

Excerpts from the Montpelier Taser Committee’s Majority Report to the City Council

Editor’s note: The Montpelier Committee on Tasers has released a 72-page report, recommending against the use of the devices in Montpelier but also laying out some restrictions and guidelines for their use should the city council decide to approve purchase. Below are a few excerpts from the report, as well as excerpts from committee member Nick Marrow’s minority report. Spelling, punctuation and grammar errors in the original document have not been corrected; italic and bold text has not been preserved.

I. A General Orientation to Tasers

The Taser (the most common brand of ECW) is a pistol-shaped, hand-held, battery-powered device that can be either fired at or pressed against an individual, discharging 50,000 volts of electricity into the subject. In its “probe” mode, two barbed darts are fired at the subject, typically from a distance of up to 21 feet. The darts are connected to the base unit by electrical wires. When both barbs successfully embed in the subject’s body, the Taser, wires and subject’s body complete an electrical circuit, causing a discharge of electricity into the subject. Each electrical discharge lasts for a predetermined five-second interval or, at the officer’s choice, for a continuous, indefinite length of time. In the probe mode the device causes excruciating pain, full-body muscle contraction, loss of physical control, immobilization and falling. In its “drive stun” mode, the base unit makes direct contact with the body. The electrical shock in this mode does not cause muscle contraction and physical immobilization; rather, it is strictly a pain-compliance device in this mode, inducing extreme pain continuously for as long as the device makes direct contact with the person’s body. The Police Executive Research Forum has warned that Tasers used in this manner “may have limited effectiveness” – it can cause the exacerbation of a confrontational situation – and so has discouraged police forces from using Tasers in the drive stun mode, although some forces still permit it, and the company still endorses use of Tasers in this manner. . . .

II. Weighing the Risks against the Potential Utility of Tasers in Montpelier

Strong arguments are made on both sides of the question whether or not it would be helpful and prudent to add this weapon to the Montpelier police arsenal. On the one hand is the forceful position that both citizens and officers are protected by Tasers, because they may handle some police-citizen encounters in a manner that controls a difficult situation and subdues a violent individual without serious injury to either subject or officer, or without the resort to a firearm. A companion argument by proponents is that Tasers would lower police workers compensation claims. On the other hand, strong arguments are made that the device is unnecessary here, given: the nature of our crime statistics, the proven ability of the police to handle confrontations effectively and safely with its present skills and weaponry, the in-

herent dangerousness of the weapon, the ease with which the weapon can be abused, the temptation to make early resort to a Taser (“mission creep”) rather than rely on traditional non-lethal weapons and crisis intervention methods, the true costs of the weapon beyond simply its purchase price, and the effect acquiring this device may have on police-community relations.

It is indisputable that there are hypothetical situations of police-citizen confrontation in which Tasers might be helpful as a control device. In his testimony before the Committee, Police Chief Tony Facos offered frequent descriptions of such possibilities, and even had he not, it takes little effort to imagine such situations occurring anywhere, including here. But if simply being able to imagine and describe dangerous situations where a Taser could be useful were a sufficient and determining factor in the City Council’s decision-making, this Committee would never have been appointed. The City Council, like many around the country, has wrestled with this issue. This Committee was appointed because this decision is far more complex, difficult and multi-factorial than simply whether a situation could arise here in which a Taser could be useful. The complexity of this decision is reflected in the fact that while many cities, from Los Angeles to Chicago and Vermont communities such as Burlington and Barre and Brattleboro and St. Albans have adopted Tasers, many others, from San Francisco to Memphis and Vermont communities such as Bennington, Middlebury, Waterbury, Barre Town and the Washington County Sheriff’s Department, have not. . . .

II.1. How Safe Are Tasers? The Research and the Views

The Taser company has steadfastly advocated the safety of the device, maintaining that the risk of death or serious bodily injury is extremely low. Over the nearly two decades since the device has been manufactured in its current general form, the company has assured potential users that Tasers present no significant safety concerns. When it could not achieve an involuntary dismissal of a lawsuit, the company has, over much of the last decade, avoided judgments against it by settling such cases out of court, generally with a confidentiality agreement regarding the amount of the settlement. For that reason it could boast, somewhat disingenuously, that it that it had never lost in court. That stance changed after 2008, when a federal court jury held the company liable for approximately \$6.2 million in the case of a man who was tased five times by five officers while effecting his arrest. A second jury verdict against the company, for \$10 million, was awarded for the 2008 death of a 17-year-old boy, from cardiac arrest, after he was tased in a Charlotte, North Carolina convenience store for 37 continuous seconds and then an additional 5 seconds. These verdicts were based on the failure of the company adequately to warn of the inherent dangers of the weapon.

On the heels of these verdicts, the company began to publicly recognize more fully the dangerousness of the device, in a series of warnings and alerts beginning in 2009. Technically, the company had made an earlier recognition of the possibility of dangerousness when, in a Form 10-K Annual Report for the year 2005 which it filed with the Securities

Exchange Commission, it stated its product “may result in serious, permanent bodily injury or death to those involved. Our products may cause or be associated with these injuries”. But the 2009 and 2010 post-verdict warnings by the company went far further and published them in detail to its user-clients. . . .

The limitations on targetable body areas, coupled with the imprecision of the aim of the device, will mean that an officer deploying the weapon will do so with the substantial risk of hitting the subject in a proscribed area of the body, with an unacceptable risk of serious injury or death. Even more to the point, the company said, in an October 29, 2009 customer teleconference: “[T]his is not a precision aiming device. There will be many times when people are hit in head, chest, and eye.” . . .

When all the cautions, prohibitions and limitations are accounted for, it is apparent that a Taser may only be discharged against a healthy, sober, rational and clear-headed adult non-elderly subject who is not pregnant, running, nor in a dangerous environment, and that the device must be able to be reliably aimed at the abdomen (“lower center mass”) or the back. The only exception to the limitations as to the subject and the surrounding circumstances occurs when there exists an imminent threat of death or serious bodily harm to someone. Overall, the extensive limitations on and imprecision in the use of the Taser render it a weapon of extremely limited safe potential applicability, as well as one that carries with it a high potential for erroneous deployment and potentially tragic consequences. That is because an officer in the field, managing difficult circumstances, simply cannot know enough to know if it is safe to deploy the weapon. He or she often cannot know, for instance, when someone has a heart condition, or is intoxicated, or mentally ill, or cognitively impaired, or pregnant, or subject to any of the host of other conditions that must be, but often cannot be, known before a deployment. . . .

II.4. The Montpelier Use-of-Force Reports and Their Meaning

The Committee requested and received from Chief Facos documentation of police incidents in which force was used, from the latter part of 2008 through June of 2011. These fifteen reports document any use of force on the police force continuum, which can range from as little as physical control or restraints at one end of the spectrum, to firearms at the other. What the reports reveal is that no party – neither an officer nor a suspect – received a single serious injury in any of these incidents. . . . All fifteen incidents were well-handled by the police with the current force continuum at their disposal, which in these incidents included handcuffs, physical tactics such as armbars and pull-downs and bear hug, leg

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irons, pepperballs, pepper spray, a helmet, and the display of a firearm. There is no indication that a Taser would have been appropriate, prudent or necessary in any one of the incidents, especially since nearly all of the incidents involved intoxicated or mentally ill people, i.e., members of vulnerable populations. To the extent there were any injuries to officer or suspect in any of these Montpelier incidents, they were limited to superficial cuts and abrasions, a kick to an officer’s groin, along with one suspect sustaining a swollen eye. None of these incidents resulted in an officer injury causing lost work time. . . .

II.6.b.

. . . The larger cities of Burlington and South Burlington, with higher crime statistics and more aggravated law enforcement circumstances, favor the device. Middlebury, a smaller town with less violent crime and a low officer injury rate (like Montpelier), does not, and prefers to rely on traditional weaponry and crisis intervention skills, as does Bennington. The Committee saw more similarity between Montpelier and the Bennington-Middlebury profile, than that of our larger (and only) metropolitan area. Our use-of-force incidents are relatively few and effectively handled by the weapons and skills at hand. Our officer injury rate is small, and officer workers compensation claims from violent encounters virtually non-existent (see infra). Our community is, unlike those of

Burlington and South Burlington, quite divided over the issue of Taser acquisition.

In summary, the data supplied the Committee by the Police Department reveals that Montpelier does not have the “typical force scenarios” that reasonably would justify the acquisition of this weapon. Neither the nature nor the frequency of our police-citizen confrontations calls for this additional force option. Our rate and degree of suspect and officer injury is low and minor. It is difficult not to believe that almost any city or town of Montpelier’s size or larger would be happy to trade statistics and “typical force scenarios” with those of Montpelier.

II.10. A Realistic Appraisal of the True Total Costs

Chief Facos, in his application to the City Council for a budget line to purchase Tasers, represented that the cost to the City would be \$11,400. This is an accurate representation of the purchase price of fourteen units. The Committee was told that the Council raised a question of other, accompanying costs but did not receive a fuller estimate from the Chief. The Committee raised this issue on its own, asking Chief Facos to also calculate the costs of other items and measures (see below) that both the Committee and the Chief agreed were prudent should Tasers be introduced here. The Chief said he would produce a five-year estimate of all such costs, but did not do so. It is the Committee’s view that, should Tasers be acquired here, certain protective prerequisites would have to be implemented by the City, which would significantly raise costs above the purchase price of the Taser itself. The following are the additional costs that both the Chief and the Committee agreed were either necessary or prudent:

- Crisis Intervention Team training[: at least \$2,000 per officer]

- Hiring of or certification of a Taser-approved trainer
- Replacement of the device (amortization of the cost)
- Maintenance of the device
- Replacement of the spent cartridges
- Body Cameras [\$899 to \$3,000 each]
- Data Storage [\$1200 per year]
- Defibrillators in cruisers [\$1,200 to \$2,400 each] . . .

It is apparent that to acquire Tasers along with the recommended equipment and training would far exceed Chief Facos’s submitted estimate for just the initial hardware. The Committee believes that if this device should be approved by City Council, that should only happen after a full and accurate calculation of all related costs, which would not only give both Council members and taxpayers a clear-eyed understanding of the proposal, but also put them in a better position to make an informed decision of whether Tasers are needed here in light of competing City needs and priorities. . . .

III.C.11.b

. . . The proposed VLCT policy tries to combine two distinctly different standards and thereby blur the distinction between them, with the result that Taser deployment would always be justified by the lower “active resistance” (“tensing”, “hunching”, “stiffening”) one. Chief Facos agreed in discussions with the Committee (August 2, 2011) that it is a “valid concern” that active resistance and active aggression are not defined in the proposed policy, and he agreed that he would want a higher standard than just, for example, the subject simply “stiffening” his/her body. He further stated he “likes” the Burlington policy requiring “a risk of injury to themselves or others”, but that he would not agree to the higher standard of “imminent threat of serious bodily injury”.

Confusingly, the Chief’s written request to the City Council for Tasers was proposed as a helpful tool for “violent” encounters. This purpose is at odds with his proposed policy’s deployment standard at the lowest end of the spectrum. This contradiction, between how it was asked for and how it would be used added to the Committee’s concerns regarding whether this request by the Chief had been researched and proposed with the care and caution it deserves.

The Committee believes both the active resistance and active aggression standards are inadequate for this community. If Tasers are permitted here, their use should be governed by a threat of imminent serious bodily injury or death standard, otherwise known as a lethal force standard, such as is recommended by the Stanford Report, the Amnesty International Report, and the ACLU of Northern California. It is also the standard recommended by the several human rights-oriented attorney-witnesses who spoke to the Committee, including Allen Gilbert, Executive Director of the American Civil Liberties of Vermont; Dan Barrett, Staff Counsel of the same organization; Robert Appel, Executive Director of the Vermont Human Rights Commission; and Jack McCullough, Director of the Mental Health Law Project of Vermont Legal Aid. . . .

IV. In Light of the Lack of Objective Showing That Tasers Are Necessary Here, There are Better, More Productive Ways to Spend the Money To Advance Public Safety.

The Committee is aware of the difficult economic decisions facing the city and the City Council. The disrepair

of city infrastructure, the deterioration of our tax base, and the budget constraints of our schools are causing the city to have to prioritize in new ways. Given that the evidence demonstrates a wish for Tasers based largely on hypothetical scenarios but not a real and present need for the device, the Committee believes any further expenditure for law enforcement should be directed toward more effective remedies. . . .

V. Should City Council Approve the Purchase of Tasers, The Following Preconditions To Their Purchase and Use Should Be Adopted.

Should the Council approve the purchase of Tasers notwithstanding the Committee’s recommendation, it is critical that high standards, strict safety measures, extensive training, and vehicles for heightened police accountability be implemented before such purchase and deployment. The Committee believes the following, culled from the major studies of Tasers, are essential preconditions to Taser acquisition by the Montpelier Police Department. . . .

1. Require Crisis Intervention Team training . . .
2. Create a police social worker position in the police force.
3. Require and develop in-depth police training in the use and dangers of the device . . .
4. Adopt an “imminent threat of serious bodily injury” deployment standard . . .
5. Position Tasers immediately below firearms on the force continuum.
6. Equip officers with body cameras . . .
7. Carry defibrillators in cruisers and require officer training and competency in their use . . .
8. Collect and preserve data indefinitely . . .
9. Add pepper foam to the police arsenal, and consider other less lethal alternatives to Tasers . . .
10. Create a Citizen Review Board . . .
11. Prohibit drive stun mode . . .
12. Prohibit tasing a fleeing or running subject . . .
13. Use specific, descriptive and mandatory language in written policy . . .
14. Include in any policy the current policy’s humane and cautious principles regarding an escalating use of force . . .
15. Fully specify all populations and circumstances relevant to limitations on Taser deployment . . .
16. Require warnings when possible before deployment.
17. Prohibit use of a taser as a pain compliance weapon or general force tool.
18. Prohibit multiple shots and continuous or prolonged exposure except where lethal force would be justified . . .
19. Prohibit Taser use on subjects in restraints except where lethal force would be justified.
20. Avoid impairment of respiration . . .
21. Provide emergency medical care immediately after all taser use.
22. Monitor tased subject’s health closely while in custody . . .
23. Reporting, supervision and monitoring. . .
24. Supervisors should respond to the scene of any Taser deployment as soon as possible.
25. Conduct rigorous investigation following each deployment . . .
26. Monitor Taser use by the agency . . .

Excerpts from Nick Marro’s Minority Report

Ultimately the issue that the City Council must decide is are there any circumstances where the use of tasers in Montpelier are acceptable. In my judgement the answer is yes. I believe taser use should be acceptable in cases where police are dealing with situations where there is a threat of bodily harm to the general public, rescue personnel, or the police officer. . . .

In my judgement any time an officer is injured in the line of duty it is a serious matter regardless of the degree of injury. The city has a responsibility to protect its employees and to provide its employees with the tools necessary to do their jobs in a safe and efficient manner possible. I fully understand that being a police officer is a dangerous job with many hazards and high expectations from the public they protect and serve. But there is nothing in a Montpelier police officer’s job description that says they have to be a punching bag for some out of control individual.

I also disagree with the notion that Mont-

pelier is immune from the types of crime that occur in Burlington and South Burlington. Vermont has become a mobile society and one has to be naive to ignore the fact that people from Chittenden County have been involved in a wide assortment of criminal activities in Montpelier and Washington County. . . .

I would argue there are potential lethal issues with many of the less means of force options. Pepper spray is dangerous to people with asthma and other respiratory illnesses, gets into ventilation systems, and impacts anyone in the vicinity of the person being subdued. People have been killed when struck by pepper ball launchers. Batons have broken bones, caused serious head injuries and death. . . .

Recommendation:

In my judgement tasers are a tool that, when used properly, will assist police with a less than lethal option in resolving combative situations where there is a risk of harm to the general public, rescue person-

nel, and the officers themselves. Like any tool, tasers are subject to misuse and abuse, but at some point you have to have trust and faith that police officers will use the tools they are provided with properly.

In recent months Taser International has issued a series of warnings about the use of their products that are, in my judgement, designed to shift the liability for misuse and abuse of their products onto the municipalities and state departments that use tasers. That is a concern. As with any tool that is abused or misused there are liability issues that require attention and the City Council would be wise to look closely at potential changes in the costs associated

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—from Nick Marro’s minority report

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