



May 27, 2014

VIA EMAIL AND U.S. MAIL

Commissioner Anthony W. Batts
Baltimore Police Department
242 W. 29th St.
Baltimore, MD 21211-2908

Dear Commissioner Batts,

I write on behalf of the ACLU of Maryland in connection with the recent death of George V. King, who is reported to have died following an incident at Good Samaritan Hospital during which a Baltimore City police officer reportedly used a Taser repeatedly on Mr. King. This is at least the 15th incident in Maryland, and the fourth in Baltimore City, since 2004 in which an individual has died following the use of a Taser. While it is clearly premature to assess the role of the Taser in Mr. King's death or the appropriateness of the officer's use of the Taser before complete details about the circumstances of the incident are available, this incident highlights the importance of ensuring that the Department has appropriate training and policies in place before it proceeds with its stated plan of equipping all of its officers with a Taser. Our concern about the BPD's Taser policies is heightened by the fact that the BPD has the highest number of electronic control weapons ("ECW") discharges in the state (based on 2012 data reported by GOCCP, which is the latest available), and one of the highest rates of Taser discharge per Taser in use in the state (based on the same data and our own public records request for Taser deployment data).¹ I understand that the Department may already be engaged in a reevaluation of its ECW policies, and write to briefly offer our views.

As you are surely aware, several years ago, the Attorney General created a Task Force on Electronic Weapons to study the use of ECWs like the Taser. Members of the Task Force included representatives from the ACLU and other civil rights groups, as well as law enforcement officials and members of the medical community. In 2009, the Task Force published a report, <http://www.oag.state.md.us/Reports/ECWReport.pdf>, unanimously endorsed by all members of the Task Force that included detailed recommendations regarding the appropriate use of ECWs by law enforcement agencies. While the ACLU endorses all of the recommendations, I specifically point out several below that should be considered both in the Department's investigation into Mr. King's death, and as part of an assessment of the adequacy of its policies.

First, the Task Force found that an ECW can cause death or serious injury, and as such, recommended that its use be allowed "only when an individual poses an imminent threat of physical injury to themselves or others." (Task Force Report at 69). Because the risk of death or injury may be higher in certain at-risk populations, including "persons in mental/medical crisis," and "persons under the influence of drugs," the Task Force recommended that in deciding whether to discharge an ECW on a person falling within one of these categories, "the officer

¹ Of the largest departments in Maryland (over 1000 officers), only Baltimore County has a higher rate of ECW discharge per ECW deployed, but we understand that force has a completely different deployment model, with only one ECW per squad in use in each precinct (for a total of 23). See Attached Chart.

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should consider the heightened risk of serious injury or death for these groups and be able to articulate the justification for exposing a person to increased risk.” (*Id.* at 70). In particular, when dealing with an individual experiencing an apparent mental health or medical crisis, the Task Force recommends that officers should consider non-force options, including containment, are feasible before using an ECW. (*Id.*) The use of a Taser on a non-compliant patient at a hospital (such as seems to have occurred in Mr. King’s case) raises all of the potential concerns noted above, due to the increased probability that the person may be under the influence of drugs (particularly including prescribed drugs), and may be in medical or mental crisis (or both), and indeed may be unable to control their own behavior.

Second, the Task Force recommended that “repeated or prolonged (i.e., beyond the 5-second standard cycle) discharges should be avoided whenever possible.” (*Id.* at 71). Repeated discharges of an ECW (as is reported to have occurred in Mr. King’s case) may cause an increased risk of injury or death (*id.* at 41), and TASER International, the manufacturer of the Taser, warns that “In some individuals, the risk of death or serious injury may increase with cumulative [ECW] exposure. Repeated, prolonged, or continuous [ECW] applications may contribute to cumulative exhaustion, stress, cardiac, physiologic, metabolic, respiratory, and associated medical risks which could increase the risk of death or serious injury.”²

Third, the Task Force found that an ECW should not be used in drive-stun mode (as reportedly occurred in Mr. King’s case) to gain compliance from a subject. Unlike the ECW’s conventional probe mode, which seeks to incapacitate an individual’s muscle movements, drive-stun mode is designed solely to administer pain. The Task Force recommended that “ECWs should not be used in pain compliance (drive-stun) mode except when necessary to complete the incapacitation circuit [e.g. when only one dart has lodged in the body], or when the probe mode has been ineffective and use of drive stun-mode is necessary to prevent imminent harm to the officer or others.” (*Id.* 5).

While we recognize that an ECW can be a valuable law enforcement tool that can decrease the risk of injury or death to law enforcement officials and members of the public by serving as an alternative to the use of deadly force, it can do so only if appropriate policies are in place that recognize the potential risks associated with the weapon, and allow its use only in situations where imposing those risks are justified. In short, we believe officers should be trained to understand that the discharge of an ECW is a potentially lethal force, particularly when used in certain situations. To help ensure the Department’s policies follow that approach, the ACLU of Maryland requests the opportunity to review and provide feedback on the Department’s policies and proposed policies regarding ECW use and training before the Department implements its plan to equip all of its officers with an ECW.

From your comments and actions in the wake of Mr. King’s death, it appears that you share many of the concerns we note above, and we look forward to working with you and your staff to craft a model policy on ECW use and model training for officers.

Sincerely,

David Rocah
Senior Staff Attorney

cc: Dan Beck, Esq.

² TASER International Inc., Volunteer: Warnings, Risks, Release & Indemnification Agreement, available at http://www.taser.com/images/training/training-resources/downloads/Volunteer_Exposure_Release_030113.pdf