



Electronic Control Devices: Legal Resources

Legal resources for the legal aspects of electronic control devices (ECDs)

Understanding, Analyzing, and Applying Force Standards of Accountability

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Be Very Clear

- Officers' acceptability of force use narrowing
- Officers' force decisions largely dependent on:
 - Importance of force need triage
 - Immediacy of threat
 - Level of threat
 - Circumstances tense, uncertain, rapidly evolving
- The lower the level of threat/flight from physical risk event the better (lower) force decision the officer is expected to make

Expectations – Realities Chasm

Expectations

- Require individual assessment / treatment
- Specially trained for anything and everything
- Extreme patience and tolerance
- Person's frailties and treatment make a "victim"
- Person's acute upon chronic bad behaviors not relevant
- 100% Perfection Standard

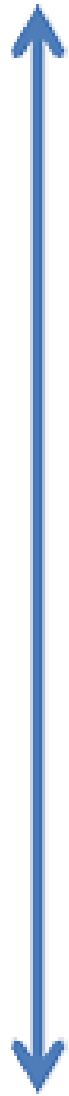
Realities

- Cookie cutter approach by policy / training
- Limited training / policy for highest probabilities
- Expeditious actions to resolve interaction
- Person "responsible" for self and behaviors
- If officers involved in incident they are at fault
- 51% Reasonable Standard

Start With a Couple Key Points

- Understand the risks you face today (including CRM/DOJ)
- Use radio to clearly time stamp key events
- Understand that without clear video/audio recordings courts are usually required to view facts from subject's perspective
- Understand that some judges will interpret facts of case through their eyes, not yours
- Understand importance of reporting, investigation, documentation, and spoliation of evidence
- Understand differences between “*possible*,” “*potential*,” and “*probable*” (4th Amendment force justification)

**Descriptive
Approximations Levels of Certainty**



100% **100% Perfection Outcome** (plaintiffs/critics)
100% Perfection Decisions
100% Perfection Evaluation
100% Perfection Observation/Knowledge

95% **Beyond a Reasonable Doubt** (criminal)

75% **Clear and Convincing** (punitive damages)

50.1% **By Preponderance of Evidence** (civil)

Probable Cause (fair probability) (arrest)

Reasonable Cause (or suspicion) (detention)

Mere Hunch

Possibility it Could Happen

Potentially it Could Happen



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Morphing More Restrictive Force Guidelines

4th Amendment Risk/Benefit Force Standard:

“[I]n judging whether [officer’s] actions were reasonable, we must consider the risk of bodily harm that [officer’s] actions posed to [suspect] in light of the threat to the public that [officer] was trying to eliminate.”

(Scott v. Harris, 550 U.S. 372, 383 (2007))

Risk Benefit Standard

Officer must weigh the foreseeable risks of harm posed by his use of force against his reasonable perceptions of the subject's actions or behaviors the officer is attempting to stop or control.

“Quantum of Force”

“*Quantum of force*” basically means:

- the reasonably foreseeable (to the officer) effects and injuries of a chosen force option under the totality of the circumstances of the force option use

One way to make force decisions: What is your objective for using force?

- **Defensive Force** - Subject reasonably perceived as an immediate threat of harm
- **Capture Force** - Subject fleeing from (serious physical harm) crime and officer is justified in tackling subject on the current surface
- **Restraint Force** - Force to facilitate restraint (including turtling)
- **Compliance Force** - Force to gain volitional compliance to commands
- **Distraction Force** – To facilitate restraint or medical care of cognitively impaired person

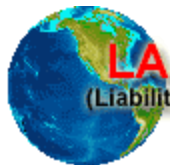
2012

A Few Points

“Smart” force decisions, applications, reporting, and evidence gathering and maintenance are often more restrictive than, and do not equate to, Constitutional or other force or other legal standards of care.

Let Me Be Real Clear!!!!

- Nothing presented or said is in any way to infer officers should unreasonably accept risks
- Usually using objectively reasonable force on a person who is reasonably perceived as an intentional immediate threat is not an issue
- Officers have to do what they can to not have people hurt at the conclusion of an encounter
- **Training, knowledge, incident documenting, evidence gathering, and reporting are keys**



2012 Legal Update

- A Few Numbers and What They Mean
- 2012 Society's View of Force
- Force Issues Update
- Importance of POV Video/Audio Evidence
- Importance of complete investigations
- Beware Spoliation of Evidence
- ECD Use Reducing Force Claims
- Avoiding ECD Excessive Force Liability

2012

Basic Numbers

Importance of putting
things into perspective

Some Basic Numbers (Law Enforcement)

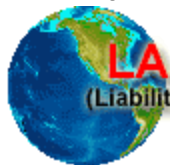
(percentage of populations (approximate numbers with different years of analyses))

Who law enforcement encounter (population %):

- 4.3 % (1:23) DUI illicit drugs (of age 16+ population)
- 8.7 % (1:11.5) Current Illicit Drug Users (of age 12+ population)
- 8.9 % (1:11.2) Classified with substance dependence or abuse in past year based on DSM-IV criteria
- 10.9 % (1:9.2) In Serious Psychological Distress (“SPD”)

Law enforcement numbers (percentages):

- 17.0 % had LEO Face-to-Face (“FtF”) encounters (annually)
- 1.4 % of LEO FtF encounters involved LEO threaten/use force
- 2.1 % of LEO arrests involved LEO’s use of weapon
- 19.0 % of LEO force recipients reported injuries
- 75.0 % of force recipients felt LEO’s force was excessive



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Some Basic Numbers (Deaths)

- 1.6 deaths per 100 hospital ER admissions (weekdays)
- 1.8 deaths per 100 hospital ER admissions (weekends)
- 1 death per 126 people in U.S. population (annually 2009)
- 1 death per 323 LEOs' uses of weapons
- 1 death per 600 LEOs' uses of pepper spray
- 1 death per 700 persons jailed
- 1 death per 5,521 LEOs (annually)
- 1 death per 15,385 arrests

Some Basic Numbers

(of deaths annually (2009))

2009 - US Population Death/Mortality Numbers:

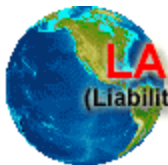
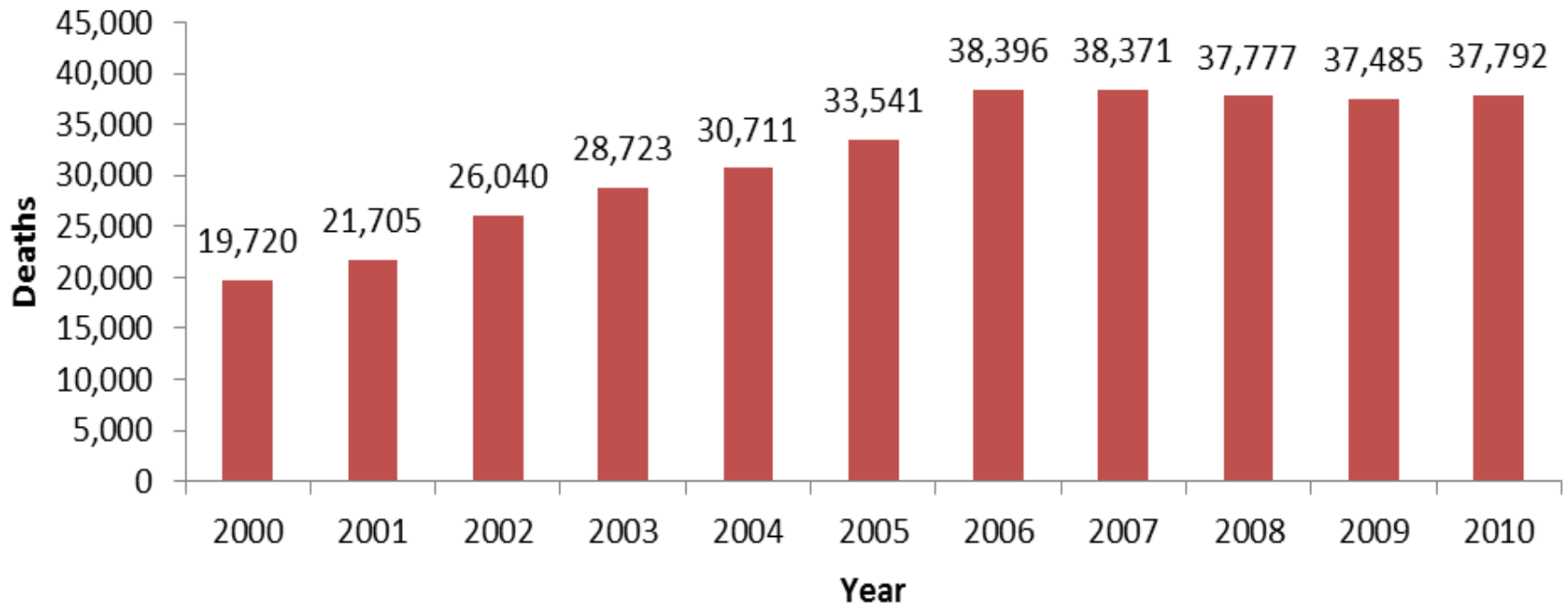
- 1 death per 126 people in the population
 - 2009: 307,006,550 people ÷ 2,436,682 deaths = 125.9937

2009 - Of those 2,436,682 who died there were:

- 1 death for every 18.81 people who died was caused by drugs, suicide, firearms, or alcohol
- 1 death for every 65 people who died was caused by drugs (37,485 drug deaths)

Basics (of force) Numbers:

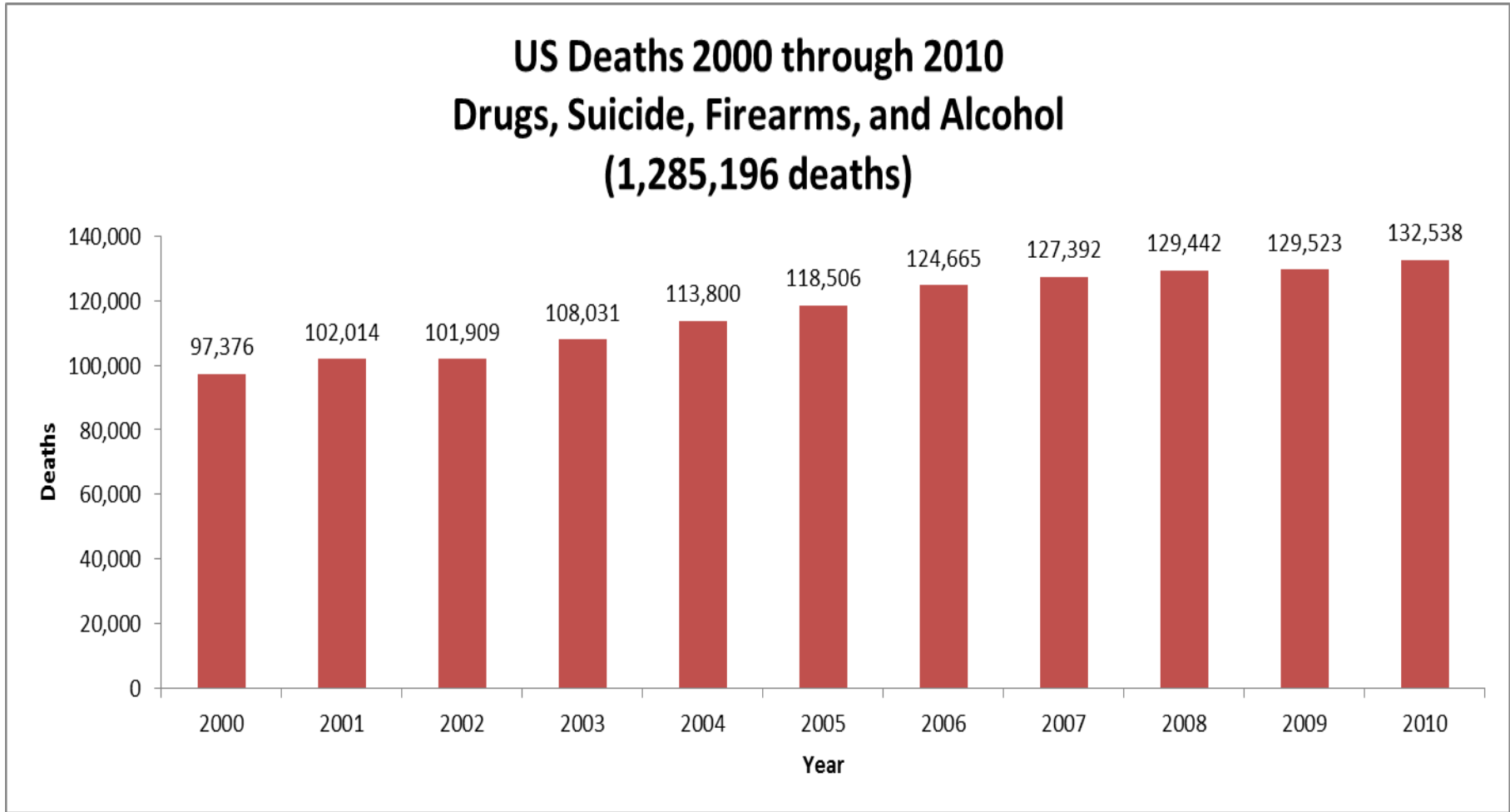
US Drug Deaths 2000 through 2010 (350,261 deaths)



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Basics (of force) Numbers:



2012

Basic Force Concepts/Expectations Best Practices

[Most of these are considerably MORE restrictive than Constitutional/statutory force standards.]



Do “NOT” confuse or substitute
Constitutional force standards with
selected usually more restrictive “Best
Practices,” judicial case extracted force
considerations, or policy restrictions!!!!
- “Shall” versus “Should”

2012 – Society's View of Force

(Officers in untenable force decision predicaments)

- Should use least amount of force
- Should use least injurious force option
- Should be more patient and understanding
- Should be tolerant of people acting out
- Should know difference between person who:
 - is an intentional immediate threat of harm
 - is fleeing from (serious physical harm) offense
 - needs medical or mental health crisis assistance(rather than committing crimes)

2012 – Society's View of Force

(Officers in untenable force decision predicaments)

- Minimize severity of seizure on person
- Should not injure a person who is not
 - an intentional immediate threat of harm, or
 - fleeing from a (serious physical harm) offense
- Subject should not be injured at end of encounter with law enforcement
- Officer should give warnings and options to subject to comply prior to each use of force

2012 – Society’s View of Force

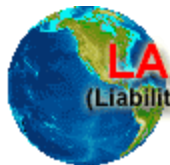
(Officers in untenable force decision predicaments)

Non-violent (not reasonably perceived as “immediate threat”) person should not be injured – people who need to be controlled who are:

- Acting as they are due to medical crisis
- Acting due to serious psychological distress (“SPD”)
- Acting due to drug and/or alcohol abuse
- Subject who is simply questioning authority
- Subject who does not understand the police encounter
- Subject who is passively resisting
- Subject is simply not cooperating

Basic Force Option Points

- Accurate analysis as to “WHY” force is used
- Record entire incident from Officer’s POV
- If person is not an “immediate threat” – no force
- If offense is not “serious offense” – no force
- Goal to have no one injured at end of encounter
- If using force for volitional compliance, must give person reasonable opportunity to comply before each application of force
- Collect and maintain ALL evidence (“spoiliation”)
- Provide high quality appropriately triaged reports



2012 Legal Update – Bottom Line

- Unassailable during incident documentation
- Have clear and unassailable evidence and reporting of force use (avoid he said/she said)
- Avoid “putting officers on notice” of unnecessarily inflated standards
- Train investigators to properly investigate incidents and arrest-related deaths (ARDs)
- Do NOT allow evidence to fail to be captured or collected or to be spoiled (lost)

2012 Legal Update – Bottom Line

Officers trained, guided, and encouraged to:

- consider least injurious/intrusive enforcement options
- use least injurious (risk/benefit analysis) force
- make least injurious force-option decisions based on (knowledge/understanding of):
 - Identified collected intel (courts' perceptions?)
 - physiological, metabolic, and serious psychological distress identifiers
 - accurate “quantum of force” decision making
- use verbal de-escalation skills where appropriate
- use crisis-intervention techniques where appropriate
- generate optimal force-use and medical recordings

Avoid the costly mistakes that others have made

- Decision to use force & chosen force option
- Record full incident from LEO's perspective
- Create complete documented time record
- Use ONLY issue competent investigators/MEs
- Capture all available evidence
- Ensure complete and adequate investigation
- Resolve evidence conflicts
- All opinions are legally, medically, scientifically supported to reasonable degree of certainty?

Questions for you

I suggest that you may not want to keep:

- plaintiffs' attorneys employed, and in the style of living to which they strive to become accustomed
- US DOJ (misnomer) Civil Rights Division attorneys employed
- ACLU and AI attorneys and staff employed

Basic Legal Concepts

Basic Legal Concepts

- Plaintiffs can allege (almost) anything
- Plaintiffs' primary goals:
 - To get attorneys' fees (42 USC § 1988)
 - To get in front of a jury
 - Law can be extremely flexible (discretion standard)
 - Know some judges will not follow the law
 - Know some judges are anti-law enforcement
 - Know some judges/juries emotion over law or logic
 - To extort a settlement
 - Beware the anti-law enforcement crusader

Basic Legal Concepts

- Burden of proof in a civil case:
 - by a preponderance of the evidence
 - more likely than not
 - 50.1 percent
- Summary judgment motion (MSJ):
 - court “MUST” take the facts as offered by the MSJ opposing party
 - UNLESS incident recording trumps party’s stated facts
(*Scott v. Harris*, USSC)

Basic Legal Concepts

- Qualified immunity
 - Protection from suit
 - Two part test:
 - Constitutional right was violated
 - Law had put officer on notice that what he did was in violation of the constitution (excellent example is *Bryan v. MacPherson* (November 30, 2010))
- Money:
 - Unlimited damages (for practical purposes)
 - 42 USC § 1988 attorneys fees (since 1976)

Basic Broad General Legal Concepts (Law Enforcement Force)

Use-of-Force Issues

- Numerous Force Paradigms Are Changing
- Qualified Immunity Narrowing
- Morphing More Restrictive Force Guidelines
- “Best Practices” Are Increasing
- Scrutiny of Officer's Decision to Use Force
- Importance of Optimal Force Reporting

Qualified Immunity Narrowing

- Qualified Immunity – Putting officers on notice
- What puts officers on notice is broadening:
 - Historically – legal precedent
 - 2012 includes
 - Department Policies
 - IACP Model Policies
 - PERF Guidelines
 - DOJ/CRD Mandated (so-called) “Best Practices”
 - TASER Training Materials
 - Others
- Beware – “scientifically proven” or “not proven” bases

Constitutional Force Standards

- Eighth Amendment:
 - Applies to convicted and incarcerated
 - Cruel and Unusual Punishment Standard
- Fourth Amendment:
 - Applies to free persons who are “seized”
 - “Objective reasonableness” Standard
- Fourteenth Amendment:
 - Applies to pre-trial detainees and “catch all”
 - Shock the Conscience (little time to decide/act)
 - Deliberate Indifference (time to decide/act)

Basics (of force):

- Any force option can be abused
- It is the person who abuses the force option - not the force option
- “Almost every use of force, however minute, poses some risk of death.” *Garrett v. Athens-Clarke County*, 378 F.3d 1274, 1280, n.12 (11th Cir. 2004).
- “Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Morphing More Restrictive Force Guidelines

- Do not abuse your authority
- Risk/benefit force standard
- Officer's objective for using force
- "Quantum of force" analysis

Morphing More Restrictive Force Guidelines

Constitutional standard purpose:

- (former) do not intentionally abuse your government endowed authority
 - “[T]he Fourth Amendment addresses ‘misuse of power,’ not the accidental effects of otherwise lawful conduct.” *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989); *i*, 243 F.3d 157 (4th Cir. 2001).
- (present 4th Amendment) risk/benefit standard

Morphing More Restrictive Force Guidelines

4th Amendment Risk/Benefit Force Standard:

“[I]n judging whether [officer’s] actions were reasonable, we must consider the risk of bodily harm that [officer’s] actions posed to [suspect] in light of the threat to the public that [officer] was trying to eliminate.”

(Scott v. Harris, 550 U.S. 372, 383 (2007))

Risk Benefit Standard

Officer must weigh the foreseeable risks of harm posed by his use of force against his reasonable perceptions of the subject's actions or behaviors the officer is attempting to stop or control.

“Quantum of Force”

“*Quantum of force*” basically means:

- the reasonably foreseeable (to the officer) effects and injuries of a chosen force option under the totality of the circumstances of the force option use

Basic Legal Considerations

**(Underlying Principles and
Considerations of 4th Amendment
Force Standard)**

Force Standards

(Do NOT confuse legal force thresholds with “*perfection*” practices)

- Federal Constitutional Standards:
 - Do not intentionally misuse government endowed authority (4th, 5th, 8th, 14th Amendments, state law, etc.)
- Restrictive force court case considerations:
 - Best force decision based upon information
 - Minimum application of force to reasonably safely accomplish lawful objectives
 - Coupled with well written accurate descriptive force reporting and documentation
(preferably video/audio from the officer’s perspective)

What is Your Force Management Objective?

Consider encouraging/training – “*perfection standards*” full knowledge possible minimum injury force practices? (Not to be confused with, or substituted for, Constitutional force standards or threshold(s).)

Some legal case based “*perfection standards*” considerations likely do not reflect federal Constitutional force standards or thresholds in numerous jurisdictions.

Meaning, these “*perfection*” considerations are (in many circumstances) considerably more restrictive than applicable federal Constitutional rights standards.

And, be cautious to NOT create elevated force standards above the Constitutional force standards thresholds.

What is Your Force Management Objective?

Consider if officers actions could be perfectly scripted in the 20/20 vision of hindsight – the “*Perfection Standard*” ... which is a “*should*” paradigm – NOT a Constitutional standard.

How would you use such force option? (if at all?)

Force Decisions and Reporting:

Court Decisions Lessons Learned

Approaching the Hollywood Scripted 20/20 Hindsight –
“*Perfection Standard*” in training and guidance.

Basic Force Considerations

- What is your force management objective?
- What is starting, or significantly enhancing, the dominos falling?
- Which force standard to comply with? Where the courts are (sometimes) headed?
 - Intentional misuse of govt endowed authority?
 - Tolerance for non-intentionally-violent offenders?
 - The “*force avoidance*” standard?
 - The “*thou shalt be nice*” (or at least “*respect*”) standard?
 - Expeditious medical care? (when in doubt summon)

Why is the person in need of a force response?

- Violent criminal
- Fleeing person
 - Serious (physical injury) offense
 - Non-serious (physical injury) offense
- Health/mental crisis (perceived as victims):
 - Person in Serious Psychological Distress (SPD)
 - Drug abuser (under influence of drugs/alcohol)
 - Excited delirium / neuroleptic malignant syndrome
 - Other (diabetic, thyroid imbalance, seizures)

Officer's Decision to Use Force

- Rapid, objective determination of degree of “immediate threat”
- Importance of training for intel gathering and actions to be taken based upon that intel
- Understanding of changing force standard paradigms

How to Analyze 4th Amendment Force

One way to make force decisions: What is your objective for using force?

- **Defensive Force** - Subject reasonably perceived as an immediate threat of harm
- **Capture Force** - Subject fleeing from (serious physical harm) crime and officer is justified in tackling subject on the current surface
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Basic 4th Amendment Force Analysis

(Key *Graham* Factors)

- the severity of the crime at issue
- whether the suspect poses an immediate threat to the safety of the officers or others
- whether suspect is actively resisting arrest or attempting to evade arrest by flight
- split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about amount of force necessary in particular situation

Graham* Factors as Ranked by *Chew

Order of Importance – Potential for Risk of Injury Importance Ranking

1. Immediate threat to safety of officers/others
2. Actively resisting seizure
3. Circumstances tense, uncertain, rapidly evolving (“*pace*” of events)
4. Severity of the crime at issue
5. Attempting to evade seizure by flight

Additional Force Factors

- Court may also consider "the availability of alternative methods of capturing or subduing a suspect." (*Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir.2005))
- Court may also consider what officers knew about the suspect's health, mental condition, or other relevant frailties. (*Deorle v. Rutherford*, 272 F.3d 1272, 1282-83 (9th Cir. 2001); *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir.1994))

Additional Force Factors

Extent of the injuries sustained as a result of the force used.

- "[T]here is no requirement that an injury be permanent for it to be actionable." *Rohrbough v. Hall*, 4:07cv0996 ERW at 11 (D.E.Mo. Oct. 23, 2008).
- "Plaintiff's allegations that she told [the officer] that the handcuffs were too tight and were causing her pain and that she suffered injuries as a result, her right to be free of such force was clearly established in 2008. "*Ramsey v. Connor*, 2011 WL 9129 (E.D.Mo. January 3, 2011)

Clarifying the *Graham* Factors:

(Immediate threat to safety of officers or others)

Graham's "immediate" vs. "possible" threat:

“[A] simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern.” (*Deorle v. Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001))

- *Beaver* – “possibly” had a weapon under him
- *Brooks* – could have fled in car
- *Brown* – beer “tankards” used as weapons

Clarifying the *Graham* Factors:

(Immediate threat to safety of officers or others)

Graham's “immediate” vs. “possible” threat

“*Releford* – 2 friends, confusing commands, questioned arrest (delaying tactic? – no evidence)

– weighed against the minimal need for force, the simultaneous double-tasing of plaintiff was clearly excessive. Once plaintiff fell to the ground and rolled onto his stomach, the need for force diminished even more and hence, the second double-tasing was also clearly excessive.

Clarifying the *Graham* Factors:

(Actively Resisting)

Releford:

- Fact that Releford stopped and raised his hands over his head, asked legitimate questions about why he was being arrested, and was likely confused by the officers' conflicting commands to turn around – the Court cannot term plaintiff's behavior "active resistance." Indeed, his behavior suggests at least a partial willingness to comply.

Clarifying the *Graham* Factors:

(Seriousness of the Offense)

- *Buckley* – failed to sign speeding ticket
- *Brooks* – failed to sign speeding ticket
- *Bryan* – traffic ticket
- *Brown* – open intoxicant M/V passenger
- *Casey* – took court file to parking lot
- *Releford* – not suspected of having just committed a crime (warrant arrest)
- *Beaver* – fleeing residential burglar
- *Cockrell* -- jaywalking

Clarifying the *Graham* Factors:

(Pacing – Tense, Uncertain, Rapidly Evolving)

- *Brooks* – slow pacing
- *Brown* – 4 officers present, husband in handcuffs in back of patrol car
- *Buckley* (dissent) – should have waited for backup

The slower the pace of the events the less force officers are allowed to use.

Less Intrusive Alternative Methods?

- *Releford*:
 - Officers did not explain why options less intrusive than ECDs could not have been used.
 - Officers did not state that they even considered less intrusive options.
- *Brooks*:
 - Alternative methods (to get her out of car)
- *Buckley* (dissent):
 - Alternative methods (waiting for backup)

ECD Force Must be Justified

Beaver:

- ECD use involves the application of force.
- each ECD application involves an additional use of force.

Scott v. Harris:

- Risk of harm to suspect from force to be used *versus* threat from suspect officer is trying to eliminate or prevent

ECD Force that Must be Justified

(Multiple ECD Applications)

Multiple ECD Applications:

- Is suspect an immediate threat?
- Is suspect about to flee (a serious offense)?
- Suspect fails to comply with command?
 - Multiple ECD applications cannot be justified solely on the grounds suspect fails to comply with command, absent other indications: about to flee or poses immediate threat to officer
 - particularly true when more than one officer present to assist in controlling situation.

ECD Force that Must be Justified

(Multiple ECD Applications)

Multiple ECD Applications:

Is the suspect capable of complying with command?

- any decision to apply multiple ECD applications must consider whether suspect is capable of complying with commands.
 - Physically? (*Beaver*)
 - Mentally (intoxication, schizophrenic, etc.)?
 - Emotionally? (*Buckley, Brown*)
 - Conflicting commands? (*Beaver, Releford*)

Officer's Force Decision & Report?

(especially where person is not active threat or attempting to flee)

- *Graham* factors – as risk prioritized by *Chew*
- Justification(s) for each use of force
 - Beware “*possible*” vs. “*immediate*” threat
 - Each application of force must be justified
- Presence or absence of other officer(s)
- Any factor used to justify escalated force must be explained
 - *Releford* – 2 persons (not explained why threat concern)

Officer's Force Decision & Report?

(especially where person is not active threat or attempting to flee)

- Consideration of suspect's ability to comply with commands
 - Conflicting commands
 - Ability to comprehend commands
 - Physically able to comply with commands
 - Emotionally able to comply with commands
 - Mentally able to comply with commands
 - Inability to comply due to trauma
- Absence of conflicting commands

Officer's Force Decision & Report?

(especially where person is not active threat or attempting to flee)

- Availability of alternative methods of capturing or subduing suspect.
 - Consideration of alternatives
- What officers knew about the suspect's:
 - Health,
 - mental condition, or
 - other relevant frailties.
- Extent of foreseeable injuries from application of chosen force option under circumstances of use

Officer's Force Decision & Report?

(especially where person is not active threat or attempting to flee)

- Warning of force to gain compliance
 - Giving warning(s) before force is used
 - Consider whether warning will be comprehended
- Time between force applications to give time for voluntary compliance (tolerance factors)
 - Concern of too short a time between applications

Officer's Force Decision & Report?

(especially where person is not active threat or attempting to flee)

- If pain is going to be used to gain compliance
 - consideration whether person will perceive the pain and be able to comply with command(s)
 - Option – use of ECD as discomfort/pain to cause distraction to attempt to capture, control, restrain, and/or other lawful force objective
 - E.g. *Lomax v. Las Vegas Metro Police Department*
 - *Stanley v. Baytown*
 - *Tucker v. Las Vegas Metro Police Department*

ARD/ICD - Where the Courts are Going

1. **Known risk factors** (*Richman v. Sheaham*, 512 F.3d 876 (7th Cir.(IL) Jan. 7, 2008) - 489 lb man – “a reasonably trained police officer would know that compressing the lungs of a morbidly obese person can kill the person”
2. **Necessity of haste** – (*Id.*) So the deputies had to use care in removing him from the courtroom, unless there was some compelling need for haste. But there was not. Court was over for the day. From the effort of the first 2 deputies to seize Richman to his death, only 7 minutes elapsed.

There was no reason to endanger his life in order to remove him with such haste. A reasonable jury could find that the deputies used excessive force.

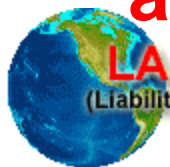
A Few Basic ECD Legal Concepts

ECDs Have Risks



**Carefully read, review, analyze, understand
and consider all current TASER ECD Warnings**

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(Liability Assessment & Awareness International, Inc.)



Absolute ECD FACT!!!!

As of April 23, 2012, no peer reviewed medical, scientific, electrical, or engineering literature, learned treatise, or position paper by a reputable organization, has found, stated, or concluded that a TASER X26 ECD causes cardiac capture, cardiac arrest, ventricular tachycardia, ventricular fibrillation, or lethal cardiac consequences in a human.

Refresher: A Few ECD Basics

Do not exceed 15-second exposure without justification

Several police organizations have set out 15 seconds (multiple applications or continuous) of Electronic Control Device (ECD) exposure as a significant safety point:

- Police Executive Research Forum (PERF), Community Oriented Policing Services (COPS), & US Department of Justice (DOJ) (2011)
- Int'l Association of Chiefs of Police (IACP) (2010)
- American Academy of Emergency Medicine (AAEM) (2011)
- National Institute of Justice (NIJ) (2011)

PERF Guideline 21 (03/11)

- An ECD should be used for one standard 5-second cycle and then evaluate the situation to determine if subsequent 5-second ECD cycles are necessary.
- Officer should consider that ECD exposure for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury.

PERF Guideline 21 (03/11)

Any subsequent ECD exposure (beyond 15 seconds of multiple applications or continuous cycling) should be independently justifiable, and the risks should be weighed against other force options.

ECD Emergency Dept Evaluation

(Vilke 2011)

These studies did not report any evidence of dangerous laboratory abnormalities, physiologic changes, or immediate or delayed cardiac ischemia or dysrhythmias after exposure to ECD electrical discharges of up to 15 seconds.

ECD

Basic Force

Analysis

Recognition of Important Role of ECD to Protect

“We explicitly ‘recognize[d] the important role controlled electric devices like the [TASER[®] X26[™] ECD] can play in law enforcement” to “help protect police officers, bystanders, and suspects alike.”

** (Bryan, 9th Circuit, 11/30/10)*

(Usually) Not a Problem ...

ECD use in probe mode:

If

- officer is justified in using force and the person is an objectively reasonably perceived immediate threat of harm to officers or others, or
- the person is trying to flee from a (serious physical harm) offense (and the officer would be justified in tackling the person on the specific surface),

then reasonably limited ECD use is almost always legally justified.

One question is: how to make the best force decisions coupled with excellent reporting?

Basic ECD Legal “Quantum of Force” Concepts

“Quantum of ECD Force”

Probe Deployment

- Probes up to ½” into body
- Pain: excruciating, intense pain felt throughout entire body
- NMI
- ECD commandeers person’s muscles and nerves
- Temporary paralysis
- Causes uncontrolled fall

Drive Stun Deployment

- Pain: only transitory, localized
- No NMI
- Non-incapacitating effect
- Without incapacitating muscle contractions
- Without significant lasting injury
- Has markedly different physiological effects than probe mode

“Quantum of ECD Force”

Probe Deployment

ECD in general “is more than a non-serious or trivial use of force but less than deadly force”

- Intermediate and significant quantum of force
- ECD use must be justified by a strong government interest
- ECD higher force than OC or nunchakus (*Forrester*)

Drive Stun Deployment

Less-than-intermediate quantum of force

- Amount of force more on par with pain compliance techniques

4th Amendment – Dart Mode

(Department Guidance Policy)

ECD in dart mode constitutes an “intermediate, significant level” of force that must be justified by a strong government interest¹

- Pepper spray and batons are also intermediate force options.

ECD against a non-violent misdemeanant who appeared to pose no immediate threat and who was given no warning² was unconstitutional excessive force

ECD Probe Mode Guidance

To use ECD in probe mode:

Officer must reasonably perceive subject to be:

- An immediate threat of harm/injury or
- Fleeing or flight risk from serious offense

Consider necessity of a verbal warning before deploying the ECD.

Be aware of foreseeable risks of secondary injury, especially falls from heights or on hard surfaces, or ignition of flammables.

X26 ECD Drive-Stun Guidance

(Using Force to Gain Volitional Compliance)

Using X26 ECD force for volitional compliance (when feasible):

- Verify person is capable of complying
- Avoid conflicting commands
- Must give a warning of imminent force application
- Must give adequate time for volitional compliance:
 - time “to recover from extreme pain” experienced,
 - opportunity to “gather herself,”
 - opportunity to “consider her refusal to comply” with officer’s commands/directives before next force application
- Always prepare clear, complete, unambiguous reports

X26 ECD Drive-Stun Guidance

(Using (ECD) Force to Gain Volitional Compliance)

Person must be given a reasonable opportunity to comply with officer's directives prior to each X26 ECD drive-stun application.

For example, the 9th Cir.¹ has found that 3 X26 ECD drive-stun applications in rapid succession provided no time for a pregnant female to recover from the extreme pain she experienced, gather herself, and reconsider her refusal to comply.

A Few ECD Force Cases to Consider

A few ECD cases to consider:

- *Casey v. City of Federal Heights*, 509 F.3d 1278 (10th Cir.(Colo.) Dec. 10, 2007)
 - Convicted speeder bringing court file back into courthouse (settled for \$85,000)
- (*Cert. denied 05/18/09*) *Buckley v. Haddock*, 292 Fed.Appx. 791 (11th Cir.(Fla.) Sep 09, 2008)
 - Sobbing speeder failed to sign speeding ticket
- *Beaver v. City of Federal Way*, 507 F.Supp.2d 1137 (W.D.Wash. 2007); (qualified immunity upheld by 301 Fed.Appx. 704 (C.A.9 (Wash.) Nov. 25, 2008)
 - Fleeing residential burglar (5 ECD uses, first 3 ok)

Bryan v. MacPherson

- *Bryan v. MacPherson:*
 - 630 F.3d 805 (C.A.9 (Cal.), November 30, 2010),
superseding 608 F.3d 614 (C.A.9 (Cal.) 06/18/10)
 - superseding 590 F.3d 767 (C.A.9 Cir. 12/28/09)
 - Seat belt violation, failed to comply, clenched fists, profanities, acting out.
 - Probe deployment while standing on pavement
 - ECD deployment objectively **UN**reasonable
 - Officer granted qualified immunity

Bryan v. MacPherson

“We recognize the important role controlled electric devices like the [TASER X26 ECD] can play in law enforcement. The ability to defuse a dangerous situation from a distance can obviate the need for more severe, or even deadly, force and thus can help protect police officers, bystanders, and suspects alike. We hold only that the X26 [ECD] and similar devices constitute an intermediate, significant level of force that must be justified by “ ‘a strong government interest [that] compels the employment of such force.’ ”

A few ECD cases to consider:

- *Brown v. City of Golden Valley*, 574 F.3d 491 (8th Cir.(Minn) Jul 22, 2009)
 - Female car passenger, beer tankards at feet, husband (driver) arrested for OMVWI.
 - Settled for \$200,000.
- *Stych v. City of Muscatine, Iowa*, 655 F.Supp.2d 928 (S.D. Iowa Sept. 18, 2009)
 - Fn 12 - “Plaintiff has presented testimony from two witnesses attesting to how important it is for police officers to listen.”

A few ECD cases to consider:

- (02/25/09) (UR) *Releford v. City of Tukwila*, Slip Copy, 2009 WL 497131 (W.D.Wash.,2009)
 - 6’5”, 280 pounds, simultaneous ECD discharge, and simultaneous ECD discharge while on ground. Arrested on warrant, not on recently committed crime.
- *Parker v. Gerrish*, 547 F.3d 1 (1st Cir. (Me.) Nov. 5, 2008)
 - *Parker v. City of South Portland*, 2007 WL 1468658 (D.Me. May 18, 2007)

A few ECD cases to consider:

Cockrell v. City of Cincinnati, Slip Copy, 2010 WL 4918725 (S.D.Ohio, November 24, 2010), *Cockrell v. City of Cincinnati*, reversed by, --- Fed.Appx. ----, 2012 WL 573972 (6th Cir.(Ohio) Feb 23, 2012) (Not selected for publication in the Federal Reporter, NO. 10-4605)

- Use of ECD on fleeing jay walker unreasonable
- Plf did not pose a threat of immediate harm
- District court found that it was clearly established on July 3, 2008 that the use of a[n ECD], against a fleeing jaywalker, i.e., a non-violent misdemeanor who posed no threat of harm to anyone, was prohibited by the Constitution.
- 6th Circuit reversed and granted qualified immunity

A few ECD cases to consider:

Cockrell v. City of Cincinnati, Slip Copy, 2010 WL 4918725 (S.D. Ohio, November 24, 2010), *Cockrell v. City of Cincinnati*, reversed by, --- Fed.Appx. ----, 2012 WL 573972 (6th Cir.(Ohio) Feb 23, 2012) (Not selected for publication in the Federal Reporter, NO. 10-4605)

- **Policy:** City continued to advise its officers that the use of the [ECD] on a nonviolent fleeing misdemeanor was permissible.
- Consequently, Plf has alleged sufficient facts to go forward on his claim that the City's policy, which explicitly permits such [ECD] deployment, is unconstitutional on its face.

A few ECD cases to consider:

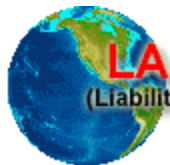
Cavanaugh v. Woods Cross City, 625 F.3d 661
(C.A.10 (Utah) November 3, 2010)

- no qualified immunity for officers who used [TASER ECD] on potentially suicidal woman involved in domestic dispute where she walked “quickly” away from officers and toward home; use of [ECD] without warning against misdemeanant violated clearly established law; incident occurred in 2006).
- Defense verdict on November 8, 2011.

A few ECD cases to consider:

Snauer v. City of Springfield (OR), 2010 WL 4875784 (D.Or. 10/01/10)

- Fleeing person's fall from top of 6-7 foot fence
 - Multiple spinal fractures
- “Any reasonable police officer would know from the training received in this case that [using a TASER ECD in probe mode on] a suspect who is cresting a six to seven foot high fence would likely result in serious injury.”
- On 09/16/11 police won jury verdict



Buckley v. Haddock, 292 Fed.Appx. 791
2008 WL 4140297 (11th Cir.(Fla.) Sep 09, 2008)
(US Supreme Court *Cert. denied* on May 18, 2009)

Officers are supposed to know if force is ok?

- District Court (unpublished decision) – not objectively reasonable, no officer would, no qualified immunity (QI)
- Circuit Court (unpublished decision):
 - Chief Judge: Objectively reasonable (OR) plus QI
 - Appellate Judge – 2 uses OR, 3rd use not OR, QI
 - District Judge – not OR, no officer would, no QI

Considerations to Avoid Allegations of ECD Excessive Force Liability

Considerations to Avoid ECD Excessive Force Liability

Force decision must reasonably consider (as time and circumstances reasonably permit):

- Officer's objective for using force
- Officer's reasonable perceptions of the subject's actions or behaviors the officer is attempting to stop, thwart, or control
- Foreseeable risks of injuries or harm to subject resulting from force to be used
- Foreseeable secondary risks of injury
- (When necessary) Give warning and reasonably perceive subject capable of complying with demands

Considerations to Avoid ECD Excessive Force Liability

- Follow targeting guidelines
- Every ECD trigger pull or 5 seconds of discharge must be justified under the specific circumstances
- Use 5-second “window of opportunity” to restrain and “cuff under power”
- ECD use is within Law and Agency Policy/Training
- Use ECD only to accomplish lawful objectives
- Do not use ECD only for verbal defiance/belligerence
- Do not use ECD for punishment

Considerations to Avoid ECD Excessive Force Liability

- Justify and document every use or application of force, including:
 - pointing, arcing ECD to gain compliance
 - each ECD trigger pull or 5-second discharge
 - fully document subject's threats or behaviors
- Avoid multiple, repeated, prolonged, extended, or continuous ECD exposures¹ unless necessary to counter reasonably perceived threat(s) and it is justifiable
 - always document your justifications

Considerations to Avoid ECD Excessive Force Liability

- Know your objectives for using force
- Avoid using ECD on elevated risk population member, unless necessary and justifiable
- Avoid intentionally targeting sensitive areas when possible
- Do not use pain compliance if circumstances dictate that pain is reasonably foreseeably ineffective

Using (X26 ECD) Drive-Stun Force to Gain Volitional Compliance

For each X26 ECD drive-stun application to gain volitional compliance, the officer must:

1. have a reasonable perception that the person is capable of volitional compliance to commands
2. reasonably perceive the person is actively resisting
3. give a warning of the imminent application of force
4. give the person a reasonable:
 - time “to recover from extreme pain” experienced,
 - opportunity to “gather herself,”
 - opportunity to “consider her refusal to comply” with officer’s commands/directives

Using (X26 ECD) Drive-Stun Force to Gain Volitional Compliance

Additionally, for each X26 ECD drive-stun application to gain volitional compliance:

- The time between each X26 ECD drive-stun application must be sufficient to allow the subject to gather themselves and comply with officer's direction. (Note: according to 9th Cir. in *Mattos/Brooks* 36 seconds was insufficient.)
- Officer needs to include in his report that before each X26 ECD drive-stun used to attempt to gain the person's volitional compliance the officer followed the guidelines set forth in *Mattos/Brooks*
- Quantum of force will very likely be different for multi-cartridge (multi-electrode) ECD drive-stuns (X3 ECD and X2 ECD)

***(Usually)* Not a Problem ...**

If officer is justified in using force and the person is reasonably perceived as:

- “***an immediate threat***” to officer or others, or
- is fleeing or trying to flee from serious offense crime and the officer would be justified in tackling the person

then reasonable ECD use is *usually* legally justified.

**The challenge:
to make the best force decisions
coupled with excellent reporting**

Beaver v. City of Federal Way

- 1. The use of an ECD involves the application of force.**
 - Each use of force [including each ECD cycle or 5 seconds of discharge] on a person that is a 4th Amendment seizure is the application of force and must be objectively reasonable.
- 2. Each additional ECD [5 seconds of] application involves an additional use of force.**
 - This is true of any use of force.

Beaver v. City of Federal Way

- 3. Multiple ECD applications [each 5 seconds of discharge] cannot be justified solely on the grounds that a suspect fails to comply with a command, absent other indications that the suspect is an *immediate threat or about to flee* [from a serious crime].**
- This is particularly true when more than one officer is present to assist in controlling a situation.

Beaver v. City of Federal Way

- 4. Any decision to apply multiple ECD [5 second] applications must take into consideration whether a suspect is capable of complying with officers' commands.**
 - This would apply to whether a suspect is capable of complying: physically, emotionally, language barrier, mental condition, etc.

Multiple ECD Applications

Is the suspect capable of complying with commands?

Any decision to apply multiple ECD [5-second] applications to gain volitional compliance must consider whether suspect is capable of complying with commands.

- Physically? (*Beaver*)
- Mentally (intoxication, schizophrenic, etc.)?
- Emotionally? (*Buckley, Brown*)
- Conflicting commands? (*Beaver, Releford*)

Tactical Considerations to Avoid ECD Excessive Force Liability

Spark Test

- Conduct spark test prior to the start of your shift
- One spark (1/19th of a second) is adequate. However, this is not a practical duration. As long as the officer sees a visible spark between the electrodes, it is not necessary to extend the duration. In most cases, less than one second.
- The reason for the spark test is:
 - To check that the ECD is sparking.
 - To check the battery's performance.
 - There are components in the high voltage section of some older X26 ECDs that are more reliable when energized (“conditioned”) on a regular basis.

Spark Test (X26 ECD)

(When Conducting X26 ECD Spark Test)

- Follow agency protocol
- Keep hands and fingers away from the front of the cartridge
- Safely remove the cartridge (beware static discharge)
- Point in a safe direction
- Put safety switch in the up (ARMED) position
- Pull the trigger
- Visually inspect the arc
- Put safety switch in the down (SAFE) position
- Load the ECD before taking into the field
- Listen for typical spark pulse rate and if pulse rate is slow replace battery (DPM/XDPM) and retest. If still slow, take out of service.

Preferred Target Zone Rear

(when possible)

- Below neck (blue zone)
 - Large muscles
 - Avoid head

The back is always the preferred target area when reasonably practicable under the totality of the circumstances of the incident as reasonably perceived by the officer.



Preferred Target Zone Front

(when possible)

Lower torso (blue zone)

- More effective
 - Split hemisphere
 - Larger Muscles
- Reduces risk of hitting sensitive body areas – Refer to current product warnings
- Increases dart-to-heart safety margin distances
- Do not intentionally target genitals



Deployment Distance Considerations

Deployments from 0-7 feet (0-2 meters):

- Higher hit probability
- Limited probe spread = low amount of muscle mass affected
- Short reactionary distance
- Consider targeting the waist area to “split the hemispheres”



Neuro-Muscular Incapacitation (NMI)

- There are different levels of NMI ranging from limited area effects to significant body lockup
- The greater probe spread, the higher likelihood of NMI
- ECDs may not achieve total NMI incapacitation
- Subject may maintain muscle control, particularly in arms and legs (depending on many factors, including probe locations)
- Be prepared with other force options including a drive-stun follow up to spread NMI over a wider area if necessary and reasonably appropriate
- Drive stun usually will not achieve NMI, only localized pain

Controlling/Cuffing Under Power

- Use each 5-second ECD cycle as a “window of opportunity” to establish control/cuff while the subject is affected
- Move in, control, and handcuff subject while the ECD is cycling during the 5-second “window of opportunity”
- Be aware that emotionally disturbed persons (EDPs), focused, intoxicated, deaf, and excited delirium individuals may not comply with verbal commands
- The need for multiple 5-second cycles, or extended or prolonged ECD exposures, may be avoided or reduced by “controlling/cuffing under power” during the “window of opportunity” the 5-second ECD cycle provides

Be Careful of Distractions

- There are incidents/cases where officers have been accused of using excessive ECD exposures caused by distractions (including by nearby family members, bystanders, incident witnesses), stress, etc.
- Be alert to and avoid potential or occurring distractions and stress induced hesitations that result in unnecessary additional 5-second ECD cycles or extended exposures
- Distraction and stress may result in the officer inadvertently holding the trigger down unintentionally which will result in a constant electrical discharge of unintended duration

Know Your ECD Trigger Operation: Continuous Discharge

- Remember if you hold the trigger back the ECD will continue to discharge after the 5-second cycle until you release the trigger (does not apply to X2 ECD with APPM)
 - (as long as the battery charge is sufficient to support discharge)
- Holding the trigger back may result in inappropriate continuous, extended, or prolonged ECD discharges and allegations of excessive force or elevated subject injury

Avoid Extended, Repeated, or Prolonged TASER ECD Applications¹ Where Practicable

- Each trigger pull and/or 5-second cycle or discharge must be legally justified
- Avoid extended, repeated, or prolonged ECD applications where practical
- The application of the ECD is a physically stressful event
- Attempt to minimize the physical and psychological stress to the subject

Avoid Extended, Repeated, or Prolonged TASER ECD Applications Where Practicable

- Only apply the number of 5-second cycles reasonably necessary to capture, control or restrain the subject
- Human studies have shown that ECD applications do not impair normal breathing patterns
- If circumstances require extended duration or repeated discharges, the operator should carefully observe the subject and provide breaks in the ECD stimulation when practicable

One Probe Hit With (three-point) Drive-Stun Follow up

If only one probe impacts the subject, a drive stun with the cartridge still attached can act as the second probe and complete the circuit, and thus may cause NMI

Injuries From Falls

- NMI frequently causes people to fall and often uncontrolled or unable to catch himself
- Falls, even from ground level, can cause serious injuries or death
- Consider the environment (including the ground surface) and the likelihood of a fall related injury

Contingencies

- ECD may have limited or no effect
- No weapon system will operate or be effective all of the time
- An ECD or cartridge may not fire or be effective
- Be prepared to transition to other force options

Clearly Record the Incident

- If available, use on-officer point of view (“POV”) incident recording equipment
- When safe, use radio to establish record of significant events with dispatch time logs (call in):
 - Immediately at end of ECD use
 - Immediately upon subject being handcuffed
 - Person’s perceived medical status and condition (pulse (where taken), breathing, eyes open, alert, flailing, leaning, lying on left side, medical distress, etc.)

Evidence Gathering*

Capture all relevant evidence, including:

- ECD probes and wires
 - do not allow items to be placed into biohazard container or destroyed.
- Collect the clothing where ECD was applied
- Photograph injuries and lack of injuries
- Collect all relevant videos, audios, dispatch
- Expeditiously download ECD firing data

ECD Use Reducing Force Claims

- Multiple studies finding ECD use decreases subject and officer injuries
- No other force option has even 1/10th the peer-reviewed published studies of ECDs
- No other force option is even close on providing use and accountability documentation

Conclusions

- Keep abreast of morphing force expectations
- Many agencies have seen significant reductions in injuries and excessive force complaints and litigation after deploying TASER ECDs
- Train officers in smart and proper use of ECDs in compliance with judicial guidelines
- Understand the importance of POV incident capture and optimal reporting
- Evidence once captured – must be available

Brief Medical and Safety Refresher

	 WARNING
	Electronic Control Device <ul style="list-style-type: none">• Can temporarily incapacitate target.• Can cause death or serious injury.• Obey warnings, instructions and all laws.• Comply with current training materials and requirements.• See www.TASER.com.



Cardiac

- Risk of an ECD deployment, application, or discharge having a negative effect on a person's heart [capture, pacing, rate, and/or rhythm] is not zero
- The risk of an ECD causing cardiac arrest, including ventricular tachycardia or fibrillation, is sufficiently remote that making accurate estimates is very difficult. Current estimates of the risk are on the order of 1 in 100,000 applications (see notes)

Cardiac

- Experts have identified dart-to-heart distances and transcardiac (across the heart) vectors as being key determining factors in whether an ECD can effect the heart.
- The further an ECD dart is away from the heart the lower the risk of affecting the heart.

Cardiac

When possible, avoiding ECD chest shots reduces the risk of affecting the heart and avoids the controversy about whether ECDs do or do not affect the human heart.

Physiologic or Metabolic Effects

- The ECD can produce physiologic or metabolic effects (see notes)
- Reasonable efforts should be made to minimize the number of ECD exposures and resulting physiologic and metabolic effects

Physiologic or Metabolic Effects

Studies show ECD effects are usually comparable or less than from:

- Struggling
- Resisting
- Fighting
- Fleeing
- Some other force tools or techniques

Higher Risk Populations

- ECD use has not been scientifically tested on:
 - Pregnant women
 - The infirm
 - The elderly
 - Small children
 - Low body-mass index (BMI) persons
- ECD use on these individuals could increase the risk of death or serious injury

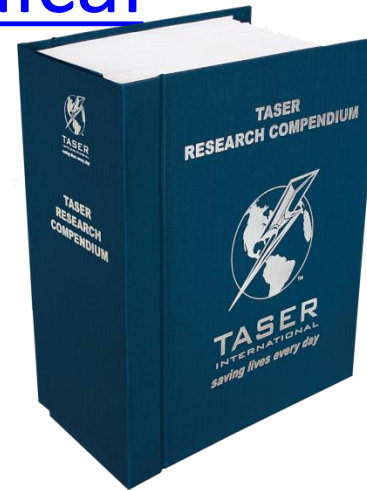
Physiologically or Metabolically Compromised Persons

- Law enforcement personnel are called upon to deal with individuals in crises that are often physiologically or metabolically compromised and may be susceptible to arrest-related death (“ARD”)
- The subject may already be at risk of death or serious injury as a result of pre-existing conditions, individual susceptibilities, or other factors
- Any physiologic or metabolic change may cause or contribute to death or serious injury
- Follow your agency’s guidance and policies when dealing with physiologically or metabolically compromised persons

Independent Conclusions

Some of the latest TASER ECD Research can be viewed at:

- <http://www.TASER.com/research-and-safety/science-and-medical>



A Few More Basic Numbers

**Importance of putting
things into perspective**

A “Few” Basic Numbers

Person Deaths:

(Involving Law Enforcement Officers (LEOs)):

~ 1 death per 15,385 arrests

~ 1 death per 700 people going to jail

~ 1 death per 600 uses of pepper spray

~ 1 death per 323 arrests using weapons

Basic Numbers:

Annually (Law Enforcement Officer Deaths, Injuries, Assaults):

- **1 LEO death per 5,521 officers**
- **1 LEO injured per 56 officers**
- **1 LEO assaulted per 18 officers**

Averages over last decade:

- **900,000 LEOs**
- **163 LEO deaths per year**
- **16,041 LEO injuries per year**
- **50,069 LEO assaults per year**

Basics (of force) Numbers:

(US) Societal problems influencing force response increases):

- **Current Illicit Drug Abusers (“CIDA”) increasing:**
 - (2009) 21,800,000 CIDA (8.7% of population age 12+)
 - (2004) 19,100,000 CIDA (7.9% of population age 12+)
- (2009) 22,000,000 (8.9% of population age 12+) classified with substance dependence or abuse in the past year based on DSM-IV criteria
- **Drug caused hospital emergency room visits annually:**
 - (2007) 1,883,272
- **People in serious psychological distress (“SPD”) annually:**
 - (2007) 23,400,000 SPD (10.9% of adults)
 - (2004) 21,400,000 SPD (9.9% of adults)

Basics (of force) Numbers:

(US) Societal problems influencing force response increases):

- **Drunk or Drugged Driving (2006-2009):**

- **30,600,000 DUI alcohol in past year**

- **13.2% of 16+ population**

- **Highest rate - Wisconsin – 23.7% of population**

- **10,100,000 DUI illicit drugs in the past year**

- **4.3% of 16+ population**

- **(2008) 32% of all traffic related deaths—nearly 12,000 deaths—were the result of alcohol-related crashes**

Basics (of force) Numbers:

LEO Face-to-Face Encounters :

- (2008) 40,000,000 (17% of population)
- (2005) 43,500,000 (19% of population)
- (2002) 45,000,000 (21% of population)

LEO Used or Threatened Force:

- (2008) 560,000 (1.4% of face-to-face encounters)
- (2005) 695,000 (1.6% of face-to-face encounters)
- (2002) 675,000 (1.5% of face-to-face encounters)

Basics (of force) Numbers:

(2008) LEO Use of Force:

- ~ 280,000 (50%) were pushed or grabbed
- ~ 140,000 (25%) had a gun pointed at them

Force Recipients Felt Force Was Excessive:

- (2008) 414,000 (74%)
- (2005) 577,680 (83%)

Subjects Reported Being Injured by LEOs' Force:

- (2008) 106,400 (19%)

Basics (of force) Numbers:

About 2.1% of all arrests involved LEO use of weapons

Pre-Arrest/Arrest Risk of Death:

- risk of death is 6.5 deaths per 100,000 arrests or
- 1 death per 15,385 arrests

If 2.1% of arrests involve use of LEO weapon

- with 1 death per 15,385 arrests
- then 2.1% of 15,385 arrests is 323 arrests with weapons
- thus, by these numbers the rate of arrestee death is 1 death per 323 LEOs' uses of weapons in arrest



Basic Arrest-Related Death (“ARD”) Numbers

- Pepper spray – approximately 1 in 600 will die
- Positional asphyxia – in a pepper spray study in 7 out of 63 “clear cut” cases of suspect death the death was attributed to positional asphyxia

Death Rate in Jails

- (2000-2007) Local Jails (in-custody deaths):
 - 8,110 deaths in local jails from 2000 through 2007
 - 1 death per 658-709 inmates (depending on year)
- Rates of jail in-custody deaths:
 - Local Jails: 141-152 deaths per 100,000 inmates
 - Nevada: 247 deaths per 100,000 inmates
 - National average: 250 deaths per 100,000 inmates
 - Western states: 219 deaths per 100,000 inmates
- Ontario: 211.5 deaths per 100,000 inmates