



COUNTY OF LOS ANGELES OFFICE OF INSPECTOR GENERAL

312 SOUTH HILL STREET, THIRD FLOOR
LOS ANGELES, CALIFORNIA 90013
(213) 974-6100
<http://oig.lacounty.gov>

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November 7, 2022

TO: Supervisor Holly J. Mitchell, Chair
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Adolfo Gonzales, Chief Probation Officer
Los Angeles County Probation Department

FROM: Max Huntsman
Inspector General

SUBJECT: **REPORT BACK ON THE OFFICE OF INSPECTOR GENERAL'S
ANALYSIS AND RECOMMENDATIONS REGARDING THE
PROBATION DEPARTMENT'S PROPOSED TASER POLICY (ITEM NO.
39, AGENDA OF MARCH 15, 2022)**

PURPOSE OF MEMORANDUM

On March 15, 2022, the Los Angeles County Board of Supervisors (Board) directed the Chief Probation Officer (CPO) to draft a policy governing the use of Tasers and a plan for appropriate training and submit the draft policy and plan to the Probation Oversight Commission (POC) and the Office of Inspector General for their review. In addition, the Board directed the POC and the Office of Inspector General to submit any feedback in writing to the CPO and the Board, and instructed that this policy will not take effect, and Tasers will not be used or issued to personnel for at least 30 days after the POC and the Office of Inspector General have completed their review. In addition, the policy must also clarify whether Tasers will be issued to only personnel who are already authorized to carry firearms.

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 2

In response to this motion, the Probation Department drafted a proposed policy *ADULT INVESTIGATIVE SERVICES BUREAU MANUAL: SPECIAL ENFORCEMENT OPERATIONS (SEO) Taser Conducted Energy Weapon Section Number: SEO-1800* (Taser Policy). After the Probation Department received comments and questions from the POC, the proposed policy was revised in an effort to address the issues raised by the POC. The initial draft of the policy and the revised proposed policy were reviewed by the Office of Inspector General. After reviewing the Probation Department's current proposed Taser policy, as well as its proposed use of force policy, the Los Angeles County Sheriff's Department (LASD) policies on Taser usage,¹ the Los Angeles Police Department's (LAPD) policies on Taser usage², pertinent caselaw, and several sources on best practices, the Office of Inspector General's feedback is as follows:

PROBATION DEPARTMENT'S PROPOSED TASER POLICY AND OFFICE OF INSPECTOR GENERAL ANALYSIS:

The following sections referenced are from the Probation Department's *ADULT INVESTIGATIVE SERVICES BUREAU MANUAL: SPECIAL ENFORCEMENT OPERATIONS (SEO) Taser Conducted Energy Weapon Section Number: SEO-1800*.

Proposed Taser Policy Section 1801

Section 1801-Introduction and Purpose:

A Conducted Energy Weapon (CEW/Taser) is a handheld battery powered device which delivers a short, low-energy electrical pulse. A CEW transmits electrical pulses along the wires and into the body which are designed to affect the sensory and motor functions of the peripheral nervous system and cause involuntary muscle contractions. The device is a less than lethal use of force option to facilitate a safe and effective

¹ LASD Manual of Policy and Procedures section 5-06.040.95 Electronic Immobilization Device (TASER) Procedures [5-06/040.95 - Electronic Immobilization Device \(TASER\) Procedures - PARS Public Viewer \(lasd.org\)](#) and Custody Division Manual 7-08.030.00 Electronic Immobilization Device (TASER) Procedures [7-08/030.00 Electronic Immobilization Device \(TASER\) Procedures - PARS Public Viewer \(lasd.org\)](#).

² Los Angeles Police Department Use of Force-Tactics Directive (November 2017) [Less-Lethal-Devices.pdf \(usgovcloudapi.net\)](#).

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 3

response from a subject in situations which jeopardize the life and safety of deputies, supervised persons, and the public.

This policy establishes the issuance, training, storage, and situational use of CEWs for authorized deputies.

Office of Inspector General Analysis and Recommendations: Section 1801

The Probation Department should acknowledge that while the Taser is not designed to be lethal, it can be in certain circumstances. Although no conclusive medical evidence has established a direct link between short-term Taser exposure and a high risk of death to normal, healthy, non-stressed, non-intoxicated people, Tasers are rarely used on normal, healthy, non-stressed, non-intoxicated people. In fact, Tasers have been indirectly linked to unintended deaths throughout the country. Moreover, the sudden loss of body control caused by a Taser induced electro-muscular disruption can also increase the risk of catastrophic head, neck, or spine injuries from falls. Because of this, the Taser should not be categorized in the same way as other less-lethal options, such as oleoresin capsicum (OC) spray. The Office of Inspector General recommends section 1801 of the Taser Conducted Energy Weapon policy read as follows (Office of the Inspector General additions in red):

Section 1801-Introduction and Purpose:

*A Conducted Energy Weapon (CEW/Taser) is a handheld battery powered device which delivers a short, low-energy electrical pulse. A CEW transmits electrical pulses along the wires and into the body which are designed to affect the sensory and motor functions of the peripheral nervous system and cause involuntary muscle contractions. **While use of the Taser has infrequently resulted in death,** the device is **intended to be a ~~less-than~~ less-lethal** use of force option to facilitate a safe and effective response from a subject in situations which jeopardize the life and safety of deputies, supervised persons, and the public.*

This policy establishes the issuance, training, storage, and situational use of CEWs for authorized deputies.

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 4

Proposed Taser Policy Section 1802

Section 1802-Authorization and Issuance of Conducted Energy Weapon (CEW/Taser):

Deputies authorized by the Chief Probation Officer to carry a CEW shall successfully complete a department approved CEW/Taser training prior to issuance. Deputies trained and authorized to carry will be issued a department issued CEW and are responsible to ensure the CEW is properly maintained and in good working order (Refer to ##### Maintenance and Inspection). Deputies shall carry the device in an approved manner.

Note: Only trained deputies who have current certification are authorized to carry and discharge a CEW.

CEWs are prohibited in juvenile halls and camp and shall be stored prior to entering any juvenile facility.

Office of Inspector General Analysis and Recommendation: Section 1802

This section of the Taser policy does not sufficiently delineate the class of Probation Department employees who are authorized to carry a Taser. The Office of Inspector General recommends that only sworn personnel who are authorized to carry firearms should be authorized to carry and employ a Taser. The Office of Inspector General also recommends that the policy mandate that, absent emergency circumstances, the Taser should be deployed only by the Probation employee to whom it is issued.

The Taser policy should include language stating that:

Prior to the beginning of each shift, the employee shall inspect the weapon to ensure it is in proper working order. This should include a visual check, a check of the battery life, a check of the laser sight, and a spark test.

Both LAPD and LASD require these checks.

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 5

Section 1802 should mandate that a maintenance log be kept to record that Tasers are properly working prior to being employed in the field.

The requirement to carry the device in an “approved” manner should include a definition of what is considered “approved.” Specifically, the policy should dictate that a Taser kept on a duty belt should be holstered on the opposite side to the officer’s duty firearm to reduce the possibility of mistaking a Taser for a firearm. The LAPD also requires this placement of the Taser and further requires the Taser be “carried on the support side of the duty belt in either cross draw or support side draw position.”³ Additionally, the policy should dictate that neither a Taser nor cartridge should be placed in a clothing pocket.⁴ The proper storage of the Tasers when not actually on a person’s duty belt should be specified. For instance, if the Taser is to be stored in a county vehicle, it should be stored in the trunk or a locked storage box. Lastly, properly trained and authorized Probation employees should carry only Tasers issued by the Probation Department.

Proposed Taser Policy Section 1803

Section 1803-Training Qualifications:

Deputies who are authorized to carry a CEW, shall complete a department-approved, Board of State and Community Corrections (BSCC) certified training prior to issuance. Annual refresher training, recurring simulator training and quarterly live practice demonstrations are also required.

Supervisors who supervise staff who are issued a CEW are also required to take all required CEW training courses and remain current with any yearly or updated mandatory departmental CEW training.

³ LAPD Directive 4.5

<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/05/Less-Lethal-Devices.pdf> at page 8.

⁴ LAPD Directive 4.5 states in an attached chart on Taser characteristics, “A TASER or cartridge should not be placed in a clothing pocket as static electricity can deploy the cartridge. In addition, a clothing pocket does not provide adequate security of the weapon.”

<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/05/Less-Lethal-Devices.pdf> at page 12.

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 6

Note: Failure to re-certify annually and/or complete required training will result in loss of taser accreditation.

Office of Inspector General Analysis and Recommendations: Section 1803

The Probation Department should mandate complete documentation of quarterly training in the form of a training log, and that the curriculum of the training program be posted on the Probation Department website. The required training should include specific requirements. For instance, a study published in the Police Executive Research Forum emphasizes that training should teach officers to evaluate multiple factors before using a Taser. Some of these factors include age, size, gender, apparent physical capabilities, and health concerns of suspects, presence of flammable liquids, and circumstances where falling would pose unreasonable risks to the suspect.⁵

Proposed Taser Policy Section 1804

Section 1804-CEW Situational Usage:

Deputies shall use de-escalation techniques and reasonable force to affect compliance in accordance with SEO-Use of Force Policy (SEO-1000). After assessment of a situation and the environment, the deployment of a CEW shall be used only to facilitate a safe and effective response to situations which jeopardize the life and safety of deputies/personnel, supervised persons, and/or the public, based on the totality of circumstances. A CEW shall only be used when a deputy can safely approach a subject within the operational range of the device.

Note: After CEW is drawn, deputies shall continue to assess the environment and the situation; the CEW is to be deactivated and re-holstered when reason for drawing the CEW ceases to exist.

⁵ Comparing Safety Outcomes in Police Use-of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted Energy Devices and a Matched Comparison Group That Have Not: A Quasi-Experimental Evaluation. Police Executive Research Forum, Sept. 2009.

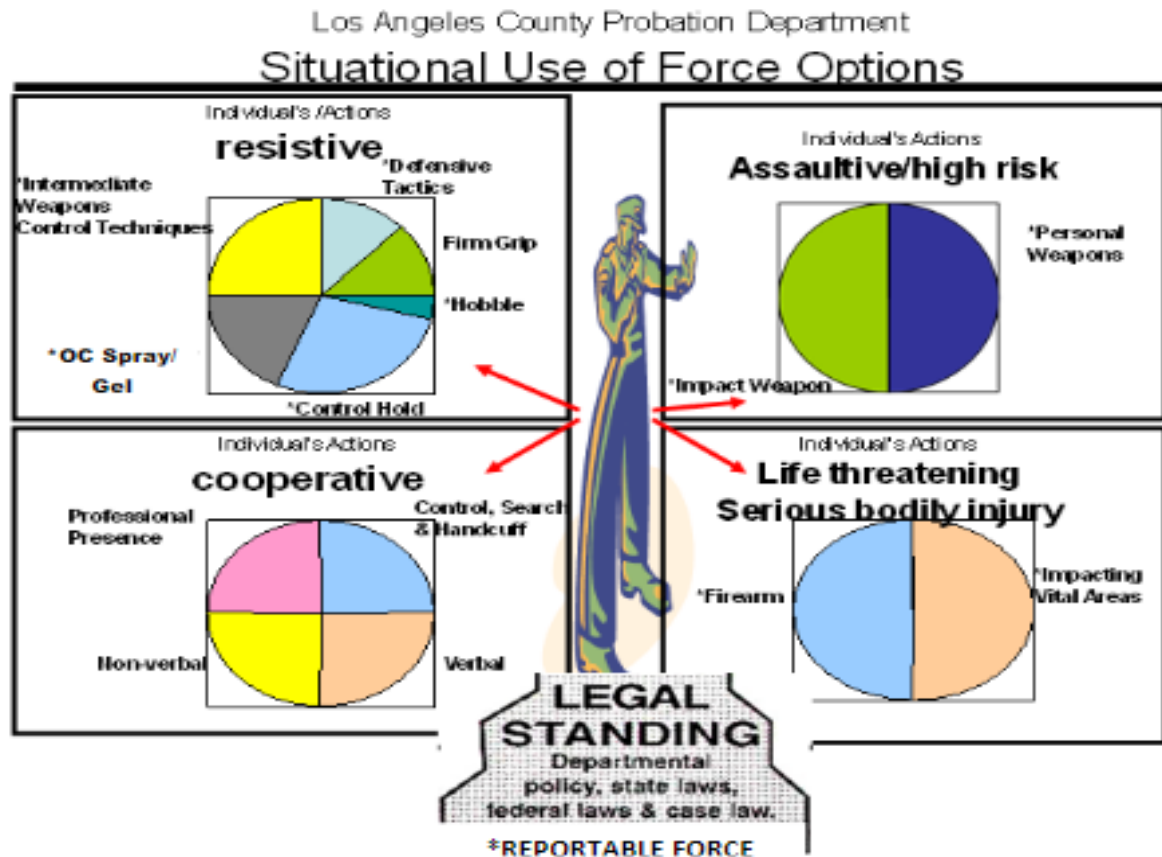
Deputies shall provide a verbal CEW warning to alert the subject a CEW will be deployed prior to discharge (i.e., "Taser, Taser, Taser,"), unless doing so would place the deputy and others at risk. Should the initial deployment of a CEW not be effective in gaining control of a subject, deputy shall use judgement and make ongoing threat assessments for continued reasonable force with consideration of situational safety. Deputies shall consider the following if additional application of CEW is warranted:

- *Whether the probes⁴ or darts are making proper contact*
- *Whether the application of the CEW is interfering with the ability of the individual to comply*
- *Whether verbal commands, other options or tactics may be more effective*

Note: When deputies attend and [sic] incident and more than one deputy is armed with a CEW, tactical communication must be used to ensure no more than one CEW is discharged on a subject at a time.

The above portion of the policy has the following four definitions as footnotes:

1. *Discharge: To fire a CEW or touch a subject with a CEW causing energy to transmit across the circuit.*
2. *Reasonable Force – The amount of force that an objective, trained, and competent peace officer, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order*
3. *Deployment: When the CEW cartridge is discharged for the purpose to facilitate an effective response from a subject*
4. *Probes: Thin metal barbed dart discharged from a CEW*



⁴Probes: Thin metal barbed dart discharged from a CEW

Except in emergent circumstances, CEW shall not be applied to the following or used in any other situation where there is a reasonably foreseeable likelihood of severe injury or death:

- *Handcuffed persons*
- *Persons detained in a vehicle*
- *Persons detained in any booking or holding cell*
- *Persons in control of a motor vehicle*
- *Persons in danger of falling or becoming entangled in machinery or heavy equipment which may result in death or serious bodily injury*
- *Persons near flammable or combustible fumes*
- *Persons near any body of water that may present a drowning risk*
- *Persons known to have a pacemaker, known to be pregnant or obvious young child/toddler/infant*

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 9

Office of Inspector General Analysis and Recommendations: Section 1804

Pursuant to the Situational Use Force Options Chart,⁶ a Taser may be used on a suspect that is “Assaultive/High Risk” and allows for use of impact weapons and personal weapons in these situations. The chart itself provides little guidance as to what Assaultive/ High Risk means. There is reference to the Probation Department’s proposed use of force policy in this Taser policy, but there is no definition of Assaultive/ High Risk in the proposed Taser policy itself. Because there is an acknowledgment in reports⁷ and case law⁸ of the foreseeable use of physical injury and the sometimes-lethal nature of Tasers, the Office of Inspector General recommends that Taser use only be authorized in situations where lethal force is authorized.

In the event the Probation Department decides to authorize the use of a Taser in response to a suspect that is Assaultive/High Risk, the proposed Taser policy should incorporate the Probation Department’s definition of Assaultive/High Risk conduct. Further, the Taser policy should not be adopted, and Tasers should not be deployed until the Probation Department’s proposed Use of Force policy is finalized and adopted.

The Office of Inspector General also recommends adding the following to this section of the policy:

⁶ The Situational Use of Force Options Chart is contained in the Taser Policy. This same chart is in the Probation Department’s current manual on use of force. ([See Special Services Bureau Manual Field Use of Force Policy Section Number SSB-300 at page 26.](#))

⁷ The Stanford Criminal Justice Center wrote in a report prepared for the Mountain View Police Department that Taser use should be limited to situations under which lethal use of force would be allowed. *Use of Tasers By Law Enforcement Agencies: Guidelines and Recommendations*. The Stanford Criminal Justice Center, 2005, <https://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164097/doc/slspublic/tasersv2.pdf>.

⁸ “The physiological effects, the high levels of pain, and the foreseeable use of physical injury lead us to conclude that the X26 [Taser] and similar devices are a greater intrusion than other non-lethal methods of force we have confronted.” *Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825. “Beyond the experience of pain, tasers result in “immobilization, disorientation, loss of balance, and weakness,’ even after the electrical current has ended.” *Bryan v. MacPherson, supra*, at p. 825, citing *Matta-Ballesteros v. Henman* (7th Cir. 1990) 896 F.2d 255, 256 n. 2. As the Bryan court went on to state, a Taser is different from other non-lethal weapons because it “intrudes upon the victim’s physiological functions and physical integrity in a way that other non-lethal uses of force do not.” *Bryan v. MacPherson, supra*, at p. 825. In footnote 7, citing *Oliver v. Fiorino* (11th Cir. 2009) 586 F.3d 898, 906, the Bryan court acknowledged that “the taser is capable of being employed in a manner to cause the victim’s death.” *Bryan v. MacPherson, supra*, at p. 825.

Prior to additional use of the Taser, staff shall make verbal request of the subject to comply and determine if the subject is complying and reassess the need for additional use of force.

The following does not alone justify the use of a Taser:

1. *Verbal threats of violence.*
2. *Mere non-compliance.*⁹

In addition, the Office of Inspector General recommends that the Probation Department consider adding the following to the list of situations when the Taser should not be used:

1. *Do not use when subject is on an elevated surface.*
2. *Do not use on juveniles or elderly people, or individuals with disabilities.*¹⁰
3. *Do not use the Taser on a fleeing suspect unless the suspect poses a threat to life of others.*

Finally, the Office of Inspector General recommends adding that *“the use of the Taser should stop when the threat is no longer present.”* As a best practices reference, the Police Executive Research Forum emphasizes that Tasers should not be used against certain vulnerable populations such as pregnant women, elderly citizens, and others who are clearly physically impaired.¹¹

⁹ LAPD Use of Force-Tactics Directive No. 4.5.

¹⁰ The Probation Department’s response to this report back is attached. The Probation Department notes that “age and physical ability alone does not preclude the individual the ability to cause harm and death to another.” The Office of Inspector General agrees that there are circumstances in which an elderly person, a juvenile, or a person with physical disabilities may have the ability to cause harm or death. As currently written, the Taser Policy does not provide appropriate guidance against the misuse of tasers when deadly force is not justified. Unless such guidance is provided, including the consideration of the totality of the circumstances that includes the potential increased risk to juveniles, the elderly, or those with physical disabilities, the Office of Inspector General recommends including this prohibition.

¹¹ Comparing Safety Outcomes in Police Use-of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted Energy Devices and a Matched Comparison Group That Have Not: A Quasi-Experimental Evaluation. Police Executive Research Forum, Sept. 2009.

Proposed Taser Policy Section 1805

Section 1805-CEW Post-Deployment Medical Requirements:

After CEW deployment, deputy shall assess the environment and consider the safety of their person, the subject, others (any person incapacitated by the CEW), and the public. As soon as possible, medical personnel shall be called to render medical aid for subject (and any person incapacitated by the CEW). Upon completion of medical examination, factoring in the safety of the situation and subject is effectively under control, probes that punctured the skin of the subject shall only be removed by a medical professional.

Office of Inspector General Analysis and Recommendations: Section 1805

The Office of Inspector General recommends adding alternative language such as, “*if medical personnel are not able to respond to the scene, the subject or incapacitated person(s) shall be taken to a medical facility prior to booking, for appropriate medical treatment and/or removal of the probes.*”

Proposed Taser Policy Section 1806

Section 1806-CEW Use of Force Reporting:

Deputies who deploy a CEW and any staff or deputy who assists with or witness a CEW use of force option are required to ensure immediate verbal notification to a Supervising Deputy Probation Officer (SDPO) and their immediate supervisor or higher-ranking staff (depending on the ranking of the deputy/staff involved in the use of force) as soon as safely possible. In addition, deputies who deploy the device and any deputy or staff who assist/witness the CEW deployment are required to submit a Use of Force Report or Special Incident Report (SIR) (SEO - 1008) containing clear and concise details of the events leading up to, during and after the deployment, prior to the end of the same working shift. In extenuating circumstances or with SDPO or management

approval, deputies and staff may prepare a report no later than 24-hours after the incident.

Should the discharge of a CEW by a Probation Deputy result in the death of another person, the deputy shall be relieved of duty, without loss of pay or benefit, and must undergo a psychological evaluation and clearance before being returned to their previous assignment.

Prohibited Reporting Conduct:

Information contained in an SIR, PIR and SUP-PIR constitute lawful and truthful statements made by Sworn Peace Officers to objectively portray the facts of the incident in the most honest and transparent manner possible. Officers who are not honest in their reporting shall be subjected to the performance management process which may result in discharge, and/or criminal prosecution and/or civil sanctions. (Refer to Employee Honesty Policy).

Examples of prohibited conduct in reporting include:

- ***Purposeful Material Omissions:*** *Officers intentionally leaving out details in an effort to disguise or diminish the actions of themselves or others.*
- ***Code of Silence:*** *Also known as blue wall of silence, the blue code of silence and blue shield of silence, are terms used to denote the informal rule that purportedly exists among law enforcement/corrections personnel, not to report on a colleague's errors, misconducts, or crimes, including excessive use of force. Such a practice is strictly prohibited, and any personnel determined to have participated in said practice shall be subject to disciplinary action according to departmental guidelines, which may include up to termination of employment.*
- ***Collusion:*** *Officers shall not collaborate (ensuring accounts of the incident contain same/similar details) with each other during the preparation of details in reports.*

- **Coaching:** *Officers instructing co-workers to report details and facts in their reports that they did not actually experience or writing reports on behalf of another Officer.*

All staff who are present at the scene who do not witness the use of force shall also submit an SIR indicating their location at the time of use of force and any relevant details related to the incident. Note: Accidental discharges of a CEW shall be reported in the same manner.

Office of Inspector General Analysis and Recommendations: Section 1806

The language should be clear that after every deployment of the Taser, whether there was a strike to a person or not, a report and the corresponding data download must be completed promptly. Both LASD and LAPD require such download after a Taser use.¹² LASD appropriately requires an immediate download of Taser data when reporting the use of force and requires that “TASER download software shall be kept on a computer that is readily available at all times to the watch sergeant, watch commander, or any supervisor. The download cable(s) shall also be available for use at any time. After each use of the TASER, or at the discretion of any supervisor, a TASER shall be downloaded.”¹³ The Probation Department should incorporate language similar to the LASD policy requiring that the software be kept on a computer available to a supervisor at all times and that a download cable be readily available into its policy on downloading data.

The Probation Department should also consider developing a Taser specific use of force report form.

The Office of Inspector General agrees with the “Prohibited Reporting Conduct” language of this section. LASD “anti-huddling” policy takes prohibition a step farther:

¹² See LASD MPP 5-06/040.96 [5-06/040.95 - Electronic Immobilization Device \(TASER\) Procedures - PARS Public Viewer \(lasd.org\)](#) and LAPD Directive No. 4.5,

<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/05/Less-Lethal-Devices.pdf>.

¹³ See [5-06/040.95 - Electronic Immobilization Device \(TASER\) Procedures - PARS Public Viewer \(lasd.org\)](#) and LAPD Directive 4.5

<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/05/Less-Lethal-Devices.pdf>.

“Deputies shall refrain from discussing the incident until the arrival of the first supervisor. The involved personnel should briefly inform the supervisor of the circumstances surrounding the incident and what action has been taken.

The involved deputies shall then be immediately transported by a supervisor, if possible, or if not, by uninvolved deputies, to the station, unit of assignment or other suitable location. Involved personnel shall refrain from discussing the incident with anyone else until after being interviewed ... [or], until each has written a detailed report articulating the circumstances leading to the encounter, the hazards/threats faced by deputies or others, and the reasons that the decision to use deadly force was made.”

While the anti-huddling policy refers to deadly force, the Probation Department should consider adding this language to this section of the policy and omit the word “deadly.”

Proposed Taser Policy Section 1807

Section 1807-Safety, Storage and Battery Charging:

Deputies authorized to carry a CEW is [sic] issued a locked storage to secure their CEW. Deputies are responsible to lock and secure the CEW in the department-issued locked storage when not on-duty.

Data related to the deployment of the CEW is electronically tracked in the evidence.com system and the data will be downloaded into the evidence.com system during the charging of the battery. The CEW battery shall be charged every 15 days and within 24-hours of any CEW discharge. Charging is done by placing the battery on the charger overnight when assigned to a work location or by swapping out the battery with a charged spare battery for those who work in a countywide position.

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 15

Office of Inspector General Analysis and Recommendations: Section 1807

As noted in reference to section 1807, the Office of Inspector General recommends that the Taser policy require an immediate download of data following Taser deployment.

The Office of Inspector General recommends that the Taser be charged and, when there has been no deployment, the data downloaded as soon as the Deputy Probation Officer is off duty and has access to the locked storage device at the Probation office.

Allowing for the battery to be swapped out in lieu of charging it skips the step of having data downloaded every 15 days and could potentially lead to inaccurate record keeping by deputies continually swapping out batteries instead of charging the device to download the data. The Office of Inspector General recommends that it be a requirement that the Taser be charged every 15 days, meaning that a battery can only be swapped out in the interim only if the 15-day requirement charging requirement is met.

Proposed Taser Policy Section 1808

Section 1808 Agency Review of CEW Deployments, Incident Tracking and Post Incident Debriefing:

After the incident, the SDPO and team will conduct a debriefing regarding the incident that will include a discussion of the results of the search, any contacts made with residents, tactics, and details of the event. All incidents of CEW deployments are to be tracked in a CEW Log and reviewed by SEO Management within 30 days for compliance with Department policy. After the review is complete, the Managers and Supervising Deputy Probation Officer (SDPO) will conduct a debriefing with the deputy and team to discuss the CEW Usage incident.

Office of Inspector General Analysis and Recommendations: Section 1808

This section should include language similar to the proposed use of force policy sections 1008.2 and 1008.3 (See Attachment 1.) These use of force sections delineate

The Honorable Board of Supervisors
Adolfo Gonzales, Chief Probation Officer
November 7, 2022
Page 16

the responsibilities of the supervisors and directors after a use of force. These also state when an internal investigation shall be initiated.

CONCLUSION

This analysis and recommendations provided in this report are intended to inform the Board and the Probation Department of the Office of Inspector General's feedback related to the use of Tasers and the proposed Taser policy.

MH:ec

Attachments

c: Fesia Davenport, Chief Executive Officer
Celia Zavala, Executive Officer
Dawyn R. Harrison, Interim County Counsel
Wendelyn Julian, Executive Director, Probation Oversight Commission

ATTACHMENT 1

1008.2 SUPERVISOR RESPONSIBILITIES INVOLVING USE OF FORCE

Supervising Deputy Probation Officer (SDPO) shall be on site during all probation led compliance checks and warrant apprehensions. While SDPOs may be involved in the use of force when warranted, the role of the SDPO during a use of force is to direct staff, coordinate a safe and effective use of force and be an objective observer during the incident. If a use of force incident occurs when a SDPO is not present, such as deputies working with a task force, the SDPO shall respond without unnecessary delay. The SDPO shall immediately advise the Director who will advise the Senior Director and Bureau Chief of any incidents of force. In addition, the SDPO shall be responsible for the following:

- Obtain the basic facts from the involved deputy(s);
- Ensure that any injured parties are examined and treated;
- Separately interview the subject(s) upon whom force was applied;
- Ensure that photographs have been taken of any areas involving injury or complaint of pain as well as overall photographs of uninjured area;
- Identify any witness not already included in related reports; and
- Review and approve all related reports.

Prior to the end of the next working day, complete and route to the Director the Supervisor's Use of Force packet summarizing the use of force incident that includes the Supervisor's Use of Force Report (Appendix C) and the Operational Plan/Search Packet. The supervisor's review should include appropriate recommendations, including whether or not the use of force was within policy, the need for additional training, and whether or not additional investigation is required. If a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor or authorized designee is expected to complete as many of the above items as circumstances permit.

Should the SDPO be involved in the use of force, the review responsibilities will fall upon the SDPO's Director.

1008.3 DIRECTOR RESPONSIBILITIES INVOLVING A USE OF FORCE

Directors shall respond without unnecessary delay to any incident involving reportable force and shall immediately advise the Senior Director and Bureau Chief of any incidents of force. In addition, the Director shall do the following:

- Obtain the basic facts from the SDPO 1000-10 LOS ANGELES COUNTY PROBATION DEPARTMENT SEO-1000 USE OF FORCE
- Review and approve all related documents, reports, photographs, and the operational plan to ensure that all applicable departmental policies, procedures, and Directives were followed.
- Maintain a log of all the use of force incidents to include the following: Date, Time, Staff involved, Reason for force and summary of injury, Summary of treatment provided by staff and medical personnel.
- Within three working days, complete and route to the Bureau Chief the Supervisor's Report along with a Director's report recommending incident closure or further investigation of the incident. The Director's report shall concur or disagree with the supervisor's written report as to whether the action of the deputy was appropriate pursuant to the Use of Force Policy.
- Should the Director determine that any application of force was not within policy, a separate internal administrative investigation shall be initiated. In the event that the Director is unable to respond to the scene of an incident involving the reported application of force, the Director or authorized designee is expected to complete as many of the above items as circumstances permit.

**Los Angeles County Probation Department's Response to
Report Back on the Office of Inspector General's Analysis and
Recommendations Regarding the Probation Department's Proposed
Taser Policy**

November 2, 2022

Proposed Taser Policy Section 1801

Section 1801-Introduction and Purpose:

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This policy establishes the issuance, training, storage, and situational use of CEWs for authorized deputies.

Office of Inspector General Analysis and Recommendations: Section 1801

The Probation Department should acknowledge that while the Taser is not designed to be lethal, it can be in certain circumstances. Although no conclusive medical evidence has established a direct link between short-term Taser exposure and a high risk of death to normal, healthy, non-stressed, non-intoxicated people, Tasers are rarely used on normal, healthy, non-stressed, non-intoxicated people. In fact, Tasers have been indirectly linked to unintended deaths throughout the country. Moreover, the sudden loss of body control caused by a Taser induced electro-muscular disruption can also increase the risk of catastrophic head, neck, or spine injuries from falls. Because of this, the Taser should not be categorized in the same way as other less-lethal options, such as oleoresin capsicum (OC) spray. The Office of Inspector General recommends section 1801 of the Taser Conducted Energy Weapon policy read as follows (Office of the Inspector General additions in red):

Section 1801-Introduction and Purpose:

*A Conducted Energy Weapon (CEW/Taser) is a handheld battery powered device which delivers a short, low-energy electrical pulse. A CEW transmits electrical pulses along the wires and into the body which are designed to affect the sensory and motor functions of the peripheral nervous system and cause involuntary muscle contractions. **While use of the Taser has infrequently resulted in death, the device is intended to be a less than less-lethal use of force option to facilitate a safe and effective response from a subject in***

PROBATION RESPONSE TO OIG REPORT BACK

November 2, 2022

Page 2 of 12

situations which jeopardize the life and safety of deputies, supervised persons, and the public.

This policy establishes the issuance, training, storage, and situational use of CEWs for authorized deputies.

Probation Department Response:

The Taser is not classified as a less-lethal tool in the same force continuum such as oleoresin capsicum (OC). OC falls into the force continuum under “resistive” and is in line with other less-lethal options such as intermediate weapons, control holds, firm grip, and defensive tactics. The Taser is a less-lethal force option under “assaultive/high risk,” in line with personal weapons and impact weapons. As noted, the Taser is not designed to be lethal, it can be in certain circumstances similar to being struck with a baton and any other personal weapons when the situation becomes assaultive/high risk.

However, the Department agrees with the inclusion of the items noted in red as any force option, less-lethal included, can result in injury and death. Additionally, a 2011 National Institute of Justice (NIJ) Research in Brief on Police Use of Force, Tasers and other Less-Lethal Weapons noted the following:

NIJ gathered an expert panel of medical professionals to study in-custody deaths related to CEDs. In its report, the panel said that while CED use is not risk free, there is no clear medical evidence that shows a high risk of serious injury or death from the direct effects of CEDs. Field experience with CED use shows that exposure is usually safe.

Proposed Taser Policy Section 1802

Section 1802-Authorization and Issuance of Conducted Energy Weapon (CEW/Taser):

Deputies authorized by the Chief Probation Officer to carry a CEW shall successfully complete a department approved CEW/Taser training prior to issuance. Deputies trained and authorized to carry will be issued a department issued CEW and are responsible to ensure the CEW is properly maintained and in good working order (Refer to ##### Maintenance and Inspection). Deputies shall carry the device in an approved manner.

Note: Only trained deputies who have current certification are authorized to carry and discharge a CEW.

CEWs are prohibited in juvenile halls and camp and shall be stored prior to entering any juvenile facility.

Office of Inspector General Analysis and Recommendation: Section 1802

This section of the Taser policy does not sufficiently delineate the class of Probation Department employees who are authorized to carry a Taser. The Office of Inspector General recommends that only sworn personnel who are authorized to carry firearms should be authorized to carry and employ a Taser. The Office of Inspector General also recommends that the policy mandate that, absent emergency circumstances, the Taser should be deployed only by the Probation employee to whom it is issued.

The Taser policy should include language stating that:

Prior to the beginning of each shift, the employee shall inspect the weapon to ensure it is in proper working order. This should include a visual check, a check of the battery life, a check of the laser sight, and a spark test.

Both LAPD and LASD require these checks.

Section 1802 should mandate that a maintenance log be kept to record that Tasers are properly working prior to being employed in the field.

The requirement to carry the device in an “approved” manner should include a definition of what is considered “approved.” Specifically, the policy should dictate that a Taser kept on a duty belt should be holstered on the opposite side to the officer’s duty firearm to reduce the possibility of mistaking a Taser for a firearm. The LAPD also requires this placement of the Taser and further requires the Taser be “carried on the support side of the duty belt in either cross draw or support side draw position.”³ Additionally, the policy should dictate that neither a Taser nor cartridge should be placed in a clothing pocket.⁴ The proper storage of the Tasers when not actually on a person’s duty belt should be specified. For instance, if the Taser is to be stored in a county vehicle, it should be stored in the trunk or a locked storage box. Lastly, properly trained and authorized Probation employees should carry only Tasers issued by the Probation Department.

Probation Department Response:

As noted in the Department policy, only deputized staff will be authorized to be issued and carry tasers as a less-lethal option to the firearm. Deputized staff are all “sworn,” and as noted in the POC presentations, only deputized staff who are authorized to carry firearms on-duty will be issued this less-lethal tool, such as the Special Enforcement Operations (SEO).

The Department agrees with the recommendations related to the pre-check in the beginning of each shift, logs, and requirement to carry. These items are associated with the vendor provided training that has yet to occur.

Proposed Taser Policy Section 1803

Section 1803-Training Qualifications:

Deputies who are authorized to carry a CEW, shall complete a department-approved, Board of State and Community Corrections (BSCC) certified training prior to issuance. Annual refresher training, recurring simulator training and quarterly live practice demonstrations are also required.

Supervisors who supervise staff who are issued a CEW are also required to take all required CEW training courses and remain current with any yearly or updated mandatory departmental CEW training.

Note: Failure to re-certify annually and/or complete required training will result in loss of taser accreditation.

Office of Inspector General Analysis and Recommendations: Section 1803

The Probation Department should mandate complete documentation of quarterly training in the form of a training log, and that the curriculum of the training program be posted on the Probation Department website. The required training should include specific requirements. For instance, a study published in the Police Executive Research Forum emphasizes that training should teach officers to evaluate multiple factors before using a Taser. Some of these factors include age, size, gender, apparent physical capabilities, and health concerns of suspects, presence of flammable liquids, and circumstances where falling would pose unreasonable risks to the suspect.

Probation Department Response:

The Department agrees with this recommendation. This item regarding training and documentation of trainings is consistent with existing duties of the Department's Staff Training Office (STO).

Proposed Taser Policy Section 1804

Section 1804-CEW Situational Usage:

Deputies shall use de-escalation techniques and reasonable force to affect compliance in accordance with SEO-Use of Force Policy (SEO-1000). After assessment of a situation and the environment, the deployment of a CEW shall be used only to facilitate a safe and effective response to situations which jeopardize the life and safety of deputies/personnel, supervised persons, and/or the public, based on the totality of circumstances. A CEW shall only be used when a deputy can safely approach a subject within the operational range of the device.

PROBATION RESPONSE TO OIG REPORT BACK

November 2, 2022

Page 5 of 12

Note: After CEW is drawn, deputies shall continue to assess the environment and the situation; the CEW is to be deactivated and re-holstered when reason for drawing the CEW ceases to exist.

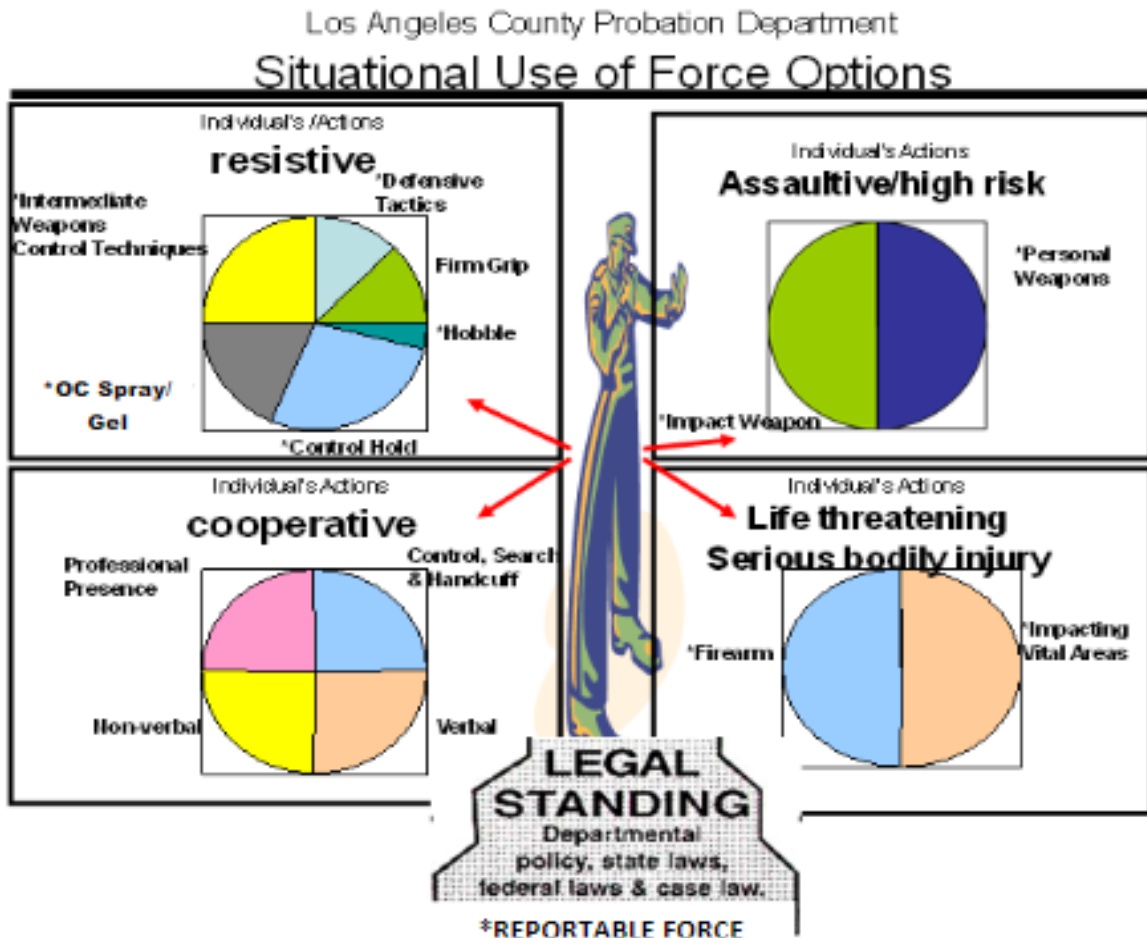
Deputies shall provide a verbal CEW warning to alert the subject a CEW will be deployed prior to discharge (i.e., "Taser, Taser, Taser,"), unless doing so would place the deputy and others at risk. Should the initial deployment of a CEW not be effective in gaining control of a subject, deputy shall use judgement and make ongoing threat assessments for continued reasonable force with consideration of situational safety. Deputies shall consider the following if additional application of CEW is warranted:

- Whether the probes⁴ or darts are making proper contact*
- Whether the application of the CEW is interfering with the ability of the individual to comply*
- Whether verbal commands, other options or tactics may be more effective*

Note: When deputies attend and [sic] incident and more than one deputy is armed with a CEW, tactical communication must be used to ensure no more than one CEW is discharged on a subject at a time.

The above portion of the policy has the following four definitions as footnotes:

- 1. Discharge: To fire a CEW or touch a subject with a CEW causing energy to transmit across the circuit.*
- 2. Reasonable Force – The amount of force that an objective, trained, and competent peace officer, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order*
- 3. Deployment: When the CEW cartridge is discharged for the purpose to facilitate an effective response from a subject*
- 4. Probes: Thin metal barbed dart discharged from a CEW*



Except in emergent circumstances, CEW shall not be applied to the following or used in any other situation where there is a reasonably foreseeable likelihood of severe injury or death:

- Handcuffed persons
- Persons detained in a vehicle
- *Persons detained in any booking or holding cell*
- Persons in control of a motor vehicle
- *Persons in danger of falling or becoming entangled in machinery or heavy equipment which may result in death or serious bodily injury*
- Persons near flammable or combustible fumes
- *Persons near any body of water that may present a drowning risk*
- *Persons known to have a pacemaker, known to be pregnant or obvious young child/toddler/infant*

Office of Inspector General Analysis and Recommendations: Section 1804

Pursuant to the Situational Use Force Options Chart,⁶ a Taser may be used on a suspect that is “Assaultive/High Risk” and allows for use of impact weapons and personal weapons in these situations. The chart itself provides little guidance as to what Assaultive/High Risk means. There is reference to the Probation Department’s proposed use of force policy in this Taser policy, but there is no definition of Assaultive/High Risk in the proposed Taser policy itself. Because there is an acknowledgment in reports⁷ and case law⁸ of the foreseeable use of physical injury and the sometimes-lethal nature of Tasers, the Office of Inspector General recommends that Taser use only be authorized in situations where lethal force is authorized.

In the event the Probation Department decides to authorize the use of a Taser in response to a suspect that is Assaultive/High Risk, the proposed Taser policy should incorporate the Probation Department’s definition of Assaultive/High Risk conduct. Further, the Taser policy should not be adopted, and Tasers should not be deployed until the Probation Department’s proposed Use of Force policy is finalized and adopted.

The Office of Inspector General also recommends adding the following to this section of the policy:

Prior to additional use of the Taser, staff shall make verbal request of the subject to comply and determine if the subject is complying and reassess the need for additional use of force.

The following does not alone justify the use of a Taser:

- 1. Verbal threats of violence.*
- 2. Mere non-compliance.*

In addition, the Office of Inspector General recommends that the Probation Department consider adding the following to the list of situations when the Taser should not be used:

- 1. Do not use when subject is on an elevated surface.*
- 2. Do not use on juveniles or elderly people, or individuals with disabilities.*
- 3. Do not use the Taser on a fleeing suspect unless the suspect poses a threat to life of others.*

Finally, the Office of Inspector General recommends adding that *“the use of the Taser should stop when the threat is no longer present.”* As a best practices reference, the Police Executive Research Forum emphasizes that Tasers should not be used against certain vulnerable populations such as pregnant women, elderly citizens, and others who are clearly physically impaired.

Probation Department Response:

The Department disagrees with this recommendation in part. Per the Special Services Bureau Field Use of Force Policy, Section 304 Category 3, Page 8. The definition of Assaultive/High Risk is defined as follows:

CATEGORY 3 - Individual Action: Assaultive/High Risk The "assaultive"/"high-risk" category is defined as an unlawful threat or unsuccessful attempt to do physical harm to another, causing a present fear of immediate harm, a violent physical attack, a situation in which the totality of the articulated facts/circumstances causes a reasonable officer to form the opinion that a significant credible threat of violence exists. The assaultive subject is one who has crossed the line of resistance and is threatening an assault, or physically assault of the officer or a citizen. This category also deals with a high-risk situation such as a fleeing subject who is hiding in a yard. In this category, the likelihood of the officer (or citizen) to be injured is obvious because of the subject's deliberate assaultive actions or other significant potential actions. The actions (or potential action) of a subject are so obvious as to make a reasonable person (officer) realize that he/she must do something to defend himself/herself or others and then employ options to effect control of the situation or safely effect an arrest.

Additionally, any less-lethal option such as a baton or other personal impact weapons will foreseeably cause physical injury and sometimes death. The Taser is a less-lethal option and is not an alternative to firearms (lethal). In the 2011 NIJ Brief referenced above, the following is noted as it relates to Tasers and force options:

"Agencies usually place the CED with chemical agents in their force continuum, meaning that their use is typically approved in the same circumstances in which pepper spray use is allowed. CEDs are usually lower on the continuum than impact weapons."

The Department has noted that age and physical ability alone does not preclude the individual the ability to cause harm and death to another. The common factor is proper training of our staff and compliance by the individual aggressor in that specific situation.

The Department agrees with the recommendation related to the best practice reference, "the use of the Taser should stop when the threat is no longer present."

Proposed Taser Policy Section 1805

Section 1805-CEW Post-Deployment Medical Requirements:

After CEW deployment, deputy shall assess the environment and consider the safety of their person, the subject, others (any person incapacitated by the CEW), and the public. As soon as possible, medical personnel shall be called to render medical aid for subject (and any person incapacitated by the CEW). Upon completion of medical examination,

factoring in the safety of the situation and subject is effectively under control, probes that punctured the skin of the subject shall only be removed by a medical professional.

Office of Inspector General Analysis and Recommendations: Section 1805

The Office of Inspector General recommends adding alternative language such as, “*if medical personnel are not able to respond to the scene, the subject or incapacitated person(s) shall be taken to a medical facility prior to booking, for appropriate medical treatment and/or removal of the probes.*”

Probation Department Response:

The Department agrees with this recommendation.

Proposed Taser Policy Section 1806

Section 1806-CEW Use of Force Reporting:

Deputies who deploy a CEW and any staff or deputy who assists with or witness a CEW use of force option are required to ensure immediate verbal notification to a Supervising Deputy Probation Officer (SDPO) and their immediate supervisor or higher-ranking staff (depending on the ranking of the deputy/staff involved in the use of force) as soon as safely possible. In addition, deputies who deploy the device and any deputy or staff who assist/witness the CEW deployment are required to submit a Use of Force Report or Special Incident Report (SIR) (SEO - 1008) containing clear and concise details of the events leading up to, during and after the deployment, prior to the end of the same working shift. In extenuating circumstances or with SDPO or management approval, deputies and staff may prepare a report no later than 24-hours after the incident.

Should the discharge of a CEW by a Probation Deputy result in the death of another person, the deputy shall be relieved of duty, without loss of pay or benefit, and must undergo a psychological evaluation and clearance before being returned to their previous assignment.

Prohibited Reporting Conduct:

Information contained in an SIR, PIR and SUP-PIR constitute lawful and truthful statements made by Sworn Peace Officers to objectively portray the facts of the incident in the most honest and transparent manner possible. Officers who are not honest in their reporting shall be subjected to the performance management process which may result in discharge, and/or criminal prosecution and/or civil sanctions. (Refer to Employee Honesty Policy).

Examples of prohibited conduct in reporting include:

- **Purposeful Material Omissions:** *Officers intentionally leaving out details in an effort to disguise or diminish the actions of themselves or others.*

- **Code of Silence:** *Also known as blue wall of silence, the blue code of silence and blue shield of silence, are terms used to denote the informal rule that purportedly exists among law enforcement/corrections personnel, not to report on a colleague's errors, misconducts, or crimes, including excessive use of force. Such a practice is strictly prohibited, and any personnel determined to have participated in said practice shall be subject to disciplinary action according to departmental guidelines, which may include up to termination of employment.*

- **Collusion:** *Officers shall not collaborate (ensuring accounts of the incident contain same/similar details) with each other during the preparation of details in reports.*

- **Coaching:** *Officers instructing co-workers to report details and facts in their reports that they did not actually experience or writing reports on behalf of another Officer.*

All staff who are present at the scene who do not witness the use of force shall also submit an SIR indicating their location at the time of use of force and any relevant details related to the incident. Note: Accidental discharges of a CEW shall be reported in the same manner.

Office of Inspector General Analysis and Recommendations: Section 1806

The language should be clear that after every deployment of the Taser, whether there was a strike to a person or not, a report and the corresponding data download must be completed promptly. Both LASD and LAPD require such download after a Taser use. LASD appropriately requires an immediate download of Taser data when reporting the use of force and requires that "TASER download software shall be kept on a computer that is readily available at all times to the watch sergeant, watch commander, or any supervisor. The download cable(s) shall also be available for use at any time. After each use of the TASER, or at the discretion of any supervisor, a TASER shall be downloaded." The Probation Department should incorporate language similar to the LASD policy requiring that the software be kept on a computer available to a supervisor at all times and that a download cable be readily available into its policy on downloading data.

The Probation Department should also consider developing a Taser specific use of force report form.

The Office of Inspector General agrees with the "Prohibited Reporting Conduct" language of this section. LASD "anti-huddling" policy takes prohibition a step farther:

"Deputies shall refrain from discussing the incident until the arrival of the first supervisor. The involved personnel should briefly inform the supervisor of the circumstances surrounding the incident and what action has been taken.

The involved deputies shall then be immediately transported by a supervisor, if possible, or if not, by uninvolved deputies, to the station, unit of assignment or other suitable location. Involved personnel shall refrain from discussing the incident with anyone else until after being interviewed ... [or], until each has written a detailed report articulating the circumstances leading to the encounter, the hazards/threats faced by deputies or others, and the reasons that the decision to use deadly force was made.”

While the anti-huddling policy refers to deadly force, the Probation Department should consider adding this language to this section of the policy and omit the word “deadly.”

Probation Department Response:

The Department agrees with this recommendation regarding the Taser download and computer availability. Department Operations and Information Systems Bureau have not had the opportunity to sit down with the vendor for specifics as it relates to this item, until the contract is finalized.

Proposed Taser Policy Section 1807

Section 1807-Safety, Storage and Battery Charging:

Deputies authorized to carry a CEW is [sic] issued a locked storage to secure their CEW. Deputies are responsible to lock and secure the CEW in the department-issued locked storage when not on-duty.

Data related to the deployment of the CEW is electronically tracked in the evidence.com system and the data will be downloaded into the evidence.com system during the charging of the battery. The CEW battery shall be charged every 15 days and within 24-hours of any CEW discharge. Charging is done by placing the battery on the charger overnight when assigned to a work location or by swapping out the battery with a charged spare battery for those who work in a countywide position.

Office of Inspector General Analysis and Recommendations: Section 1807

As noted in reference to section 1807, the Office of Inspector General recommends that the Taser policy require an immediate download of data following Taser deployment.

The Office of Inspector General recommends that the Taser be charged and, when there has been no deployment, the data downloaded as soon as the Deputy Probation Officer is off duty and has access to the locked storage device at the Probation office.

Allowing for the battery to be swapped out in lieu of charging it skips the step of having data downloaded every 15 days and could potentially lead to inaccurate record keeping by deputies continually swapping out batteries instead of charging the device to download

the data. The Office of Inspector General recommends that it be a requirement that the Taser be charged every 15 days, meaning that a battery can only

Probation Department Response:

The Department agrees with this recommendation with modifications due to office and locations available for staff issued Tasers and the infrastructure available to charge and download. As noted in Section 1806 response, "Department Operations and Information Systems Bureau have not had the opportunity to sit down with the vendor for specifics as it relates to this item until the contract is finalized."

Proposed Taser Policy Section 1808

Section 1808 Agency Review of CEW Deployments, Incident Tracking and Post Incident Debriefing:

After the incident, the SDPO and team will conduct a debriefing regarding the incident that will include a discussion of the results of the search, any contacts made with residents, tactics, and details of the event. All incidents of CEW deployments are to be tracked in a CEW Log and reviewed by SEO Management within 30 days for compliance with Department policy. After the review is complete, the Managers and Supervising Deputy Probation Officer (SDPO) will conduct a debriefing with the deputy and team to discuss the CEW Usage incident.

Office of Inspector General Analysis and Recommendations: Section 1808

This section should include language similar to the proposed use of force policy sections 1008.2 and 1008.3 (See Attachment 1.) These use of force sections delineate the responsibilities of the supervisors and directors after a use of force. These also state when an internal investigation shall be initiated.

Probation Department Response:

The Department agrees with this recommendation.

END