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TASER Deployment: Time to Change Hands



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**By
Karl M. Johnson**

**Saginaw Police Department
Saginaw, Texas
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ABSTRACT

The M26 TASER was first released to police service in 1999. Since March 2001, police officers have unintentionally used a firearm against a suspect in lieu of a TASER on nine occasions. These weapons confusion incidents have wounded seven suspects and killed two others (AELE, 2012).

Law enforcement leadership must take action to prevent any further injuries or loss of life due to TASER and handgun weapons confusion. These previous incidents have not only taken a human toll but have cost departments loss of public support and financial reparations. To prevent further such incidents, law enforcement officers should carry the TASER on the support hand side and implement policy to draw the TASER with their support side hand developed through realistic training.

A better understanding of “slips-and-capture errors” and “inattentional blindness” supports the change from the current practice of cross draw carry of TASERs (“Force Science explains,” 2010). Use of force subject experts recommend law enforcement agencies implement training that prepares officers to use sound decision making during stressful use of force encounters. The experts also believe that support side carry and support hand draw significantly reduce the chance of weapons confusion involving TASERs and firearms (Meyer, 2009). The cost to implement these changes within a police department is much less than the civil suit settlement of 2.8 million dollars to the family of Oscar Grant who was shot in a weapons confusion incident by the Bay Area Rapid Transit, California (Reisman, 2011).

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	3
Counter Position	5
Recommendation.....	8
References.....	12

INTRODUCTION

Since production of the M26 TASER Electronic Control Device in 1999, the deployment and use of TASERs by law enforcement agencies have continued to grow. Currently, over 16,000 agencies have obtained TASER devices (TASER International, 2012). The modern TASER has evolved from the M26 to X26/P, X3 and, most recently, the X2. All of the TASERs are designed as a handheld device that has appearance and manipulation similar to modern police handguns. TASERs are normally carried on the officer's duty belt with their duty handgun, ammunition, radio, handcuffs, chemical spray, baton, and other equipment. TASERs are now classified as Conducted Electrical Weapons (CEW). The TASER is considered a less lethal device that operates on the basis of neuromuscular incapacitation to assist in the apprehension of non-compliant or assaultive subjects. The neuromuscular incapacitation is obtained through an electrical charge. This electrical charge is delivered by probes discharged from the TASER by nitrogen gas or by direct contact in the drive stun mode. The standard effective engagement range with the TASER is from contact to approximately 21 feet. At this close range, any physical encounter between an officer and suspect can be initiated quickly and in an aggressive nature that increases the threat to the officer while elevating the stress level of the officer.

Law enforcement personnel and agencies have continued to develop tactics, techniques, and procedures (TTP's) for the TASER. These TTP's have been based on several factors. Some of the TTP's are based on court decisions while others are based on successes or failures of specific tactics used by officers.

A significant court case is *Graham v. Conner* (1989). *Graham v. Conner* (1989) is a United States Supreme Court case that clarifies use of force claims under the Fourth Amendment's "objective reasonableness" standard. This case addresses factors considered to determine what force is "reasonable" in a police use of force encounter. The factors include severity of the offense, whether the suspect posed a threat to public safety, whether the suspect actively resisted, and whether they attempted to flee or evade arrest (AELE, 2007). These standards have led to the establishment of policies that guide situational use of the TASER.

Of note are procedural changes based on weapon confusion incidents that have occurred when officers mistakenly have drawn and discharged a duty handgun using deadly force instead of the intended TASER in a less lethal response. This tragic and avoidable event has happened nine times in the past 13 years. The most recent event was in January 2009, in California (AELE, 2012).

An early response to these weapon confusion incidents was to move the carry position or holster of the TASER from the officer's primary duty weapon or dominant side to the support, reaction, or weak hand side. To clarify terms for this article, dominant side will be used to describe the side and hand an individual normally uses to draw and fire his duty handgun. Support side will be used to describe the opposite side and hand (often referred to as weak side, reaction, or non-dominant hand).

Action must be taken to prevent further tragedies involving weapons confusion between the less lethal TASER and deadly force of the duty handgun when mistakenly discharged. Law enforcement officers should carry the TASER on the support hand side and implement policy to draw the TASER with their support side hand developed

through realistic training. If implemented, these actions can reduce the risk of further potentially fatal mistakes.

POSITION

Between March 2001 and January 2009, there were nine incidents of law enforcement officers intending to draw and employ the TASER but who have instead have drawn and unintentionally fired a handgun. In each of these incidents, the suspect has been wounded or killed. The first incident occurred in March 2001, when a Sacramento, CA police officer reached for the TASER that was carried in a strong side thigh holster. Without intention, the officer drew the handgun from the holster, fired and wounded the suspect. Several of the other incidents occurred while the suspect was resisting apprehension or handcuffing. In one of those incidents, the suspect was already handcuffed and in the back seat of the police car when shot by the officer (AELE, 2012). In perspective to the number of actual appropriate TASER deployments, these incidents are small in number but all precautions must be taken to prevent additional unintentional deaths or injuries based on weapons confusion between the TASER and a firearm (AELE, 2012).

Support side carry and support hand draw of the TASER develops a specifically different muscular reaction. This reaction will be different from that which has been established as muscle memory by officers through repeated drawing and presentation of their handgun. This simple action can be beneficial in the prevention of weapon confusion incidents.

In relationship to an officer intending to draw the TASER during a physical encounter, the psychological phenomenon called “slips-and-capture errors” can occur.

This phenomenon can occur during a stressful event or encounter. In explanation, “slips-and-capture errors” occur when the mind starts the process of reaction by having the body do one thing as a response to a threat or stimulus, then it slips and the body captures a more trained response or reaction (“Force Science explains,” 2010). An example of this is starting a car, such as a rental car that is not normally driven by the driver. Mentally, the driver prepares to start the car with the key. Unintentionally, the driver reaches to place the key in the ignition location of the car normally driven because the action is captured by the more practiced or repeated response of starting the normally driven car. This conditioned response can occur multiple times by someone even in non-stressful situations.

This can be compared to drawing a TASER with the dominant hand in a stressful event. The mind of an officer recognizes a threat or resistance by a suspect. The mind of the officer sets a response into motion and directs a physical reaction such as draw and fire the TASER. The officer’s neuromuscular system accepts the command and begins with the physical response to draw the TASER. The officer’s mind now goes on to other tasks such as moving to create distance from the threat or attack and trusts the body to finish the previously instructed action to draw the TASER. Somewhere in the response process, muscle memory can override or interrupt the original intended response path. Muscle memory is a conditioned physical response established through numerous repetitions, such as accurately throwing a baseball, shooting a basketball free throw, or drawing a handgun from a holster. While the original action of drawing the TASER is still in motion, the physical act can slip and then be captured by the

likely more often and longer practiced action of drawing the handgun (“Force Science explains,” 2010).

Another factor that must be considered is “inattentional blindness” or “selective attention.” Most would think that if an officer intended to draw a TASER, it would be obvious when a handgun was drawn by mistake. The handgun could be a different color and is usually definitely heavier than the TASER. However, in a stressful situation, the human mind will narrow the window of attention and not detect these differences in the few seconds of reaction (“What Force Science,” 2012).

Support side draw does not limit an officer to only aiming and firing the TASER with the support hand. Most encounters that the TASER is utilized in are not an immediate response to an assaultive attack by a suspect. Many are slow paced in development. These type events allow an officer the time to draw the TASER with the support hand, verify weapons type identification, and transfer the TASER to the dominant hand to improve accuracy in deployment of the TASER in engagements at longer distance (Police Executive Research Forum, 2011). Overall, support side carry with support hand draw better benefits the officer, the officer’s safety, and minimizes the risk of lethal action mistakenly used against a suspect.

COUNTER POSITION

Officers are trained to employ weapon retention techniques to maintain control of carried weapons if a subject attempts to remove the weapons from the officer’s control. Officers may be concerned that carrying the TASER on the support side creates weapon retention issues by widening the area where officer’s defensive weapons are carried, making them more difficult to protect. Standard weapons retention procedures

for a holstered weapon encourages officers to respond with various techniques. A common response to a suspect attempting to grab a firearm from an officer's holster is to use both hands to grasp the subject's hand and the holstered weapon to prevent the weapon from being drawn by the suspect. The officer then typically twists away from the suspect to cause the suspect to release the grip through body leverage. If that does not cause the suspect to release, the officer may then use strikes with the support hand to facilitate disengaging the suspect's hand from the grip or access to the firearm (Siddle, 2005). Ultimately, during this process, the TASER on the support side is left exposed and unprotected if the suspect attempts to access the TASER.

This is a significant issue as any attempt by a suspect to unlawfully obtain a firearm, TASER, or other weapon from an officer's control is a serious threat and priorities of defensive response must be understood. Knowing this, support side carry is still a strong tool. If an officer is alone and a suspect attempts or is successful in gaining control of the TASER, the situation becomes one that the officer could be incapacitated by the suspect using the TASER against the officer. At that point, the suspect could have access to the officer's firearm, so the officer should take lawful actions to prevent the suspect from gaining control of the TASER. These actions could include a deadly force response by an officer who is alone (Police Executive Research Forum, 2011). Additionally, support side carry of the TASER in a manner to allow support hand draw of the TASER provides the officer quick access to the TASER. This allows an officer to use the dominant hand to maintain control of a weapon if a suspect is attempting to grab it. The support hand could also deploy the TASER, which would likely be more effective in causing a suspect to cease the attempt at obtaining another

weapon from the officer's control than weaponless techniques such as defensive strikes with arms or hands.

Cross draw carry of the TASER is another option given in opposition to support side carry. It moves the TASER to the support side but leaves it positioned to be drawn with the dominant hand in a cross draw manner across the body. This is considered a viable option because most of the weapon confusion incidents that ended with subjects being shot with the officer's duty weapon by mistake were caused by the TASER being carried on the officer's weapon side in close proximity of the duty firearm. By moving the TASER to the support side in a cross draw carry mode, it should interrupt the standard handgun draw and will prevent weapons confusion. Even TASER sample policies provided by nationally recognized organizations recommend support side carry with either cross draw or support hand draw of the TASER (Ryan, 2009).

Although several of the weapons confusion incidents with TASER and firearms occurred while the TASER was in the dominant side carry configuration, three occurred when the TASER was carried in the cross draw, dominant hand draw configuration. The most notable of these occurred in January 2009. Officer Johannes Mehserle was with the Bay Area Rapid Transit (BART) Police in San Francisco, California. He responded to a disturbance to assist other officers who were attempting to take Oscar Grant into custody with an angry crowd in the immediate area. Oscar Grant was on the ground, and Officer Mehserle intended to deploy the TASER from the position it was carried in on the duty belt in the cross draw configuration to obtain control of Grant. During review of videos, Officer Mehserle's actions appear to mimic drawing and activating a TASER, including moving the thumb to deactivate the TASER safety,

backing up to create distance to increase TASER dart spread, and only pulling the trigger once. Unfortunately, though, Officer Mehserle drew the firearm and fired one shot into Grant's back, causing a fatal wound ("Force Science explains," 2010).

RECOMMENDATION

Law enforcement agencies should establish policy and realistic training for officers to use the support hand to draw the TASER from a holster carried on the officer's support side. This is needed to prevent further tragic events and loss of life due to officers unintentionally confusing a TASER and firearm. Even with these accidents being a very small percentage of the thousands of TASER deployments each year, any unintentional use of deadly force or loss of life is not acceptable.

Police administrators, trainers, and officers must recognize that the human mind and body are complex organs. Their functioning is affected by threats or stressful events. By recognizing the phenomenon of "slips-and-capture errors," they should begin corrective action by modifying tactics, techniques, and procedures to change the current practice of TASER cross draw carry mode to support side carry and support hand draw of the TASER.

Any change in tactics or procedures needs to be supported with relevant and sound training. Police trainers should ensure that TASER training is comprehensive. It should not include only the simple how to use the TASER, but the elements of violent and stressful use of force encounters. To be effective, the training must engage the psychological and physiological abilities of an officer. The training should be scenario based and require decision making. This training must be recurring and include

sufficient repetitions to override previous procedures or practices that are being replaced.

TASER training should include skills and drills to increase effective TASER draw and presentation. TASER training is often conducted in a static and low stress mode consisting of firing TASER cartridges while in a stationary position without emotional stressors. This type of training may only require the officer to draw, aim, and fire one or more TASER cartridges without any additional stimulus. Such training is common since it can easily be set up, conducted, and is relatively inexpensive. Unfortunately, this style of training does not realistically simulate events an officer is likely to encounter with a violent subject.

Training should include techniques that elevate the officer's psychological and physiological states. This can be accomplished by conducting scenario based training that requires an officer to use judgment and decision making while employing the TASER. Scenario based training provides additional input to the training exercise that requires the officer to incorporate physical responses in conjunction with awareness of situational surroundings. Judgment and decision making is added to the training event by providing the officer multiple choices and response options to complete the training event.

During life threatening situations, officers often react with responses they have previously developed through training. New training tactics should include enough repetitions to learn the new or different task. The training should also include a sufficient amount of repetitions that allow the new response to override an action learned before that may not be the right response in the situation (Murray, 2006).

Additionally, the training should be provided to personnel initially and on a recurring basis, such as annually or more often. The training should incorporate not just the “how to” of TASER use but changes in policy, equipment, and national trends. Specifically, the training should identify the appropriate transition to other force options (Police Executive Research Forum, 2011).

Previous changes have reduced these weapon confusion events. Many agencies have already converted from a strong side carry of the TASER to support side carry. This change to cross draw was adapted over time and has become the norm. However, there has still been loss of life due to unintentional use of deadly force. The process has shown that change can be implemented and accepted by law enforcement agencies.

Officers have valid concerns for weapons retention of the variety of weapons that are carried on the duty belt, on a daily basis. Officers must be trained on the appropriate response when the action to take one of the officer’s weapons is attempted. Support side TASER draw can enhance the retention of the duty handgun.

To implement transition to support side TASER carry and support hand draw techniques will require time, training, and equipment. And yes, these all cost money. However, if these actions are integrated into an agency’s current training and procurement programs, the financial impact could be minimal. However, failure to take action could cost even more in lives and money. The liability settlement with the family of Oscar Grant in the BART incident totaled 2.8 million dollars (Reisman, 2011). Officer Mehserle was charged and convicted of involuntary manslaughter. Officer Mehserle

was sentenced to two years in prison. After 11 months in jail, the man previously known as Officer Mehserle was paroled to continue with his life ("What Force Science," 2012).

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