



OMBUDSMAN'S SPECIAL REPORT

Taser Use by the Boise Police Department

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by
Pierce Murphy
Community Ombudsman



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POLICY AND TRAINING RECOMMENDATIONS - June 6, 2006

EXECUTIVE OVERVIEW

The Office of the Community Ombudsman and the Boise Police Department jointly analyzed over two years of data related to the use of Tasers by Boise police officers. As a result of this study, combined with research into national best practices in policy and training, the Boise Police Department is making changes to its policy governing the use of Tasers.

In this report I respond to the new Taser policy and make a few suggestions for further improvement. This report also summarizes my own analysis of the local data and national best practices. Finally, at the conclusion of this report, I address the larger issue of police use of force and encourage our elected officials to engage the entire community in a public discussion regarding the use of force by the police in all its many forms.

BACKGROUND

In April 2005, the Boise Police Department (BPD) and the Office of the Community Ombudsman (OMB) formed a joint team of employees to study the use of Conducted Energy Weapons, commonly known by the brand name of the largest manufacturer of such devices, Taser®. The team's mission was to study available data regarding the actual use of Tasers by BPD officers. The results of this study were made available to the BPD command staff as well as the community ombudsman. Following the completion of this study, the BPD Policy Committee and command staff worked on the development of recommended changes to department policies governing the use of Tasers. At the same time, OMB staff gathered and reviewed information from other agencies and professional organizations regarding Taser

studies, model policies, and best practices.

By March 2006, the BPD Policy Committee began circulating a draft of a proposed policy governing the use of Tasers by BPD officers. This would replace the existing policy that has been in place since 2002. Over the next two months the community ombudsman reviewed various drafts of this proposed policy and provided feedback and constructive criticism to the Policy Committee. By the second week of May a final draft of the new Taser policy was approved by the BPD command staff and shared with the community ombudsman. In preparation for a public discussion between BPD commanders, the mayor and the City Council regarding Taser policy and usage, OMB was invited to provide BPD, the mayor and the City Council with its comments and recommendations.

BEST PRACTICES IN THE UNITED STATES AND CANADA

The following major studies were evaluated in the course of this review:

American Civil Liberties Union of Northern California, "Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives." Taser Study. September 2005.

American Civil Liberties Union of Massachusetts, "Less Lethal Force: Proposed Standards for Massachusetts Law Enforcement Agencies." May 10, 2005.

Amnesty International – USA, "Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of tasers." April 1, 2005.

Canadian Police Research Centre, "Review of Conducted Energy Devices (Technical Report TR-01-2006)." August 22, 2005.

United States Government Accountability Office (GAO), "Taser Weapons: Use of Tasers by Selected Law Enforcement Agencies." May 2005.

International Association of Chiefs of Police (IACP), "Electro-muscular Disruption Technology: A Nine Step Strategy for Effective Deployment." Undated.

IACP National Law Enforcement Policy Center, "Electronic Control Weapons: Concepts and Issues Paper." August 2005.

League of Minnesota Cities Insurance Trust, "Police Use of Conducted Energy Devices (Tasers®)." October 2005.

Police Executive Research Forum (PERF), "Conducted Energy Device Policy and Training Guidelines for Consideration." October 2005.

Potomac Institute for Policy Studies, "Efficacy and Safety of Electrical Stun Devices." March 29, 2005.

Wisconsin Department of Justice – Law Enforcement Standards Board, "Advisory Committee Recommendations for Training for Employment of an Electronic Control Device By Law Enforcement Officers In Wisconsin." June 7, 2005.

These studies and recommendations contained a significant amount of information and detail. The following areas are of the highest significance:

1. Tasers are an effective and valuable tool for law enforcement use.
2. Tasers should not be used against passive resisters. All agreed that Tasers were an appropriate response to active physical aggression. However, opinions were divided on whether Tasers should be used in the following circumstances:
 - a. Non-violent persons fleeing minor charges, e.g., traffic infractions, petty theft, etc.
 - b. Persons who threaten physical resistance.
 - c. Persons who physically resist but are not aggressive and present no threat to officers.
3. With notable restrictions and under certain circumstances, Tasers may be considered as a suitable alternative to other intermediate force options, e.g., batons, pepper spray, strikes, etc. Not all the studies agreed on this.

4. Tasers should be considered as a possible alternative to deadly force (firearms), given favorable circumstances and adequate resources. However, this is a controversial recommendation and not universally supported by use-of-force experts.
5. If used properly, with adequate training and safeguards, Tasers can reduce injuries to officers and suspects often associated with other force options or the nature of close-quarters contact.
6. Only one officer at a time should activate a Taser against a particular subject, and consecutive activations of a Taser on the same subject should be restricted and severely limited.
7. Tasers should not be used on handcuffed persons unless their actions present some immediate danger to officers and/or others.
8. The use of Tasers is not without risk. Certain persons seem to be more vulnerable to adverse reactions. Although more independent, scientific studies need to be conducted, it appears that young children, the elderly, pregnant women, frail persons, and persons of small stature, regardless of age, may be at risk. Absent exigent circumstances, policies and training should restrict the use of Tasers against these populations.
9. The risks associated with Tasers use are also raised when certain environmental conditions exist, e.g., near a highly flammable or explosive substance, when the intended target is on an elevated surface, such as a ladder or a fence, or when the intended target is in or near a pool or other body of water (which presents a risk of drowning). Here, too, policies and training should direct officers to avoid Taser use when such conditions exist.

10. Many deaths proximate to Taser use involve persons who were under the influence of drugs and/or alcohol. Persons experiencing a condition sometimes referred to as “excited delirium” (often associated with the use of methamphetamine and/or other drugs) appear to be at greater risk for sudden death following the use of a Taser against them. This seems to be especially true when the person is subjected to multiple and/or extended applications of a Taser. Ironically, this same population also presents law enforcement with a high number of situations in which officers and the public are put in danger as a result of their actions. In many cases, a Taser is the best alternative to other force options (including deadly force). The studies OMB reviewed generally recommended that Taser training alert officers to the increased risk for persons displaying the symptoms of extreme substance intoxication and/or a state of “excited delirium.” Also, policy should require a medical examination of such persons as soon as possible after the application of a Taser, as well as a longer period of monitoring for signs of distress.
11. Due to the possible effects of Tasers on a suspect’s cardio-vascular system, officers should avoid use of a prone, four-point restraint, any sudden restrain, or other tactics that may restrict respiration, post-Taser use. Particular caution regarding restraint must be exercised after a Taser has been used on a person exhibiting behavior associated with “excited delirium.”
12. Following the use of a Taser, the subject should be examined by a medical professional and monitored for some time afterwards for signs of distress.
13. Consistent with the police agency’s policy regarding all other uses of force, every Taser use should be reported by the officer, reviewed by a supervisor, and tracked by the agency.

14. Officers who carry and are authorized to use Tasers must receive adequate initial training and regular, annual refresher training for re-certification.

There is still more research that needs to be done on the effects of Taser use. As more independent medical and scientific research studies are conducted, and as these weapons are purchased and used by more and more law enforcement agencies throughout the world, these new findings and data will need to be incorporated into BPD's policy, practice, and training.

TASER USE IN BOISE

In the period studied (July 2002 through December 2004), BPD officers used their Tasers a total of 120 times. None of the subjects involved died as a result of, or in connection with the use of Tasers. With one exception, the only injuries experienced by those on whom Tasers were used had to do with small puncture wounds from the barbs or surface burns associated with contact with the electrical current. The one exception was a cervical fracture suffered by a suspect scaling a fence while fleeing from the police. This person fell from the fence when the Taser was activated. Following this incident, BPD immediately reviewed their Taser training and reinforced the message that officers should avoid Taser use on persons on elevated surfaces.

The primary conclusion I draw from the history of Taser use in Boise is that BPD implemented Tasers appropriately from the beginning. They adopted a clear and moderately restrictive policy and gave officers adequate training before issuing Tasers. Many of the best practices contained in the reports cited above were instituted by BPD from the beginning.

As with any law enforcement device or tactic, even good practices can be improved. BPD's Taser policy and practices are no exception. To their credit, the chief and his command staff also recognize the value of continuous improvement. As a result, BPD engaged in a

thorough self-review of its own policies and training. They, too, looked outside the department for best practices and consulted many of the studies cited above.

NEW BOISE POLICE TASER POLICY

Following is the updated Taser policy being implemented by BPD :

1.02.03 Conducted Energy Weapon

The Conducted Energy Weapon is defined as a weapon that fires barbed projectiles. The deployment generates an electrical current that causes motor dysfunction and pain compliance. An officer shall only carry the Department-approved Conducted Energy Weapon.

1.02.03A Issuing of the Conducted Energy Weapon

Employees shall only carry and use the Conducted Energy Weapon as approved by the Chief. Issue of the Conducted Energy Weapon will be to selected officers, based on their duties. Personnel may only use Department-issued Conducted Energy Weapon cartridges.

1.02.03B Use of Conducted Energy Weapon

The decision to use the Conducted Energy Weapon should be based on:

- The totality of the circumstances*
- The severity of the crime committed*
- Prior acts by the suspect (fleeing, threats, etc.)*
- The level of resistance*
- To prevent them from harming themselves or others*
- Other criteria listed for determining use of force (see 1.01.03 Criteria for Use of Force)*

In the case of a fleeing subject, the fact that the subject is fleeing should not be the sole justification for use of the Conducted Energy Weapon. The severity of the offense, as well as other circumstances, should be considered before officers use a Conducted Energy Weapon on a fleeing subject.

Unless exigent circumstances exist, the Conducted Energy Weapon will not be used:

- On women known to be or that obviously appear to be pregnant*

- *On elderly persons, young children, and visibly frail persons*
- *On passive subjects*
- *In combustible environments*
- *On a handcuffed subject unless actively resisting or exhibiting active aggression to prevent individuals from harming themselves or others*
- *On subjects in physical control of a vehicle in motion, including automobiles, trucks, motorcycles, ATVs, bicycles, and scooters*
- *On subjects in a location where a fall may cause substantial injury or death*

1.02.03C Multiple Conducted Energy Weapon Deployments

No more than one officer should activate a Conducted Energy Weapon against a person at a time unless exigent circumstances exist.

1.02.03D Officer's Responsibilities

Before being issued a Conducted Energy Weapon, an officer must successfully complete the certified Conducted Energy Weapon class. On completion of the program, an officer will be certified to carry and use the Conducted Energy Weapon. The officer shall:

- *Determine if the Conducted Energy Weapon needs to be deployed based on Department policy.*
- *Ensure all personnel at the scene are notified by radio or other means that the Conducted Energy Weapon is being deployed and may be used if time and conditions permit. Acknowledgement is necessary to avoid confusion with the use of lethal force when the Conducted Energy Weapon is fired.*
- *Use minimum activations necessary to control the subject. Subsequent cycles will not exceed three applications unless exigent circumstances exist.*
- *Ensure that a plan is in place for taking physical control of the subject once the Conducted Energy Weapon has been deployed.*
- *Once the suspect is restrained or has complied, there should be no further use of the Conducted Energy Weapon.*
- *Ensure the subject receives medical treatment by EMS and/or hospital personnel in the field after a Conducted Energy Weapon deployment. Only EMS or medical personnel shall remove probes from the Conducted Energy Weapon.*
- *Request photographs be taken of probe impact sites and any other related injuries.*
- *Probes that have penetrated a body should be treated as bio-hazardous and handled properly.*
- *Securely store the Conducted Energy Weapon when off-duty.*

1.02.03E Supervisor/Lieutenant's Responsibilities

The supervisor shall respond to the incident when an officer indicates the necessity for the Conducted Energy Weapon to be deployed or when the Conducted Energy Weapon has been deployed if the conditions did not permit previous notification. He/she shall also ensure that all guidelines for deployment are met and that proper care is provided to injured officers/subjects. Because the probes are considered biohazards, he/she will ensure the probes are disposed of properly, typically deposited in a sharps container (property, ambulance, hospital).

At the scene, the supervisor will ensure the collection of the confetti-like identification tags from the deployed cartridge, put them in an envelope, and attach the envelope to the Administrative Use of Force form. The supervisor shall also download data from the Conducted Energy Weapon deployment and print the results. He/she shall attach the printout of data downloaded to a completed UOF form.

OMBUDSMAN'S RESPONSE TO NEW BOISE POLICE TASER POLICY

I support the amended BPD policy for Conducted Energy Weapons (§ 1.02.03) as provided for my review on May 8, 2005. It incorporates nearly all of the recommendations made by the Police Executive Research Forum (PERF), a leading police executive organization, and is consistent with many of the best practices we identified in our research. This new policy includes elements not present in BPD's previous Taser policy. Among them are the following:

1. Clear guidance is given to officers regarding the factors they must take into account before using a Taser. I support these guidelines.
2. Specific restrictions on the use of Tasers are delineated in policy. For the most part, these restrictions take into account what BPD and other law enforcement experts have learned over the past several years of actual Taser use. With only a few exceptions, which I will discuss below, I concur with these restrictions.

3. The previous policy contained language that discouraged officers from even considering the use of a Taser as an alternative to deadly force. This language is not included in the new policy.

OMBUDSMAN'S POLICY RECOMMENDATIONS

As stated above, I am supportive of BPD's new policy. Based on OMB's review of known studies and best practices in the field, I recommend only four modifications to this new policy.

Requirement to Carry a Taser

Current BPD policy does not mandate that officers who are issued a Taser and certified in its use must carry it on their person while on duty in uniform. However, current BPD policy does require officers to carry a firearm and pepper spray. Given that Tasers are, under certain circumstances, a less-lethal alternative to firearms and a safer alternative to pepper spray, they should be immediately available to all officers to whom they have been issued. When an officer is in the middle of a dynamic and unfolding incident he or she should have the Taser option immediately available. Carrying a Taser must be as important as carrying a firearm or pepper spray.

I recommend that the following language be added to § 1.02.03A of BPD's revised Taser policy:

An officer who is currently certified in Taser use and to whom the department has issued a Taser, must carry the Taser on his or her person at all times when in uniform and on-duty.

Level of Resistance

The new policy states that officers must take into account the subject's level of resistance before deciding on whether it would be reasonable force to use a Taser. The policy also prohibits officers from using a Taser on a person whose only resistance is passive in nature. I fully support this restriction. Other than escort and restraint holds, the use of force techniques and tools that might cause injury on passive resistors is properly prohibited.

However, I believe this narrow restriction regarding passive subjects leaves too much room for Tasers to be applied to persons whose actions clearly constitute an active level of resistance but who have given no indication that they pose a threat to officers, and/or have displayed no aggressive behavior. For example, a person who refuses to follow an officer's direction and clings to a stationary object as officers are trying to pull him or her away from it is actively resisting. Given the inherent risks involved in applying a Taser to a human being and absent any actions by the subject or other indications that the person is a threat to the officers, the use of a Taser would be unreasonable. Except in exigent circumstances, the policy should prohibit the use of Tasers against persons whose active resistance is only defensive in nature.

I recommend that, under the section that reads, "Unless exigent circumstances exist, the Conducted Energy Weapon will not be used," the following item should be added:

- **On subjects whose active resistance is only defensive in nature and who pose no immediate threat of physical harm to officers, themselves, or others.**

Handcuffed Persons

The new Taser policy prohibits the use of Tasers on handcuffed subjects unless, "[they are] actively resisting or exhibiting active aggression [or] to prevent individuals from harming

themselves or others (§ 1.02.03B).” This wording is exactly the same as recommended by PERF.

I support the exception for handcuffed individuals who are, “exhibiting active aggression.” Tasers are an appropriate force option to prevent injury caused by an aggressive person. However, I cannot support the use of Tasers on handcuffed individuals who, while still resisting, show no sign of aggression towards officers or others. One of the main purposes of Tasers is to incapacitate a resistant or aggressive subject long enough to get the person into handcuffs. Once the person is handcuffed, other, less dangerous means can be employed to control his or her movements, assuming there is no aggressive behavior on the part of the subject.

I recommend that the section dealing with handcuffed subjects be modified to read,

- **On a handcuffed or secured subject, absent physical assault or active aggression that poses an immediate threat of injury to officers or others.**

Children and Other Persons of Small Stature

Available research on the effects of Taser application appears to indicate that the risk of serious injury or death may be increased when the person on whom the tool is applied is very small in stature. The use of tasers against children warrants special consideration. This is why most model policies prohibit the use of Tasers on young children. Smaller bodies have a lower margin of safety with regard to electrical currents. Careful attention and heightened caution should be used in the rare event that a taser is used against a child. This is especially true with respect to young children, who, unless armed, are physically incapable of offering meaningful resistance. This is an issue which, I hope, will be carefully addressed in BPD’s Taser training.

Children are not the only persons of small stature that officers may encounter. Adolescents and adults can also have very small bodies for a variety of reasons. BPD's policy should be modified to prohibit the use of Tasers on persons of very small stature, unless exigent circumstances exist. One such exception would be in cases where the officer is also of small stature and the use of a Taser is reasonable to prevent injury to the officer.

I recommend that the section of the policy that reads, "Unless exigent circumstances exist, the Conducted Energy Weapon will not be used," should be amended to read as follows (added language appears in *italics*):

- **On elderly persons, young children, visibly frail persons, *and persons of very small stature.***

THE IMPORTANCE OF TRAINING

One reason why BPD experienced success and minimal injuries associated with their use of Tasers is the quality of the training they provided their officers. As BPD implements these important changes to their Taser policy, particular care must be paid to the training that officers receive. Many of the recommendations contained in the studies referenced above are directed at officer training. I encourage BPD to pay particular attention to these recommendations when updating their own Taser training, even those that come from non-law enforcement bodies.

As with any weapon or device purchased from a vendor, BPD must not rely solely on the training provided by the Taser manufacturer. The philosophy, policies, and practices of BPD reflect the values and interests of the citizens of Boise as expressed through their elected officials. Training provided to our police officers, especially training on the use of force, must reflect these values. While it is reasonable to rely on the Taser manufacturer for

training on the functionality and operation of the weapon, BPD must develop its own training on when and how the Taser is to be used, any restrictions on its use, and its place within BPD's overall use of force policy.

I especially encourage the integration of Tasers into BPD's overall use of force training. BPD makes excellent use of experience-based learning to help its officers be prepared for the many different and ever-changing circumstances they face. Because it is impossible to train an officer to respond to every conceivable situation he or she might face, BPD uses scenario training to teach officers how to consider their options and use reasonable force under extreme pressure and stress. BPD has already begun to integrate Taser use into these scenarios and I strongly urge them to continue this effort, especially in situations where a firearm might be authorized but a Taser might be a safe and viable alternative.

THE USE OF FORCE – WHERE DO WE GO FROM HERE?

This study of Taser use in Boise and the international debate surrounding its safety and appropriate use inescapably lead to a broader discussion about the use of force, whether the force used is a Taser or one of the many other options available to the police. It is widely accepted in free and democratic societies that those responsible for enforcing the law and the maintenance of public order and safety must have the authority to use reasonable and necessary force. Peace officers have the right to defend themselves and the duty to protect the lives of others. At the same time, the use of force by the police can never be an end in itself, only a means to accomplish a lawful purpose when other, non-forceful means have failed or are impractical. The objective in every lawful police action is to accomplish the mission without harm or injury to officers and public alike. Should force become necessary to prevent injury or overcome resistance, it must be limited to that which is reasonable given the totality of the circumstances. Where possible and without compromising safety, the force used should be only that which is minimally necessary to end the threat, overcome the resistance, or bring the person under control.

To accomplish this, the following are necessary:

- A clear and unambiguous use of force policy reflecting the values of the community and the requirements of the law.
- Training that supports the policy and enables officers to safely and appropriately employ tactics and options that eliminate the need to use force and, when necessary, limit its use to that which is reasonable and unavoidable.
- Reinforcement of policy and training by police commanders and supervisors.
- Active community involvement through elected officials, an independent oversight mechanism, neighborhood and other civic associations, and in direct engagement on specific issues.

This is a subject of primary interest to me as the Community Ombudsman. As I investigate incidents involving the use of force by Boise law enforcement officers, I am acutely aware of the key role that policy, training, and supervision play and my responsibility to make recommendations for improvement in these areas.

I encourage the mayor and members of the City Council to take this opportunity to engage themselves, the public, and the police in a public discussion regarding the use of force and the values, philosophy, and policy that should govern it.



Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org