevitable that a substantial percentage—well over half—of the incident reports reviewed for this report failed to document active aggression or a threat of harm to a person as a justification for using the Taser.

Excessive Number and Duration of Shocks

Most deaths associated with Taser use involve multiple or prolonged discharges,⁵⁴ which experts say are extremely dangerous. Model policies require individualized assessment of the need for additional shocks or shocks longer than the standard five-second cycle.⁵⁵ Unfortunately, more than one-third (38 percent) of the incidents reviewed by the NYCLU involved multiple shocks, with 16 percent involving three or more shocks. Prolonged shocks were reported less frequently, appearing in 3 percent of records reviewed, with the majority occurring in one department—the Glens Falls Police Department. There, nearly 20 percent of the Taser incidents reported involved prolonged application of the Taser.

Rarely do officers justify the reasons for additional or prolonged shocks. For example, the Glens Falls Police Department reported 15 instances in which Tasers were deployed three or more times. In none of these reports did the officer provide any specific indication of why the weapon was used in this dangerous manner. Frequently, the officer said nothing at all. In a 2008 incident, an officer applied four cycles in drive-stun mode against an uncooperative individual, but provided only a single sentence explanation.

This situation plainly is linked to the fact that the majority of departments surveyed provide no caution against multiple or prolonged Taser discharges in their use of force policies.⁵⁶ The silence of these policies invites abuse.

The Albany Police Department policy stands out in this regard. Contrary to expert recommendations, it appears to endorse repeat Taser use, without precaution or limitation, until people are compliant or apprehended. The policy states, “Compliance through incapacitation is the desired goal, and to that end the officer should be prepared to administer continued electrical charge(s), in the event that the initial 5-second charge is not effective, until the subject is compliant and/or apprehended.” This language embodies no recognition or warning of the dangers of prolonged or repeated Taser cycles, sets no limit on the number or duration of cycles and does not require

individualized assessment of the need for repeated or prolonged Taserings.

A few departments, recognizing if not fully responding to the risks associated with multiple Taser cycles, urge caution before Taserings someone multiple times, but set no specific limits or a requirement for individualized assessment for consecutive cycles.⁵⁷ The inconsistency and incompleteness of New York's policies in itself raises serious concerns.

Targeting of Dangerous and Sensitive Areas of the Body

The matter of targeting Tasers at particularly sensitive areas of the body has generated a great deal of controversy in the wake of Taser International's 2009 warning against targeting the chest area.⁵⁸ Even before this announcement, expert recommendations encouraged departments to avoid sensitive areas of the body, such as the head, neck and genitalia.⁵⁹


In 27 percent of the reports NYCLU reviewed, an officer fired at a person's chest, the very area the manufacturer warns against. In 14 incidents, individuals were shocked in the head, neck or groin.

Although most departments surveyed provide some targeting guidance, some provide no guidance whatsoever, licensing officers to target subjects without limitation.⁶⁰ Even among those that guide Taser targeting, many policies are incomplete, covering only some of the most vulnerable areas, or limiting targeting guidance to drive-stun mode only.

June 2008, Harlem. *Alexander Lombard III, the 18-year-old son of retired NYPD Lieutenant Alexander Lombard II, was Tasered four times at a Harlem barbeque when police intervened in a fight between two female guests.*

Lombard received Taser shocks to the neck, shoulder, face and rib cage, resulting in permanent scarring and mental anguish, according to his father. The teenager was also beaten with a nightstick and placed in a choke hold.

In more than **1 out of 4** incidents, an officer fired at a person's chest.



September 2009, Syracuse.

A.E., a 15-year-old student at Fowler High School, was shocked by a Taser meant for another student, school officials later stated, as school resource officers attempted to stop an afterschool fight between two girls. School officer James Stone shot his Taser toward one of the girls in the fight. But Stone's Taser missed its mark and struck A.E., who was trying to stop the fight. The officers did not announce their intent to use the Taser, and students had no warning before the officers fired the Taser barbs.

A.E. was shocked and handcuffed in full view of 30 to 40 students who pleaded with the police officers to stop, saying that he was not part of the fight. He suffered pain, injury and emotional distress as a result of the Taser shock. In 2010, the NYCLU filed a suit against the Syracuse Police Department on behalf of A.E.

Two departments—the NYPD and the Suffolk County Police Department—appear to follow Taser International's warnings about targeting the chest, suggesting that most New York State officers operate Tasers with insufficient guidance.

Failure to Warn Prior to the Use of a Taser

In light of the dangers of Tasers and their purpose to de-escalate potentially violent situations, experts recommend that officers issue a verbal warning before using the weapons.⁶¹ In 75 percent of the incidents reviewed, however, there was no documentation of a verbal warning in the use-of-force report. The departmental policies surveyed do not uniformly require a warning before firing a Taser at a subject; indeed, the surveyed departments split almost evenly between those requiring a warning and those that do not.⁶²

Over-Reliance on Drive-Stun Mode

Experts strongly emphasize that Tasers are meant to be used in probe mode whenever feasible, both because it is more effective and because it is safer.⁶³ Only two departments surveyed—the Guilderland Police Department and the NYPD—incorporate this concept into practice, by requiring that drive-stun mode be used only as a last resort or in exceptional circumstances. One department, Saratoga Springs, cautions that drive-stun mode is less effective, with no mention of the dangers of over-reliance on this method. The remaining departments either are entirely silent or leave the decision to the officers' discretion.

Unsurprisingly, among those departments that document the mode of use, drive-stun mode was used in 47 percent of Taser deployments. Probe mode accounted for 53 percent, suggesting that officers use the more dangerous, less effective mode with alarming frequency.

Targeting At-Risk Populations and Using Tasers in Dangerous Situations

In addition to the dangers of targeting specific areas of the body, experts warn of the dangers of targeting physically or mentally vulnerable people, including the inebriated.⁶⁴

Despite these warnings, our analysis suggests that Tasers are regularly used on intoxicated people. In 40 percent of incidents surveyed, officers reported that the subject showed signs of intoxication.

Although Taser use on children and the elderly are relatively rare, they provide disturbing examples of Taser misuse. In a 2005 report from the Guilderland Police Department, an officer Tasered a 13-year-old boy who had allegedly been involved in a fight at a shopping mall. During the arrest, the officer gave no indication that he felt threatened or that the boy had threatened himself or those around him. Nonetheless, the officer deployed a Taser and struck the boy's thigh. The officer's narrative indicated nothing more to justify the Taser's use than that the weapon was fired in order "to gain compliance."

Experts caution that an apparent mental health crisis or mental distress should not be a justification for using a Taser to subdue a subject.⁶⁵ Yet in about 30 percent of the incident reports reviewed, the officer using a Taser was responding to a "mental health" call (with no suspicion of criminal activity) or the officer reported that the subject was seriously mentally ill.

In almost
HALF of the incidents,
officers used the
'drive-stun' mode
-meant only as a **last resort.**

August 2004, Queens. *Terence L. Thomas, 35, of Hempstead, Long Island, was under arrest in a holding cell in the 105th Precinct in Queens when he became agitated and banged his head into the holding cell wall. Thomas refused medical attention and resisted officers' attempts to calm him; police said later that Thomas might have swallowed crack cocaine to avoid its discovery after his arrest. Four police officers and four fire department medical workers tried to subdue Thomas, who was shocked with a Taser at 3:45 a.m. Thomas experienced cardiac arrest in the ambulance en route to Queens Hospital Center, where he was pronounced dead at 4:30 a.m. (Analysis of Thomas' stomach contents revealed cocaine.) Thomas' family was not permitted to see his body at the hospital, and charged that his face was bruised and beaten in a Polaroid they were shown.*

In a particularly disturbing report from the Syracuse Police Department, a total of three officers each used their Tasers against a mentally ill man. In their individual reports, each officer reported firing and applying multiple Taser cycles. The first applied five to six cycles, the second four to five cycles, and the third three to six cycles. The man had refused the officers' orders to get on the floor, yet at no point in the report did the officers document any risk of harm. Only one officer issued a verbal command to attempt to control the situation before the man was Tasered – more than a dozen times. No charges were ever filed against the man.

The failure of many departments' policies to caution officers against using Tasers on vulnerable populations contributes to this problem.⁶⁶ Even in departments that do provide guidance, the lists of "vulnerable populations" are inconsistent with one another and incomplete relative to expert recommendations.

Expert guidelines deliberately enumerate risky situations in which Tasers should be avoided. Once again, many departments' policies are silent on this subject, and the guidance that is provided is often inconsistent and incomplete. Reliable data on how frequently Tasers are used in identifiably risky situations could not be gathered from the incident reports surveyed because police departments across New York do not require detailed reporting of this kind of information.

The Disproportionate Use of Tasers on People of Color

Among departments that track race in their incident reports, black and Latino New Yorkers accounted for

58 percent of Taser incidents.⁶⁷ Closer scrutiny of the data illustrates precisely how disproportionate that statistic is to the relative population. For example, according to the most recent census data available,

40 percent
of incidents
involved
at risk subjects:
children
elderly
infirm
intoxicated
mentally ill

28 percent of the population in Albany is black, yet 68 percent of those Tasered were black.⁶⁸ Similarly, in Syracuse, 56 percent of individuals involved in a Taser-related incident were black – more than twice their presence (25 percent) in the total population. In Rochester, 48 percent of those Tasered were black, while 38 percent of the population is black.

Full analysis of this troubling pattern of heightened Taser use in communities of color falls outside of the scope of this report. But it echoes consistent and disturbing practices of over-policing in communities of color and the disproportionate impact of abusive police practice on these communities. ■

December 2004, Guilderland.

On the day after Christmas, Swahiti S. “Chevron” Bolden, 34, of Albany, was outside a Houlihan’s restaurant with his family in the Crossgates Mall. Mall police called local police officers at 1:30 p.m. when Bolden was acting “belligerently.” Once police officers arrived, Bolden declined to show them his identification. Officers Tasered Bolden twice: The first shock did not penetrate his winter clothing, but a second shock was applied directly to his groin. Witnesses say that Bolden was handcuffed before being Tasered; police officers say that Bolden was resisting arrest and that the Taser shocks permitted them to handcuff him.

Part III: Recommendations

These troubling statistics of misuse and overuse of Tasers are clearly linked to the inadequacies of New York law enforcement agencies' use-of-force policies and training governing Tasers. Moreover, the data are incomplete because of extremely lax reporting on Taser incidents within individual departments and a complete lack of such reporting at the state level. These problems suggest three necessary steps to begin to address the problems association with the use of Tasers by New York law enforcement officials.

Recommendation 1

New York law enforcement agencies must reform their use-of-force policies and training programs to comply with national expert guidelines governing Tasers.

The essential elements of an appropriate Taser use-of-force policy and training guidelines are by now well established. The Police Executive Research Forum (PERF) and the DOJ have combined their expertise to produce guidelines, updated most recently in 2011, establishing the essential elements of sound use-of-force policies and practices governing Tasers.⁶⁹ One New York law enforcement agency, the NYPD, uses these recommendations in its departmental policy. Other New York law enforcement agencies should review their policies in light of these recommendations and the inadequacies details in this report, and make changes to address the clear deficiencies and inconsistencies in their policies and training programs.

In addition to the need for reform of policies and procedures, information obtained by the NYCLU suggests that many New York police departments

have grossly inadequate Taser training. Experts recommend that departments provide their own training curriculum,⁷⁰ but of the departments that responded to the NYCLU's Freedom of Information request, only the Rochester Police Department reported used independent training materials in addition to protocols issued by the manufacturer. Expert recommendations also suggest annual recertification to carry Tasers. Nonetheless, more than half of the departments surveyed did not require annual recertification.⁷¹ Given that new information about the safety, reliability and proper Taser use emerges every year, the failure to ensure annual recertification across the board must be addressed.

Recommendation 2

The State of New York should do more to encourage reform of, and uniformity among, law enforcement agencies' use-of-force policies.

PERF and the DOJ specifically recommend that law enforcement agencies coordinate their Taser policies and strive toward multi-jurisdictional training programs and policies.⁷² Such coordination can only occur with the assistance of state agencies such as the Division of Criminal Justice Services (DCJS), and in particular the Municipal Police Training Council (MPTC).

In September 2009, the MPTC, a department of the DCJS, published recommended guidelines for Taser use.⁷³ These recommendations have some positive elements, but they are relatively weak and far from comprehensive. Indeed, they do not address the fundamental question of when the use of a Taser is authorized and appropriate, leaving law enforcement agencies on their own in answering this difficult and controversial question.

Moreover, MPTC has done little to see that its recommendations are followed. Although the agency conducted a series of trainings for willing departments in 2009, participation in the training and adoption of MPTC recommendations was entirely voluntary, and did not gain momentum statewide. No

indications suggest that MPTC is continuing its push to bring more coherence to Taser policies.

Recommendation 3

The State of New York should require statewide comprehensive reporting and monitoring of Taser use.

Accurate, comprehensive data on Taser use and misuse in New York is unavailable because of poor recordkeeping by law enforcement agencies and a lack of monitoring or oversight by state and local authorities. New Yorkers deserve a complete and well-grounded understanding of the costs and benefits of Taser use. Such an understanding cannot occur until and unless responsible state officials demand appropriate reporting from local law enforcement agencies.

Given the rapid spread of this relatively new technology, one would expect law enforcement agencies and government officials to carefully monitor and review Taser use. Expert recommendations emphasize the importance of such review,⁷⁴ and say that incident reports should include copious information, such as the facts supporting the officer's decision to fire a Taser; specific justification for a prolonged cycle or multiple discharges; whether the person Tasered was a juvenile, elderly or a person obviously under the influence of drugs or alcohol; the range at which the Taser was deployed; where on the body the person was Tasered; and the injuries, if any, to the subject.⁷⁵

All departments queried require officers to complete an incident report following the use of a Taser. But only two departments surveyed, Rochester and Saratoga Springs, required reporting of the specific information deemed necessary by experts. Indeed, some departments' policies and practices actively interfere with attempts to provide sufficient information. For example, incident report forms in the Syracuse and Greece police departments provide little physical room to describe a Taser incident. Even when forms are nominally adequate,

many reports were incomplete or had a number of fields left blank. The absence of proper documentation results in grossly inconsistent and incomplete recordkeeping, forming a clear obstacle to understanding Taser use and holding law enforcement accountable.

Even if the reporting in individual incident reports were complete, it is not clear how departments use the information they collect. According to the policies provided to the NYCLU, almost no police departments surveyed mandate comprehensive departmental review of incident reports to assess their Taser program.

The state should step into this void. At the present time, there is no independent or state-level evaluation or assessment of Taser use, whether by the MPTC or any other state agency. Such statewide mandates are not unprecedented. In 2007, the State of New Jersey passed a law requiring specific reporting whenever a Taser is discharged or displayed.⁷⁶ The law also requires supervising officers, the chief executive of the law enforcement agency, the county prosecutor and, ultimately, the state attorney general, to review such reports.⁷⁷

These relatively modest first steps will lay the foundation for a more sound approach to the use of Tasers in New York. Better policies and training, consistent with the recommendations of law enforcement experts, will curtail the overuse and misuse of Tasers while ensuring that they remain a viable and appropriate law enforcement tool. Better reporting will contribute to a more robust understanding of the risks and benefits of Tasers and create stronger mechanisms of accountability for officers who continue to overuse or misuse these weapons. Ensuring the responsible and appropriate use of Tasers is in the interest of law enforcement officers and the citizens they serve. ■

End Notes:

- ¹ U.S. Department of Justice, Office of Justice Programs, *NIJ Research in Brief: Police Use of Force, Tasers and Other Less-Lethal Weapons* (Washington: U.S. Department of Justice, May 2011) 2.
- ² This information was reported to the NYCLU following a press inquiry to the primary manufacturer of Tasers, TASER International, and is available on file with the NYCLU.
- ³ Those departments include the Albany Police Department, the Glens Falls Police Department, the Greece Police Department, the Guilderland Police Department, the Monroe County Sheriff's Office, the Nassau County Police Department, the Rochester Police Department, the Saratoga Springs Police Department, the Suffolk County Police Department, the Syracuse Police Department and the New York Police Department. The policies of each of these departments are available upon request from the NYCLU. The NYCLU also requested policies from the Buffalo Police Department and the New York State Police but, at the time they responded to the request, neither of those two departments used Tasers.
- ⁴ Those departments include the Albany Police Department, the Glens Falls Police Department, the Greece Police Department, the Guilderland Police Department, the Nassau County Police Department, the Rochester Police Department, the Saratoga Springs Police Department and the Syracuse Police Department. A spreadsheet containing the data points from these many hundreds of reports is available upon request from the NYCLU. Original copies of the incident reports are also on file with the NYCLU.
- ⁵ See U.S. Department of Justice & Police Executive Research Forum, *2011 Electronic Control Weapon Guidelines* (Washington: March 2011).
- ⁶ Mark Schlosberg, *Stun Gun Fallacy: How the Lack of TASER Regulation Endangers Lives*, ACLU of Northern California, September 2005. Since that time, at least one study concluded that "more than 99% of subjects do not experience significant injuries" after the use of Tasers, based on an examination of 1,200 incidents from six American law enforcement agencies. William P. Bozeman et al., "Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects," *Annals of Emergency Medicine*, April 2009. Like this report, the Bozeman study was based on a review of officer reports, "which has well-recognized limitations." *Id.* at 485.
- ⁷ Robert Anglen, "144 Cases of Death Following Stun Gun Use," *Arizona Republic*, Aug. 8, 2005.
- ⁸ United Nations Committee Against Torture, *CAT/C/USA/C/2* (New York: United Nations, July 25, 2006); United Nations Human Rights Committee, *CCPR/C/USA/CO/3* (New York: United Nations, Sept. 15, 2006); Amnesty International, *Continuing Concerns About Taser Use*, May 2006.
- ⁹ Amnesty International, *'Less than Lethal'? The Use of Stun Weapons in U.S. Law Enforcement*, December 2008.
- ¹⁰ Nova Scotia Department of Justice, *Conducted Energy Device (CED) Review* (Nova Scotia: March 5, 2008).
- ¹¹ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *NIJ Special Report: Study of Deaths Following Electro Muscular Disruption* (Washington: U.S. Department of Justice, May 2011) viii – ix, 6, 10, 16, 22, 23, 24.
- ¹² IACP National Law Enforcement Policy Center, *Electronic Control Weapons: Concepts and Issues Paper*, August 2005, 4.

¹³ See Bozeman et al., *supra* note 6 at 487; Michael Cao et al., “Taser-Induced Rapid Ventricular Myocardial Capture Demonstrated By Pacemaker Intracardiac Electrograms,” *Journal of Cardiovascular Electrophysiology* 18:8 (2007) 876-879; P.J. Kim et al., “Ventricular Fibrillation After Stun-Gun Discharge,” *New England Journal of Medicine* 353 (2005) 155, 156.

¹⁴ Taser International, “Training Bulletin 15.0 Medical Research Update and Revised Warnings,” Oct. 12, 2009.

¹⁵ *Police Use of Force, Tasers and Other Less-Lethal Weapons*, *supra* note 1 at ii; J.M. MacDonald et. al, “The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events,” *American Journal of Public Health* 99 (2009) 1-7; M.R. Smith, et al., “The Impact of Conducted Energy Devices and Other Types of Force and Resistance on Officer and Suspect Injuries,” *Policing* 30 (2007) 423, 446; E. Jenkinson et al., “The Relative Risk of Police Use-of-Force Options: Evaluating the Potential for Deployment of Electronic Weaponry,” *Journal of Clinical Forensic Medicine*, 13 (2006) 229, 241. As another academic study points out, however, many of these studies may significantly overstate the value of Tasers because their data are based solely on internal agency reviews of the use of Tasers. See Bozeman et al., *supra* note 6, at 485.

¹⁶ *Police Use of Force, Tasers and Other Less-Lethal Weapons*, *supra* note 1 at 15.

¹⁷ *Less Than Lethal?*, *supra* note 9, at 3-4.

¹⁸ *Stun Gun Fallacy*, *supra* note 6, at 12-13.

¹⁹ Andrew Wolfson, “Tasers Help Save Lives But Use Also Criticized,” *The Courier-Journal*, Oct. 2, 2006.

²⁰ *Id.*

²¹ James Cronin et al., *Conducted Energy Devices: Development of Standards for Consistency and Guidance*, U.S. Department of Justice Office of Community Oriented Policing Services and Police Executive Research Forum (Washington: U.S. Department of Justice, 2006) 7.

²² *Id.* at 8.

²³ This report focuses on the use of force by patrol officers, but excessive use of force is also prohibited on persons held in detention. For convicted prisoners, the standard derives from the Eighth Amendment’s ban of cruel and unusual punishment. See *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989). For pretrial detainees, the Due Process Clause controls. *Id.*

²⁴ 490 U.S. 386. The *Graham* test requires an analysis of “the totality of the circumstances” in order to determine whether the use of force by a law enforcement officer was reasonable, and the Supreme Court and lower courts have identified a range of factors to be considered when analyzing whether the use of force was excessive. Many of these factors have particular relevance to the question of when Taser use is constitutionally appropriate, including: the degree or severity of the force applied; the risk of significant injury from the use of force; the severity of the crime; whether the suspect posed an immediate threat to the safety of the officers or others; whether the suspect was actively resisting arrest or attempting to evade arrest by flight; whether a warning was given prior to the use of force; whether the use of force complied with manufacturer’s instructions and safety warnings; whether there were available alternatives to the use of force deployed; and the officer’s opportunity for deliberation prior to the use of force.

²⁵ *Id.* at 395. *Graham* left open the question whether the Fourth Amendment continues to apply between the time of arrest and the initial appearance before a judge. *Id.* at 395 n.10. Many lower courts have held that the Fourth Amendment applies after arrest until the initial appearance before a judge. See, e.g., *Luck v. Rovenstine*, 168 F.3d 323, 326 (7th Cir. 1999); *Frohman v. Wayne*, 958 F.2d 1024, 1026 (10th Cir. 1992).

²⁶ See, e.g., *Bronson v. Mitchell*, 1995 U.S. Dist. Lexis 21651, *12 (N.D. Miss. 1995).

- ²⁷ 471 U.S. 1, 3 (1985).
- ²⁸ *Snauer v. City of Springfield*, 2010 WL 4875784, *6 (D.Or., 2010).
- ²⁹ See, e.g., *Estate of Mathis ex rel. Babb v. Kingston*, 2009 WL 1033771, *6 (D.Colo., 2009).
- ³⁰ *McKenney v. Harrison*, 2011 WL 1104528, 5 (8th Cir. 2011).
- ³¹ See, e.g., *Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185, 1199 (9th Cir. 2001), *vacated* 534 U.S. 801 (2001), *aff'd on remand*, 276 F.3d 1125 (2002).
- ³² *People v. Sullivan*, 116 A.D.2d 101, 107 (1 Dep't 1986).
- ³³ *Id.* at 1322 n.58.
- ³⁴ Cf. *Ryder v. City of Topeka*, 814 F.2d 1412, 1417 n.11 (10th Cir. 1987) (“[T]he use of deadly force does not occur only when the suspect actually dies.”); *Shillingford v. Holmes*, 634 F.2d 263, 266 (5th Cir. 1981) (“That the results of the attack on Shillingford’s person were not crippling was merely fortuitous. That same blow might have caused blindness or other permanent injury.”).
- ³⁵ *DeSalvo v. City of Collinsville*, 2005 U.S. Dist. Lexis 23180, *13 (S.D. Ill. 2005).
- ³⁶ *Hickey v. Reeder*, 12 F.3d 754, 757, 758 (8th Cir. 1993). See also *Preston v. Pavlushkin*, 2006 U.S. Dist. Lexis 14357, *4 (D. Colo. Mar. 16, 2006) (describing plaintiff as “writhing in obvious pain” after being Tasered).
- ³⁷ *Crowell v. Kirkpatrick*, 667 F.Supp.2d 391 (2d Cir. 2010).
- ³⁸ *Madrid v. Gomez*, 889 F. Supp. 1146, 1175 n.43 (N.D. Cal. 1995).
- ³⁹ *Roberts v. Manigold*, 240 Fed.Appx. 67, (6th Cir. 2007).
- ⁴⁰ *Oliver v. Fiorino*, 586 F.3d 898, (11th Cir. 2009).
- ⁴¹ *Brown v. City of Golden Valley*, 574 F.3d 491, (8th Cir. 2009).
- ⁴² *Casey v. City of Federal Heights*, 509 F.3d 1278, (10th Cir. 2007) .
- ⁴³ *Estate of Mathis ex rel. Babb v. Kingston*, 2009 WL 1033771, *6 (D.Colo. 2009).
- ⁴⁴ *Id.*
- ⁴⁵ *Oliver v. City of Orlando*, 2008 WL 4000863, *5 (M.D.Fla. 2008) (“[I]t should have been obvious to the City that training officers to use this excessive force against passively resistant individuals would result in constitutional violations.”).
- ⁴⁶ United States General Accounting Office, *Taser Weapons: Use of Tasers by Selected Law Enforcement Agencies*, (Washington: GAO-05-464, May 2005).
- ⁴⁷ *Id.* at 9 n.10.
- ⁴⁸ Maryland Attorney General’s Office, *Report of the Maryland Attorney General’s Task Force on Electronic Weapons*, (Baltimore: Office of the Attorney General, December 2009). See also *Report of the Use of Force Working Group of Allegheny County, Pennsylvania* (Pittsburgh: Allegheny County District Attorney’s Office, October 8, 2009) (conducting a comprehensive review and recommending changes to Allegheny County’s approach to using Tasers).
- ⁴⁹ *Maryland Attorney General’s Office Report*, *supra* note 48, at 2.

- ⁵⁰ United States Department of Justice & Police Executive Research Forum, *2011 Electronic Control Weapon Guidelines* (Washington: U.S. Department of Justice, March 2011) [hereinafter “DOJ/PERF 2011 Guidelines”], Guideline 25, 20; Maryland Attorney General’s Office Report, *supra* note 48, at 3. The International Association of Chiefs of Police takes a slightly more permissive approach, suggesting that Taser use be prohibited “unless the person demonstrates an overt intention to use violence or force against the officer or others or resists detention and arrest and other alternatives to controlling them are not reasonable or available. The use of ECWs [electronic control weapons] against passively resistant individuals who do not pose an immediate threat of violence to officers or others would not normally be permitted.” IACP Concepts and Issues Paper, *supra* note 12. Even judged by this standard, however, the policies we reviewed fall far short.
- ⁵¹ DOJ/PERF Guidelines, *supra* note 5051, Guideline 26, at 20 (Tasers should not be authorized merely because a suspect is fleeing); Maryland Attorney General’s Office Report, *supra* note 48, at 3 (same); DOJ/PERF Guidelines, *supra* note 5051, Guideline 29, at 20 (Tasers should generally not be used on handcuffed persons); Maryland Attorney General’s Office Report, *supra* note 48, at 3 (same).
- ⁵² The frequent absence of factual narratives and the over-reliance on vague or undefined terms such as “active resistance” or “uncooperativeness” complicated our analysis. For example, some departments only ask an officer to tick a box labeled “Active Resistance (pulling away, striking or attempting assault).” The conflation of “pulling away” with “attempting assault” blurs a crucial distinction – the presence of absence of an actual risk of injury. In other instances, the failure to provide certain details flouts established departmental policy.
- ⁵³ Of the policies collected and reviewed by the NYCLU, only the Suffolk County Police Department and the NYPD’s policies comport with this aspect of expert recommendations. All of these policies are available upon request from the NYCLU.
- ⁵⁴ *Study of Deaths Following Electro Muscular Disruption*, *supra* note 11 at ix.
- ⁵⁵ DOJ/PERF Guidelines, *supra* note 5051, Guidelines 13, 21, at 18, 20; Maryland Attorney General’s Office Report, *supra* note 48, at 4-5. In addition to these national guidelines, standards promulgated by the Municipal Police Training Council (MPTC), a department of the New York State Division of Criminal Justice Services, urge “extra caution” with consecutive Taser discharges and encourages re-evaluation of the approach after three discharges. Municipal Police Training Council, New York State Division of Criminal Justice Services, *Recommended Guidelines for the Use of Conducted Energy Devices* (Albany: New York State Division of Criminal Justice Services, September 2009) (hereinafter “MPTC Recommended Guidelines”), Recommendation IV.I.1, IV.I.2.
- ⁵⁶ The exceptions are the Guilderland Police Department, which requires an independent assessment and “elevated justification” for more than three consecutive cycles of a Taser, the Monroe County Sheriff’s Department, which prohibits more than three cycles “absent exigent circumstances,” and the NYPD, which requires an officer to “reassess the situation” after the first discharge cycle, use the minimum number of cycles necessary, and in “no situation [use] more than three (3) standard discharge cycles against any subject.
- ⁵⁷ Such departments include the Rochester Police Department and the Saratoga Springs Police Department.
- ⁵⁸ Taser International Training Bulletin, *supra* note 14.
- ⁵⁹ DOJ/PERF Guidelines, *supra* note 5051, Guideline 28, at 20; MPTC Recommended Guidelines, *supra* note 55, Recommendation IV.E.2. In 2009, Taser International discouraged targeting in the chest area because of heightened risk of heart failure. The Maryland Attorney General’s recommendations, which were published following Taser International’s announcement, include a caution against targeting the chest area, in addition to the other areas mentioned previously. Maryland Attorney General’s Office Report, *supra* note 48, at 4.

- ⁶⁰ Those departments are the Nassau County Police Department, the Rochester Police Department and the Glens Falls Police Department.
- ⁶¹ DOJ/PERF Guidelines, *supra* note 5051, Guidelines 22-23, at 20; Maryland Attorney General's Office Report, *supra* note 48, at 43; MPTC Recommended Guidelines, *supra* note 55, Recommendation IV.H.1.
- ⁶² Six departments do require some kind of warning (the NYPD, Albany, Guilderland, Monroe, Rochester and Syracuse), while four do not (Glens Falls, Nassau County, Saratoga Springs and Suffolk County).
- ⁶³ DOJ/PERF Guidelines, *supra* note 5051, Guidelines 16, at 16; Maryland Attorney General's Office Report, *supra* note 48, at 5; MPTC Recommended Guidelines, *supra* note 55, Recommendation IV.C.1, IV.C.2, IV.E.3.
- ⁶⁴ DOJ/PERF Guidelines, *supra* note 5051, Guideline 27, 34, at 20-21; Maryland Attorney General's Office Report, *supra* note 48, at 4; MPTC Recommended Guidelines, *supra* note 55, Recommendation IV.G.
- ⁶⁵ Maryland Attorney General's Office Report, *supra* note 48, at 4.
- ⁶⁶ In particular, the Glens Falls, Nassau County, and Syracuse police departments' policies provide no caution or limitation on the use of Tasers on vulnerable populations.
- ⁶⁷ The Greece and Nassau County police departments did not record the race of any of the individuals who were Tasered.
- ⁶⁸ U.S. Census Bureau, State and County Quick Facts, *available at* <http://quickfacts.census.gov/qfd/states/36/36001.html>. Last visted Aug. 17. 2011.
- ⁶⁹ DOJ/PERF Guidelines, *supra* note 50.
- ⁷⁰ DOJ/PERF Guidelines, *supra* note 5051, Guideline 12 at 18; Maryland Attorney General's Office Report, *supra* note 48, at 3; MPTC Recommendation IV.C.1.
- ⁷¹ These departments were the Albany Police Department, Glens Falls Police Department, Nassau County Police Department and the Saratoga Springs Police Department. Suffolk County requires "periodic retraining" but does not specify the period.
- ⁷² DOJ/PERF Guidelines, *supra* note 50, Guideline 3, at 17.
- ⁷³ MPTC Recommended Guidelines, *supra* note 55.
- ⁷⁴ DOJ/PERF Guidelines, *supra* note 5051, Guidelines 42-50, at 22-24; Maryland Attorney General's Office Report, *supra* note 48, at 5.
- ⁷⁵ IACP Concepts and Issues Paper, *supra* note 12, at 5; *id.* at 2 (recommending that officers justify in their use-of-force reports any instance in which "subjects are energized more than three times" or "subjects are subjected to any energy cycle longer than 15 seconds in duration"); DOJ/PERF Guidelines, *supra* note 5051, Guidelines 21, 50, at 20, 23; Maryland Attorney General's Office Report, *supra* note 48, at 57-58.
- ⁷⁶ State of New Jersey, Office of the Attorney General, Department of Law and Public Safety, *Revised Supplemental Policy on Conducted Energy Devices*, (Trenton: Office of the Attorney General, Oct. 7, 2010). *Available at* <http://www.state.nj.us/lps/dcj/pdfs/NJ-OAG-Stun-Gun-Policy-10-2010.pdf>. Last visited Aug. 17, 2011.
- ⁷⁷ *Id.*



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