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# Law Enforcement Action Forum NEWSLETTER

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## Taser — The Michigan Municipal League's Liability And Property Pool And Workers' Compensation Fund Stand On Electrical Current Weapons

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Over the past several years many law enforcement executives and the top-level management of member municipalities have asked about the MML Pool and Fund's position on electrical current weapons (taser). Therefore, this edition of the LEAF Newsletter will outline the MMLs philosophy on tasers, a philosophy that applies to any other weapons that a municipal entity may want to add to their officers' duty belts.

### THE POSITION

The MML Pool and Fund neither endorse nor recommend any particular weapon. There are several reasons for this decision:

1. There are many types and varieties of weapons available to law enforcement, each designed for specific purposes and each presenting varying degrees of risk in their use. Therefore, it is impossible to select a particular weapon as the right one for all members.
2. Each municipal entity has different considerations that it must address when choosing the types of weapons it introduces into its municipal environment.
3. The Pool, Fund and LEAF believe it is the governing body's responsibility to determine the resources and level of service it provides to its municipality. A law enforcement executive usually gives technical advice to the governing body on these issues. That executive is responsible for the department reaching the entity's goals for public service as well as for the preventing, deterring and prosecuting criminal activity.

### THE TASER AS A WEAPON

It is LEAF's belief that the taser is a legitimate police weapon. Nevertheless, LEAF Members are monitoring the technology of the weapon and its impact on the human body. Some have obtained the weapon and their officers have it available to them on patrol. Other Members are still analyzing the need for the weapon and its practical use in their policing environment. At this point, the only consensus about tasers within LEAF is that the decision to add the weapon to a department's arsenal is an individual choice of the governing entity they serve.



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## THE CORE CONTROVERSY

In recent years, the media has reported on catastrophes that have allegedly resulted from using tasers. These allegations include improper use, serious injuries, the triggering of heart attacks, and fatalities. As a result, the public and social agencies have expressed serious concerns about these weapons. Citing concerns that this form of control might constitute cruel and unusual punishment, Amnesty International has called for suspending the use of tasers, until further study of the weapon's effect on the human body. In November 2004, Amnesty International issued a comprehensive report, Tasers in the United States, Amnesty international, Excessive & Lethal Force? Amnesty international's Concerns about Deaths & Ill Treatment Involving Police Use of Tasers. You can find the full report can at: ([http://web.amnesty.org/library/pdf/AMR511392004ENG LISH/\\$File/AMR5113904.pdf](http://web.amnesty.org/library/pdf/AMR511392004ENG LISH/$File/AMR5113904.pdf))

The American Civil Liberties Union is also involved in disputes and controversies involving taser use around the country. The International Association of Chief's of Police and the Department of Justice have announced they are going to study the electronic stun weapon issue. There is lots of "stuff" brewing on the topic, and there are no clear answers to rely upon.

However, one thing is clear, police departments must proceed carefully and do the following if they choose to buy or already have tasers.

1. Educate the governing body, officers, and the public that tasers should be an adjunct to, not a replacement of, any of the equipment that the department already authorizes.
2. Define tasers as another option for the officers to use when controlling subject resistance.
3. Train officers on the need for a back up plan when using a taser in case it fails.
4. Train officers on the medical issues they must consider when using tasers.
5. Discourage the perception that the taser is a substitute for deadly force.

## THE REASONABLE OFFICER STANDARD

Each incident involving a confrontation with a suspect is different. There are going to be times that officers will shoot a resisting subject. When evaluating each incident, remember that the U.S. Supreme Court has established the applicable legal standard: "**Was the officer's**

**response to the subject's actions objectively reasonable in light of the facts and circumstances confronting the officer at the time the force was used (*Graham v. Connor*)?"**

LEAF's Legal Advisor and Coordinator have presented at conferences and written in past LEAF Newsletters about the significance of the "Reasonable Officer Standard". They have cautioned departments against diminishing the standard by promoting the weapon in such a way that the public's expectation of taser use by officers is only when faced with extreme levels of resistance.

It is LEAF's view that if officers have an objective and reasonable belief, based on the circumstances and resistance they face, that a subject's actions may result in great bodily harm or loss of life, then a firearm or projectile firing less lethal weapon would be appropriate. Officers should understand that they must follow their training, experience, and judgment in these very critical situations and take the action they believe is correct as they evaluate the facts and circumstances confronting them. **Departments must review their training to ensure it does not leave the impression that an officer must default to a less lethal weapon in these critical situations. This will confuse officers when the use of the firearm may be tactically prudent over the use of the less lethal weapon. We have added so many tools to the belt and/or available weapon choices that if the message is confusing or creates hesitation it could cost an officer or a citizen their life.**

## DON'T OVERSELL

When a law enforcement executive decides the taser should be an authorized weapon, he or she must start by convincing the decision makers of the correctness of the decision. When presenting the decision, the executive must separate the vendor's marketing hype from facts that the decision makers should hear. It is the vendors' job to sell the taser. Like all sales people, they are going to provide information that they feel will persuade the municipality to buy the product. During the presentation, the law enforcement executive must persuade the governing body that the information the vendor has provided is correct and applies to the municipality's environment.

<p><b>Rule Of Thumb</b></p> <p>Do not use the vendor's sales pitch until you verify that all the statements are true!</p>
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The decision makers need to hear that departmental expectations are that the officers will use the taser to control subjects who are threatening to fight or resist. Law enforcement executives should be cautious about promoting the use of the taser during armed confrontations. Using a taser is only viable if an officer believes it may be safe to do so. The key is to stress that officer safety comes before anything else.

Do not use the "insurance will go down" card because that is probably not true. If the department has a large number of injuries to officers or subjects while making arrests, the taser may help reduce some claims but subjects may still get hurt dropping to the ground when they lose control. If the department often encounters violent mentally ill or substance abuse subjects, there is a possibility that using the taser may reduce injuries to officers. However, recent incidents indicate these subjects may be at high risk for serious injury.

### **PUBLIC PERCEPTION OF JUSTIFICATION TO BUY**

The U.S. Supreme Court's ruling in *Tennessee v Garner*, allows lethal force to be used to subdue armed and dangerous subjects. Because of the marketing and sales efforts by departments wanting to incorporate tasers as an authorized weapon, the public has developed the perception that tasers will be used to subdue armed and dangerous subjects without shooting them dead. In their haste to make the case for purchasing tasers, departments did not promote the idea that the taser's most valuable feature is that it allows officers to control subjects without having to engage them physically. Departments have not focused on or promoted the actual reason they are going to use the taser – officer and subject safety -- and at what level of resistance they will be used. Now the public is reacting to what it believes is a department's breach of faith by using tasers at levels lower than what they originally heard or expected. It is important to promote the intended use of the weapon: taking the fight out of a resisting subject in a manner that generally will provide a lower risk of injury to all involved.

The public needs to hear that the taser does not replace lethal force. Officers may still have to shoot people. It also needs to understand that, although the potential exists to reduce injuries, the taser eliminates the ability of the subject to control their voluntary muscles. As a result, they are going to fall to the ground. The potential for injury is obvious, so overall safety to the subject is a

hard sell. In addition, the possibility that someone may die in an incident involving a taser does exist.

The public and officers must be made aware that tasers can be effective when they work properly, but their use is not always successful. Officers and the public must be made aware that when a taser fails to work, the officer might have to resort to physical combat or deadly force. One of the positive aspects of taser use that should be promoted is that "tased" subjects generally submit to the officer's control without the officer having to engage physically with the resisting subject. This is an advantage in preventing injury to the officers. The media frequently reports on police arrests. Bad outcomes are certain to get attention, therefore, departments should make sure that the press reports on those positive outcomes where the taser worked as intended.

### **IF YOU HAVE THEM OR ARE THINKING OF GETTING THEM**

You must have the following in place.

- **Policy:** A formal document that states management's expectations about employee use of the weapon and provides direction to employees.
- **Training:** Formal activities that ensure understanding of the policy and management's philosophy, develop appropriate motor skills, and convey the extent of officers' discretion in using the weapon.
- **Supervision:** Accountability to ensure that officers follow the philosophy and the intent of the policy within the discretion granted.
- **Administrative Review:** Quality assurance by reviewing departmental actions to ensure they comply with the policy and any exceptions to it.

One of the most important responsibilities of the law enforcement executive is to ensure that the policy clearly defines the department's expectations and philosophy for using the taser. During training, officers must hear clear definitions of management expectations and the extent of officer discretion. Additionally, officers need to receive training in the use of the taser and deployment of the darts regularly.



The training needs to reflect the actual conditions officers can expect to be working in. Like any other weapon, tool, or technique that the department has authorized, training in the use of tasers is not a once and done event.

Since we maintain that the "Reasonable Officer Standard" is the measurement for the use of force, it is difficult to place the taser specifically on the force continuum. Because situations and circumstances are often fluid in an incident, officers need to weigh the reasonableness of using the taser against the factors known to the officer at the time. The Pool and Fund believe that, because of the invasiveness of the weapon and the risk of injury to the subject, officers should, in general use the taser when they have a reasonable belief that they are going to have to engage the person physically, using physical controls or an intermediate weapon to overcome the resistance present.

However, having a reasonable belief is only half of the story. The department must require that officers articulate that belief in a post use of force report. Officers must know that the use of a taser is as important as using other invasive weapons. Officers must know that they are accountable for their decision to use the weapon and that the administration will review the incident to ensure the decision to use the taser falls within the expectations and discretion of the department.

### WHERE TROUBLE LURKS

A real problem area for departments using tasers is the use of the weapon to achieve compliance through the application of pain. In Michigan, the only manufacturer that currently meets the state's requirements for Tasers is TASER INTERNATIONAL. TASER INTERNATIONAL provides training and a policy that focuses mostly on the deployment of the darts. The training and attention that departments provide follows that focus. Officers receive training in how to fire the darts with little discussion about the stun gun mode. The general emphasis and frame of reference for officers using tasers today is that they have to report the deployment of the darts in careful detail, but they mention drive stun only as a number on the reporting sheet.

Drive stun incidents -- especially if officers use the taser as a pain compliance tool outside an arrest or after the person is in custody -- present a greater challenge to departments than the deployment of the darts. Amnesty International is calling the use of the drive stun technique as torture. They are calling for a prohibition of

the use of the stun gun function in cases other than immediate threat to the life or safety of the officer or others. This is happening because of uncorroborated reports from subjects who claim that officers repeatedly use the stun gun in situations where a subject is not complying with an order by an officer or is talking back.

In addition to the review of the incident, administrators must periodically audit all uses of the taser. The TASER M26 and X26 are the most prevalent tasers in use in Michigan. These models have a computer chip that captures the activation of the weapon. Administrators can download the information through a port to a computer program that is available as an additional product. The department, as a matter of policy, should regularly download the data from each TASER put in service and audit the download against their records. To accomplish the audit, every time an officer pulls the trigger on a taser, the department should require the officer to record the incident. When testing a taser, an entry to a log is necessary. If someone fires a taser in stun mode, the individual who fired should document this fact as well as provide the names of the individuals present at the time. If an officer fires the barbs or uses the taser in drive stun mode in an incident, then an incident report and post use of force report is mandatory.

Because the techniques used for selling the weapon and the instruction that trainers often provide officers can be confused about departmental expectations and the extent of their discretion in using a taser. It is important to clearly communicate the department's expectations about officer conduct and discretion both in writing and during training.

Through auditing and analysis of the logs and use of force reports, law enforcement executives must determine whether taser use meets the stated expectations and intent of the department. If there is a variance, the department needs to determine if the problem is an issue of policy, training or bad behavior by an officer. This level of quality assurance is the only quantitative way to ensure that officers are meeting management's goals.

### TASERS IN TRAINING

Departments must also be mindful of their responsibility to protect the health and safety of their employees. Departments cannot require officers to be tased. If officers volunteer, they have to



complete a medical screening to identify past medical history or injury that may place them at risk. In addition, during the actual deployment training, a competent medically trained person must be present to respond to any medical event or injury.

## TO BE A SUCCESSFUL ORGANIZATION

It is the law enforcement executive's responsibility to ensure that the department under their command is performing to the expectations and philosophy of the municipality's governing body. To be successful, the executive must be committed to guiding his officers by providing policy and articulations of the expectations for their performance. Law enforcement executives must ensure that officers have the equipment necessary to do the job in their municipal environment. They are responsible for ensuring that their officers receive training both in the mechanical skills necessary for the job and on departmental policy and expectations about their behavior and performance. To guide the officers, supervision of their actions must be included to provide for oversight and feedback concerning officer's action and behavior. Most importantly, the executive has to evaluate the operations of the department for quality assurance. He must ensure the department is meeting the goals of the governing body through action that is just and fair in the application of the law and the services they provide.

## STEPS TO INTRODUCING A WEAPON IN A LAW ENFORCEMENT AGENCY

1. Explain the need for the weapon in your municipal entity to the governing body.
2. Outline realistically the intended use of the weapon.
3. Define the weapon as an additional tool not a replacement for one.
4. Sell the idea both internally and externally using only information you know to be true.



The LEAF Committee of the Michigan Municipal League Liability and Property Pool and Workers' Compensation Fund continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact the Michigan Municipal League's Risk Management Services at 734-669-6340 or MML Loss Control Services at 800-482-2726, for your risk reduction needs and suggestions.

5. Outline departmental expectations about officer conduct and about the level of discretion the department is giving officers.
6. Explain use of force requirements.
7. Define the reasonable officer standard and explain its application during the department's quality assurance review.
8. Train officers to the mechanical skills and expectation of use for the weapon.
9. Train officers to their limits of discretion in the use of the weapon.
10. Train supervisors in their responsibilities to review the behavior of their officers.
11. Train the person responsible to maintain and audit the use of the weapon.
12. Document the officers' responsibility to report each time they activate the weapon.
13. Document all training.
14. Review the use of force by the department and take action when necessary.
15. Review and annually report on the department's use of force.
16. Publicize the successful use of the weapon by the department.



***While compliance with the loss prevention techniques suggested herein might reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our readers are encouraged to consult with their attorneys for specific legal advice.***

*Inside This Issue* **"MML's Stand on Tasers"**



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