UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW AVITABILE,

Plaintiff,

-against-

SUPERINTENDENT GEORGE P. BEACH II, SUPERINTENDENT OF THE NEW YORK STATE POLICE,

Defendant.

NOTICE OF CROSS-MOTION FOR SUMMARY JUDGMENT

1:16-CV-1447 (DNH)(CFH)

PLEASE TAKE NOTICE that upon the Declarations of Michael G. McCartin; and N.Y.S. Trooper Philip Shappy, as well as the exhibits attached to the forgoing declarations; the Defendant's Rule 7.1(a)(3) Statement; the accompanying Memorandum of Law; and all prior proceedings, the Defendant, will make a cross-motion for summary judgment before the Hon. David N. Hurd, U.S. District Court Judge, on September 28, 2018 at 10:00 a.m. at the United States District Court, Northern District of New York, Utica, New York for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, granting summary judgment in favor of the Defendant on the ground that there is no genuine issue as to any material fact and that the Defendant is entitled to judgment as a matter of law.

PLEASE NOTE that Rule 7.1(a)(3) of the Northern District's local rules requires you to include a response to the Defendant's statement of material facts that mirrors it in matching numbered paragraphs setting forth where in the record you contend that a factual issue arises. In the absence of such a statement, all material facts set forth in the Defendant's statement of material facts will be deemed

admitted by the Court. Please note that you may also include a separate short and concise statement of any material facts, in additional numbered paragraphs, as to which you contend there exists a genuine issue.

Dated: Albany, New York
September 9, 2018

s/*Michael McCartin*
Michael G. McCartin
Bar Roll No. 511158

To: Stephen D. Stamboulieh, Esq.
Attorney for Plaintiff
Stamboulieh Law, PLLC
P.O. Box 4008
Madison, MS 39130

Alan Alexander Beck, Esq.
Attorney for Plaintiff
Law Office of Alan Beck
4780 Governor Drive
San Diego, CA 92122

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW AVITABILE,

Plaintiff,

-against-

SUPERINTENDENT GEORGE P. BEACH II, SUPERINTENDENT OF THE NEW YORK STATE POLICE,

Defendant.

DECLARATION OF MICHAEL G. McCARTIN

1:16-CV-1447

(DNH)(CFH)

Pursuant to 28 U.S.C. § 1746, I, MICHAEL G. McCARTIN, declare under penalty of perjury that the following is true and correct:

1. I am an Assistant Attorney General in the Office of Barbara D. Underwood and I represent Defendant Superintendent George P. Beach II in this action.

2. Attached hereto as Exhibit 1 is a copy of the Bill Jacket for Senate 7151-A/ Assembly 9187-A.

3. Attached hereto as Exhibit 2 is a copy of the Bill Jacket for Senate 5301/ Assembly 5398-A.

4. Attached hereto as Exhibit 3 is a copy of the deposition of Plaintiff Matthew Avitabile.

5. Attached hereto as Exhibit A is a copy of Exhibit A marked during the deposition of Plaintiff Matthew Avitabile.

6. Please note that Exhibit B of the deposition of Plaintiff Matthew Avitabile cannot be electronically filed within the Court's CM/ECF system because it is an CD-Rom that contains two short

videos that were shown during the plaintiff's deposition. Defendant has asked for permission to conventionally file the same with the Court's Clerk.

7. Attached hereto as Exhibit C is a copy of Exhibit C marked during the deposition of Plaintiff Matthew Avitabile.

8. Attached hereto as Exhibit D is a copy of Exhibit D marked during the deposition of Plaintiff Matthew Avitabile.

9. Attached hereto as Exhibit E is a copy of Exhibit E marked during the deposition of Plaintiff Matthew Avitabile.

10. Attached hereto as Exhibit F is a copy of Exhibit F marked during the deposition of Plaintiff Matthew Avitabile.

11. Attached hereto as Exhibit 4 is a copy of Axon/Taser's Warning for Tasers use by "Citizens." The warnings contained therein are similar to Exhibit F referenced above, which was for "Law Enforcement."

12. Attached hereto as Exhibit 5 is a printout of Sabre's website found at https://www.sabrered.com/formulations-heat-strength-and-law (visited on August 31, 2018).

Dated: September 9, 2018
Albany, New York

s/ *Michael McCartin*
Michael G. McCartin

CHAPTER 217

Cal. No. 492

7151-A

IN SENATE

(Prefiled)

January 7, 1976

Introduced by Sen. CAEMMERER—read twice and ordered printed, and when printed to be committed to the Committee on Codes—reported favorably from said committee with amendments and ordered reprinted as amended and when reprinted to be committed to the order of first report

AN ACT

to amend the penal law, in relation to criminal possession of electronic dart guns

Compared by Walter Nelms

Approved

Chap 217

SENATE JOURNAL MAR 1 PAGE 28

1976

SENATE

The Senate Bill
by Mr. CAEMMERER Calendar No. 492 Senate No. 7151-A
Assem. Rept. No. _____
Entitled: "

7151-A

MR. CAEMMERER
AN ACT TO AMEND THE PENAL LAW, IN RELATION TO CRIMINAL POSSESSION OF ELECTRONIC DART GUNS

" was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	47	Mr. Anderson			29	Mr. Leichter	
	49	Mr. Auer			8	Mr. Levy	
	45	Mr. Barclay			22	Mr. Lewis	
	18	Mr. Bartosiewicz			50	Mr. Lombardi	
	23	Mr. Beatty	EXCUSED		24	Mr. Marchi	
	25	Ms. Bellamy			5	Mr. Marino	
	33	Mr. Bernstein			48	Mr. Mason	
	19	Mr. Bloom			28	Mr. McCall	
	12	Mr. Bronston			59	Mr. McFarland	
	9	Ms. Burstein			[redacted]		
	7	Mr. Caemmerer			42	Mr. Nolan	
	34	Mr. Calandra			27	Mr. Ohrenstein	
	21	Mr. Conklin			17	Mr. Owens	
	46	Mr. Donovan			11	Mr. Padavan	
	6	Mr. Dunne			60	Mr. Paterson	
	54	Mr. Eckert			53	Mr. Perry	
	35	Mr. Flynn			36	Mr. Pisani	
	32	Mr. Galiber			57	Mr. Present	
	30	Mr. Garcia			39	Mr. Rolison	
	14	Mr. Gazzara			31	Mr. Ruiz	
	1	Mr. Giuffreda			10	Mr. Santucci	
	13	Mr. Gold			40	Mr. Schermerhorn	
	26	Mr. Goodman			2	Mr. Smith, B. C.	
	37	Mr. Gordon			51	Mr. Smith, W. T.	
	56	Mr. Griffin			43	Mr. Stafford	
	20	Mr. Halperin			55	Mr. Tauriello	
	41	Mr. Hudson			3	Mr. Trunzo	
	44	Mr. Isabella			58	Mr. Volker	
	4	Mr. Johnson			52	Mr. Warder	
	15	Mr. Knorr			38	Mrs. Winikow	

AYES 58
NAYS 0

¶ Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein

No. 4-150

(Republicans in Italics)

Those Who Voted In the Affirmative	Those Who Voted In the Negative
Mr. Abramson	
Miss Amatucci	
Mr. Barbaro	
Mr. Betros	
Mr. Bianchi	
Mr. Blumenthal	
~~Mr. Brenner~~	
Mr. Brown	
Mr. Burns	
Mr. Burrows	
Mr. Butler	
Mr. Calogero	
Mr. Caputo	
Mr. Cincotta	
Mr. Cochrane	
Mrs. Connelly	
Mr. Connor	
Mr. Cook (C.D.)	
~~Mr. Crouch (D.Wm.)~~	
Mr. Cooperman	
Mr. Culhane	
Mr. Daly	
Mr. D'Amato	
Mr. D'Andrea	
Mr. Dearie	
Mr. DelliBovi	
Mr. Del Toro	
Mr. DeSalvio	
Mr. DiCarlo	
Mr. DiFalco	
~~Mr. Diggs~~	
Mr. Dokuchitz	
Mr. Duryea	
Mr. Dwyer	
Mr. Emery	
Mr. Esposito	
~~Mr. Farr~~	
Mr. Farrell	
Mr. Ferris	
Mr. Field	
Mr. Fink	
Mr. Flack	
Mr. Flanagan	
Mr. Fortune	
Mr. Fremming	
Mr. Frey	
Miss Gadson	
~~Mr. Gianaris~~	
Mr. Gorski	
Mr. Gottfried	
Mr. Graber	
Mr. Grannis	
Mr. Greco	
Mr. Griffin	
Mr. Griffith	
Miss Gunning	
Mr. Haley	
Mr. Hanna	
Mr. Harenberg	
Mr. Harris	
Mr. Hawley	
Mr. Healey	
Mr. Hecht	
Mr. Henderson	
Mr. Herbst	
Mr. Hevesi	
Mr. Hinchey	
Mr. Hochberg	
Mr. Hochbrueckner	
Mr. Hoyt	
Mr. Hurley	
Mr. Izard	
~~Mr. Jones~~	
Mr. Kelleher	
Mr. Kidder	
Mr. Koppell	
Mr. Kremer	
Mr. Landes	
Mr. Lane	
Mr. Lasher	
Mr. Lee	
Mr. Lehner	
Mr. Lentol	
Mr. Levy	
Mr. Lewis	
Mr. Lill	
Mrs. Lipschutz	
Mr. Lisa	
Mr. Lopresto	
Mr. Mannix	
Mr. Marchiselli	
~~Mr. Markowitz~~	
Mr. Marshall	
Mr. McCabe	
Mr. Mega	
Mr. Miller (G.W.)	
~~Mr. Miller (H.B.)~~	
Mr. Miller (H.M.)	
Mr. Miller (M.H.)	
Mr. Mirto	
Mr. Molinari	
Mr. Montano	
Mr. Murphy (G.A.)	
Mr. Murphy (M.J.)	
Mr. Murphy (T.J.)	
~~Mr. Nicolosi~~	
Mr. Nine	
Mr. O'Neil	
Mr. Orazio	
Mr. Passannante	
Mr. Pesce	
Mr. Posner	
Mr. Rappleyea	
Mr. Reilly	
Mr. Riford	
Mr. Robach	
Mr. Roosa	
Mr. Ross	
Mrs. Runyon	
Mr. Ryan	
Mr. Schmidt	
Mr. Schumer	
Mr. Sears	
Mr. Serrano	
Mr. Sharoff	
Mr. Siegel	
Mr. Silverman	
Mr. Solomon	
Mr. Stavisky	
Mr. Stein	
Mr. Stephens	
Mr. Stott	
Mr. Strelzin	
Mr. Suchin	
Mr. Sullivan	
Mr. Tallon	
Mr. Taylor	
Mr. Thorp	
Mr. Tills	
Mr. Vann	
Mr. Velella	
Mr. Virgilio	
Mr. Walsh	
Mr. Wemple	
Mr. Weprin	
Mr. Wertz	
Mr. Yevoli	
Mr. Zagame	
Mr. Zimmer	
~~Mr. Speaker~~	

AYES ..... 140 .....

NOES ..... 0 .....

THE SENATE
STATE OF NEW YORK
ALBANY 12224

JOHN D. CAEMMERER
71ST DISTRICT
CHAIRMAN
COMMITTEE ON TRANSPORTATION

DISTRICT OFFICE
374 HILLSIDE AVENUE
WILLISTON PARK, N.Y. 11596

May 12, 1976

Honorable Judah Gribetz
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

MAY 13 1976

Re: Senate 7151-A

Dear Mr. Gribetz:

The purpose of this bill is to prohibit the illegal possession of an electronic dart gun. Although this device was designed and is being manufactured and sold as a self-defense weapon, it has already been used in holdups and robberies, and it is apparent that its use must be controlled.

There are a number of these devices being manufactured, the most popular of which is called a "Taser Public Defender". It is designed to look like a flashlight which can shoot two barbed darts a distance of 15 to 18 feet and deliver a 50,000 volt jolt of electricity effective through an inch of clothing. While the effect of the charge is to stun, knock out or paralyze a person and is temporary, it causes great pain and may well be lethal to a person in poor health.

This bill amends Section 265.00 of the Penal Law by adding thereto a new subdivision defining the electronic dart gun and amends Section 265.01 by adding electronic dart gun, as a prohibited weapon.

For the protection of our law-abiding residents from the law-breakers who are purchasing and using this dangerous device, it is essential that Governor Carey sign this legislation. I urge you to request the Governor's prompt approval of this bill.

Very truly yours,

JOHN D. CAEMMERER
State Senator

JDC:JMg

Passed 5/5/76

State Sen.

CALENDAR NO. 690

BILL NO. A. 9187-A
S.

INTRODUCED BY: Mr. D'Amato

AN ACT

to amend the penal law, in relation to criminal possession of electronic dart guns

SUMMARY OF PROVISIONS - This bill amends section 265.00 of the Penal Law by adding thereto a new subdivision which defines an electronic dart gun. Such gun is defined as a device designed primarily as a weapon the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electric shock to such person by means of a dart or other projectile. Section 265.01 of the Penal Law is also amended to include an electronic dart gun as a prohibited weapon.

RATIONALE - To prohibit the illegal possession of an electronic dart gun.

LEGISLATIVE HISTORY -

PERTINENT CONSIDERATIONS - It is noted that it has recently come to light that there are a number of electronic devices being manufactured which can be used as a weapon to stun, knock out or paralyze an individual. The most popular of these devices is called a Taser Public Defender and was designed as a self-defense weapon. However, such devices are extremely powerful and dangerous and already have been used for illegal purposes. The Taser Public Defender can shoot two barbed darts through an inch of clothing and deliver a 50,000 volt jolt of electricity. Such a shock can immobilize a person for five to fifteen minutes.

It is further noted that if these weapons must be controlled, the penal la must be amended to specifically outlaw their unregulated use. This is especially true because the Federal Treasury Department has ruled that such weapons are not firearms under the 1968 Federal Gun Control Law. These devices have already been used in holdups and robberies.

Cal. 690

SENATE CAEMMERER

ASSEMBLY D'Amato

9187

CODES

Way

AN ACT to amend the penal law in relation to criminal possession of electronic dart guns

PURPOSE OF BILL

The purpose of this bill is to prohibit the illegal possession of an electronic dart gun.

SUMMARY OF PROVISIONS

This bill amends § 265.00 of the penal law by adding thereto a new subdivision which defines an electronic dart gun. Such gun is defined as a device designed primarily as a weapon the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electric shock to such person by means of a dart or other projectile. § 265.01 of the penal law is also amended to include an electronic dart gun as a prohibited weapon.

JUSTIFICATION

It has recently come to light that there are a number of electronic devices being manufactured which can be used as a weapon to stun, knock out or paralyze an individual. The most popular of these devices is called a Taser Public Defender and was designed as a self-defense weapon. However, such devices are extremely powerful and dangerous and already have been used for illegal purposes. The Taser Public Defender can shoot two barbed darts through an inch of clothing and deliver a 50,000 volt jolt of electricity. Such a shock can immobilize a person for five to fifteen minutes. It is apparent that these weapons must be controlled and the penal law must be amended to specifically outlaw their unregulated use. This is especially true because the Federal Treasury Department has ruled that such weapons are not firearms under the 1968 Federal Gun Control Law. These devices have already been used in holdups and robberies and it is important that the Legislature quickly adopt this bill.

EFFECTIVE DATE

This act shall take effect September first, nineteen hundred seventy-six.

MAY 18 1976

NEW YORK STATE POLICE
STATE CAMPUS
ALBANY, N.Y. 12226

WILLIAM G. CONNELIE
SUPERINTENDENT

May 14, 1976

SENATE	ASSEMBLY	INTRODUCED BY
7151-A		Sen. Caemmerer

RECOMMENDATION: Approval

STATUTE INVOLVED: Penal Law, §265.00 and 265.01

EFFECTIVE DATE: September 1, 1976

DISCUSSION:

1. Purpose of bill:

   To amend the Penal Law, in relation to criminal possession of electronic dart guns.

2. Summary of provisions of bill:

   This bill defines an electronic dart gun and makes it a crime to be in possession thereof.

3. Prior legislative history of bill:

   None known.

4. Known position of others respecting bill:

   It can be anticipated that all police agencies would be in support of this bill.

5. Budget implications:

   None known.

6. Arguments in support of bill:

   It has been demonstrated that the electronic dart gun, which is capable of being carried as a concealed weapon, will discharge a small projectile a distance of fifteen

feet and through an electric conductor produce paralysis in its victim. This total paralysis may endure for several minutes thus leaving the victim completely helpless. It would take little imagination to realize that such weapon employed unsuspectingly on a police officer would not only leave the police officer at the mercy of the perpetrator but also would leave him vulnerable to the loss of his service weapon.

7. Arguments in opposition to bill:

None.

8. Reasons for recommendation:

See six above.

Superintendent

STATE OF NEW YORK
OFFICE OF COURT ADMINISTRATION
270 BROADWAY
NEW YORK, NEW YORK 10007

RICHARD J. BARTLETT
STATE ADMINISTRATIVE JUDGE

MICHAEL R. JUVILER
COUNSEL

May 12, 1976

Honorable Judah Gribetz
Counsel to the Governor
Executive Chamber
Albany, New York 12224

RE: S. 7151-A

Dear Mr. Gribetz:

This will acknowledge receipt of your request for comment on the above-designated legislation.

This bill defines and prohibits the possession of electronic dart guns. The Office of Court Administration takes no position on this bill, because the decision to prohibit the possessing of these weapons is properly a substantive legislative one.

However, we point out that the definition of an electronic dart gun as a device designed to "momentarily stun, knock out or paralyze" appears to be an unintentionally narrow one. It would appear at least arguable that if the electrical charge could be stepped up to the point that it is apt to cause permanent injury or death, rather than momentary incapacity, the weapon would not be illegal. We assume this is not intended and therefore suggest that if the Governor supports the objective of the bill, he seek recall or amendment in order to delete the adverb "momentarily."

We also note that, perhaps again inadvertently, the manufacture of these weapons is not prohibited by the bill. Compare, Penal L. §265.10(1).

Sincerely,

Michael R. Juviler

Michael R. Juviler

MRJ:fn

TO COUNSEL TO THE GOVERNOR

MAY 6 1976

RE: SENATE 7151-A

ASSEMBLY

Inasmuch as this bill does not appear to involve a legal problem nor to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon wnich you wish comment, please advise me.

Dated: May 6, 1976

LOUIS J. LEFKOWITZ
Attorney General

MAY 1 1976

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
ECONOMIC DEVELOPMENT BOARD

MEMORANDUM

TO: Judah Gribetz

DATE: May 7, 1976

FROM: Alan Madian

SUBJECT: Ten-day Bills - Economic Impact Statements

The following bills have been reviewed and they do not appear to have any economic impact:

S. 7151-A
S. 8241
S. 8583

A. 2387-B
A. 10168

S 7151-A

B-203-(6/68) BUDGET REPORT ON BILLS Session Year 1976

SENATE NO RECOMMENDATION ASSEMBLY

No. 7151-A No.

MAY 10 1976

Law: Penal

Title: An Act to amend the penal law, in relation to criminal possession of electronic dart guns.

The above bill has been referred to the Division of the Budget for comment. After careful review, we find that (a) the bill does not affect State finances in any way, (b) the bill has no appreciable effect on State programs or administration, and (c) this office does not have the technical responsibility to make a recommendation on the bill.

We therefore make no recommendation.

SR:jh
5/7/76

Paul J. Elston, Deputy Director

S 7151-A

STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, N.Y. 12231

MARIO M. CUOMO
SECRETARY OF STATE

MAY 17 1976

May 14, 1976

Honorable Judah Gribetz
Counsel to the Governor
State Capitol
Albany, New York

Re: Senate 7151-A

Dear Judah:

This bill amends the Penal Law, in relation to criminal possession of electronic dart guns.

This bill does not relate to my functions and responsibilities and I have no comments or recommendations concerning same.

Sincerely,

Secretary of State

mmc:sc

P.G.

S-7151-A
Electronic dart guns

New York State Bar Association

CRIMINAL JUSTICE SECTION
COMMITTEE ON LEGISLATION
MEMO FROM:
Albert M. Rosenblatt, *Co-Chairman*

MAY 24 1976

May 21, 1976

TO: HON. JUDAH GRIBETZ
Counsel to the Governor

SUBJECT: Senate - 7151-A

The Criminal Justice Section of the New York State Bar Association approves of the above captioned bill.

cc: Kent H. Brown, Esq.
Legislative Counsel

NYSBA

COURTHOUSE, POUGHKEEPSIE, NEW YORK 12601

S 7151A

LAW OFFICES
LEVINE AND KROM
404 NORTH ROXBURY DRIVE
BEVERLY HILLS, CALIFORNIA 90210

AREA CODE 213
273-3555 AND 878-4848
CABLE ADDRESS
LEVKRO

WASHINGTON OFFICE
1523 "L" STREET, N.W.
WASHINGTON, D.C. 20005

HOWARD A. KROM
MELDON E. LEVINE
LEONARD UNGER
GEOFFREY COWAN*
ROBERT L. IVEY

OF COUNSEL
SID B. LEVINE
WILLIAM C. STEIN

*MEMBER D.C. BAR ONLY

May 20, 1976

SPECIAL DELIVERY

Judah Gribetz, Esq.
Executive Chamber
The Capitol
Albany, New York 12224

Re: Senate Bill 7151A

Dear Mr. Gribetz:

This office represents Taser Systems, Inc., the manufacturers of a non-lethal self-defense weapon known as the Taser.

It has come to our attention within the past hour that the New York state legislature passed Senate Bill 7151A, amending Section 265 of the New York Penal Law to make the Taser a prohibited weapon. Although I have not seen the legislation yet, I have heard some of the arguments that were made in support of the bill and at least some of them are factually inaccurate. For example, the Taser is regulated by the Bureau of Alcohol, Tobacco and Firearms of the United States government, does not penetrate a person's clothing and has no meaningful kinetic force.

I am taking the liberty of forwarding herewith a package of material which describes the Taser and its operation. As you will see from this information, the Taser is not only non-lethal but is meaningfully less dangerous than any other self-defense weapon heretofore created. As persons have become more familiar with its nature and its possibilities, it has developed substantial support.

We did not have the opportunity to present our case before the state legislature or any of its relevant committees and we do not believe that the arguments in support of this device were

LEVINE AND KROM

Judah Gribetz, Esq.
Executive Chamber
The Capitol
Albany, New York 12224

May 20, 1976 - Page Two

properly before it. We believe, therefore, that enactment of SB7151A was premature and that its approval by the Governor would be premature. We urge you to allow us to present our case before the legislature before legislation which so clearly affects us is enacted.

If you have any questions, please feel free to contact the undersigned in the meantime.

Very truly yours,

Meldon E. Levine
of LEVINE & KROM

MEL/jmg

The Association of the Bar of the City of New York
Committee on Criminal Courts Law and Procedure

S. 7151 Sen. Caemmerer

Senate Committee: Codes

AN ACT to amend the penal law, in relation to criminal possession of electronic guns.

The bill is disapproved.

This bill would amend Section 265.00 of the penal law, defining an "electronic dart gun" to mean a weapon the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electrical shock by means of a dart or projectile. It would then amend Section 265.01 so as to make the possession of such an electronic dart gun a Class A misdeanor, that is, with a penalty equivalent in severity to that for possession of a firearm.

The penal law already prohibits the assaultive use of any weapon (§ 120.00),or the possession of any "dangerous or deadly instrument or weapon with intent to use it unlawfully" (§ 265.05.9). This bill, therefore, would add to existing law only by making the mere possession of an electronic dart gun, without criminal intent, a crime equivalent to the unlicensed possession of a firearm. It should be noted that while current law provides for the licensing--that is, the legalization--of the deadly firearm, the proposed bill makes no provision for licensing of the "stun gun."

The premise of this bill is that attaching a criminal sanction to the possession of an electronic dart gun, or "stun gun", will make its possession (and therefore presumably its use) less likely. If the criminal sanction does so operate as a deterrent, the Committee believes that it is far more important to deter the possession of firearms, both in themselves, and as compared to a relatively less deadly weapon such as a "stun gun." Recognizing the fact that large numbers of people in New York City possess illegal weapons, not with intent to commit crime but because of understandable fear, it would be at least a relative improvement if they would arm themselves with "stun guns" as opposed to the firearms so many now possess.

The Committee believes that rather than make possession of a "stun gun" equivalent to unlicensed possession of a firearm, a sharp differentiation should be maintained between them.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

May 20, 1976

MAY 21 1976

S.7151-A - by Mr. Caemmerer

AN ACT To amend the penal law, in relation to criminal possession of electronic dart guns

APPROVAL RECOMMENDED

Honorable Hugh L. Carey
Governor of the State of New York
Albany, New York

Dear Governor Carey:

The above bill is before you for executive action.

This bill would amend the dangerous weapon provisions of the Penal Law to prohibit possession of electronic dart guns.

A new type of weapon is currently being used to commit robberies in New York and in other states. The gun resembles a flashlight and fires multiple barbed darts which are connected to the unit by a wire approximately eighteen feet in length. The darts are fired into the body of the victim followed by an electric charge which travels from the unit along the wires and into the body causing loss of muscular control, pain and in some cases serious physical injury.

Although the manufacturer claims that the weapon does not kill or main but only immobilizes without after effects, this claim is based on tests upon healthy young men. The unit, which is capable of producing a charge of 50,000 volts, is obviously a menance to many, particularly those with heart conditions.

The manufacturer claims that the weapon is defensive; however, it is no more defensive than other prohibited weapons and, in the hands of wrongdoers it is as effective as a loaded firearm and as potentially hazardous.

Enactment of this bill would place the electronic dart gun in that category of weapons the mere possession of which is illegal.

Accordingly, I urge your approval of this bill.

Very truly yours,

ABRAHAM D. BEAME, Mayor

By
Legislative Representative

To Paul Gioia
2 Pages

The Association of the Bar of the City of New York
Committee on Criminal Courts Law and Procedure

S. 7151 Sen. Caemmerer

Senate Committee: Codes

AN ACT to amend the penal law, in relation to criminal possession of electronic guns.

The bill is disapproved.

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The Committee believes that [illegible] them make possession of a "stun gun" equivalent to unlicensed possession of a firearm, a sharp differentiation should be maintained between them.

LITMAN, FRIEDMAN & KAUFMAN
ATTORNEYS AT LAW
120 BROADWAY
NEW YORK, NEW YORK 10005

MAY 17 1976

LEWIS R. FRIEDMAN
HERMAN KAUFMAN
JACK T. LITMAN

(212) 349-675

May 14, 1976

Honorable Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate 7151-A

Dear Mr. Gribetz:

We recommend that the above bill be disapproved.

The bill amends Penal Law Section 265.01 to provide that possession of an"electronic dart gun" is a class A misdemeanor. The statute also seeks to define the term "electronic dart gun".

One of the problems with the bill is that it makes possession of an"electronic dart gun" a per se crime without regard to the intent of the possessor. In view of the difficulties with the definition of an "electronic dart gun" its mere possession should not be a per se violation.

It is of more moment that the definition of "electronic dart gun" is not sufficiently specific and is in fact partially contradictory. Under the proposed definition, the court would have to find the primary purpose of the design to be a "weapon". The word "weapon" is not anywhere defined. Then the "purpose" of the device would have to be "to momentarily stun, knock out or paralyze" the victim by the use of an electric shock. The purpose of the "device" might be difficult to ascertain since one meaning of the word "weapon" might well be much broader or perhaps different from the prohibited "purposes" included in the statute. Also, the electric shock which is given by an "electronic dart gun" is not actually given by the dart or projectile but by the battery contained in the handle. Therefore it is possible that "electronic dart guns" generally will not meet the statutory definitions contained in the instant bill.

For the foregoing reasons the bill should be disapproved.

Sincerely,

Lewis R. Friedman

LRF/pe

Multiple memorandum received from the State Comptroller dated MAY 12 1976 stating the following bill is of "No Interest" to the Department of Audit and Control.

Intro. No.	Print No.
S 11814	

The original memorandum filed with:

APPROVAL # 31

CHAPTER 264

LAWS OF 19 90 MEMORANDUM NO.

SENATE BILL 5301 ASSEMBLY BILL

5301

1989-1990 Regular Sessions

IN SENATE

May 10, 1989

Introduced by Sen. VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to offenses involving electronic stun guns

IN THE ASSEMBLY BY A.5398-A Conners (ms)

DATE RECEIVED BY GOVERNOR:

6/19/90

ACTION MUST BE TAKEN BY:

6/26/90

DATE GOVERNOR'S ACTION TAKEN:

JUN 24 1990

000002

SENATE VOTE 50 Y 9 N

DATE 4·4·90

ASSEMBLY VOTE 120 Y 23 N

DATE 6/13/90

HOME RULE MESSAGE ___ Y ✓ N

BILL IS DISAPPROVED

DATE _____

COUNSEL TO THE GOVERNOR

S. 5301

NEW YORK STATE ASSEMBLY
TWO HUNDRED THIRTEENTH SESSION

REPRINT
DATE: 06/13/90

DATE: 06/13/1990
TIME: 05:39:04 PM

BILL: S5301 (A5398-A) R.R. NO: 554 SPONSOR: VOLKER

Includes possession of an electronic stun gun within crime of criminal possession of a weapon in the fourth degree

Y	Abbate PJ	Y	Gantt DF	NAY	Ortloff C
Y	Abramson E	Y	Genovesi AJ	Y	O'Shea CJ
NAY	Anderson RR	Y	Gottfried RN	Y	Parment WL
Y	Balboni MA	Y	Graber VJ	Y	Parola FE
Y	Barbaro FJ	Y	Grannis A	Y	Passannante WF
Y	Barnett HW	ABS	Green RL	Y	Pataki GE
Y	Barraga TF	Y	Greene A	Y	Pheffer AI
Y	Becker GR	Y	Griffith E	Y	Pillittere JT
NAY	Behan JL	Y	Harenberg PE	Y	Pordum FJ
Y	Bennett LE	ABS	Harris GH	NAY	Prescott DW
Y	Bianchi IW	Y	Hasper J	Y	Proskin AW
Y	Bonacic JJ	Y	Hawley RS	NAY	Proud G
Y	Boyland WF	Y	Healey PB	NAY	Rappleyea CD
NAY	Bragman MJ	EOR	Hevesi AG	Y	Reynolds TM
Y	Brennan JF	Y	Hikind D	Y	Robach RJ
Y	Brodsky RL	Y	Hill EH	Y	Rosado D
Y	Brown HC	Y	Hillman MC	Y	Saland SM
Y	Bush WE	Y	Hinchey MD	Y	Sanders S
Y	Butler DJ	Y	Holland JR	Y	Sawicki J
Y	Canestrari RJ	Y	Hoyt WB	Y	Schimminger RL
NAY	Casale AJ	Y	Jacobs RS	Y	Schmidt FD
Y	Catapano TF	Y	Jenkins C	Y	Seabrook L
NAY	Chesbro RT	Y	Kaufman SB	NAY	Sears WR
Y	Clark BM	Y	Keane RJ	Y	Seminerio AS
Y	Cochrane JC	NAY	Kelleher NW	Y	Siegel MA
Y	Colman S	Y	King RL	Y	Silver S
Y	Connelly EA	Y	Koppell GO	Y	Singer CD
Y	Conners RJ	Y	Lafayette IC	Y	Straniere RA
Y	Conte JD	EOR	Larkin WJ	Y	Sullivan EC
Y	Cooke AT	Y	Lasher HL	Y	Sullivan PM
NAY	Coombe RI	NAY	Leibell VL	Y	Sweeney RK
Y	Crowley J	Y	Lentol JR	Y	Tallon JR
NAY	D'Andrea RA	Y	Lopez VJ	NAY	Talomie FG
Y	Daniels GL	Y	Luster MA	NAY	Tedisco J
Y	Davidsen DR	Y	Madison GH	Y	Tocci RC
Y	Davis G	Y	Marshall HM	Y	Tokasz P
Y	Dearie JC	Y	Martinez I	Y	Tonko PD
Y	Del Toro A	Y	Mayersohn N	EOR	Vann A
Y	Diaz HL	Y	McCann JW	Y	Vitaliano EN
Y	DiNapoli TP	Y	McGee PK	NAY	Warren GE
Y	Dugan EC	NAY	Miller RH	Y	Weinstein HE
NAY	Eannace RJ	Y	Murphy MJ	Y	Weisenberg H
Y	Eve AO	Y	Murtaugh JB	Y	Weprin S
Y	Farrell HD	Y	Nadler J	Y	Wertz RC
Y	Faso JJ	EOR	Nagle JF	NAY	Winner GH
Y	Feldman D	Y	Nolan CT	Y	Yevoli LJ
Y	Flanagan JJ	Y	Norman C	Y	Young GP
Y	Friedman G	NAY	Nortz HR	Y	Zaleski TM
NAY	Frisa D	Y	Nozzolio MF	Y	Zimmer MN
Y	Gaffney RJ	NAY	O'Neil JG		Mr. Speaker

YEAS: 120 NAYS: 23

CONTROL: 35526004 CERTIFICATION: /S/ FRANCINE M. MISASI
CLERK OF THE ASSEMBLY

LEGEND: Y=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT, ELB=EXCUSED FOR LEGISLATIVE BUSINESS, EOR=EXCUSED FOR OTHER REASONS.

1990

SENATE JOURNAL
APR 4 - 1990
PAGE 16

SENATE

The Senate Bill
by Sen. VOLKER Calendar No. 296 Senate No. 5301
Assem. Rept. No.
Entitled: "

An act to amend the penal law, in relation to offenses involving electronic stun guns

DEBATE WAS HAD THEREON

"was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	17	Mr. Babbush			21	Mr. Markowitz	
	33				58	Mr. Masiello	
	43	Mr. Bruno			46	Mr. McHugh	
	25	Mr. Connor			23	Mr. Mega	
	40	Mr. Cook			30	Mrs. Mendez	
	61	Mr. Daly			22	Ms. Montgomery	
	47	Mr. Donovan			42	Mr. Nolan	
	44	Mr. Farley			27	Mr. Ohrenstein	
	31	Mr. Galiber			14	Mr. Onorato	
	13	Mr. Gold			36	Mrs. Oppenheimer	
	32	Mr. Gonzalez			11	Mr. Padavan	
	37	Mrs. Goodhue			29	Mr. Paterson	
	26	Mr. Goodman			54	Mr. Perry	
	39	Mr. Gray			56	Mr. Present	
	18	Mr. Halperin			55	Mr. Quattrociocchi	
	6	Mr. Hannon			41	Mr. Rolison	
	48	Ms. Hoffmann			50	Mr. Seward	
	10	Mr. Jenkins			60	Mr. Sheffer	
	4	Mr. Johnson			9	Mr. Skelos	
	53	Mr. Kehoe			20	Miss Smith	
	52	Mr. Kuhl			19	Mr. Solomon	
	2	Mr. Lack			35	Mr. Spano	
	1	Mr. LaValle	EXCUSED		57	Mr. Stachowski	
	28	Mr. Leichter			45	Mr. Stafford	
	38	Mr. E. Levy			12	Mr. Stavisky	
	8	Mr. N. Levy			3	Mr. Trunzo	
	51	Mr. Libous			7	Mr. Tully	
	49	Mr. Lombardi			34	Mr. Velella	
	15	Mr. Maltese			59	Mr. Volker	
	24	Mr. Marchi			16	Mr. Weinstein	
	5	Mr. Marino					

AYES 50
NAYS 9

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

1990

SENATE JOURNAL
MAR 3 0 1990
PAGE 27

SENATE

The Senate Bill
by Sen. VOLKER Calendar No. 296 Senate No. 5301
Entitled: " Assem. Rept. No.

S. 5301 VOLKER

An act to amend the penal law, in relation to offenses involving electronic stun guns

"was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

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	1	Mr. LaValle			57	Mr. Stachowski	
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	8	Mr. N. Levy			3	Mr. Trunzo	
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	49	Mr. Lombardi			34	Mr. Velella	
	15	Mr. Maltese			59	Mr. Volker	
	24	Mr. Marchi			16	Mr. Weinstein	
	5	Mr. Marino					

AYES 55

NAYS 0

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

SB

C-2604

S-5301

B-203 (12/75) BUDGET REPORT ON BILLS Session Year 1990

SENATE NO RECOMMENDATION ASSEMBLY

No. 5301 No.

Law: Penal Law

Title: AN ACT to amend the above law, in relation to offenses involving electronic stun guns

The above bill has been referred to the Division of the Budget for comment. After careful review, we find that the bill has no appreciable effect on State finances or programs, and this office does not have the technical responsibility to make a recommendation on the bill.

We therefore make no recommendation.

Senator Dale M. Volker

S. 5301

MEMORANDUM IN SUPPORT

An Act to amend the penal law, in relation to offenses involving electronic stun guns

Purpose

This bill would make the possession of an electronic stun gun a crime. Stun guns would be put in the classification as a weapon.

Summary of Provisions

Adds a new subdivision 15(c) of the Penal Law, as added by Chapter 217 of the Laws of 1976 and amends subdivision 1 of Section 265.01 of the Penal Law, as amended by Chapter 220 of the Laws of 1988, to include electronic stun gun. Posession of an electronic stun gun would be a criminal offense in the fourth degree.

Justification

Stun guns, which are described as hand-held weapons that administer high-voltage, low-amperage charges, have shown up across the State in a variety of confrontational circumstances, such as experienced by police officers in domestic disputes. Local police previously have had no cause of action when faced with stun guns. This legislation will alleviate past problems and allow officers to make an arrest for possession.

Effective Date

The first day of November after it becomes law.

A.5398-A

New York State Assembly
Memorandum in Support of Legislation
submitted in accordance with Assembly Rule III, para.1.(e)

Bill Number: A.5398A S.5301A

/ / memo on original draft
/x / memo on amended bill

Sponsors: Members of Assembly: Richard J. Conners

Senators: Dale Volker

Introduced at the request of: _____

Title of Bill: AN ACT to amend the penal law,in relation to offenses involving electronic stun gun.

Purpose or General Idea of Bill: This bill would make the possession of an electronic stun gun a crime. Stun guns would be put in the classification as a weapon.

Summary of Specific Provisions: Section 265,01 of the penal law is amended by adding a new subdivision 15c and subdivision 1 of section 265.01 of the penal law, as amended by Chapter 220 of the Laws of 1988 is amended.

Effects of Present Law Which This Bill Would Alter: Possession of an electronic stun gun would be a criminal offense in the fourth degree.

Justification: During August 18, 1988 a county worker shocked two fellow female co-workers with an electrical stun gun. A stun gun is a hand-held weapon that administers a high-voltage, low-amperage charge, either by placing it directly on the victim's body or through wires attached to date that are fired at the victim. Current state law does not specifically outlaw stun guns used in this incident.

Prior Legislative History:1989:A5398A: Cal. #197
S5301A:Rules

Fiscal Implications for State and Local Government: None

Effective Date: The first day of November next succeeding the date on which it shall have become law.

SB

S-5301

THE SENATE
STATE OF NEW YORK
ALBANY 12247

DALE M VOLKER
59TH DISTRICT
CHAIRMAN
COMMITTEE ON CODES

PLEASE RESPOND

☐ ALBANY OFFICE
ROOM 609
LEGISLATIVE OFFICE BUILDING
ALBANY NEW YORK 12247
518 455 3471

☐ DISTRICT OFFICE
5314 BROADWAY
LANCASTER NEW YORK 14086
716 681 3373

June 18, 1990

Hon. Evan A. Davis
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12224

Re: S.5301

Dear Mr. Davis:

This is in response to your request for comment on the above-referenced legislation pending before the Governor for approval, and to submit the enclosed memorandum in support of the bill.

Senator Volker urges the Governor's approval, and I hope you will feel free to contact me if I can be of any assistance to you or your staff in preparing your recommendation. Please keep in mind that the Governor, as part of his 1990 legislative program, also sought to ban electronic stun guns.

Sincerely,

Kenneth J. Connolly
Counsel

KJC:ho
Enc.

SB

S. 5301

RICHARD J. CONNERS
104th District
Most of the City of Albany
Towns of Guilderland and New Scotland

CHAIRMAN
Committee on Veterans Affairs

Room 524 State Capitol
Albany, New York 12248
(518) 455 4178

FAX #(518) 455 5737

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

June15, 1990

The Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber - Room 225
State Capitol

Re: S-5301 - Volker
A-5398A- Conners

AN ACT to amend the penal law, in relation to offenses involving electronic stun gun

Dear Counsel Davis:

Both Houses of the Legislature have passed S.5301 (Volker) and A.5398A in the Assembly by the writer of this letter. It is a bill which defines "electronic stun gun", as any device designed primarily as a weapon, the purpose of which is to stun, cause mental disorientation, knock out or paralyze a person by passing a high voltage electrical shock to such person; makes possession of such weapon a Class A misdemeanor of criminal possession of a weapon in the 4th degree. Criminal sanction impact,

The bill is supported by the Police Conference of New York, Inc. representing more than 200 Police Benevolent Associations throughout the State of New York and urges its enactment into law.

The direct issue came about on August 17, 1988 when an Albany County worker shocked two girls with an electrical stun gun. Police arrested Mark L. Rooney at his office at the Albany County Real Property Tax Service in mid-afternoon after two female workers complained that Rooney had given them shocks and burns on their hips and buttocks. Rooney was arrested and arraigned in City Police Court on two counts of assault and a count of criminal possession of a weapon. The victims told police that Rooney came up behind them separately at the office on Monday and Tuesday afternoons and placed the six-inch stun gun on their bodies, delivering electrical charges. The stun gun delivers about 1200 volts of electricity, an amount which is painful, but not very often too harmful.

...

Under the right conditions, however, a stun gun charge could be fatal. People wearing cardiac pacemakers or with subtle heart conditions can suffer irregular heart beats after receiving electrical shocks of this high voltage. Dectective Captain William Murray of the Albany Police Department said the risk could also apply to people who abuse cocaine or amphetamines. Captain Murray said the recipient is altering their heart rate chemically, so a severe shock could affect them.

For this reason, after debate, the bill passed the Assembly by a vote of 120 to 23 and was sponsored in the Assembly by both the undersigned and Arnold Proskin of Colonie. We hope that you can see fit to recommend the Governor's approval for this effort to cut down on possible harmful usage as sub-division I 265.01 of the Penal Law (as amended by Chapter 220) of the Laws of 1988. If approved, the bill would take effect the first day of November next succeeding the date on which it shall have become a law.

With every best wish, I am

Sincerely,

Richard J. Conners
Assemblyman

STATE OF NEW YORK
APR 4 - 1990
IN SENATE

The Senate bill No. 5301

Entitled:

AN ACT to amend the penal law, in relation to offenses involving electronic stun guns

was recalled from the Assembly by concurrent resolution.

On motion of Senator VOLKER and by unanimous consent,

the same was ordered returned to the Assembly for concurrence.

By order of the Senate,

Stephen F. Shaw

Secretary

FORM : # 73-A Senate bill recalled from the Assembly
Returned - No action

STATE OF NEW YORK
MAR 30 1990
IN SENATE

1125

STATE OF NEW YORK

IN SENATE

By Senator VOLKER

Resolved (if the Assembly concur), that the Assembly return to the Senate, the Senate Bill No. 5301 for the purpose of amendment. ~~substitution.~~

(Insert Title)

By order of the Senate,

Stephen F. Adams

Secretary

IN ASSEMBLY

MARCH 30, 1990

19

Concurred in without amendments.

By order of the Assembly,

Francine M. Misasi

Clerk

Form No. 26-A – Recall Senate Bill from Assembly

SB

c-214

S-5301

LEONARD G DUNSTON
DIRECTOR

NEW YORK STATE EXECUTIVE DEPARTMENT
DIVISION FOR YOUTH
84 HOLLAND AVENUE
ALBANY, NEW YORK 12208

CHARLES M DEVANE
EXECUTIVE DEPUTY DIRECTOR

June 20, 1990

The Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Davis:

Re: S.5301. AN ACT to amend the penal law, in relation to offenses involving electronic stun guns

The Division for Youth SUPPORTS this legislation.

This bill would amend the definitional section of Article 265 of the Penal Law (§265.00) by adding a new subdivision 15-C which would define the term "electronic stun gun." The bill would also amend subdivision one of Penal Law §265.01 to make possession of an electronic stun gun per se a criminal possession of a weapon.

The bill should deter acquisition of such weapons and enhance their removal from the general population.

Sincerely,

William F. Pelgrin
General Counsel

B

C-264 S-5301

STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
60 SOUTH PEARL STREET
ALBANY NY 12207 1596
(518) 474 1416

CHAIRMAN
WILLIAM G McMAHON

COMMISSIONERS

DEBORAH A REYES

June 20, 1990

Hon. Evan A. Davis, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: AN ACT to amend the penal law, in relation to offenses involving electronic stun guns

Dear Mr. Davis:

The Commission of Correction supports this bill which would make possession of an electronic stun gun a crime. Currently, Penal Law section 265.00(15-a) prohibits possession of an "electronic dart gun," but is limited by definition to devices utilizing a "dart" or "projectile." A stun gun, which produces a result similar to that of an electronic dart gun, does not utilize a dart or projectile. This bill would address this omission and ensure that possession of stun guns is also proscribed.

Thank you for the opportunity to comment on this proposal.

Very truly yours,

Gloria Herron Arthur

Gloria Herron Arthur
Counsel

SB

C-264

S-5301

MEMORANDUM

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES

TO: Evan A. Davis
Counsel to the Governor

FROM: M. Dawn Herkenham MDH
Counsel, Division of Criminal Justice Services

SUBJECT: Senate Bill Number 5301

DATE: June 21, 1990

This is in response to your request for comment on the above-entitled legislation which would amend sections 265.00 and 265.01(1) of the Penal Law to define and make unlawful the possession of an electronic stun gun.

An "electronic dart gun" is defined by section 265.00 (15-a) of the Penal Law and its possession is punishable as the class A misdemeanor of criminal possession of a weapon in the fourth degree under Penal Law §265.01(1). As presently defined, however, such a device must produce its effect by means of a dart or projectile. The bill would add a new definition for an "electronic stun gun" which passes a high voltage shock to a person by any means and would similarly proscribe its possession at the class A misdemeanor level. While the measure should have no direct impact on the operations of the Division of Criminal Justice Services, the proscription of such stun guns would remove an oversight in present law and reduce the use of these dangerous items. Accordingly, the Division of Criminal Justice Services supports approval of this legislation.

Thank you for the opportunity to comment on this legislation.

A. 5398-A
S. 5301

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES
60 SOUTH PEARL STREET
ALBANY, NEW YORK 12207-1595

MARIO M. CUOMO
Governor

EDMUND B. WUTZER
State Director

MEMORANDUM

TO: EVAN A. DAVIS
Counsel to the Governor

FROM: LINDA J. VALENTI
Counsel

DATE: June 18, 1990

RE: A. 5398-A

This memorandum is in response to your recent request for the Division of Probation and Correctional Alternatives' comments on the above-referenced legislation, which would amend Section 265.00 of the Penal Law to include a definition of electronic stun gun and amend Section 265.01 of such law to establish that any person possessing this weapon may be convicted of criminal possession of a weapon in the fourth degree.

In view of the potential health and safety concerns surrounding possession of an electronic stun gun and that it is dissimilar in some respects to an electronic dart gun, which is already outlawed, the Division supports making possession of an electronic stun gun a crime. Accordingly, the Division recommends that the Governor sign A. 5398-A into law.

cc: Sean Byrne

S B

S- 5301

Memorandum

June 18, 1990

TO: Evan A. Davis, Esq.
Counsel to the Governor

FROM: Glenn Valle, Counsel

SUBJECT: TEN DAY BILL COMMENT - SENATE 5301

The Division of State Police supports this legislation.

cc: Sean M. Byrne, Esq.
Counsel to the Director of Criminal Justice

SB

C 264

S 5301

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PAROLE

RAMON J. RODRIGUEZ
CHAIRMAN

97 CENTRAL AVENUE
ALBANY, NY 12206

22 June 1990

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, N.Y. 12224

RE: S.5301 - AN ACT to amend the penal law, in relation to offenses involving electronic stun guns

Dear Mr. Davis:

I am in receipt of your recent request for the Division of Parole's analysis, comments, and/or recommendations concerning the above referenced legislation.

Please be advised that the Division supports this legislation and recommends that it be approved. This bill amends Penal Law by adding the definition of an "electronic stun gun" to §265.00 and by adding an "electronic stun gun" to the list of weapons contained in §265.01.

The purpose of these changes is to make the mere possession of an "electronic stun gun" illegal. Proof of such possession will, in and of itself, suffice to establish commission of a crime. Since this weapon has proven to be extremely dangerous, this statutory change is warranted. Therefore, the Division supports this legislation and urges the Governor to approve it.

If you have any questions regarding these comments, please do not hesitate to contact me.

Very Truly Yours,

Ann Horowitz
Counsel

S.5301

A.5395-A

C-264

BOARD MEMBERS
ANGELO PETROMELIS, Chairman
DIANE McGRATH-McKECHNIE
GENNARO A. FISCHETTI

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CRIME VICTIMS BOARD
845 CENTRAL AVENUE, ROOM 107
ALBANY, NEW YORK 12206-1588
(518) 457-8727

MEMORANDUM

TO: Evan A. Davis
Counsel to the Governor

FROM: Lorraine Felegy
Counsel, Crime Victims Board

RE: S.5301 - AN ACT to amend the penal law, in relation to offenses involving electronic stun guns

DATE: June 25, 1990

Recommendation: Support

Comment: This bill makes possession of an electronic stun gun a crime. As there is no legitimate purpose for individual use of such weapons, criminalizing possession will allow appropriate intervention.

/jt

S.5301

STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N.Y. 12226

THOMAS A. COUGHLIN III
COMMISSIONER

ANTHONY J. ANNUCCI
DEPUTY COMMISSIONER AND COUNSEL

June 18, 1990

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: S.5301

Dear Mr. Davis:

This bill would amend the penal law, in relation to offenses involving electronic stun guns.

The Department of Correctional Services has no objection to the approval of this legislation.

Very truly yours,

Anthony J. Annucci
Deputy Commissioner
and Counsel

AJA/tmd/21
cc: Sean Byrne, Esq.

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

JUL 23 1990

MEMORANDUM filed with Senate Bill Number 5301, entitled:

CHAPTER 264
APPROVAL #31

"AN ACT to amend the penal law, in relation to offenses involving electronic stun guns"

A P P R O V E D

This bill, which is part of my 1990 Legislative Program, defines and makes criminal the possession of an electronic stun gun. The possession of an electronic dart gun constitutes the crime of criminal possession of a weapon in the fourth degree under existing law, but the definition of that device requires the passage of an electrical shock by means of a dart or projectile.

The availability and use of an equally dangerous weapon which passes a high voltage electrical shock to a person by means of direct contact or without resort to a projectile pose the same threat to New Yorkers. The possession of an electronic stun gun merits a criminal sanction identical to that applicable to the possession of an electronic dart gun and the bill accords such treatment to those weapons.

Approval of the bill is recommended by the Division of State Police, the Division of Criminal Justice Services, the Division of Probation and Correctional Alternatives and the Police Conference of New York, Inc.

The bill is approved.

S. 5301

C-264

A. 5398-A

POLICE of NEW YORK INC CONFERENCE

EDWARD W. GUZDEK, PRESIDENT
POLICE CONFERENCE OF NEW YORK
[illegible]

METROPOLITAN POLICE CONFERENCE INC. N.Y.

PAUL D. CAROZZA, PRESIDENT
METROPOLITAN POLICE CONFERENCE OF NEW YORK STATE
[illegible]

June 14, 1990

Honorable Evan A. Davis
Counsel to the Governor
State Capitol
Albany, New York 12244

Re: S. 5301 - Introduced by Senator Volker
A. 5398-A - Introduced by Member of the Assembly Conners

An act to amend the Penal Law, in relation to offenses involving electronic stun guns

Dear Mr. Davis:

The Metropolitan Police Conference of New York State, Inc. and the Police Conference of New York, Inc., a coalition of the largest organizations representing law enforcement throughout New York State, strongly supports this legislation which would make the possession of an electronic stun gun a crime.

This bill would add a new subdivision 19 to Section 265.00 of the Penal Law defining the term "Electronic stun gun." The definition would embrace weapons which project a high voltage electrical charge which stuns, knocks out, paralyzes, or causes disorientation in a person against whom it is used. There is currently no existing law prohibiting the possession of an electronic stun gun.

Since there has been a dramatic increase in the use of stun guns, this bill would redress the exclusion of stun guns from the Penal Law Weapons Prohibition. Since there is no rational basis for permitting the possession of a stun gun, on behalf of our combined memberships, we urge your support in signing this legislation into law.

Respectfully submitted,

Paul D. Carozza

PAUL D. CAROZZA, President
METROPOLITAN POLICE CONFERENCE

Edward W. Guzdek

EDWARD W. GUZDEK, President
POLICE CONFERENCE OF NEW YORK

FLOYD HOLLOWAY, Joint
Legislative Chairman

JOHN LALONDE, Legislative
Co-Chairman

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S.5301

POLICE CONFERENCE *of New York, Inc.*
Union of Police Officers

Executive Offices: 112 State Street—Suite 1120, Albany, New York 12207
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Founded in 1925

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JAMES B. TUTTLE, Counsel
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GUS DANESE, Sgt.-at-Arms

SUPPORT

AN ACT TO DEFINE "ELECTRONIC STUN GUN" AS ANY DEVICE DESIGNED PRIMARILY AS A WEAPON, THE PURPOSE OF WHICH IS TO STUN, CAUSE MENTAL DISORIENTATION, KNOCK OUT OR PARALYZE A PERSON BY PASSING A HIGH VOLTAGE ELECTRICAL SHOCK TO SUCH PERSON; MAKES POSSESSION OF SUCH WEAPON A CLASS A MISDEMEANOR OF CRIMINAL POSSESSION OF A WEAPON IN THE 4TH DEGREE. CRIMINAL SANCTION IMPACT.

S-5301 BY VOLKER/A-5398A BY CONNERS

THE POLICE CONFERENCE OF NEW YORK, INC., REPRESENTING OVER 200 PBA'S THROUGHOUT THE STATE OF NEW YORK, SUPPORTS THE ABOVE ENTITLED LEGISLATION AND URGES ITS ENACTMENT INTO LAW.

John E. Lalonde

JOHN E. LALONDE
PCNY LEGISLATIVE CHAIRMAN

2-13-90

000024

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

AVITABILE et al,

Plaintiff,

V 16-CV-01447

CUOMO et al,

Defendants.

_____/

DEPOSITION OF: MATTHEW AVITABILE

DATE: July 26, 2018

LOCATION: Albany, New York

TAKEN BY: Counsel for the Defendants

Avitabile v Cuomo - 7-26-2018 - Matthew Avitabile

APPEARANCES:

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OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
BY: MICHAEL McCARTIN

The Capitol
Albany, New York

I N D E X O F P R O C E E D I N G S

MATTHEW AVITABILE; Sworn
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STIPULATIONS

It is HEREBY STIPULATED by and among the attorneys for the respective parties, in accordance with the Federal Rules of Civil Procedure, that this deposition may be taken by the Defendant at this time, pursuant to subpoena;

FURTHER STIPULATED, that all objections except as to the form of the questions and responsiveness of the answers, be reserved until trial;

FURTHER STIPULATED, that the witness may read and sign the deposition and make any corrections to same before any Notary Public;

AND FURTHER STIPULATED, that if the original deposition has not been duly signed by the witness and returned to the attorney taking the deposition by the time of trial or any hearing in this cause, a certified copy of the deposition may be used as though it were the original

Avitabile v Cuomo - 7-26-2018 - Matthew Avitabile

(The deposition commenced at 3:18 p.m.)

MR. MCCARTIN: All set.

THE REPORTER: I need to swear you in before we start. Give me just a second here.

Okay. Raise your right hand.

Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

MR. AVITABILE: Yes.

MATTHEW AVITABILE; Sworn

THE REPORTER: All right. Can you state your name for the record, please?

THE WITNESS: Matthew, M-A-T-T-H-E-W, Wayne, W-A-Y-N-E, Avitabile, A-V-I-T-A-B-I-L-E.

THE REPORTER: Thank you. I'm all set.

DIRECT EXAMINATION

BY MR. MCCARTIN:

Q. All right, sir. My name is Michael McCartin. I'm an Assistant Attorney General with the New York State Attorney General's Office and I represent Defendant Beach in this case. Good afternoon.

A. Pleasure to see you. Thanks for your time.

Q. Thank you. Could you tell me where

you live?

A. Middleburgh, New York.

Q. All right. And what's your address there?

A. 135 Maple Avenue.

Q. Okay. And what county is that in?

A. Schoharie.

Q. And what's your present employment?

A. A bit of everything.

Q. Okay.

A. Actually --.

Q. Why don't you just give me a rundown of that?

A. I'm the mayor of the Village of Middleburgh.

Q. Okay. And how long have you been mayor there?

A. Six years and, coming up in a couple days, four months.

Q. Okay.

A. I'm an adjunct professor, mostly of history, at SUNY Oneonta and SUNY Cobleskill. And I also own and operate a small-town newspaper called The Mountain Eagle.

Q. Mountain Eagle?

A. Uh-huh.

Q. Okay. And what do you do at The Mountain Eagle?

A. A better question might be what I don't do.

Q. What do you don't do?

A. A little bit of everything, delivery, advertising, subscriptions, writing, editorial. Due to the fact that I'm not seeking another term as mayor, the opportunity came up to purchase the paper, which my father moved to the area to work at about thirty years ago, so I bought it.

Q. Uh-huh. Are there term limits for mayor or did you decide you didn't want to pursue that?

A. Voluntary.

Q. Okay. Okay.

A. I figure get out while they still like me.

Q. That sounds good. For local government, that's ideal.

A. Absolutely.

Q. You got to live there, so --.

A. Uh-huh.

Q. Now you said that you were a history professor, as well?

A. Yes.

Q. How long have you been a history professor?

A. Overall, eight years.

Q. Okay. And over the past ten years of employment, have you -- have you not mentioned something that you've been employed at yet, in the past ten years? Or is that --?

A. I have a whole gamut. I probably have like six or seven other jobs. If you need to know all of them, I'll tell you but --.

Q. Yeah. I mean, just outline them. What kind of employment?

A. A little more than ten years ago, I worked right next door in the Assembly Building.

Q. Okay.

A. I did a summer with the Assembly -- then Assemblyman Peter Lopez. That summer and the following summer, I worked -- I was a gas station attendant. I was a cashier. Three years in a row, I worked as tutor for the Educational Opportunity Program at SUNY Oneonta. I did a couple different things with them.

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I was a tutor -- no, that would have been more than ten years ago now.

I got to know Alan because I -- I do some writing with a lawyer in California. Just some like, hey I need this on my website, can you write it down for me? I do other writing on the side, just like, general informational writing. I -- there's a couple other that I'm forgetting. I was a trustee on the village board before I was mayor. What else have I been doing? I've done just about everything.

Q. Okay.

A. The -- there's probably a few more that I forgot, but in the last ten years that's the gist of it.

Q. All right. That sounds good. Now this is probably -- I probably know the answer to this, but I have to -- ask it anyways. Ever been convicted of a crime? A misdemeanor or a felony?

A. Nothing.

Q. Okay. And that includes a domestic violence crime. You've never been convicted of a domestic violence crime --

A. Nothing.

Q. -- fair to say?

MR. STAMBOULIEH: I'm sorry. Just one point of housekeeping. If you'd let him finish his questions, so the court reporter can get everything on the record --

THE WITNESS: Of course.

MR. STAMBOULIEH: -- because it gets a little confusing. So let him finish his question and then answer it, if you would.

THE WITNESS: Of course. I'm sorry, Mike.

MR. STAMBOULIEH: That's fine.

MR. MCCARTIN: No problem. I appreciate that.

BY MR. MCCARTIN: (Cont'g.)

Q. Have you ever been deemed by a mental health professional to have a mental illness such that it would prevent you from having possession of firearms under New York State Law?

A. None.

Q. Okay. Do you have any military history in your background?

A. None.

Q. Okay. Are you a member of the N.R.A.?

A. I -- I actually just rejoined, yes.

Q. Okay. When did you first join with

the N.R.A.?

A. It was, I believe, July -- July -- summer of 2012. Actually, it was upon recommendation of Congressman Gibson. We were at a fair event and he recommended I do it. I let it lapse because I don't make very much money. And sometime this year, I forget, a couple of months ago, I rejoined.

Q. And are you a member of the Firearms Policy Coalition?

A. No.

Q. No? Any other membership in any other kind of firearms organizations?

A. No.

Q. Ever been any kind of officer in any firearms organizations, including the N.R.A.? Or is it just members -- membership?

A. Regular basic membership.

Q. Okay. What kind of activities do you do with the N.R.A., if any?

A. None. I send them a check and they mail me a gift and that's about it.

Q. Okay. All right. Do you or have you ever owned any firearms?

A. Yes.

Q. Okay. Do you own a handgun or --?

A. No. I'm sorry.

Q. That's fine. Or have you ever owned a handgun?

A. No and no, I have not ever owned one.

Q. Okay. How about a rifle?

A. Yes.

Q. Okay. And how about a shotgun?

A. Yes.

Q. And when did you first purchase a rifle?

A. The first rifle I purchased was, I'm trying to remember the date, 20 -- I believe it was around 2010.

Q. And do you presently own a rifle?

A. Yes.

Q. Okay. And how many rifles do you own?

A. Three.

Q. Three? And what -- what type of rifles are they?

A. All bolt-action.

Q. And you mentioned you own -- owned a shotgun. Do you presently own a shotgun?

A. Yes, I do. I have a pump-action

shotgun.

Q. And how many shotguns do you own?

A. Just one.

Q. Just one. Twelve-gauge?

A. Yes.

Q. Have you ever fired a firearm?

A. You're speaking of a rifle or a pistol or a shotgun?

Q. You -- that's correct.

A. Yes.

Q. And well for -- to begin with, have you ever fired a handgun?

A. No.

Q. Okay. Your rifle, are -- are you a hunter by any chance?

A. No.

Q. No?

A. I -- I just never got into it.

Q. Okay. When would you fire a rifle or a shotgun? Do you go to target practice or things like that?

A. Uh-huh. General --.

Q. Is that a yes?

A. Yes, that was a yes. But generally,

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once or twice a year for target practice.

Q. And did you go to a firing range or where -- how do you go about --?

A. Not necessarily a proper firing range, but one -- target practice often in Fred's property.

Q. Okay. And you mentioned that you do that up to three times a year?

A. I would say on average about once or twice.

Q. Once or twice. Do you presently have the firearms, the rifles -- the three rifles and the one shotgun, in your own home now?

A. Yes.

Q. Okay. And who lives with you at your home?

A. I'm actually in a little bit of flux. One of my close friends lives with me and he's moving out, so perhaps for simplicity, because he's in the process, I'm going to say I live alone.

Q. Okay. Would you ever use a firearm to defend your home?

A. I would certainly hope not to, but if -- if a situation ever occurred that I felt it necessary, I would do so in compliance with state law.

Q. And so you would use your rifle or your shotgun if circumstances presented themselves such that you had to defend your home? You would, in fact, use your rifle or shotgun?

A. Only if absolutely necessary.

MR. STAMBOULIEH: And I would just object to the form of the question, but you answered.

THE WITNESS: Oh, pardon me.

MR. STAMBOULIEH: You're fine.

BY MR. MCCARTIN: (Cont'g.)

Q. What kind of ammunition do you have for your rifle and your shotgun?

A. Two of the rifles are twenty-twos, one is an eight-millimeter, and the shotgun is twelve-gauge.

Q. And are they all lethal forms of ammunition? I'm not sure if you have -- have you ever dealt with non-lethal forms of ammunition? Or less lethal forms of ammunition?

A. Which -- I'm sorry, there were three parts of the question there.

Q. Yeah. Let me -- that's absolutely right. Let me ask you in a coherent form then.

Have you ever dealt with a less lethal form of ammunition?

A. Not to the best of my knowledge.

Q. Now I'm going to refer to conducted electrical weapons, C.E.W.s, including the Taser Pulse, by the generic term taser. Okay?

A. Okay.

Q. If a taser was legal, would you possess one in New York?

A. Yes.

Q. And why is it that you want to have a taser?

A. There's a number of different reasons, but I guess if -- if I had to choose one overriding one, it would be self-defense.

Q. And where would you want to use that taser for self-defense?

A. I would certainly hope nowhere. But of course, the -- the location that I would have it. So in accordance with state law, wherever I could carry it. I know that there -- right now it's a bit up in the air because they are not legal in New York State, so it's not clear whether I could carry it on campus or in the office, but certainly if it was legal in accordance with state law, I would do so in both locations, as well as my home.

Q. And any other reasons that you want to

have a taser?

A. Beyond that, there's a -- a series that interconnect with self-defense, the idea of having one if ever necessary to have one. It goes -- I think that I would answer it better with probably your next couple of questions.

Q. Well, no, I -- I just want to know, generally. I want to cover all of the reasons why you want to have a taser. And then -- then, we'll go from there.

A. Sure.

Q. I just wanted to -- to make sure I've gotten all your answers regarding that.

A. Okay. Stemming from self-defense, there's a couple of different aspects to it. Of course, one of the major portions is I would rather have it and never pull it out of my pocket or never pull it out of a drawer than not have it at a necessary time. It's a non-lethal form of self-defense, which is important to me. On top of that, it is portable and concealable. And that those three factors put together, I -- I'm trying to think of other, like, ancillary reasons, but as far as three larger reasons tied to self-defense, I would state all of those.

Q. Okay. Any other reasons that you haven't mentioned?

A. I can't think of -- I think they all tie into those three.

Q. Have you ever used a taser before?

A. No.

Q. Have you ever used a stun gun before?

A. No.

Q. Do you want to purchase a stun gun in New York if it were legal?

A. My preference would be a taser, but of course, if -- depending on how things shake out, I think that a stun gun would be on the -- on the table.

Q. In your estimation, how would a taser be an effective tool for you to defend your home?

A. There are a number of different factors, of course. Like I said earlier, portability plays a large factor, which is surprising even within one home -- one's home, how much portability has to do with keeping yourself and your -- any potential family members safe.

But on top of that, there are a number of issues that I foresee. One of the largest revolving around the firearms that I do own is that if a situation

came up that I would ever have to defend myself within my own home, the last thing I'd like to do is use lethal force. And having ammunition that is potentially lethal would be something that would be an absolute last resort. So if I could place any additional barriers between myself and using lethal force, I think it would -- it would make me more comfortable.

Q. So any kind of alternatives to lethal force, you would be open to considering?

A. I would be open to the most effective forms of non-lethal defense. And right now, the number one for me would most likely be a taser.

Q. In your estimation, how would a stun gun ever be an effective tool for self-defense in your home?

A. A stun gun's a bit different because of range and because of different factors related to it. I guess it would be that if -- if circumstances arose that a taser was unavailable, then that would be something that would make me feel more comfortable than having to load a rifle, which is something I hope never to do in anger or in self-defense.

Q. Are your rifles at home loaded?

A. No.

Q. What makes you think that a stun gun would be any more effective self-defense than, for instance, a baseball bat in your home?

A. I have a baseball bat due to baseball. And baseball bats, ultimately, are much more likely to break bones and if someone gets hit in the head, even unintentionally, it could wind up incapacitating them permanently or killing them. And if I had to choose between something that would put them on the floor and allow them to be picked back up by law enforcement, I would much rather do that than accidentally give someone brain damage.

Q. Okay. But right now, I'm asking you about stun guns.

A. Okay.

Q. What makes you think that a stun gun would be a more effective tool to defend your home than a baseball bat?

A. I think that the word that I would use, perhaps overriding effective, would be appropriate. That ultimately within my own home, I would certainly prefer to use something that would ultimately not cause further complications within the home, a bullet travelling through walls, pepper spray all over the room, God forbid

even blood. That I would rather use something that immobilizes the target, should need be, while also not carrying with it negative -- other negative ramifications. So I -- I -- I would say appropriate over effective on that front.

Q. All right. I -- I understand what you said there, referring to bullets and referring to pepper spray, but my question to you was what would make you think that a stun gun would be a more effective tool for defending your home than something like a baseball bat. And I'm specifically focusing on stun gun.

A. That's a difficult question to answer for the same reason that if someone asked me about a rifle, that a rifle can ultimately immobilize a target but come with so many negative ramifications that, while effective, it would not be appropriate for the circumstances I'd look to be in.

Q. Would you agree with me that a stun gun, in order for it to be effective, you have to be up on somebody directly in order to press the probes into the individual?

A. Any sort of melee weapon would be very similar.

Q. But a baseball bat, at least, can have

two or three feet between you and the -- the assailant?

A. Certainly but --.

Q. Would you agree with that?

A. I think it's the way that it's framed that ultimately if I'm within an arm's reach of anyone, whether it be a baseball bat, a stun gun, a taser, a pistol, it -- that sort of intimate quarters I think is, I don't know how to phrase it exactly, but almost irrelevant in the moment.

Q. And why do you feel it's irrelevant, though?

A. I teach history and one of the things that I show a lot of my students are videos of ancient battles, recreations. And they'll be historians, Victor Davis Hanson is a -- an interesting one, a classicist. It talks about this idea of ancient warfare, for the most part, involved if someone were to die on the field of battle, it usually involved this sort of proximity, this sort of difficulty of having to be close to someone in -- in terms of martial conflict.

Of course, there are examples like arrows and slings, but for the most part it would be so close and in such a moment, especially as adrenaline and instinct takes over, sometimes it's less relevant to an individual

how exactly it happens. And -- and to the point where if I'm that close, it becomes very difficult to parse hypotheticals in a moment I hope never occurs.

Q. Which would you feel is a more effective self-defense weapon or -- yeah, self-defense weapon? A stun gun or a baseball bat? In your home?

A. It depends on context. I would certainly think that they would both have their place within certain contexts of who is coming in, the circumstances, what room I was in, the level of threat to bodily -- excuse me -- bodily injury. I think without more -- dealing with such a hypothetical question, I would say they both have their own values that -- there are more variables at play that I can't decide just on one. I would prefer to have both, if need be.

Q. You would prefer to have the baseball bat and the stun gun?

A. Absolutely.

Q. Do you own any kind of knives other than your cooking knives?

A. I have a few pocket knives, utility knives. But apart from practical knives, no.

Q. If you were able to purchase a taser, would you plan on getting any kind of professional

instruction?

A. I would consider it. I think it's too early to state, especially with them being illegal. I'd have to see, basically, how convenient it was to me, the cost, a number of different factors. But I would strongly consider it.

Q. Do you presently own any type of what I'll generally refer to as pepper spray?

A. No.

Q. And why is that?

A. I don't know where I would purchase it, for starters. And beyond that, it hasn't come to mind very much.

Q. Well you have a desire to have a form of non-lethal self-defense in your home. Would you agree that pepper spray is a form of non-lethal self-defense?

A. I would say that it is a form of non-lethal self-defense, yes.

Q. Why have you not considered having pepper spray in your own home then?

A. Bear -- bear in mind I'm not an expert on -- on the field. I would say I know more about tasers and more about firearms than pepper spray, but one of the factors that I would consider is, of course, its potency

and in the State of New York it's diluted. It's not as powerful as, let's say, something I might be able to buy over the state border.

And wanting to be in compliance with state law, I'd want something that is effective and lethal -- or -- lethal, pardon me. Boy that was a -- a slip. Effective and legal. And something that is less effective, while New York State Law also bars me from getting something that I might consider a better fit for my home, makes it less likely that I would purchase it.

Q. Would you ever consider carrying pepper spray on your person on campus or at your office?

A. I -- I wouldn't rule it out, but it certainly wouldn't be my first choice.

Q. But to date, you haven't even basically researched where you could purchase pepper spray?

A. I've given it no serious consideration.

Q. Would you ever consider using pepper spray to defend your home in the future?

A. I wouldn't rule it out, but it -- it would certainly be towards the bottom of my list.

Q. And why is that?

A. There's a number of different factors. Dilution is one of them. Working in a public office or having to live in a home for -- as the question asked -- there is this risk of contamination. I wouldn't want to have anything that would have to be professionally cleaned. There's also an issue, of course, is of if you're in a relatively small room, will I accidentally hit someone else? If a window's open, will it blow back into my own eyes? I would say that all of those factors combined make it less likely that I would use it.

Q. I had mentioned less lethal forms of ammunition. I forget; did you say you've ever heard of them before?

A. Certainly. I mean, you turn on the news and there's sometimes protests or riots are broken up by rubber bullets. There's also different shotgun ammunition that includes almost like beanbags, so that it more disperses a crowd or pushes someone back rather than potentially killing them. So yeah, I would say I've heard of them.

Q. Okay. Is that the extent of your knowledge about those less lethal forms of ammunition? Anything else that you're aware of?

A. Nothing comes to mind and I've never

Avitabile v Cuomo - 7-26-2018 - Matthew Avitabile

fired it.

Q. All right. I'm going to mark this -- this first exhibit.

A. Okay.

Q. And you've seen this.

THE REPORTER: Going with letters?

MR. MCCARTIN: Yeah, we'll go with letters.

BY MR. MCCARTIN: (Cont'g.)

Q. All right. Let me hand to you what's marked as Exhibit A.

A. Thank you.

Q. Sure. Do you recognize this to be beanbag rounds that you've mentioned in your testimony?

A. If it didn't say it on there, I would assume that it would be, but I've never held one or seen one up close, personally.

Q. So you've never seen -- seen a photograph of a beanbag round or anything like that?

A. Maybe in passing like in a protest photo, but nothing like -- nothing of the nature like this.

Q. All right.

MR. MCCARTIN: Actually, off the record for a moment.

(Off the record)

(The deposition resumed.)

BY MR. MCCARTIN: (Cont'g.)

Q. The next thing I'd like to do is show you an exhibit that we'll ask to be marked as Exhibit B. We'll actually put the exhibit on the CD-ROM after the deposition's over, but the CD-ROM contains two videos and I'd like to show you those videos. We'll go off the record while we do that, so that there's no transcription problems. We don't need them transcribed. We'll just -- I just want to show you the videos and then discuss them with you afterwards.

A. Okay.

Q. Okay. So we'll go off the record as I show you Exhibit B, video one and video two.

(Off the record)

(The deposition resumed.)

BY MR. MCCARTIN: (Cont'g.)

Q. You've had an opportunity to review the two videos that are -- that are on Exhibit B there?

A. Yes.

Q. Would you like to review either of them again? Or --

A. Not --

Q. -- or is that sufficient?

A. -- not at this time. I believe it's sufficient.

Q. Okay. I just have a few questions for you to follow up on those videos. It seems to me that you have a -- a goal in mind in this -- in defending your home. One is to minimize the likelihood that you would use deadly force if someone were to break into your home, for instance. Would you agree with me that the forms of non -- or less lethal ammunition that you've seen in the videos there would be one alternative means of achieving that goal?

A. Based upon what I saw, I think that it -- in certain circumstances, it could be.

Q. And why do you say that?

A. There's a few questions that -- that come to mind, of course. In the videos, you saw they were using specially colored shotguns. I wasn't sure whether or not there would have to be something that would require a completely new setup, a completely new shotgun to fire. So ultimately, when I think of what I currently have, being unsure about whether the ammunition in the videos is appropriate for what I currently own, it's difficult for me to say whether it would be appropriate for the

circumstances within my home right now.

Q. But you do agree that it is a means of less lethal force that could be used in your home to defend it?

A. Hypothetically.

Q. Is that a yes?

A. I think there's too many circumstances for me to say, like, whether or not I would go through the process of buying another firearm to fire special ammunition. So I -- I would say the strongest I could say without more knowledge would be under the right circumstances.

Q. Okay. Along those lines, let me show you the next exhibit, Exhibit C.

MR. MCCARTIN: Can I have this marked?

BY MR. MCCARTIN: (Cont'g.)

Q. Let me show you Exhibit C.

A. Thank you.

Q. Sure. Take your time to look through it.

A. Okay.

Q. And I can represent to you that it's simply a download from American Specialty Ammo dot com, an internet dealer in less lethal forms of ammunition.

A. Very good.

Q. Okay. You've had an opportunity to look at Exhibit C?

A. Yes.

Q. And if you could use one of those or multiple forms in your own shotgun, your twelve-gauge shotgun, would that be a consideration that you would -- would that be something you would take into consideration to use to defend your home?

A. Yes, I would consider it.

Q. You would? And why -- why is that?

A. Again, going back to the last question regarding whether or not it would be useful within my shotgun, assuming that it may be, which we don't know at this point, I think that the more options the better, that ultimately, it's the same reason why I own both buckshot and slugs, that I would rather have different -- different options depending on different variables within my home.

Q. So would you agree that beanbag rounds like you've seen on the video today in Exhibit B and different forms of non-lethal ammunition are alternatives to lethal forms of ammunition that you presently own?

A. It could be under different circumstances.

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Q. And would you be willing to use those less lethal forms of ammunition to defend your home if -- if you needed to?

A. Under the -- depending on the circumstances, I would consider it.

Q. And under what considerations would you not use those types of non-lethal forms of ammunition?

A. There's a few in here that perked up my -- perked up my ears. There's one -- or a couple series revolving the use of pepper and it states that it would ultimately create a cone -- cone-shaped blast -- quote, cone-shaped blast of pepper powder, unquote -- or actually add to that, approximately eight feet in diameter twenty-five feet, unquote. Quote, recommended for outdoor use as the powder can become imbedded in carpet and furniture, unquote. I would certainly prefer not to use something like that.

At a future -- or -- one a little bit further states -- there's one on the last page stating, cannot ship to New York. That obviously would be a consideration. So again, it comes down to circumstances that ultimately some of these would be impractical for use in my home within New York State.

Q. Certainly. Any of that are prohibited

in New York, you wouldn't consider using?

A. Of course.

Q. Okay. But there are forms of non-lethal ammunition that are permitted in New York. Would you agree with that?

A. Yes.

Q. And you would consider using those to defend your home if need be?

A. Yes.

Q. And do you consider those to be an alternative to tasers as being a non-lethal form of self-defense in the home?

A. Again, it comes down to circumstance. There -- there are a number of tiers where ultimately a shotgun with lethal ammunition might be the appropriate instrument to use at a particular time. There are other drawbacks, of course, compared to a highly portable weapon. I would really prefer not to have a long arm to use for defense if a smaller portable, something I can carry on my person, is acceptable.

Q. Have you ever tried to get a pistol permit in New York?

A. I filled out the form and I decide -- I actually had to fill it out, twice. I decided not to

both times. Once was I had it filled out and the next week was a horrific flood that destroyed a lot of our community, so it fell off of my radar.

And I was considering it again and decided not to do it around the time of the SAFE Act's passing.

Q. And why would you not consider getting a pistol permit?

A. I would certainly like to have a pistol permit. I believe it might be an appropriate use of my time and resources, but New York State has made it, relative to other states, onerous for an average person, law abiding individual, to purchase one, compared to the large majority of states in the union.

Q. So it's -- it's too onerous for you to attempt to get a pistol permit?

A. I've decided that, in large part due to state law, that it might be worth my time to -- to wait in case I ever move out of the state, in case the SAFE Act is unconstitutional, in case it gets overturned, or if there are circumstances where my need is so large that I decide to get one. But as of right now, I've decided it's not a -- it's at the bottom of my priority list.

Q. You mentioned considerations of moving out of state.

A. Uh-huh.

Q. What considerations are you -- do you have right now of moving out of state? What -- what's the possibility of that?

A. In the near future, zero. I have to serve out my term. I have to run my newspaper. But in twenty or thirty years -- I'm eligible for a pension in twenty-two years -- twenty-one and a half years.

Q. So maybe Florida's in your future?

A. There's a ranch in Wyoming in my future where they have constitutional carry maybe, but as of -- as of tomorrow, as of 2018, 2019, the chances of me moving are effectively zero.

Q. Okay. You're going to be in Schoharie County for the foreseeable future?

A. For the duration, yes.

Q. Okay. All right. Was there anything on Exhibit C that you noticed that had any concern to you?

A. Beyond the two that I mentioned?

Q. Yes.

MR. STAMBOULIEH: Just object to form. If -- read it all again before you answer the question. Just make sure you understand what he's asking you.

THE WITNESS: Okay. If I may ask --?

BY MR. MCCARTIN: (Cont'g.)

Q. Let me direct your attention right to the -- the red line on page one and see if that had any concern.

MR. STAMBOULIEH: Go ahead. I was just having an off-the -- conversation.

A. Would you like me to read it for the record?

BY MR. MCCARTIN: (Cont'g.)

Q. You don't have to read it for the record -- well, yeah, go ahead and do that.

A. Okay.

Q. Why don't we do that?

A. In red, quote, all less lethal ammo has the potential to be fatal. Never use less lethal ammo as a joke or a prank. Even a blank has the ability to harm or kill.

Q. Irrespective of that warning there --

A. Okay.

Q. -- would you still consider using non -- or rather, less lethal forms of ammunition in your own shotgun to defend your home?

A. In certain circumstances, I would consider it.

Q. And is -- is it fair to say that you had also considered defending your home with a live firearm that shoots lethal forms of ammunition?

A. Under the appropriate circumstances and in compliance with state law, yes.

Q. Do you consider, based upon the video -- the two videos that you've seen here today, do you consider the less lethal beanbag rounds, for instance, that you've see for shotguns to be an adequate alternative to tasers and stun guns?

MR. STAMBOULIEH: Object to the form of the question.

A. Could you please rephrase?

BY MR. MCCARTIN: (Cont'g.)

Q. Sure. Do you consider beanbags, after viewing the video -- the two videos there that you've seen today, do you consider beanbags to be an adequate alternative to either tasers or stun guns?

A. I -- I believe it all comes down to circumstance. There might be a hundred different ways that something could go wrong within my own home and it might be appropriate in some of them, but not in most of them. Without more knowledge of what I might be facing, the circumstances of where certain objects are, the fact

that I don't keep any firearms loaded, and I would not keep them loaded, there's a lot to consider.

Q. Would you consider keeping a shotgun loaded with a less-than-lethal or less lethal form of ammunition? Would you consider that?

A. No, I would not.

Q. Why's that?

A. It would be to leave a weapon -- it goes right back to the basics of gun safety. To leave a weapon loaded without an immediate use is completely callous and it's something that I will never do.

Q. Would you consider having your shotgun easily available to you with the less lethal forms of ammunition easily available so that you could load them quickly?

A. Yes, as long as it was safe so that if someone else accidentally -- so long as it was safe for everything else other than myself, so that only perhaps I know where things were under lock and key.

Q. Would you keep the taser loaded with the probes at your -- at your home even -- well just, let me repeat the question.

A. Okay.

Q. Would you keep your taser loaded with

the probes?

A. I would have to -- of course, after using it and after practice, you know, there -- I would understand more about the utility of it, especially in the circumstances of my home, but the most likely scenario would be -- at least off of the top of my head, would be to do so safely. So I would say yes, perhaps in a -- a pistol safe.

Q. Just to be clear, despite the warning that less lethal ammunition can still be lethal, you would consider using it to defend your home?

A. Yes, I would consider it.

Q. Are you familiar with the Taser manufacturer, Axon? Is that how you pronounce that?

MR. BECK: Axion.

MR. STAMBOULIEH: No; it's Axon.

A. No. And if you told me another name, I would've believed you.

BY MR. MCCARTIN: (Cont'g.)

Q. Okay. Are you familiar that Axon has stated in official filings with the United States Government that its products -- Taser products can be deadly?

A. No, I was not --.

Q. You're not aware of that?

A. No.

Q. Would that change your opinion as to whether or not you'd want to possess a taser in your home?

A. I don't believe so.

Q. Okay. And why is that?

A. We had mentioned, or at least in Exhibit C, the idea of blanks being lethal. If a blank can be legal -- or lethal, excuse me, then ultimately a taser carries a similar risk. So I don't believe the -- the threshold of lethality with the taser is so low relative to live ammunition that it -- it becomes -- it's a significant consideration whether or not it would be lethal in most circumstances.

MR. MCCARTIN: I'm going to ask that this be marked as the next exhibit. We're not going to go through --.

THE WITNESS: I was going to say --.

MR. STAMBOULIEH: Is that their -- their --?

MR. MCCARTIN: There's their -- yes, it's --.

MR. STAMBOULIEH: Maybe we could just put a link to it or something.

MR. MCCARTIN: Here -- here's what I'm going to do.

MR. STAMBOULIEH: I mean, we'll -- we'll stipulate to whatever's in their S.E.C. filing for whatever we need.

MR. MCCARTIN: I --I have it down to three pages --

MR. STAMBOULIEH: Okay.

MR. MCCARTIN: -- that are relevant.

MR. STAMBOULIEH: Okay.

MR. MCCARTIN: Okay? So that's going to be marked -- I wanted -- I didn't want to just have the three pages.

MR. STAMBOULIEH: Okay. I got to --.

BY MR. MCCARTIN: (Cont'g.)

Q. So we're going to mark it and I'll let you look at it for as long as you want to look at it, but I'm going to focus your attention on three pages for the next exhibit.

A. Very good. Should --

Q. Okay.

A. -- I take that one?

Q. Yes.

A. Okay.

Q. So that's Exhibit D; right?

THE REPORTER: Yes.

BY MR. MCCARTIN: (Cont'g.)

Q. Okay. And let me give you Exhibit E, as well, as soon as that's marked, and you can compare the two.

MR. BECK: Do you have another copy? I'm just curious.

MR. MCCARTIN: I don't have another copy.

MR. BECK: Okay. Sorry.

A. I imagine this is a copy that I can hand to my attorneys?

MR. STAMBOULIEH: Sure. Sure. I'm going to look at it with you.

THE WITNESS: Okay.

MR. STAMBOULIEH: I mean I can download it on -- it's got a little web address on the bottom so --.

THE WITNESS: Okay.

BY MR. MCCARTIN: (Cont'g.)

Q. Okay. I'm going to hand you Exhibit E, as well.

A. Thank you.

MR. STAMBOULIEH: That's probably the one we want to look at.

THE WITNESS: This is the first page --

MR. MCCARTIN: We can give Alan the --.

THE WITNESS: -- twenty-four --.

MR. STAMBOULIEH: What page does it start on?

THE WITNESS: One and then twenty-four and then one forty.

MR. STAMBOULIEH: Twenty-four --?

MR. MCCARTIN: Twenty-four is the relevant page.

THE WITNESS: And one forty.

MR. STAMBOULIEH: Okay.

THE WITNESS: Okay.

BY MR. MCCARTIN: (Cont'g.)

Q. Okay. So the first and last page and then page twenty-four and one forty.

A. Very good.

Q. I'm going to direct your attention to the bottom of page twenty-four on Exhibit E.

A. Okay. The last question?

Q. Yes, the last paragraph there.

A. Very good.

Q. Okay. So having read that, do you understand that the manufacturer of Tasers has basically

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stated that Tasers can lead to permanent bodily injury or death on occasion?

A. Yes, that there is a potential that that could occur.

Q. And does that concern you in any way as far as using tasers or wanting to possess a taser for home use?

A. I will answer that, I guess, in two parts. The shorter version being no, the longer version being fortunately the newspaper doesn't require me to file with the S.E.C., but if -- if we grow enough that I ever do and I have a lawyer write up something like this, probably it would read very similar that if there were circumstances of anything printed in the newspaper, even -- even things that were inherently true that could lead to individuals harming others, financial difficulties, then I would imagine it would read very similar to this.

Q. So you think that this is basically lawyer talk and it's not legitimate -- a legitimate concern?

A. I didn't say that. I said -- I do believe that there is a chance, of course, of -- of lethal force especially having to deal with something like they quote in here, negligent design or defective products.

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That all being said, I know that a lot of the skeleton of the way it's written would be similar for even a newspaper.

Q. Okay. My -- my question, I guess, is more concerned with the first sentence there. Our C.E.W. products are often used in aggressive confrontations that may result in serious, permanent bodily injury or death to those involved.

A. Okay.

Q. Does that concern you at all?

A. No. That's the entire reason I would prefer to have one. Because it would be in a confrontation such as one of these.

Q. It -- it -- I'm sorry; I missed that.

A. The reason to have a -- a method of self-defense is because of the risk of potential, as stated here, aggressive confrontations. That if --.

Q. Well, a home invasion would be an aggressive confrontation. Would you agree?

A. Yes.

Q. So it's possible, based on Taser's own manufacturer warning, that that could lead to death if you were to ever defend your own home with a taser? Would you agree with that statement?

A. To the best of my knowledge regarding their statement, yes.

Q. Let me just show you the next exhibit.

A. Okay.

MR. MCCARTIN: It's F, I believe.

THE REPORTER: Uh-huh.

BY MR. MCCARTIN: (Cont'g.)

Q. Okay. I'm going to hand to you Exhibit F.

A. Thank you. Is there anything in particular you'd like me to focus on?

Q. Well, first of all, I want you to take an opportunity to read whatever parts of the document that you're concerned with and your lawyer's concerned with. I am going to direct your attention to three specific spots on page one, but I want you to be able to -- I don't want to rush you with the document, in other words.

A. Okay.

Q. So what -- what -- however long you want to spend with the document is perfectly fine.

A. Thank you.

Q. If you want me to just -- to carry on with the questions and direct your attention to specific spots, I can do that.

A. I'll take a moment and --.

Q. Okay.

A. Are all of the questions related to page one?

Q. Yes.

A. Okay. So I'll focus mostly on that then.

MR. STAMBOULIEH: Just give me one second here.

THE WITNESS: No, that's okay. You can keep -- keep -- I'll just look at it.

MR. STAMBOULIEH: So just generally, this is for the law enforcement models; right?

MR. MCCARTIN: That's correct.

MR. STAMBOULIEH: Okay. Not for the civilian versions?

MR. MCCARTIN: I -- I -- that is correct.

MR. STAMBOULIEH: Okay.

MR. MCCARTIN: It's generally for law enforcement.

MR. STAMBOULIEH: Yeah, just for the record --

MR. MCCARTIN: Yup.

MR. STAMBOULIEH: -- for that to be clear.

THE WITNESS: Okay. I'm ready.

BY MR. MCCARTIN: (Cont'g.)

Q. Okay. I want to first direct your attention to the warning box toward the top of the document.

A. Okay.

Q. Do you see the second line down there, where it says can cause death or serious injury?

A. Yes.

Q. Is one of the warnings that Taser -- Axon has stated for their products?

A. Yes.

Q. Okay. Does that cause you any concern about wanting to use a taser for defense of your own home?

A. No.

Q. Okay. And why's that?

A. The -- any form of less than lethal defense carries the risk of serious bodily injury or death, baseball bat, the beanbag shells in the shotgun, or a taser, or anything else.

Q. And directing your attention to the second paragraph, along those lines that you were discussing, it says any use of force including the use of a C.E.W. involves risk that a person may get hurt or die

due to the effects of the C.E.W.

Do you see that?

A. Yup.

Q. And is -- does that cause you any concern based -- based upon our -- does that cause you any concern -- want you not to use a taser in defense of your own home for any reason?

A. No concern in that capacity.

Q. And is that for the same reason that you mentioned previously?

A. Correct.

Q. All right. And directing your attention down to the warning box toward the bottom of the page one --

A. Okay.

Q. -- Of Exhibit F. It says in some individuals, the risk of death or serious injury may increase with cumulative C.E.W. exposure -- exposure. Does that cause you any concern about using a taser to defend your own home?

A. No.

Q. And is that for the same reasons you've already identified?

A. Yes.

Q. Okay. So do I understand that you would be willing to consider using a twelve-gauge shotgun to defend your home with less lethal forms of ammunition?

A. It would certainly be on the list of options.

Q. And would that be on the same list of options as a taser?

A. Yes, it would be.

Q. And that would be an alternative to taser if you were ever prevented from using a taser in New York State?

A. Not necessarily. It's the same -- just because it's on the same list doesn't mean that it's at the same level. I mean, it might be on the top. It's like saying a list of Thanksgiving foods and turkey's going to rank a lot higher than, you know, a roll, in such a circumstance. So I would certainly rank it depending on circumstances.

Q. How does the less lethal forms of ammunition rank on that list that you're considering?

A. There -- I would have to consider, I think, more -- more circumstances before I can give an exact answer, but I would say it would certainly be under a -- a small, portable, less than lethal device probably

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similar to a taser.

Q. Are you aware that there are less lethal forms of ammunition for, for instance, handguns, forty-five-caliber handguns?

A. Yes.

Q. You are aware of that?

A. Uh-huh.

Q. Would you ever consider trying to get a pistol permit in New York and trying to get a less lethal form of ammunition for that pistol?

A. I'm not saying that it wouldn't happen, but if I'm not going to get a pistol permit under the -- the circumstances right now, that would be one more barrier or one more step beyond my -- where I sit now. That if I already don't want one and I would get it for something less lethal, the chance of me doing it is pretty low.

Q. I understand that one of the reasons that you wanted to have a taser over a shotgun is that it is smaller and more convenient for smaller spaces. Is that fair to say?

A. Yes.

Q. So in that circumstance, a forty-five-caliber handgun loaded with less lethal form of ammunition

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would be -- would satisfy that desire that you have to have a smaller firearm in your hand?

A. There's a couple of different factors, especially considering how taser use would be regulated, should it be legal. But if the Governor would like to make a special dispensation, hand me a C.C.W. tomorrow, then that would certainly change my -- I would strongly consider that. But as of right now, that of my own volition, I'm not going to get a pistol permit, I would say it's less relevant.

Q. How -- I'm at a loss for why you don't want to get a pistol permit if you could load a pistol with a less lethal form of ammunition and that's one of your desires is to defend your home with a less lethal form of a weapon. So if you could explain that to me?

A. There's a lot of different factors involved. And of course, some are hypothetical because, of course, tasers are not legal in this state. And -- and certainly, the state could regulate them in a very similar way as handguns, which would completely change the way that someone would carry and -- and acquire them.

There are other circumstances where it may, depending on what occurs, be legal for me to carry a taser in a place -- a location that I cannot carry a handgun.

So for example, on campus, I am prohibited from carrying on campus even with a C.C.W. I would like to not violate state law.

If a taser was legal on campus, which I have more reason to believe that it would be than a pistol would be in the next five years, then I would prefer to carry something for self-defense, especially for the defense of my students, that carries with it a lower risk of death.

So outside of my home, there are going to be places where I cannot carry a pistol, even with a permit, that a -- a taser would fit that niche. And that's a strong consideration.

Q. I want to focus your attention, though, on inside the home self-defense and limit it -- limit the question to that.

A. Okay.

Q. All right. Not outside the home where you're prohibited from having a -- a handgun on campus. My question then would be why would you not want to get a pistol permit to allow you to have a less lethal form of ammunition in your pistol to defend your own home?

A. If I may speak a bit frankly, I wouldn't get a pistol permit solely, solely for the use

within my own home. Middleburgh is not terribly far off from Maybury in that ultimately, I can carry other things that don't require me to go through the pistol permit process. I would've -- when I filled out the form, I was asking for unrestricted carry, that I would prefer, should I have a pistol permit, to have the primary -- one of the primary reasons to have the permit is to carry outside of the home.

So ultimately, if I did have to choose, having a pistol solely within my home would be pretty darn low on the list of reasons I'd get a pistol permit. And the way that if I had to jump through a whole bunch of hoops to get a pistol -- so with this -- with the understanding that we're talking mainly within the home, I don't see the utility of it, of -- of going through all of those hoops just to keep it within my four walls.

Q. So when you mentioned Maybury, is that -- I had a vision that you're saying it's a very safe place. You don't need really to have a weapon in your home to defend it. Is that what you were trying to convey to me?

A. No. I would -- I'm not going to carry a pistol around my house. If I traveled to a place that's high crime, I would be more likely to have a pistol on my

person.

Q. Is your hometown a safe area that you're not really concerned of home invasion in?

A. I would say I'm certainly less worried about it. Right before I moved to my house, my pipes were stolen out of my basement. We had a number of high profile -- after the flood of people losing their copper pipes. So it certainly happens. But one of the major reasons for having unrestricted concealed carry is not to pick up a cup of coffee on Main Street in Middleburgh. It's probably because there's a circumstance in another part of the state that I would feel necessitate it.

Q. So your desire for a taser is more for having it outside the home than inside the home? Is that fair to say?

A. I think that's difficult -- I think it's difficult to say. I would say that I would certainly weigh both inside and outside the home in my decision. And I'm not sure if it would be equally or one way a little bit more than the other, but they're both very strong.

Q. All right. This is probably -- I don't want to beat a dead horse, but I'm still a little bit confused. All right. So I'm going to ask the

question maybe a little bit differently or maybe you can explain it to me a little bit better, and then I can understand.

A. Okay.

Q. All right. But I'm -- I'm still -- you're willing to go through a lawsuit to try and get a taser that's illegal in New York State. Fair to say?

A. I guess you could say it that way, yes.

Q. All right. But you haven't been willing to go to a judge to see if you could get a pistol permit to have a pistol in your own home and use non-lethal forms of ammunition in that pistol to defend your home. Is that fair to say?

A. Yes.

Q. I'm trying to understand why that's the case? And I -- I just -- I -- I'm at a loss for understanding why you haven't been willing to go to a judge and ask for a pistol permit to use non-lethal forms of ammunition in your own home.

A. There's a lot of ways I think I can dissect it. I guess part of it is it's my own volition, so if I choose to -- if I believe that tasers should be legal in New York State, and I choose to have two really

good attorneys represent me in that, and I want to do it because I think it's the correct thing to do, then that can out -- outweigh whether I want any other form of self-defense.

Some of it goes back to philosophical issues. I -- I talked about, you know, in thirty years or twenty years, you know, maybe I'll have a ranch in Wyoming with constitutional carry that -- that perhaps their view on firearms is more in line with mine and the SAFE Act has kind of drawn New York State a bit away from that.

So when you rank all of those together, it makes more sense for us to be sitting in this room right now than me go through that process to get a pistol permit. As -- as of today.

Q. So you have no desire to get a pistol permit in the future, either?

A. I would certainly like a pistol permit, but as far as the near future in New York State, I would say it's about zero.

Q. Okay. That's what I'm referring to, while you're living in New York State.

A. Yes.

Q. Not twenty or thirty years when you retire.

A. Yes.

MR. MCCARTIN: All right. I don't have any other questions.

MR. STAMBOULIEH: I don't have any questions, either. He'll read and sign.

MR. MCCARTIN: Yes.

MR. STAMBOULIEH: And I was hoping you weren't going to put that big document in.

Do you do e-trans?

THE REPORTER: Yes.

MR. STAMBOULIEH: Okay. Because I don't want --.

MR. MCCARTIN: Well you already have it; right? You already have --

MR. STAMBOULIEH: Oh, yeah.

MR. MCCARTIN: -- that document?

MR. STAMBOULIEH: I've already got that, but usually when the court reporter sends me the hard copy, they send me all the exhibits in hard copy, too.

MR. MCCARTIN: I was going to keep the exhibits myself unless --

MR. STAMBOULIEH: Oh. Oh. No that's fine.

MR. MCCARTIN: -- that causes you --.

MR. BECK: I have no need --.

THE WITNESS: What about these. Should I hand them back to you?

MR. MCCARTIN: Yes. I'll take them back.

MR. STAMBOULIEH: Yes. So you're just going to be the custodian of --?

MR. MCCARTIN: Yeah, I'll be the custodian of the exhibits.

MR. STAMBOULIEH: Yeah, that's fine.

And the e-tran, are you going to do an exhibit -- copy of the exhibits?

THE REPORTER: I don't have the exhibits.

MR. MCCARTIN: He won't have them.

MR. STAMBOULIEH: Can you just scan --?

MR. MCCARTIN: So I can make copies and --.

MR. STAMBOULIEH: Just scan them and email them if you can.

MR. MCCARTIN: Yeah, that's what we'll do. That's what we usually do.

MR. STAMBOULIEH: Yeah, because I'm --.

THE WITNESS: Are we still on the record?

MR. MCCARTIN: Oh, I'm sorry. Let's go off the record.

THE WITNESS: Thank you for your time.

(The deposition concluded at 4:31 p.m.)

STATE OF)
COUNTY OF)

I, MATTHEW AVITABILE, have read the foregoing record of my testimony taken at the time and place noted in the heading hereof and do hereby acknowledge:
(Please check one)
( ) That it is a true and correct transcript of same.
( ) With the exceptions noted in the attached errata sheet, it is a true and correct transcript of same.

X
MATTHEW AVITABILE

Sworn to before me this
_____day of _____, 2018.
X_____
NOTARY PUBLIC
My Commission Expires:
_____

Avitabile v Cuomo - 7-26-2018 - Matthew Avitabile

I, HOWARD HUBBARD, do hereby certify that the foregoing testimony of MATTHEW AVITABILE was taken by me, in the cause, at the time and place, and in the presence of counsel, as stated in the caption hereto, at Page 1 hereof; that before giving testimony said witness(es) was (were) duly sworn to testify the truth, the whole truth and nothing but the truth; that the foregoing typewritten transcription, consisting of pages number 1 to 61, inclusive, is a true record prepared by me and completed by Associated Reporters Int'l., Inc. from materials provided by me.

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Date:
Case Name: AVITABILE V CUOMO et al
Index Number: 16-cv-01447
Deponent: MATTHEW AVITABILE
Deposition Date: 7-26-2018
Examining Attorney: Michael McCartin

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Please read and make any changes and/or corrections in your testimony and sign the transcript in the presence of a notary public. Please do so within thirty (30) days. If you fail to sign the transcript within thirty (30) days, it will be delivered to the appropriate parties without signature. Return the transcript with corrections, if any, to:

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PUNCH
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PENGAD 800-631-6989
EXHIBIT
A
7-26-18 DNH

12 Gauge Less Lethal

All rounds come in a three pack

ALL LESS LETHAL AMMO HAS THE POTENTIAL TO BE FATAL. NEVER USE LESS LETHAL AMMO AS A JOKE OR PRANK. EVEN A BLANK HAS THE ABILITY TO HARM OR KILL!!!!

Sorry we cannot ship any ammo to Hawaii, Alaska, Massachusetts, Washington D.C., Los Angeles, CA, Cook County IL, and New York City. Specific types of ammunition may be restricted in some areas. Please check all State and local laws in your area.
Residents of CA and NY must have their ammunition orders sent to a local FFL.

Residents of New Jersey and Illinois must provide their firearm Identification card for your state. Residents of Conneticut must provide a valid state ID and a copy of their firearm permit. They can be emailed to us at shipping@americanspecialtyammo.com

Beehive 3 rounds per pack 2 3/4"

38 6mm .12g balls come together to give you the power to protect yourself without the worry of imminent death. The LESS-LETHAL alternative with low recoil.

Price: $8.99

Qty:

Add to Cart

Shorty Beehive

3 - 1 5/8" rounds per pack

24 6mm .12g balls come together to give you the power to protect yourself without the worry of imminent death. The LESS-LETHAL alternative with low recoil.

Price: $8.99

Qty:

Add to Cart

Glow in the Dark Beehive

3 - 2 3/4" rounds

38 GLOW IN THE DARK 6mm .12g balls come together to give you the power to protect yourself without the worry of imminent death. The LESS-LETHAL alternative with low recoil.

Price: $8.99

Qty:

Add to Cart

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20 Gauge
.410
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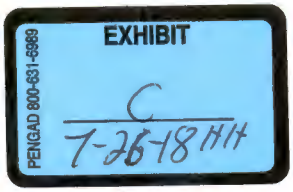
Bulk Shotgun Amr
AR-15 Accessorie
Gun Mats
Tactical Gear
AR15 Upper Recei
AR10 Upper Recei
AR 9mm Upper Re
Barrels
Sights and Optics
Completed Uppers
Cerakoted Upper S
AR-15 Handguard
22 Conversion Kit
Bolt Carrier Group



12 Gauge Shorty Glow in Dark Beehive

3 - 1 5/8" rounds per pack

24 6mm .12g GLOW IN THE DARK balls come together to give you the power to protect yourself without the worry of imminent death. The LESS-LETHAL alternative with low recoil.

Price: $8.99

Qty:

Add to Cart

Bouncer 3 rounds per pack 2 3/4"

Two large Zytel ball travel with accuracy up to 35 yards with the impact equal to a FAST PITCHED BASEBALL!! Guaranteed personal bodyguard protection with MAXIMUM punch!!

Price: $8.99

Qty:

Add to Cart

Hammer 3 rounds per pack 2 3/4"

A ballistic bag with stabilizing tails filled with tiny shot forms an extremely accurate "bean bag". Great for LESS-LETHAL power in the most threatening situations. effective up to 30 yards!!

Price: $11.99

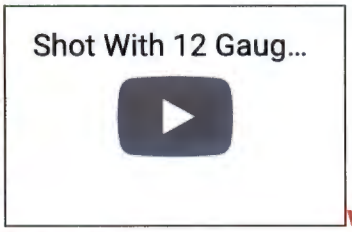
Qty:

Add to Cart

12 Gauge Rubber Slugs - Civilian

3 rounds per pack 2 3/4"

Rubber slugs are great for less lethal defense and riot control situations.



WE ARE PROFESIONALS!!
DO NOT TRY THIS AT HOME!!

Price: $12.99

Qty:

Add to Cart

12 Gauge Rubber Slug - Military/Law Enforcement

3- 2 3/4" rounds per pack

Rubber slugs are great for less lethal defense and riot control situations. The military/law enforcement slugs are a heavier more dense projectile than the civilian slugs.

Stripped Lower Re
Lower Parts Kits a
Cannon Fuse
Handgun Brass
Rifle Brass
Survival Gear
Novelty Items
Distraction Device
Repack Kits
Thread Adapter
DiveX Scooters an
Store Location
Contact Us
Buyers Statement
Friends of A.S.A.
Legal Disclaimer

* Email

First Name

Last Name

* = Required Field

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Subscribe to our email list to receive information on new products, discounts, and sales

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Price: $12.99
Qty:

Add to Cart

12 Gauge Rubber Shot 3 rounds per pack 2 3/4"

Rubber Buckshot delivers a staggering punch to protect your family and home. Loaded with a rubber substitute, this ammunition still delivers excellent knockdown power without over-penetration. Perfect for law enforcement or military use.

Price: $12.99
Qty:

Add to Cart

12 Gauge Rubber Slug

3 Rounds per Pack -2 3/4"

Rubber Slug Shotgun rounds deliver quite the punch to protect your family and home. Loaded with a rubber substite slug, it will deliver excellent knockdown power without over penetration. This is ideal for home defense in highly populated areas.

Price: $12.99
Qty:

Add to Cart

12 Gauge Rubber Sampler

3 - 2 3/4"Rounds

Rubber Sampler pack contains

1 - 12G Rubber Slug - Fiocchi

1 - 12G Rubber Slug - Military/Law Enforcement

1 - 12G Rubber Shot

Price: $12.99

Qty:

Add to Cart

12 Gauge Less Lethal Sample Pack 3 rounds per pack 2 3/4"

Less lethal sample pack contains

1-12g pepper gas round

1-12g Bean bag round (Hammer)

1-12g Stinger/Beehive Round (Plastic Shot)

Price: $10.99

Like Page

American Specialty Ammo
21 hours ago

489 4 392

Qty:

Add to Cart

12 Gauge Pepper Rounds 2-3/4"

THIS CARTRIDGE PRODUCES A CONE SHAPED BLAST OF PEPPER POWDER APPROXIMATELY 8 FEET IN DIAMETER AT 25 FEET. IDEALLY SUITED FOR USE IN THE 12 GAUGE SIGNAL ALARM SYSTEM DESCRIBED IN THIS CATALOG OR IN ANY SHOTGUN. RECOMMENDED FOR OUTDOOR USE AS THE POWDER CAN BECOME IMBEDDED IN CARPET AND FURNITURE. ITS PRACTICAL USE WOULD BE FOR RIOT CONTROL WHERE LESS THAN LETHAL FORCE IS NECESSARY. OVERALL CARTRIDGE LENGTH IS 2-3/4".

Price: $9.99 for a 3 round pack
$74.99 for a 25 round bulk pack

Qty:

Size: 3 Round Pack

Add to Cart

12 Gauge Pepper Rounds(shorts) 1-5/8 in 3 rounds per pack

IS CARTRIDGE PRODUCES A CONE SHAPED BLAST OF OC POWDER APPROXIMATELY 8 FEET IN DIAMETER AT 25 FEET. IDEALLY SUITED FOR USE IN THE 12 GAUGE ALARM SYSTEM DESCRIBED IN THIS CATALOG OR IN ANY SHOTGUN. RECOMMENDED FOR OUTDOOR USE AS THE POWDER CAN BECOME IMBEDDED IN CARPET AND FURNITURE. ITS PRACTICAL USE WOULD BE FOR RIOT CONTROL WHERE LESS THAN LETHAL FORCE IS NECESSARY. OVERALL CARTRIDGE LENGTH IS 1-5/8"

Price: $9.99 for a 3 round pack
$74.99 for a 25 round bulk pack

Qty:

Size: 3 pack

Add to Cart

12 Gauge Rock Salt 3 rounds per pack 2 3/4"

FOR USE AGAINST GHOSTS, ZOMBIES, AND DEMONS ONLY!!! NOT EFFECTIVE AGAINST VAMPIRES AND WEREWOLVES!!!! NEVER TO BE USED AGAINST THE LIVING. NOVELTY USE ONLY.

Price: $9.99 for a 3 round pack
$74.99 for a 25 round bulk pack

Qty:

Size: 3 pack

Add to Cart

12 Gauge Salt & Pepper 3 rounds per pack 2 3/4"

Twice the deterrant. 12 gauge shell filled with half pepper powder and half rock salt.

Price: $8.99
Qty:

Add to Cart

12 Gauge Double Koosh 3 rounds per pack 2 3/4"

Loaded with 2 brightly colored "Star" Projectiles. For use with targets more than 3 yards away and less than 15.

Cannot ship to AK, HI, MA, NY, DC, Los Angeles, San Francisco, Sacramento, Oakland and Beverly Hills, CA

Price: $8.99
Qty:

Add to Cart

12 Gauge Less Lethal MEGA Pack

Not sure which less lethal round is right for you? Get a mega pack to try them all! Get one pack of 3 of our most popular 12 gauge less lethal rounds.

Contains: Beehive, Bouncer, Hammer, Rubber Slug, Long Pepper, Salty Dog, Salt & Pepper, Rubber Shot and Double Koosh

All state restrictions apply.

Price: $89.99
Qty:

Add to Cart

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Home | Products | Monthly Sale Item | Apparel | Gun Bags and Backpacks | Coffee | Subscription Box | Stickers | 37mm Launchers | 37mm Rounds | 37mm Loading | 37mm Adapters | 26.5mm | Exploding Targets | Smoke Signal Devices | Shotgun Adapters | 12 Gauge | 12 GA. Less lethal | 20 Gauge | .410 | Dragons Breath | Bulk Shotgun Ammo | AR-15 Accessories | Gun Mats | Tactical Gear | AR15 Upper Receivers and Upper Parts | AR10 Upper Receivers and Parts | AR 9mm Upper Receivers and Parts | Barrels | Sights and Optics | Completed Uppers | Cerakoted Upper Sets | AR-15 Handguards | 22 Conversion Kits | Bolt Carrier Groups | Stripped Lower Receivers | Lower Parts Kits and Pieces | Cannon Fuse | Handgun Brass | Rifle Brass | Survival Gear | Novelty Items | Distraction Devices/CO2 Grenades | Repack Kits | Thread Adapter | DiveX Scooters and Accessories | Store Location | Contact Us | Buyers Statement | Friends of A.S.A. | Legal Disclaimer

American Specialty Ammo
(330) 485-4034
sales@americanspecialtyammo.com

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2017

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 001-16391

Axon Enterprise, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**86-0741227**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
17800 North 85th Street Scottsdale, Arizona	**85255**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code:

(480) 991-0797

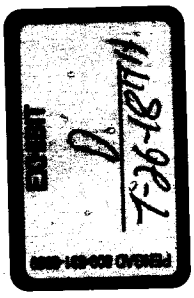
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Name of exchange on which registered**
Common Stock, $0.00001 par value per share	**The Nasdaq Global Select Market**

Securities registered pursuant to Section 12(g) of the Act:

None

(Title of Class)



Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Case 1:16-cv-01447-DNH-CFH Document 58-7 Filed 09/09/18 Page 2 of 140

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☐
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the common stock held by non-affiliates of the registrant, based on the last sales price of the issuer's common stock on June 30, 2017, which was the last business day of the registrant's most recently completed second fiscal quarter, as reported by NASDAQ, was approximately $1,303,000,000. Solely for purposes of this disclosure, shares of common stock held by executive officers and directors of the registrant as of such date have been excluded because such persons may be deemed to be affiliates. This determination of executive officers and directors as affiliates is not necessarily a conclusive determination for any other purposes.

The number of shares of the registrant's common stock outstanding as of February 15, 2018 was 53,034,299

DOCUMENTS INCORPORATED BY REFERENCE

Parts of the registrant's definitive proxy statement for its 2018 annual meeting of stockholders to be prepared and filed with the Securities and Exchange Commission not later than 120 days after December 31, 2017 are incorporated by reference into Part III of this Form 10-K.

AXON ENTERPRISE, INC.
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FOR THE YEAR ENDED DECEMBER 31, 2017

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PART I

Statements contained in this report that are not historical are "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including statements regarding our expectations, beliefs, intentions and strategies regarding the future. We intend that such forward-looking statements be subject to the safe-harbor provided by the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to, among other things:

- our intentions about future development efforts and activities, including our intentions to invest in research and development as well as the development of new product and service lines and enhanced features for our existing product and service lines;
- our need that customers upgrade and replace existing conducted electrical weapons ("CEW") units and the willingness of customers to do so;
- that we may have more sales denominated in foreign currencies in 2018;
- our intention to increase our investment in the development of sales in the international, military and law enforcement market;
- our plans to expand our sales force;
- that cloud and mobile technologies are fundamentally changing the police environment;
- our plan to invest in web activities and law enforcement trade shows in 2018;
- our intention to not pay dividends;
- that increases in marketing and sales activities will lead to an increase in sales;
- our belief that the video evidence capture and management market will grow significantly in the near future and the reasons for that belief;
- our intention to continue to pursue the personal security market;
- our intention to grow direct sales;
- the sufficiency of our facilities and our strategy to expand manufacturing capacity if needed;
- that we may lease facilities from parties that specialize in handling and manufacturing of firearm materials;
- that we expect to continue to depend on sales of our X2 and X26P CEW devices;
- our intention to apply for and prosecute our patents;
- that selling, general and administrative expense will increase in 2018;
- that research and development expenses will increase in 2018;
- the timing of the resolution of uncertain tax positions;
- our intention to hold investments to maturity;
- the effect of interest rate changes on our annual interest income;
- that we may engage in currency hedging activities;
- our intentions concerning, and the effectiveness of, our ongoing marketing efforts through web activities, trial programs, tech summits and law enforcement trade shows;
- the benefits of our CEW products compared to other lethal and less-lethal alternatives;
- the benefits of our Software and Sensors products compared to our competitors';
- our belief that customers will honor multi-year contracts despite the existence of appropriations, termination for convenience. or similar clauses;
- our belief that customers will renew their Evidence.com service subscriptions at the end of the contractual term;
- our insulation from competition and our competitive advantage in the weapons business;
- estimates regarding the size of our target markets and our competitive position in existing markets;
- the availability of alternative materials and components suppliers;
- the benefits of the continued automation of our production process;
- the sufficiency and availability of our liquid assets and capital resources;
- our financing and growth strategies, including: our decision not to pay dividends, potential joint ventures, mergers and acquisitions, stock repurchases and hedging activities;
- the safety of our products;
- our litigation strategy, including the outcome of legal proceedings in which we are currently involved;

- our ability to maintain secure and consistent customer data access and storage, including the use of third-party data storage providers, and the impact of a loss of customer data, a breach of security or an extended outage;
- our ability to attract and retain the qualified professional services necessary to implement and maintain our business, both through employment and through other partnership arrangements;
- the effect of current and future tax strategies;
- the fluctuations in our effective tax rate;
- the impact of the U.S. Tax Cuts and Jobs Act (the "Tax Act");
- the impact of recently adopted and future accounting standards;
- the impact of Accounting Standards Update 2014-09, *Revenue from Contracts with Customers* ("ASU 2014-09" or "Topic 606");
- that the complaint filed by Digital Ally is frivolous; and
- the ultimate resolution of financial statement items requiring critical accounting estimates.

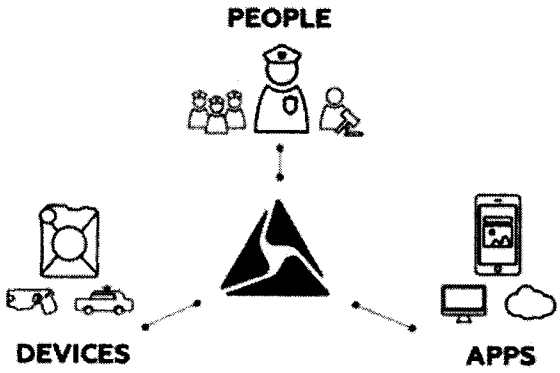
These statements are qualified by important factors that could cause our actual results to differ materially from those reflected by the forward-looking statements. Such factors include, but are not limited to, those factors detailed in Part I Item 1A of this Annual Report on Form 10-K entitled "Risk Factors." The forward-looking statements included in the foregoing list are not exhaustive. Other sections of this report may include additional such statements and factors that could adversely impact our expectations and affect our business and financial performance. New risk factors emerge from time to time, and it is not possible for management to predict all such factors, nor can it assess the impact of all such risk factors or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. We undertake no obligation to update or revise any forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to expectations over time.

Axon, the "Axon Delta" logo, Axon network, Axon Body 2, Axon Fleet, Axon Flex 2, Axon Citizen, Axon Signal, Evidence.com, Smart Weapons, and TASER are trademarks of Axon Enterprise, Inc., some of which are registered in the U.S. and other countries. For more information, visit www.axon.com/legal. All rights reserved. The information on our website, including information about our trademarks, is not incorporated by reference into or otherwise a part of this report.

Item 1. *Business*

Company Background and Business Strategy

Axon Enterprise, Inc.'s (the "Company" or "Axon" or "we" or "our") core mission is to protect life through innovative technologies that make communities safer. We are the market leader in the development, manufacture and sale of CEWs designed for use by law enforcement, corrections, military forces, private security personnel and by private individuals for personal defense. We are also the market leader in developing, manufacturing and selling connected wearable on-officer cameras as well as developing and selling cloud-based digital evidence management software. We have established a robust network that connects devices, apps and people primarily in the law enforcement vertical market. We aim to have every public safety officer in the world carry a TASER, deploy an Axon camera and be connected to the Axon network.



The three foundations for our growth strategy are:

- **Devices -** Our TASER CEWs are one of the few weapons that can incapacitate a person while drastically limiting the risk for death and/or serious injury. Over the past two decades, the TASER CEW has become one of the most frequently used weapons in the North American law enforcement market, with use-of-force injuries and deaths dropping dramatically as a result. Outside of weapons, we produce devices that primarily fall within three categories: on-officer cameras that capture critical digital evidence aimed at protecting truth, a range of related accessory hardware devices and an in-car camera variant called Axon Fleet. We refer to these cameras, related accessories and devices collectively as "Axon" products. We believe our CEWs and Axon cameras should be standard-issue equipment for all patrol officers domestically and internationally. We have created and are continuing to create service plans and product bundles to allow agencies to have the latest devices and technology at predictable annual costs.

- **Apps -** Axon's Evidence.com platform is designed to help agencies securely store, manage and share all digital evidence. Our software platform features continuous improvement with regular software updates that enable our customers to always have access to the latest technology. Recent new features include secure sharing, audit trails, integration of other data sources, and transcription and redaction services. These feature sets are designed to provide our customers with valuable tools to police more efficiently and effectively while enabling greater transparency with the communities they serve. An increasing number police agencies trust Axon to host their video evidence data, which is captured via our devices, apps and software, and stored in our secure cloud and accessed via the Axon network.

- **People -** Our TASER weapons and Axon software and sensors platforms have allowed us to build relationships with more than 20,000 public safety agencies worldwide. Axon's goal is to bring modern information technology capabilities to every law enforcement officer. Some of our customers report that police officers are spending over 60% of their time on paperwork-related tasks, rather than on value-added public safety work. We see a large opportunity to leverage our connected platform to enable a broad suite of mobile, wearable, and data management capabilities. Axon is also improving workflows throughout the public safety chain, from the incident on the scene to the court room. With our software, police officers can share evidence with prosecutors during discovery while maintaining a secure and encrypted chain of custody. Axon's cohesive ecosystem is delivering increased value to all public safety stakeholders, including state and municipal police agencies, police chiefs and other leadership, patrol officers, state patrols and officers, agency detectives, public prosecutors, district attorneys, and others in the public safety and judicial communities, as well as the public communities they serve.

We have four strategic growth areas:

- **Expand TASER CEW adoption:** We believe we can increase the ratio of TASER CEWs to patrol officers domestically as well as continue expand into new international markets. We believe that our strategy of offering payment plans and eventually subscription hardware plans will shorten upgrade cycles and expand our immediately addressable market. Also, through continuing research and development ("R&D"), we believe that our TASER CEWs will become more capable and more connected over time, thus increasing in value and utility for our customers.

- **Expand Axon body camera and Evidence.com market share and increase average revenue per user ("ARPU"):** Axon is the market leader in body-worn cameras and digital evidence management. Of the top 50 metropolitan areas in the U.S., 38 are on the Axon network. We believe we are well-positioned to build upon our prior success, and that our software offerings can become more valuable to our customers as we continue to expand our service offerings to better help agencies store, manage and share evidence data.

- **Capture in-car video market share with Axon Fleet:** In the second quarter of 2017, we began shipping our in-car video offering, Axon Fleet. This is a new and adjacent market for Axon that we believe we can continue to grow through offering a superior product and service with disruptive pricing.

- **Expand into police agency records management systems and computer-aided dispatch software:** In late 2016, we announced our intention to develop a police agency enterprise resource planning ("ERP") system, Axon Records, that would put officers back on the streets, help to solve and prosecute crime, and help to prevent crime and other incidents. Our development of Axon Records supports our strategic focus and vision of growing recurring cash flows by leveraging the data we host to unlock value-added services to our customers.

Technological innovation is key to all four long-term growth areas. By investing in R&D, we intend to continue to develop novel, high-value solutions across our product platforms and expand our total addressable market within the law enforcement and public safety vertical markets. In 2017, we invested heavily in a new artificial intelligence ("AI") group, Axon AI. Through two acquisitions plus additional hires, we have developed a team that is delivering AI features in our products as well as winning industry recognition. In 2017, we were named the preferred AI vendor for the Los Angeles Police Department. In early 2018, we opened an R&D office in Tampere, Finland, with 10 imaging and sensor experts who will work with our existing teams to create best-in-class smart cameras that integrate with our cloud platform. We also continue to add engineering talent to our Scottsdale headquarters and Seattle engineering and development office.

Company Organization

Axon sells its products to law enforcement worldwide through its direct sales force, distribution partners, online store and third-party resellers. The Company manages its business primarily on a geographic basis, with various sales representatives strategically located throughout the world. Domestic and international law enforcement agencies are primarily served through the Company's headquarters in Scottsdale, Arizona, and its software engineering development center located in Seattle, Washington. The Company also has subsidiaries located in the United Kingdom, Germany, the Netherlands, Australia, Vietnam and Canada.

The Company's operations are comprised of two reportable segments: the sale of CEWs, accessories and other related products and services (the "TASER Weapons" segment); and the software and sensors business, focused on Axon devices, wearables, applications, cloud and mobile products (the "Software and Sensors" segment). Within the Software and Sensors segment, the Company includes only revenues and costs attributable to that segment which include: costs of sales for both products and services, direct labor, selling expense for the sales team, product management and marketing expenses, trade shows and related expenses, finance and accounting expenses, and research and development for products included, or to be included, within the Software and Sensors segment. All other costs are included in the TASER Weapons segment. Further information about our reportable segments and sales by geographic region is included in Notes 1 and 16 of the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K. We have made certain acquisitions of companies or their assets in the past two years that are described in Note 15 of our consolidated financial statements included in Part II, Item 8 of this report.

Products

TASER Weapons Products

We make CEWs for two main types of market segments: (i) the law enforcement, military, corrections and private security markets; and (ii) the consumer market. Our CEWs use our proprietary Neuro Muscular Incapacitation ("NMI") technology to effectively neutralize suspects or threats. From a replaceable cartridge containing compressed nitrogen, two small probes that are attached to the CEW by insulated conductive wires are deployed from up to 35 feet away. Electrical pulses are transmitted along the wires and into the body, affecting the sensory and motor functions of the peripheral nervous system.

Since 2009, our CEWs have been on our Smart Weapons system, an all-digital platform that features the ability to regulate charge output, perform health checks, update firmware over the Internet, and provide analytics on device usage. Through the Company's Evidence.com platform, important records such as the event logs, which record user actions such as safety activation and trigger event durations, can be viewed and analyzed.

The benefits of using CEWs in the field have been significant. Studies have shown that TASER CEWs have prevented death or serious injury more than 178,000 times from the first deployment in 2000 to the end of 2017. The use of these devices instead of other force options has significantly reduced injuries for suspects and officers, with substantial liability and workers' compensation savings to government agencies around the world.

The following products are core to the Company's TASER Weapons product line:

TASER X26P - The X26P is a single-shot, compact Smart Weapon designed for law enforcement and military use. It features the smallest form factor of our law enforcement models and was ergonomically designed with ease of use in mind.

TASER X2 - The X2 is a double-shot Smart Weapon designed for law enforcement and military use. In addition to the back-up shot, the X2 also features dual lasers and the warning arc, a visible electric charge that increases voluntary surrenders and de-escalates conflicts without cartridge deployment.

Consumer CEWs - The Company has two consumer CEW models, the Bolt (formerly known as the C2) and the Pulse. The two products differ in form factor but both feature the same NMI effects as the CEW models available to law enforcement and run in cycles of 30 seconds, which is intended to allow adequate time for the user to escape a threat.

Replacement Cartridges and Consumables - The Company manufactures multiple cartridge types with effective ranges from 15' to 35'. Smart cartridges communicate with the firing control system within the TASER X2 to indicate the type of cartridge loaded in each bay and its deployment status. Standard replacement cartridges are used in the TASER X26P as well as our consumer models. The Company also offers Performance Power Magazines ("PPM"), batteries that power the CEWs. PPMs are available in several options, such as Tactical ("TPPM") or Automatic Shut-Down ("APPM").

Axon Connected Solutions

Axon creates connected technologies to protect truth in public safety. As a company that grew from our TASER business, we are building on a history of innovation in policing. Axon is more than a collection of individual technologies; it is a cohesive ecosystem. Every product from our Smart Weapons to our body-worn cameras to our digital evidence management system integrates seamlessly with one another, and often complements the systems and processes a customer already uses. Below are the products and features that are core to the Axon platform.

Axon Hardware Products:

Axon Body 2 - Axon Body 2 builds upon the original platform by bringing officers new features such as high-definition ("HD") video, wireless fidelity ("Wi-Fi") offload capabilities, extended battery life, and additional security enhancements. The Axon Body 2 can be mounted on the officer's shirt at mid-chest level and eliminates all wires from the wearer's body.

Axon Flex 2 - The Axon Flex 2 builds upon the original Axon Flex camera system and features a more rugged industrial design, new mounts and advanced capabilities like unlimited HD video, a 120-degree field of view, extended battery life, improved buffering and wireless activation.

Axon Fleet - Axon Fleet is a breakthrough in-car video system with advanced capabilities and a price that is significantly less than traditional systems. Axon Fleet includes automatic activation, HD video and a flexible design.

Axon Dock - With the Axon Dock, the camera charging station is also the automatic data downloader. At the end of a shift, the Axon Dock syncs video from the user's Axon Flex or Axon Body camera during routine charging. Videos are uploaded directly to Evidence.com, eliminating manual filing processes.

TASER CAM HD - The TASER CAM HD is a recording device built into a PPM battery pack for use with compatible TASER CEWs. The device can capture critical video and audio before, during and after a TASER CEW deployment.

Axon Signal - Axon Signal is a technology that enables Axon Body 2, Axon Flex 2 and Axon Fleet cameras to start recording upon certain triggering events such as the opening of a patrol car door, activation of a patrol car lightbar or the unholstering of a TASER CEW.

Signal Sidearm - Signal Sidearm is a device that is compatible with most firearm holsters. The moment an officer removes a firearm from a holster, Signal Sidearm wirelessly alerts all nearby Axon cameras to begin recording.

Axon Software and Mobile Technologies:

Evidence.com - As the sources of digital evidence expand, storage alone is not enough to keep track of the body-worn camera videos, photos, audio recordings and other data that is overwhelming agency servers and systems. Evidence.com is a robust end-to-end solution that not only allows agencies to store all that data, but also enables new workflows for managing and sharing that data. Officers and command staff can upload content from Axon and TASER devices or other systems easily, manage it with search and retrieval features, and collaborate with prosecutors by using powerful sharing features. When storage needs or users increase, the cloud-based system allows agencies to scale instantly and cost-effectively.

Evidence Sync - Evidence Sync is a desktop-based application that enables evidence in any format, from any source to be uploaded to Evidence.com. TASER Smart Weapon logs, Axon camera videos, interview room footage, photos and more can be uploaded, stored, and managed in one location. Sources new and old—from TASER devices or other brands—are equally supported. Network servers, secure digital memory cards ("SD cards"), compact discs ("CDs"), and computer folders can be synced with ease, and frequently used folders or drives can be set up to automatically sync on schedule.

Commander - Axon Commander is an on-premise application that consolidates all of a customer's digital evidence in one secure location, making it easy to manage and access while maintaining security and chain of custody. Designed to meet the evidence management needs of agencies in regions without reliable high-speed Internet access, Commander delivers many of the same features of cloud-based Evidence.com to customers using on-premise storage systems.

Axon Citizen - Axon Citizen is a mobile application that provides a public safety portal where community members can submit photos and videos of an incident they witness directly to their agency on Evidence.com.

Axon Capture - Axon Capture is a mobile application that allows officers to capture digital evidence right from the field. The app eliminates the need to carry three separate devices for photo, video, and audio recording by securely building upon the capabilities of an officer's mobile phone. Officers can add tags, titles or Global Positioning System ("GPS") coordinates to any recordings before uploading the data to Evidence.com.

Axon View - Axon View is a mobile application that wirelessly connects with an Axon camera to provide instant playback of unfolding events from the field, in the field. The app's live display ensures the camera is positioned correctly.

Axon Interview - Axon Interview is a recording system designed for the interview room. The system records crucial interviews with redundant, high-quality video and audio technology, ensuring that every moment is captured. The system is available with a 24/7 buffering option that allows agencies to capture key dialogue even after it occurs.

Markets and Distribution

Law Enforcement

Our primary target market for both our weapon and video products is federal, state and local law enforcement agencies in the U.S. and throughout the world. We estimate that in the U.S., approximately two-thirds of all law enforcement patrol officers carry a TASER CEW and internationally, approximately one out of every fifty eligible law enforcement officers carries a TASER CEW. Our goal is to have our CEWs be standard issue equipment for all domestic and international law agencies.

Other Markets

We also target military forces, private security, correctional facilities and consumer personal protection markets to provide technologies that offer a less lethal form of protection.

U.S. Distribution

The Company sells directly to law enforcement agencies in the U.S. as well as through a distribution network. Distributors are selected based upon their reputation within their respective industries, contacts and distribution network. Our regional sales managers work closely with the distributors in their territory to inform and educate the law enforcement communities. We continue to monitor our law enforcement distributors closely to help ensure that our service standards are achieved. Where appropriate, we intend to grow our direct sales over time. Distributors often allow us to penetrate regions at lower fixed costs; however, direct sales allow us greater control over the customer relationship.

Sales in the private citizen market are primarily made through our distributors and our website. We have implemented a variety of marketing initiatives to support sales of our consumer products, with a focus on web, public relations and consumer trade shows. We have consulted with professional digital media and public relations professionals to assist us in media and press events and editorial placements along with attending numerous trade shows specifically to target the consumer market.

International Distribution

We market and distribute our CEW products to foreign markets through our international subsidiaries as well as through a network of distributors. For geographical and cultural reasons, our distributors usually have a territory defined by their country's borders. These distributors market both our law enforcement, military, and corrections products, and our consumer products where allowed by law. Our distributors work with local law enforcement, military and corrections agencies in the same manner as our domestic market distributors. For example, they may perform demonstrations, attend industry trade shows, maintain country specific websites, engage in print advertising and arrange training classes.

In order to more effectively engage customers internationally, we have also implemented direct sales teams strategically located throughout each major geographic region of the world. Having dedicated sales personnel stationed full time in these regions will allow us to better serve existing customers as well as execute our sales and marketing strategies more efficiently in order to continue to grow our customer base in new markets.

Manufacturing

We perform light manufacturing, final assembly, and final test operations at our headquarters in Scottsdale, Arizona, and own substantially all of the equipment required to develop, prototype, manufacture and assemble our finished products. This includes critical injection molds, schematics, automation equipment, test equipment and prototypes utilized by our supply chain for the conversion of raw materials into sub-assemblies. We have implemented lean/six sigma methodologies to optimize most direct and indirect resources within the organization, which has helped boost capacity for existing products, as well as provide flexibility to accommodate production of new TASER and Axon product introductions. We are currently operating one to two production shifts depending on inventory levels and demand. However, other capacity options, including the use of additional shifts, will be considered should we experience higher demand resulting from large orders of legacy or new product releases. We have continued to maintain our ISO 9001 certification and have recently attained the new ISO 9001:2015 certification.

The Company currently purchases both off-the-shelf and custom components, including finished circuit boards assemblies and injection-molded plastic components, primarily from suppliers located in the U.S., Mexico, China and Taiwan. Although the Company currently obtains many of these components from single sources of supply, the Company owns the designs as well as the injection molded component tooling and test fixtures used in production for all custom components. As a result, management believes it could obtain alternative suppliers in most cases without incurring significant production delays. The Company also strategically holds safety stock levels on custom components to further reduce this risk. For off-the-shelf components, Management believes that there are readily available alternative suppliers in most cases who can consistently meet the Company's needs for these components. The Company acquires most of its components on a purchase order basis and does not have any significant long-term contracts with suppliers.

Business Seasonality and Product Introductions

The Company has historically experienced higher net sales in its second and fourth quarters compared to other quarters in its fiscal year due primarily to municipal budget cycles. Additionally, new product introductions can significantly impact net sales, product costs and operating expenses. However, historical seasonal patterns, municipal budgets or historical patterns of product introductions should not be considered reliable indicators of the Company's future net sales or financial performance.

Backlog

Our backlog for products and services includes all orders that have been received and are believed to be firm. As of December 31, 2017 and 2016, our backlog was $582.7 million and $384.2 million, respectively.

In the TASER Weapons segment, we define backlog as equal to deferred revenue. Deferred revenue represents amounts billed and collected from the customer for goods and services to be delivered in subsequent periods. The Company processes orders within the TASER Weapons segment quickly, and our best estimate of firm orders outstanding as of period end represents those that have been paid for but remain undelivered. The TASER weapons backlog balance was $46.7 million as of December 31, 2017. The Company expects to realize $16.7 million of this deferred revenue balance as revenue during the next 12 months. This represents cash received from customers on or prior to December 31, 2017 for products and services expected to be delivered in the next 12 months.

In the Software and Sensors segment, we define backlog as cumulative bookings, net of cancellations, less product and service revenue recognized to date. Bookings are generally realized as revenue over multiple years. The Software and Sensors backlog balance was $536.0 million as of December 31, 2017. This backlog balance includes $78.6 million of deferred revenue, $27.0 million that has been invoiced, but not yet collected, and $430.4 million that has been recorded as bookings but not yet invoiced, all as of December 31, 2017. The Company expects to realize approximately $110.0 million of the December 31, 2017 backlog balance as revenue during the next 12 months.

Backlog - Year ended December 31, 2017 (in thousands)

	TASER Weapons	Software and Sensors	Total
Balance, beginning of period	$ 33,391	$ 350,792	$ 384,183
Add: additions to backlog, net of cancellations	247,806	291,152	538,958
Less: revenue recognized during period	234,512	105,928	340,440
Balance end of period	$ 46,685	$ 536,016	$ 582,701

Competition

Law Enforcement, Corrections and Private Security Markets

Law enforcement customers partner with TASER for the long-term. The primary competitive factors in the law enforcement and corrections market include a weapon's accuracy, effectiveness, safety, cost, ease of use and an exceptional customer experience. We are aware of competitors providing competing CEW products, primarily in international markets.

We also believe our CEWs compete indirectly with a variety of other less-lethal alternatives. These alternatives include, but are not limited to, pepper spray, batons and impact weapons sold by companies such as Defense Technology. We believe our TASER brand devices' advanced technology, versatility, portability, effectiveness, built-in accountability systems, and low injury rate enable us to compete effectively against these other less-lethal alternatives.

Private Citizen Market

CEWs have gained limited acceptance in the private citizen market. These devices primarily compete with guns, but also with other less lethal weapons such as pepper spray. The primary competitive factors in the private citizen market include a weapon's cost, effectiveness, safety and ease of use.

Video Evidence Market

Axon is the market leader in a video evidence capture and management market that is highly fragmented and competitive. Continued evolution in the industry and technology shifts are creating opportunities for both established and new competitors. Key competitive factors include: product performance, product features, product quality and warranty, total cost of ownership, data security, data and information work flows, company reputation and financial strength, and relationships with customers.

Our digital evidence management system, Evidence.com, is a cloud-based platform. Cloud computing fundamentally changes the way local, state and federal government agencies will develop and deploy software applications. Applications used by these agencies have historically required the agency to deploy their own infrastructure of servers, storage, network devices and operating systems.

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With a cloud-based system, the entire ...ge infrastructure is managed by third-parties wh... ...pecialize in infrastructure management. Agencies use Internet web browsers to access the application. Our cloud-based Evidence.com service enables

agencies to store, manage and analyze digital evidence. We believe our end-to-end solution providing a combination of both products and services is a compelling value proposition for law enforcement agencies to implement.

Regulatory Matters

U.S. Regulation

The majority of TASER CEWs, as well as the cartridges used by these devices, are subject to regulations; however, most are not considered to be "firearms" by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives. Many states have regulations restricting the sale and use of stun guns, hand-held shock devices and electronic weapons. We believe existing stun gun laws and regulations apply to TASER CEWs.

In many cases, the law enforcement and corrections market is subject to different regulations than the private citizen market. Where different regulations exist, we assume the regulations affecting the private citizen market also apply to the private security markets, except as the applicable regulations otherwise specifically provide.

As of December 31, 2017, the possession of stun guns by the general public, including TASER CEWs, is prohibited in four states: Hawaii, Massachusetts, New York, and Rhode Island, as well as in the District of Columbia. In 2017, New Jersey ended its state ban on stun guns for civilians. Some cities and municipalities also prohibit private citizen possession or use of our CEW products.

We are also subject to environmental laws and regulations, including restrictions on the presence of certain substances in electronic products. Reference is made to Section 1A, Risk Factors under the heading "Environmental laws and regulations subject us to a number of risks and could result in significant liabilities and costs."

Axon body worn cameras and fleet vehicle cameras are subject to regulations including 21-CFR-47 Part 15, Subpart C for Bluetooth and WiFi transmission, US-DOT/UN 38.3 for transportation of lithium batteries, and FCC KDB 447498 + IEEE 1528-2013 Specific Absorption Rate ("SAR") regulations. These regulations are also beginning to affect CEWs with signal performance power magazine ("SPPM") technology and future CEWs implementing wireless technology into the feature set.

Evidence.com is subject to government regulation of the Internet in many areas, including telecommunications, data protection, user privacy and online content.

U.S. Export Regulation

CEWs are considered a crime control product (ECCN: 0A985) by the U.S. government. Accordingly, the export of our devices is regulated under export administration regulations. As a result, we must obtain export licenses from the Department of Commerce for all shipments to foreign countries other than Canada. Most of our requests for export licenses have been granted, and the need to obtain these licenses has not caused a material delay in our shipments. Export regulations also prohibit the further shipment of our products from foreign markets in which we hold a valid export license to foreign markets in which we do not hold an export license for our products.

Export Administration Regulations ("EAR") established by the U.S. Department of Commerce restrict the export of technology used in our CEWs. These regulations apply to both the technology incorporated in our CEW systems and to the processes used to produce them. These restrictions apply to any individual that is not a U.S. Citizen, U.S. Permanent Resident, or "protected person" as defined in 8 U.S.C. 1324b(a)(3).

Foreign Regulation

Foreign regulations, which may affect our devices, and sale thereof, are numerous and often unclear. We prefer to work with a distributor who is familiar with the applicable import regulations in each of our foreign markets. Experience with foreign distributors in the past indicates that restrictions may prohibit certain sales of our products in a number of countries. However, the majority of countries permit TASER devices to be sold and used by law enforcement. We maintain strong communication channels with our distributors to ensure that we are aware of ongoing regulation of our products and of those countries where TASER CEW devices are prohibited or restricted.

Contracts

Our business is affected by numerous laws and regulations, including those related to the award, administration and performance of contracts. Governmental agencies generally have the ability to terminate our contracts, in whole or in part, for

reasons including, but not limited to, non-appropriation of funds. We monitor our policies and procedures with respect to our contracts on a regular basis to enhance consistent application under similar terms and conditions, as well as compliance with all applicable laws and regulations. We provide limited manufacturer's warranties on our CEWs and Axon devices. Further information about our warranties is included in Note 1 of the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K.

Intellectual Property

We protect our intellectual property with U.S. and foreign patents and trademarks. Our patents and pending patent applications relate to technology used by us in connection with our products. We also rely on international treaties, organizations and foreign laws to protect our intellectual property. As of December 31, 2017, we hold 137 U.S. patents, 63 U.S. registered trademarks, 98 foreign patents, and 278 foreign registered trademarks, and also have numerous patents and trademarks pending. We continuously assess whether and where to seek formal protection for particular innovations and technologies based on such factors as the commercial significance of our operations and our competitors' operations in particular countries and regions, our strategic technology or product directions in different countries, and the degree to which intellectual property laws exist and are meaningfully enforced in different jurisdictions. Axon has the exclusive rights to many Internet domain names, primarily including "TASER.com", "Axon.com", "Axon.net", "Evidence.com" and "Axon.io."

Confidentiality agreements are used with employees, consultants and key suppliers to help ensure the confidentiality of our trade secrets.

Research and Development

Our R&D initiatives focus on next generation technology. We continue to develop new technologies to enhance existing products and services, and to expand the range of our offerings through R&D, licensing of intellectual property and acquisition of third-party businesses and technology. Our investment in internally funded research and development totaled $55.4 million, $30.6 million and $23.6 million in 2017, 2016, and 2015, respectively.

Within the Software and Sensors segment, the Company's team of application developers conduct R&D initiatives for cloud applications, wearable and mobile technologies in law enforcement, focused specifically on new revenue opportunities that align with our Software and Sensors product and services solutions.

Within the TASER Weapons segment, current R&D initiatives include bio-medical research and electrical, mechanical and software engineering. We expect that future CEW development projects will focus on extending the range, reducing the size, improving the functionality and developing new delivery options for our products.

Our return on investment is intended to be realized over the long-term, although new systems and technologies often can have a more immediate impact on our business.

Employees

As of December 31, 2017, we had 949 full-time employees and 146 temporary employees. The breakdown of our full-time employees by department was as follows: 354 direct manufacturing employees, 600 administrative and manufacturing support employees and 141 employees within sales, marketing, communications and training. Of the 146 temporary employees, more than 91% worked in direct manufacturing roles. Our employees are not covered by any collective bargaining agreement, and we have never experienced a work stoppage. We believe that our relations with our employees are good.

Available Information

We were incorporated in Arizona in September 1993 as ICER Corporation. We changed our name to AIR TASER, Inc. in December 1993 and to Axon Enterprise, Incorporated in April 1998. In January 2001, we reincorporated in Delaware as TASER International, Inc., and in April 2017, changed our name to Axon Enterprise, Inc.

Our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act are available free of charge on our website at *http://www.axon.com* as soon as reasonably practicable after we electronically file such material with, or furnish such material to, the SEC. The information on our website, including information about our trademarks, is not incorporated by reference into or otherwise a part of this report. The SEC maintains a website that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at *http://www.sec.gov*.

Item 1A. ***Risk Factors***

Because of the following factors, as well as other variables affecting our operating results, our past financial performance may not be a reliable indicator of our future performance and historical trends should not be used to anticipate our results or trends in future periods. You should carefully consider the trends, risks and uncertainties described below and other information in this Form 10-K and subsequent reports filed with or furnished to the Securities and Exchange Commission (the "SEC") before making any investment decision with respect to our securities. If any of the following trends, risks or uncertainties actually occurs or continues, our business, financial condition or operating results could be materially adversely affected, the trading prices of our securities could decline, and you could lose all or part of your investment. All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by this cautionary statement.

We are materially dependent on acceptance of our products by law enforcement markets, both domestic and international. If law enforcement agencies do not continue to purchase and use our products, our revenues will be adversely affected.

At any point, due to external factors and opinions. whether or not not related to product performance, law enforcement agencies may elect to no longer purchase our CEWs or other products

We substantially depend on sales of our TASER X26P and X2 CEWs, and if these products do not continue to be widely accepted, our growth prospects will be diminished.

In the years ended December 31, 2017, 2016 and 2015, we derived our revenues predominantly from sales of TASER CEW brand devices and related cartridges, and expect to depend on sales of these products for a predominant portion of our revenue fo the foreseeable future. We are seeing a large number of customers upgrade their devices to the X2 or the new X26P device. This is a trend we expect to continue. A decrease in the selling prices of, or demand for these products, or their failure to maintain broad market acceptance, would significantly harm our growth prospects, operating results and financial condition.

The success of our Evidence.com software as a service ("SaaS") delivery model is materially dependent on acceptance of this business model by our law enforcement customers. Delayed or lengthy time to adoption by law enforcement agencies will negatively impact our sales and profitability.

A substantial number of law enforcement agencies may be slow to adopt our Evidence.com digital data evidence management and storage solution, requiring extended periods of trial and evaluation. The hosted service delivery business model is not presently widely adopted by our law enforcement customer base. As such, the sales cycle has additional complexity with the need to educate our customers and address issues regarding agency bandwidth requirements, data retention policies, data security and chain of evidence custody. Delays in successfully securing widespread adoption of Evidence.com services could adversely affect our revenues, profitability and financial condition.

If we are unable to design, introduce and sell new products or new product features successfully, our business and financial results could be adversely affected.

Our future success will depend on our ability to develop new products or new product features that achieve market acceptance in a timely and cost-effective manner. The development of new products and new product features is complex, time consuming and expensive, and we may experience delays in completing the development and introduction of new products. We cannot provide any assurance that products that we may develop in the future will achieve market acceptance. If we fail to develop new products or new product features on a timely basis that achieve market acceptance, our business, financial results and competitive position could be adversely affected.

Delays in product development schedules may adversely affect our revenues and cash flows.

The development of CEWs, devices, sensors and software is a complex and time-consuming process. New products and enhancements to existing products can require long development and testing periods. Our increasing focus on our SaaS platform also presents new and complex development issues. Significant delays in new product or service releases or significant problems in creating new products or services could adversely affect our business, financial results and competitive position.

We face risks associated with rapid technological change and new competing products.

The technology associated with law enforcement devices is receiving significant attention and is rapidly evolving. While we have some patent protection in certain key areas of our CEW, Axon Device and SaaS technology, it is possible that new technology may

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result in competing products that operate outside our patents and could present significant competition for our products, which could adversely affect our business, financial results and competitive position.

Defects in our products could reduce demand for our products and result in a loss of sales, delay in market acceptance and damage to our reputation.

Complex components and assemblies used in our products may contain undetected defects that are subsequently discovered at any point in the life of the product. Defects in our products could result in a loss of sales, delay in market acceptance and damage to our reputation and increased warranty costs, which could adversely affect our business, financial results and competitive position.

If our security measures are breached and unauthorized access is obtained to customers' data or our data, our network, data centers and service may be perceived as not being secure, customers may curtail or stop using our service and we may incur significant legal and financial exposure and liabilities.

Our service involves the storage and transmission of customers' proprietary information, and security breaches could expose us to a risk of loss of information or the total deletion of all stored customer data, litigation and possible liability. We devote significant resources to engineer secure products and ensure security vulnerabilities are mitigated, and we require out third-party service providers to do so as well. Despite these efforts, security measures may be breached as a result of third-party action, employee error, and malfeasance or otherwise. Breaches could occur during transfer of data to data centers or at any time, and result in unauthorized access to our data or our customers' data. Third-parties may attempt to fraudulently induce employees or customers into disclosing sensitive information such as user names, passwords or other information in order to gain access to our data or our customers' data. Additionally, hackers may develop and deploy viruses, worms, and other malicious software programs that attack or gain access to our networks and data centers. Because the techniques used to obtain unauthorized access, or to sabotage systems, change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. Moreover, our security measures and/or those of our third party service providers and/or customers may not detect such security breaches if they occur. Any security breach could result in a loss of confidence in the security of our service, damage our reputation, lead to legal liability, negatively impact our future sales and significantly harm our growth prospects, operating results and financial condition.

Interruptions or delays in service from our third-party cloud storage providers for our Evidence.com service, or the loss or corruption of digitally stored evidence, would impair the delivery of our service and harm our business.

We currently serve our Evidence.com customers from third-party cloud storage providers based in the U.S. and other countries. Interruptions in our service, or loss or corruption of digital evidence, may reduce our revenue, cause us to issue credits or pay penalties, cause customers to terminate their subscriptions and adversely affect our renewal rates and our ability to attract new customers. Our business will also be harmed if our customers and potential customers believe our service is unreliable.

Most of our end-user customers are subject to budgetary and political constraints that may delay or prevent sales.

Most of our end-user customers are government agencies. These agencies often do not set their own budgets and therefore, have limited control over the amount of money they can spend. In addition, these agencies experience political pressure that may dictate the manner in which they spend money. As a result, even if an agency wants to acquire our products, it may be unable to purchase them due to budgetary or political constraints, particularly in challenging economic environments. There can be no assurance that the economic and budgeting issues will not worsen and adversely impact sales of our products. Some government agency orders may also be canceled or substantially delayed due to budgetary, political or other scheduling delays, which frequently occur in connection with the acquisition of products by such agencies, and such cancellations may accelerate or be more severe than we have experienced historically.

We expend significant resources in anticipation of a sale due to our lengthy sales cycle and may receive no revenue in return.

Generally, law enforcement and corrections agencies consider a wide range of issues before committing to purchase our products, including product benefits, training costs, the cost to use our products in addition to, or in place of, other products, budget constraints and product reliability, safety and efficacy. The length of our sales cycle may range from a few weeks to as long as several years. Adverse publicity surrounding our products or the safety of such products has in the past, and could in the future, lengthen our sales cycle with customers. In the past, we believe that the Company's sales were adversely impacted by negative publicity surrounding our products or the use of our products. See, for example, "Litigation - Product Litigation" in Note 9 of our consolidated financial statements included in Part II, Item 8 of this report. We may incur substantial selling costs and expend significant effort in connection with the evaluation of our products by potential customers before they place an order. If these potential customers do not purchase our products, we will have expended significant resources and received no revenue in return.

Due to municipal government funding rules, certain of our contracts are subject to appropriation, termination for convenience, or similar cancellation clauses, which could allow our customers to cancel or not exercise options to renew contracts in the future.

Although Axon has entered into contracts for the delivery of products and services in the future and anticipates the contracts will be completed, if agencies do not appropriate money in future year budgets, terminate contracts for convenience or if other cancellation clauses are invoked, revenue associated with these bookings will not ultimately be recognized, and could result in a reduction to bookings.

An increasing percentage of our revenue is derived from subscription billing arrangements which may result in delayed cash collections and may increase customer credit risk on receivables

A growing portion of our sales are derived from subscription billing arrangements and on an open credit basis. While we perform ongoing credit evaluations of our customers' financial condition, if we become aware of information related to the creditworthiness of a major customer, or if future actual default rates on receivables in general differ from those currently anticipated, we may have to adjust our allowance for doubtful accounts, which could adversely affect our business, financial condition or operating results.

Changes in civil forfeiture laws may affect our customers' ability to purchase our products

Some of our customers use funds seized through civil forfeiture proceedings to fund the purchase of our products. Changes in state legislatures could impact our customers' ability to seize funds or use seized funds to fund purchases. Changes in civil forfeiture statutes or regulations are outside of our control and could limit the amount of funds available to our customers, which could adversely affect the sale of our products.

SaaS revenue for Evidence.com is recognized over the terms of the contracts, which may be several years, and, as such, trends in new business may not be immediately reflected in our operating results.

Our SaaS service revenue is generally recognized ratably over the terms of the contracts, which generally range from one to five years. As a result, most of the SaaS revenue we report each quarter is the result of agreements entered into during previous quarters. Consequently, current positive or negative trends in this portion of our business may not be fully reflected in our revenue results for several periods.

We utilize multiple third-party cloud-based storage providers to host the Axon Evidence.com platform.

Utilizing and administering multiple cloud-based storage providers may result in duplication of efforts and resources, increased cost structure, and organization complexities. These complexities and additional costs could adversely affect our business, financial condition or operating results.

We may face personal injury, wrongful death and other liability claims that harm our reputation and adversely affect our sales and financial condition.

Our CEW products are often used in aggressive confrontations that may result in serious, permanent bodily injury or death to those involved. Our CEW products may be associated with these injuries. A person, or the family members of a person, injured in a confrontation or otherwise in connection with the use of our products, may bring legal action against us to recover damages on the basis of theories including wrongful death, personal injury, negligent design, defective product or inadequate warning. We are currently subject to a number of such lawsuits and we have been subject to significant adverse judgments and settlements. We may also be subject to lawsuits involving allegations of misuse of our products. If successful, wrongful death, personal injury, misuse and other claims could have a material adverse effect on our operating results and financial condition and could result in negative publicity about our products. Although we carry product liability insurance, we do incur significant legal expenses within our self-insured retention in defending these lawsuits and significant litigation could also result in a diversion of management's attention and resources, negative publicity and a potential award of monetary damages in excess of our insurance coverage. The outcome of any litigation is inherently uncertain and there can be no assurance that our existing or any future litigation will not have a material adverse effect on our business, financial condition or operating results.

Other litigation may subject us to significant litigation costs and judgments and divert management attention from our business.

We have been or could in the future be involved in numerous other litigation matters relating to our products, contracts and business relationships, including litigation against persons whom we believe have infringed on our intellectual property, infringement litigation filed against the Company, litigation against a competitor and litigation filed by a former distributor against the Company. Such matters have resulted, and are expected to continue to result in, substantial costs to us, including in the form of attorney's fees and costs, damages, fines or other penalties, whether pursuant to a judgment or settlement, and diversion of our management's attention, which could adversely affect our business, financial condition or operating results. There is also a risk of adverse judgments, as the outcome of litigation is inherently uncertain.

If we are unable to protect our intellectual property, we may lose our competitive advantage or incur substantial litigation costs to protect our rights. We may be subject to intellectual property infringement claims, which could cause us to incur litigation costs and divert management attention from our business.

Our future success depends upon our proprietary technology. Our protective measures, including patents, trademarks, copyrights, trade secret protection, and Internet identity registrations, may prove inadequate to protect our proprietary rights and market advantage. The right to stop others from misusing our trademarks and service marks in commerce depends, to some extent, on our ability to show evidence of enforcement of our rights against such misuse in commerce. Our efforts to stop improper use, if insufficient, may lead to loss of trademark and service mark rights, brand loyalty and notoriety among our customers and prospective customers. The scope of any patent to which we have or may obtain rights may not prevent others from developing and selling competing products. The validity and breadth of claims covered in technology patents involve complex legal and factual questions, and the resolution of such claims may be highly uncertain, lengthy and expensive. In addition, our patents may be held invalid upon challenge, or others may claim rights in or ownership of our patents. Moreover, we are subject to litigation with parties that claim, among other matters, that we infringed their patents or other intellectual property rights. The defense and prosecution of patent and other intellectual property claims are both costly and time consuming, divert our management's attention from our business and could result in a material adverse effect on our business, and financial position and operating results.

If our products were found to infringe a third-party's proprietary rights, we could be forced to enter into costly royalty or licensing agreements in order to be able to sell our products or discontinue use of the protected technology. Such royalty and licensing agreements may not be available on terms acceptable to us or at all. We could also be required to pay substantial damages, fines or other penalties, indemnify customers or distributors, cease the manufacture, use, or sale of infringing products or processes, and/or expend significant resources to develop or acquire non-infringing technologies. There is no guarantee that our use of conventional technology searching and brand clearance searching will identify all potential rights holders. Rights holders may demand payment for past infringements and/or force us to accept costly license terms or discontinue use of protected technology and/or works of authorship that may include, for example, photos, videos, and software. Our current research and development focus on developing software-based products increases this risk.

In foreign countries, we can enforce patent rights only in the jurisdictions in which our patent applications have been granted.

Our U.S. patents protect us from imported infringing products coming into the U.S. from abroad. We have made applications for patents in a few foreign countries; however, these may be inadequate to protect markets for our products in other foreign countries. Each foreign patent is examined and granted according to the law of the country where it was filed independent of whether a U.S. patent on similar technology was granted. A patent in a foreign country may be subject to cancellation if the claimed invention has not been sold in that country. Meeting the requirements of working invention differs by country and ranges from sales in the country to manufacturing in the country. U.S. export law, or the laws of some foreign countries, may prohibit us from satisfying the requirements for working the invention, creating a risk that some of our foreign patents may become unenforceable.

Government regulations applied to our CEW products may affect our markets for and sales of these products.

We rely on the opinions of the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, including the determination that a device that has projectiles propelled by the release of compressed gas in place of the expanding gases from ignited gunpowder, are not classified as firearms. Changes in statutes, regulations, and interpretation outside of our control may result in our products being classified or reclassified as firearms. Our private citizen market could be substantially reduced if consumers are required to obtain a registration to own a firearm prior to purchasing our products.

Federal regulation of sales in the U.S.: Our CEWs are not firearms regulated by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, but our consumer products are regulated by the U.S. Consumer Product Safety Commission. Although there are

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currently no Federal laws restricting sales of our core CBW products in the U.S., future Federal regulation could adversely affect sales of our products.

Federal regulation of international sales: Our CEW devices are considered a "crime control" product by the U.S. Department of Commerce ("DOC") for export directly from the U.S. Consequently, we must obtain an export license from the DOC for the export of our CEW devices from the U.S. other than to Canada. In addition, certain of our camera and software products require classifications from the DOC before they may be shipped internationally. Our inability to obtain DOC export licenses or classifications on a timely basis for sales of our products to our international customers could significantly and adversely affect our international sales.

State and local regulation: Our CEW devices are controlled, restricted or their use prohibited by a number of state and local governments. Our CEW devices are banned from private citizen purchase or use by statute in five states: Hawaii, Massachusetts, New York, and Rhode Island, as well as in the District of Columbia. Some cities and municipalities also prohibit private citizen possession or use of our CEW products. Other jurisdictions may ban or restrict the sale of our CEW products and our product sales may be significantly affected by additional state, county and city governmental regulation.

Foreign regulation: Certain foreign jurisdictions prohibit, restrict, or require a permit for the importation, sale, possession or use of CEWs, including in some countries by law enforcement agencies, limiting our international sales opportunities.

Our CEW products are also subject to regulation by testing, safety and other standard organizations (e.g. ANSI, IEC, NIST).

Our international operations expose us to additional risks that could harm our business, operating results, and financial condition.

Our international operations are significant, and we plan to continue to grow internationally by acquiring existing entities or setting up new legal entities in new markets. In certain international markets, we have limited operating experience and may not benefit from any first-to-market advantages or otherwise succeed. In addition to risks described elsewhere in this section, our international operations expose us to other risks, including the following:

- Restrictions on foreign ownership and investments, and stringent foreign exchange controls that might prevent us from repatriating cash earned in countries outside the U.S.
- Import and export requirements, tariffs, trade disputes and barriers, and customs classifications that may prevent us from offering products or providing services to a particular market or obtaining necessary parts and components to manufacture products, which may lead to decreased sales and may increase our operating costs.
- Longer payment cycles in some countries, increased credit risk, and higher levels of payment fraud.
- Uncertainty regarding liability for products and services, including uncertainty as a result of local laws and lack of legal precedent.
- Different employee/employer relationships, existence of workers' councils and labor unions, and other challenges caused by distance, language, and cultural differences, making it harder to do business in certain jurisdictions.

Additionally, changes in international local political, economic, regulatory, tax, social, and labor conditions may adversely harm our business and compliance with complex foreign and U.S. laws and regulations that apply to our international operations increases our cost of doing business. These numerous and sometimes conflicting laws and regulations include, among others, internal control and disclosure rules, privacy and data protection requirements, anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act, and other local laws prohibiting corrupt payments to governmental officials, and competition regulations, among others. Violations of these laws and regulations could result in fines and penalties, criminal sanctions against us, our officers, or our employees, prohibitions on the conduct of our business and on our ability to offer our products and services in one or more countries, and could also materially affect our brand, our international growth efforts, our ability to attract and retain employees, our business, and our operating results. Although we have implemented policies and procedures designed to ensure compliance with these laws and regulations, there can be no assurance that our employees, contractors, or agents will not violate our policies.

Environmental laws and regulations subject us to a number of risks and could result in significant liabilities and costs.

We are subject to various state, federal and international laws and regulations governing the environment, including restricting the presence of certain substances in our products and making producers for those products financially responsible for the collection, treatment, recycling and disposal. Environmental legislation within the European Union ("EU") may increase our cost of doing business internationally and impact our revenues from EU countries as we comply with and implement these requirements.

The EU has published Directives on the restriction of certain hazardous substances in electronic and electrical equipment (the "RoHS Directive") and on electronic and electrical waste management (the "WEEE Directive"). The RoHS Directive restricts the use of a number of substances, including lead. The WEEE Directive directs members of the EU to enact laws, regulations, and

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administrative provisions to ensure that producers of electric and electronic equipment are financially responsible for the collection, recycling, treatment and environmentally responsible disposal of certain products sold into the EU. In addition, similar

environmental legislation has been or may be enacted in other jurisdictions, including the U.S. (under federal and state laws) and other countries, the cumulative impact of which could be significant.

We continue to monitor the impact of specific registration and compliance activities required by the RoHS and WEEE Directives. We endeavor to comply with applicable environmental laws, yet compliance with such laws could increase our operations and product costs, increase the complexities of product design, procurement, and manufacturing, limit our ability to manage excess and obsolete non-compliant inventory, limit our sales activities, and impact our future financial results. Any violation of these laws can subject us to significant liability, including fines, penalties, and prohibiting sales of our products into one or more states or countries, and result in a material adverse effect on our financial condition.

Regulations related to voice, data and communications services may impact our ability to sell our products.

The radio spectrum is required to provide wireless voice, data and video communications services. The allocation of spectrum is regulated in the U.S. and other countries and limited spectrum space is allocated to wireless services and specifically to public safety users. In the U.S., the Federal Communications Commission ("FCC") regulates spectrum use by non-federal entities and federal entities. Similarly, countries around the world have one or more regulatory bodies that define and implement the rules for use of radio spectrum and electromagnetic interference, pursuant to their respective national laws. We manufacture and market products in spectrum bands already made available by regulatory bodies. Consequently, our results could be positively or negatively affected by the rules and regulations adopted from time to time by the FCC or regulatory agencies in other countries. Regulatory changes in current spectrum bands may also provide opportunities or may require modifications to some of our products so they can continue to be manufactured and marketed. If current products do not comply with the regulations set forth by these governing bodies, we may be unable to sell our products or could incur penalties, which could have an adverse impact on our financial condition, results of operations and cash flows.

Regulations related to conflict minerals may force us to incur additional expenses, may make our supply chain more complex and may result in damage to our reputation with customers.

The U.S. Securities and Exchange Commission ("SEC") has enacted disclosure requirements for companies that use certain minerals and metals, known as "conflict minerals," in their products, whether or not these products are manufactured by third-parties. These requirements require companies to perform due diligence, disclose and report whether or not such minerals originate from the Democratic Republic of Congo and adjoining countries. We have incurred and will likely continue to incur costs to comply with the disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in our products. In addition, these new requirements could adversely affect the sourcing, availability and pricing of minerals used in our products. Because our supply chain is complex, we may not be able to sufficiently verify the origins for these minerals and metals used in our products through the due diligence procedures that we implement, which may harm our reputation. In such an event, we may also face difficulties in satisfying customers who require that all of the components of our products are certified as conflict-free.

Our dependence on third-party suppliers for key components of our devices could delay shipment of our products and reduce our sales.

We depend on certain domestic and foreign suppliers for the delivery of components used in the assembly of our products. Our reliance on third-party suppliers creates risks related to our potential inability to obtain an adequate supply of components or sub-assemblies and reduced control over pricing and timing of delivery of components and sub-assemblies. Specifically, we depend on suppliers of sub-assemblies, machined parts, injection molded plastic parts, printed circuit boards, custom wire fabrications and other miscellaneous customer parts for our products. We do not have long-term agreements with any of our suppliers and there is no guarantee that supply will not be interrupted. Due to changes imposed for imports of foreign products into the U.S., as well as potential port closures and delays created by terrorist attacks or threats, public health issues, national disasters or work stoppages, we are exposed to risk of delays caused by freight carriers or customs clearance issues for our imported parts. Any interruption of supply for any material components of our products could significantly delay the shipment of our products and have a material adverse effect on our revenues, profitability and financial condition.

Component shortages could result in our inability to produce at a volume to adequately meet customer demand, which could result in a loss of sales, delay in deliveries and injury to our reputation.

Single or sole-source components used in the manufacture of our products may become unavailable or discontinued. Delays caused by industry allocations or obsolescence may take weeks or months to resolve. In some cases, parts obsolescence may require a product re-design to ensure quality replacement components. These delays could cause significant delays in manufacturing and loss of sales, leading to adverse effects significantly impacting our financial condition or results of operations and injure our reputation.

We may experience a decline in gross margins due to rising raw material and transportation costs associated with a future increase in petroleum prices.

A significant number of our raw materials are comprised of petroleum-based products, or incur some form of landed cost associated with transporting the raw materials or components to our facility. A significant rise in oil prices could adversely impact our ability to sustain current gross margins by increasing component pricing and transportation costs.

We may experience a decline in gross margins due to a shift in product sales from CEWs to Axon devices which may continue to carry a lower gross margin.

We continue to invest in the growth of the Software and Sensors segment, and this expected growth may result in a higher percentage of total revenues being comprised of Software and Sensors products and services. Gross margin as a percentage of net sales for the Software and Sensors segment is currently lower than that of the TASER Weapons segment, and may continue to be lower in the future.

To the extent demand for our products increases, our future success will be dependent upon our ability to manage our growth and to increase manufacturing production capacity, which may be accomplished by the implementation of customized manufacturing automation equipment.

To the extent demand for our products increases significantly in future periods, one of our key challenges will be to increase our production capacity to meet sales demand while maintaining product quality. Our primary strategies to accomplish this include introducing additional shifts, increasing the physical size of our assembly facilities, the hiring of additional production staff, and the implementation of additional customized automation equipment. The investments we make in this equipment may not yield the anticipated labor and material efficiencies. Our inability to meet any future increase in sales demand or effectively manage our expansion could have a material adverse effect on our revenues, financial results and financial condition.

Our future success is dependent on our ability to expand sales through distributors and direct sales and our inability to recruit new distributors or increase direct sales would negatively affect our sales.

Our distribution strategy is to pursue sales through multiple channels with an emphasis on independent distributors and direct sales. Our inability to establish relationships with and retain law enforcement equipment distributors, who we believe can successfully sell our products, would adversely affect our sales. In addition, our arrangements with our distributors are generally short-term. We are also focusing on direct sales to larger agencies through our regional sales managers and our inability to grow sales to these agencies in this manner could adversely affect our sales. If we do not competitively price our products, meet the requirements of our distributors or end-users, provide adequate marketing support, or comply with the terms of our distribution arrangements, our distributors may fail to aggressively market our products or may terminate their relationships with us. These developments would likely have a material adverse effect on our sales. Our reliance on the sales of our products by others also makes it more difficult to predict our revenues, cash flow and operating results.

The increased focus on direct sales compared to sales through distribution is dependent on our ability to sell into the states or foreign jurisdictions that have established distributor relationships.

In certain states and foreign jurisdictions we have decided to pursue sales directly with law enforcement customers, rather than working through established distribution channels. Our customers may have strong working relationships with distributors and we may face resistance to this change. If we do not overcome this resistance and effectively build a direct relationship with our customers, sales may be adversely affected.

Acquisitions and joint ventures may have an adverse effect on our business.

We may consider additional acquisitions or joint ventures as part of our long-term business strategy. These transactions involve significant challenges and risks including that the transaction does not advance our business strategy, that we do not realize a satisfactory return on our investment, or that we experience difficulty in the integration or coordination of new employees, business systems, and technology, or there is a diversion of management's attention from our other businesses. These events could harm our operating results, financial condition or cash flows.

If our goodwill or indefinite-lived assets become impaired, we may be required to record a significant charge to earnings.

We test goodwill for impairment at least annually. If such goodwill or indefinite-lived intangible assets are deemed to be impaired, an impairment loss equal to the amount by which the carrying amount exceeds the fair value of the assets would be recognized. We review our indefinite-lived intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Events which might indicate impairment include, but are not limited to, declines in stock price market capitalization or cash flows, adverse cost factors, deteriorating financial performance, strategic decisions made in response to economic, market and competitive conditions, the impact of the economic environment on us and our customer base, and/or relevant events such as changes in management, key personnel, litigation or customers.

We may be required to record a significant charge in our financial statements during the period in which any impairment of our goodwill or indefinite-lived intangible assets is determined, which would negatively affect our results of operations.

Catastrophic events may disrupt our business.

A disruption or failure of our systems or operations in the event of a major earthquake, weather event, fire, explosion, failure to contain hazardous materials, industrial accident, cyber-attack, terrorist attack, or other catastrophic event could cause delays in completing sales, providing services, or performing other mission-critical functions. A catastrophic event that results in the destruction or disruption of any of our critical business or information technology systems could harm our ability to conduct normal business operations and our operating results as well as expose us to claims, litigation and governmental investigations and fines.

The Company's financial performance is subject to risks associated with changes in the value of the U.S. dollar versus local currencies.

For current and potential foreign customers whose contracts are denominated in U.S. dollars, the relative change in currency values creates fluctuations in our product pricing. These changes in foreign end-user costs may result in lost orders and reduce the competitiveness of our products in certain foreign markets.

For non-U.S. dollar denominated sales, weakening of foreign currencies relative to the U.S. dollar generally leads us to raise international pricing, potentially reducing demand for our products. Should we decide not to raise local prices to fully offset the dollar's strengthening, or at all, the U.S. dollar value of our foreign currency denominated sales and earnings would be adversely affected. We do not currently engage in hedging activities. Fluctuations in foreign currency could result in a change in the U.S. dollar value of our foreign denominated assets and liabilities including accounts receivable. Therefore, the U.S. dollar equivalent collected on a given sale could be less than the amount invoiced causing the sale to be less profitable than contemplated.

We also import selected components which are used in the manufacturing of some of our products. Although our purchase orders are generally in U.S. dollars, weakness in the U.S. dollar could lead to price increases for the components.

Unanticipated changes in our effective tax rate and additional tax liabilities may impact our operating results

We are subject to income taxes in the United States and various jurisdictions outside of the United States. Our effective tax rate could fluctuate due to changes in the mix of earnings and losses in countries with differing statutory tax rates. Our tax expense could also be impacted by changes in non-deductible expenses, changes in excess tax benefits related to exercises and vesting of stock-based expense, changes in the valuation of deferred tax assets and liabilities and our ability to utilize them and the applicability of withholding taxes.

We are subject to tax examinations in multiple jurisdictions. While we regularly evaluate new information that may change our judgment resulting in recognition, derecognition or change in measurement of a tax position taken, there can be no assurance that the final determination of any examinations will not have an adverse effect on our operating results and financial position.

Our tax provision could also be impacted by changes in federal, state or international tax laws including fundamental tax law changes applicable to corporate multinationals.

Additionally, we may be subject to additional tax liabilities due to changes in non-income taxes resulting from changes in federal, state or international tax laws, changes in taxing jurisdictions' administrative interpretations, decisions, policies, and positions, results of tax examinations, settlements or judicial decisions, changes in accounting principles, changes to the business operations, including acquisitions, as well as the evaluation of new information that results in a change to a tax position taken in a prior period.

The enactment of tax reform legislation, including legislation implementing changes in taxation of international business activities, could materially impact our financial position and results of operations.

Legislation or other changes in the tax laws could increase our liability and adversely affect our after-tax profitability. For example, the Tax Cuts and Jobs Act was enacted in the United States on December 22, 2017. The Tax Cuts and Jobs Act could have a significant impact on our effective tax rate, cash tax expenses and net deferred tax assets. The Tax Cuts and Jobs Act reduces the U.S. corporate statutory tax rate, eliminates or limits deduction of several expenses which were previously deductible, imposes a mandatory deemed repatriation tax on undistributed historic earnings of foreign subsidiaries, requires a minimum tax on earnings generated by foreign subsidiaries and permits a tax-free repatriation of foreign earnings through a dividends received deduction. We are evaluating the overall impact of the Tax Cuts and Jobs Act on our effective tax rate and balance sheet, but expect that the impact may be significant for fiscal year 2018 and future periods.

We maintain most of our cash balances, some of which are not insured, at four depository institutions.

We maintain the majority of its cash and cash equivalents accounts at four depository institutions. As of December 31, 2017, the aggregate balances in such accounts were $53.4 million. The Company's balances with these institutions regularly exceed Federal Deposit Insurance Corporation ("FDIC") insured limits for domestic deposits and various deposit insurance programs covering our deposits in the Netherlands, the United Kingdom, Australia and Germany.

We could suffer losses with respect to the uninsured balances if the depositary institutions failed and the institution's assets were insufficient to cover its deposits and/or the governments did not take actions to support deposits in excess of existing insurance limits. Any such losses could have a material adverse effect on our liquidity, financial condition and results of operations.

We depend on our ability to attract and retain our key management, sales and technical personnel.

Our success depends upon the continued service of our key management personnel. Our success also depends on our ability to continue to attract, retain and motivate qualified technical personnel. Although we have employment agreements with certain of our officers and other members of our execute management team, the employment of such persons is "at-will" and either we or the employee can terminate the employment relationship at any time, subject to the applicable terms of the employment agreements. The competition for our key employees is intense. The loss of the service of one or more of our key personnel could adversely impact our business, prospects, financial condition and operating results.

We are highly dependent on the services of Patrick W. Smith, our Chief Executive Officer.

We are highly dependent on the services of Patrick W. Smith, our founder and Chief Executive Officer. Our future success depends upon our ability to retain executive officers, specifically Mr. Smith, and any failure to do so could adversely impact our business, prospects, financial condition and operating results.

We have identified a material weakness in our internal control over financial reporting which could, if not remediated, result in material misstatements in our financial statements.

Although we have concluded that our consolidated financial statements as of December 31, 2017, present fairly, in all material respects, the results of operations, financial position, and cash flows of our company and its subsidiaries in conformity with generally accepted accounting principles, we have identified a material weakness in internal control over financial reporting related to the monitoring controls of the Company's subsidiary, Axon Public Safety U.K. Ltd. Under standards established by the Public Company Accounting Oversight Board, a material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected and corrected on a timely basis. See Item 9A, "Controls and Procedures."

We have initiated remedial measures, but if our remedial measures are insufficient to address the material weakness, or if additional material weaknesses or significant deficiencies in our internal control over financial reporting are discovered or occur in the future, our consolidated financial statements may contain material misstatements, and we could be required to restate our financial results. In addition, if we are unable to successfully remediate this material weakness and if we are unable to produce accurate and timely financial statements, it could adversely impact our business and our stock price.

Risks Related to Ownership of Our Common Stock

The trading price of our common stock has been, and is likely to continue to be, volatile. In addition to the factors discussed in this Annual Report on Form 10-K, the trading price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our revenue and other operating results;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- actions of securities analysts who initiate or maintain coverage of us, changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- investor sentiment with respect to our competitors, our business partners, and our industry in general;
- announcements by us or our competitors of significant products or features, technical innovations, acquisitions, strategic partnerships, joint ventures, or capital commitments;
- announcements by us or estimates by third-parties of actual or anticipated changes in the size of our user base, addressable market or the effectiveness of our products;
- changes in operation performance and stock market valuations of technology companies in our industries, including our developers and competitors;
- price and volume fluctuations in the overall stock market, including as a result of trends in the economy as a whole;
- media coverage of our business and financial performance;
- lawsuits threatened or filed against us;
- developments in anticipated or new legislation and pending lawsuits or regulator actions, including interim or final rulings by tax, judicial or regulatory bodies; and
- other events or factors, including those resulting from war or incidents of terrorism, or responses to these events.

Our revenues and operating results may fluctuate unexpectedly from quarter-to-quarter, which may cause our stock price to decline.

Our revenues and operating results have varied significantly in the past and may vary significantly in the future due to various factors, including, but not limited to:

- budgetary cycles of municipal, state and federal law enforcement and corrections agencies;
- market acceptance of our products and services;
- the timing of large domestic and international orders;
- the outcome of any existing or future litigation;
- adverse publicity surrounding our products, the safety of our products, or the use of our products;
- changes in our sales mix;
- new product introduction costs;
- increased raw material expenses;
- changes in our operating expenses;
- changes in foreign currency exchange rates and
- regulatory changes that may affect the marketability of our products.

As a result of these and other factors, we believe that period-to-period comparisons of our operating results may not be meaningful in the short term, and our performance in a particular period may not be indicative of our performance in any future period.

Item 1B. ***Unresolved Staff Comments***

None.

Item 2. ***Properties***

Our corporate headquarters and manufacturing facilities are based in a 100,000 square foot facility in Scottsdale, Arizona, which we own. We also lease premises in Scottsdale, Arizona; Seattle, Washington; Topsfield, Massachusetts; Amsterdam, Netherlands; Daventry, England; London, England; Frankfurt, Germany; Brisbane, Australia; Sydney, Australia, Ho Chi Minh City, Vietnam and Tampere, Finland. We believe our existing facilities are well maintained and in good operating condition. We also believe we have adequate manufacturing capacity for our existing product lines. To the extent that we introduce new products in the future, we will likely need to acquire additional facilities to locate the associated production lines. However, we believe we can acquire or lease such facilities on reasonable terms. The Company continues to make investments in capital equipment as needed to meet anticipated demand for its products.

Item 3. ***Legal Proceedings***

See discussion of litigation in Note 9 to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K, which discussion is incorporated by reference herein.

Item 4. ***Mine Safety Disclosures***

None.

PART II

Item 5. ***Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities***

Market Information

Our common stock is quoted under the symbol "AAXN" on The NASDAQ Global Select Market. The following tables set forth the high and low sales prices per share for our common stock as reported by NASDAQ for each quarter of the last two fiscal years.

Year Ended December 31, 2017:	High	Low
First quarter	$ 27.56	$ 22.05
Second quarter	28.17	21.18
Third quarter	26.31	21.25
Fourth quarter	27.09	20.57

Year Ended December 31, 2016:	High	Low
First quarter	$ 20.69	$ 13.56
Second quarter	24.94	17.18
Third quarter	30.15	24.46
Fourth quarter	28.49	21.50

Holders

As of December 31, 2017, there were 255 holders of record of our common stock.

Dividends

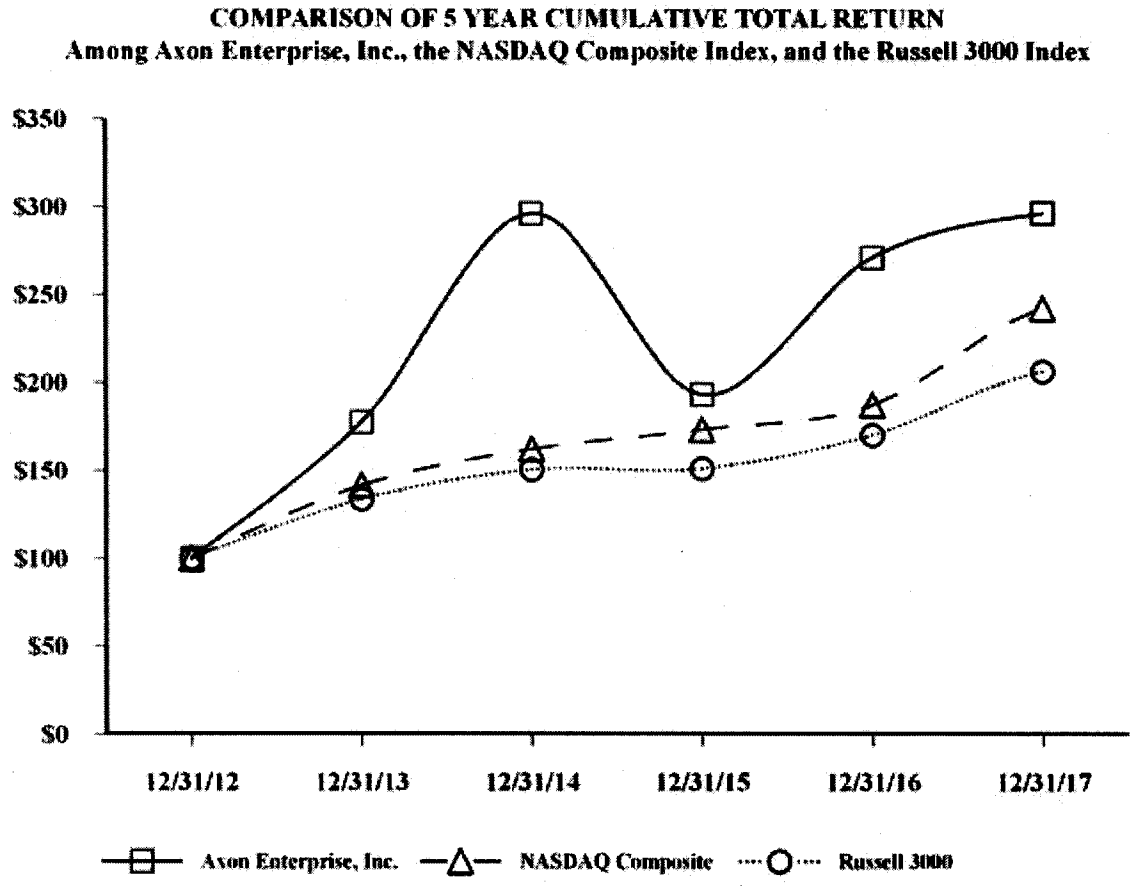
To date, the Company has not declared or paid cash dividends on its common stock. The Company does not intend to pay cash dividends in the foreseeable future, and its revolving line of credit prohibits the payment of cash dividends.

Issuer Purchases of Equity Securities

In February 2016, the Company's Board of Directors authorized a stock repurchase program to acquire up to $50.0 million of the Company's outstanding common stock subject to stock market conditions and corporate considerations. The stock repurchase program does not have a stated expiration date. During the year ended December 31, 2017, no common shares were purchased under the program. As of December 31, 2017 and 2016, $16.3 million remains available under the plan for future purchases. During 2016, the Company suspended its 10b-5 plan, and any future purchases would be discretionary.

Stock Performance Graph

The following stock performance graph compares the performance of our common stock to the NASDAQ Composite Index and the Russell 3000 Index. The graph covers the period from December 31, 2012 to December 31, 2017. The graph assumes that the value of the investment in our stock and in each index was $100 at December 31, 2012, and that all dividends were reinvested. We do not pay dividends on our common stock.



	2012	2013	2014	2015	2016	2017
Axon Enterprise, Inc.	$ 100.00	$ 177.63	$ 296.20	$ 193.40	$ 271.14	$ 296.42
NASDAQ Composite	100.00	141.63	162.09	173.33	187.19	242.29
Russell 3000	100.00	133.55	150.32	151.04	170.28	206.26

Item 6. ***Selected Financial Data***

The following selected financial data should be read in conjunction with our consolidated financial statements and the notes thereto, and with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations." The statement of operations data for the years ended December 31, 2017, 2016 and 2015, and the balance sheet data as of December 31, 2017 and 2016, have been derived from, and should be read in conjunction with, our audited consolidated financial statements and the notes thereto included herein. The statement of operations data for the years ended December 31, 2014 and 2013, and the balance sheet data as of December 31, 2015, 2014 and 2013, is derived from our historical audited consolidated financial statements and the notes thereto which are not included in this Annual Report on Form 10-K. Dollars are in thousands, except per share amounts.

	For the Year Ended December 31,				
	2017	2016	2015	2014	2013
Statements of Operations Data:					
Net sales from products	$ 285,859	$ 238,573	$ 185,230	$ 160,313	$ 136,123
Net sales from services	57,939	29,672	12,662	4,212	1,708
Net sales	343,798	268,245	197,892	164,525	137,831
Cost of product sales	117,997	91,536	65,022	60,913	50,099
Cost of service sales	18,713	6,173	4,223	2,064	1,889
Cost of sales	136,710	97,709	69,245	62,977	51,988
Gross margin	207,088	170,536	128,647	101,548	85,843
Sales, general and administrative expenses	138,692	108,076	69,698	54,158	46,557
Research and development expenses	55,373	30,609	23,614	14,885	9,888
Litigation judgments	—	—	—	—	1,450
Income from operations	13,023	31,851	35,335	32,505	27,948
Interest and other (expense) income, net	2,738	(354)	26	(194)	86
Income before provision for income taxes	15,761	31,497	35,361	32,311	28,034
Provision for income taxes	10,554	14,200	15,428	12,393	9,790
Net income	$ 5,207	$ 17,297	$ 19,933	$ 19,918	$ 18,244
Net income per common and common equivalent shares:					
Basic	$ 0.10	$ 0.33	$ 0.37	$ 0.38	$ 0.35
Diluted	$ 0.10	$ 0.32	$ 0.36	$ 0.37	$ 0.34
Weighted average number of common and common equivalent shares outstanding:					
Basic	52,726	52,667	53,548	52,948	51,880
Diluted	53,898	53,536	54,638	54,500	54,152

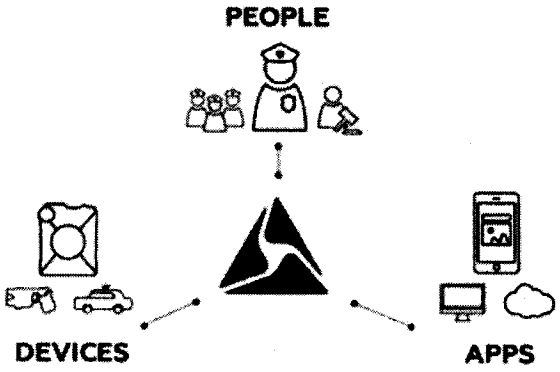
	As of December 31,				
	2017	2016	2015	2014	2013
Balance Sheet Data:					
Working capital	$ 97,242	$ 99,192	$ 123,269	$ 102,669	$ 67,237
Total assets	338,112	278,163	229,881	185,368	148,382
Total current liabilities	107,950	78,039	38,140	31,973	23,129
Total long-term debt and capital leases, net of current portion	41	118	81	29	67
Total stockholders' equity	167,444	150,888	157,004	129,106	108,347

Item 7. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is designed to provide a reader of our consolidated financial statements with a narrative from the perspective of our management on our financial condition, results of operations, liquidity and certain other factors that may affect our future results. Our MD&A should be read in conjunction with the other sections of this Annual Report on Form 10-K, including Part I, Item 1A: "Risk Factors"; Part II, Item 6: "Selected Financial Data"; and Part II, Item 8: "Financial Statements and Supplementary Data." The various sections of this MD&A contain a number of forward-looking statements, all of which are based on our current expectations and could be affected by the uncertainties and risk factors described throughout this filing. The tables in the MD&A sections below are derived from exact numbers and may have immaterial rounding differences.

Overview and Strategy

Axon Enterprise, Inc.'s (the "Company" or "Axon" or "we" or "our") core mission is to protect life through innovative technologies that make communities safer. We are the market leader in the development, manufacture and sale of conducted electrical weapons ("CEWs") designed for use by law enforcement, corrections, military forces, private security personnel and by private individuals for personal defense. We are also the market leader in developing, manufacturing and selling connected wearable on-officer cameras as well as developing and selling cloud-based digital evidence management software. We have established a robust network that connects devices, apps and people primarily in the law enforcement vertical. We aim to have every public safety officer in the world carry a TASER, deploy an Axon camera and be connected to the Axon network.



The three foundations for our growth strategy are:

- **Devices** - Our TASER CEWs are one of the few weapons that can incapacitate a person while drastically limiting the risk for death and/or serious injury. Over the past two decades, the TASER CEW has become one of the most frequently used weapons in the North American law enforcement market, with use-of-force injuries and deaths dropping dramatically as a result. Outside of weapons, we produce devices that primarily fall within three categories: On-officer cameras that capture critical digital evidence aimed at protecting truth, a range of related accessory hardware devices and an in-car camera variant called Axon Fleet. We believe our CEWs and Axon cameras should be standard-issue equipment for all patrol officers domestically and internationally. We have created and are continuing to create service plans and product bundles to ensure agencies have the latest devices and technology at predictable annual costs.

- **Apps** - Axon's Evidence.com platform is designed to help agencies securely store, manage and share all digital evidence. Our software platform features continuous improvement with regular software updates that enable our customers to always have access to the latest technology. Recent new features include secure sharing, audit trails, integration of other data sources, and transcription and redaction services. These feature sets are designed to provide our customers with valuable tools to police more efficiently and effectively while enabling greater transparency with the communities they serve. More and more police agencies trust Axon to host their video evidence data, which is captured via our devices, apps and software, and stored in our secure cloud and accessed via the Axon network.

- **People** - Our TASER weapons and Axon software and sensors platforms have allowed us to build relationships with more than 20,000 public safety agencies worldwide. Axon is bringing modern information technology capabilities to every law enforcement officer. Some of our customers report that police officers are spending over 60% of their time on paperwork-related tasks, rather than on value-added public safety work. We see a large opportunity to leverage our connected platform to enable a broad suite of mobile, wearable, and data management capabilities. Axon is also improving workflows throughout the public safety chain, from the incident on the scene to the court room. With our software, police officers can share evidence

with prosecutors during discovery while maintaining a secure and encrypted chain of custody. Axon's cohesive ecosystem is delivering increased value to all public safety stakeholders, including state and municipal police agencies, police chiefs and other leadership, patrol officers, state patrols and officers, agency detectives, public prosecutors, district attorneys, and others in the public safety and judicial communities, as well as the public communities they serve.

Results of Operations

The following table presents data from our statements of operations as well as the percentage relationship to total net sales of items included in our statements of operations (dollars in thousands):

	Year Ended December 31,					
	2017		2016		2015	
Net sales from products	$ 285,859	83.1%	$ 238,573	88.9 %	$ 185,230	93.6%
Net sales from services	57,939	16.9	29,672	11.1	12,662	6.4
Net sales	343,798	100.0	268,245	100.0	197,892	100.0
Cost of product sales	117,997	34.3	91,536	34.1	65,022	32.9
Cost of service sales	18,713	5.4	6,173	2.3	4,223	2.1
Cost of sales	136,710	39.8	97,709	36.4	69,245	35.0
Gross margin	207,088	60.2	170,536	63.6	128,647	65.0
Operating expenses:						
Sales, general and administrative	138,692	40.3	108,076	40.3	69,698	35.2
Research and development	55,373	16.1	30,609	11.4	23,614	11.9
Total operating expenses	194,065	56.4	138,685	51.7	93,312	47.2
Income from operations	13,023	3.8	31,851	11.9	35,335	17.9
Interest and other income (expense), net	2,738	0.8	(354)	(0.1)	26	—
Income before provision for income taxes	15,761	4.6	31,497	11.7	35,361	17.9
Provision for income taxes	10,554	3.1	14,200	5.3	15,428	7.8
Net income	$ 5,207	1.5%	$ 17,297	6.4 %	$ 19,933	10.1%

Net sales to the U.S. and other countries are summarized as follows (dollars in thousands):

	Year Ended December 31,					
	2017		2016		2015	
United States	$ 282,810	82.3%	$ 218,757	81.6%	$ 161,803	81.8%
Other Countries	60,988	17.7	49,488	18.4	36,089	18.2
Total	$ 343,798	100.0%	$ 268,245	100.0%	$ 197,892	100.0%

The Company's operations are comprised of two reportable segments: the sale of CEWs, accessories and other related products and services (the "TASER Weapons" segment); and the software and sensors business, focused on devices, wearables, applications, cloud and mobile products (the "Software and Sensors" segment). Within the Software and Sensors segment, the Company includes only revenues and costs attributable to that segment which include: costs of sales for both products and services, direct labor, selling expenses for the sales team, product manage R&D for products included, or to be included, within the Software and Sensors segment. All other costs are included in the TASER Weapons segment. The CODM does not review assets by segment as part of the financial information provided; therefore, no asset information is provided in the following tables.

Net Sales - For the Years Ended December 31, 2017 and 2016

Net sales by product line were as follows for the years ended December 31, 2017 and 2016 (dollars in thousands):

	Year Ended December 31,					
	2017		2016		Dollar Change	Percent Change
TASER Weapons segment:						
TASER X26P	$ 64,426	18.7%	$ 72,490	27.0%	$ (8,064)	(11.1)%
TASER X2	81,417	23.7	52,665	19.6	28,752	54.6
TASER Pulse and Bolt	4,340	1.3	3,580	1.3	760	21.2
Single cartridges	63,203	18.4	52,305	19.5	10,898	20.8
Extended warranties	12,426	3.6	9,880	3.7	2,546	25.8
Other	8,700	2.5	11,724	4.4	(3,024)	(25.8)
TASER Weapons segment	234,512	68.2	202,644	75.5	31,868	15.7
Software and Sensors segment:						
Axon Body	15,184	4.4	12,911	4.8	2,273	17.6
Axon Flex	10,083	2.9	5,323	2.0	4,760	89.4
Axon Fleet	2,954	0.9	—	—	2,954	*
Axon Dock	9,736	2.8	7,422	2.8	2,314	31.2
Evidence.com	57,841	16.8	29,260	10.9	28,581	97.7
TASER CAM	3,358	1.0	4,888	1.8	(1,530)	(31.3)
Extended warranties	7,110	2.1	3,710	1.4	3,400	91.6
Other	3,020	0.9	2,087	0.8	933	44.7
Software and Sensors segment	109,286	31.8	65,601	24.5	43,685	66.6
Total net sales	$ 343,798	100.0%	$ 268,245	100.0%	$ 75,553	28.2 %

* Not meaningful

Net unit sales for TASER Weapons and Software and Sensors segment were as follows:

	Year Ended December 31,			
	2017	2016	Unit Change	Percent Change
TASER X26P	70,381	79,218	(8,837)	(11.2)%
TASER X2	76,106	47,700	28,406	59.6
TASER Pulse and Bolt	12,504	9,549	2,955	30.9
Cartridges	2,408,471	1,979,051	429,420	21.7
Axon Body	89,808	66,154	23,654	35.8
Axon Flex	26,025	14,173	11,852	83.6
Axon Fleet	3,795	—	3,795	*
Axon Dock	23,492	16,983	6,509	38.3
TASER CAM	6,432	9,566	(3,134)	(32.8)

*Not meaningful

Net sales were $343.8 million and $268.2 million for the years ended December 31, 2017 and 2016, respectively, an increase of $75.6 million or 28.2%. Net sales for the TASER Weapons segment were $234.5 million and $202.6 million for the years ended December 31, 2017 and 2016, respectively, an increase of $31.9 million or 15.7%. Net sales for the Software and Sensors segment were $109.3 million and $65.6 million for the years ended December 31, 2017 and 2016, respectively, an increase of $43.7 million or 66.6%. International sales were $61.0 million in 2017 compared to $49.5 million in 2016, an increase of 23.2%.

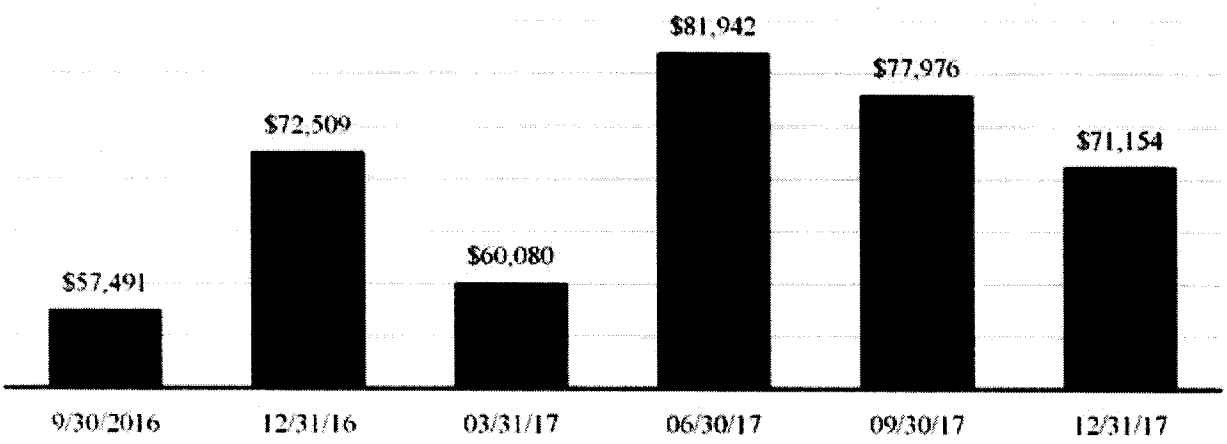
The increase in net sales for 201, compared to 2016 in the TASER Weapons segment was primarily attributable to increased sales under the Officer Safety Plan ("OSP") and TASER 60 installment payment programs. During the first quarter of 2017, the

Home Office of the U.K. government approved the Company's Smart Weapons for sale which resulted in increased TASER X2 sales within the U.K. of $8.5 million for the year ended December 31, 2017 compared to no sales during 2016. Additionally, the Company increased cartridge sales by $10.9 million to $63.2 million during the year ended December 31, 2017 as compared to $52.3 million during the same period in 2016 which was primarily attributable to an increase in total weapons in the field.

Net sales for the Software and Sensors segment were $109.3 million and $65.6 million for the years ended December 31, 2017 and 2016, respectively, an increase of $43.7 million, or 66.6%. The overall increase in the Software and Sensors segment was driven by continued adoption of on-officer cameras and related technologies, including the Company's Evidence.com digital evidence management software suite. Combined net sales related to the Company's Axon Body, Axon Flex, and Axon Dock products increased approximately $9.3 million. The Company recorded net sales of $3.0 million related to Axon Fleet, the Company's newly introduced in-car camera system, with no amounts recorded during the same period in 2016. Evidence.com revenues for the twelve months ended December 31, 2017 increased $28.6 million to $57.8 million as compared to the same period in 2016. This increase was primarily driven by the continued increase in active users on the Company's Evidence.com platform.

To gain more immediate feedback regarding activity for Axon camera products and Evidence.com services, we also review bookings for these products. We consider bookings to be a statistical measure defined as the sales price of orders (not invoiced sales), including contractual optional periods we expect to be exercised, net of cancellations, placed in the relevant fiscal period, regardless of when the products or services ultimately will be provided. Most bookings will be invoiced in subsequent periods. Due to municipal government funding rules, in some cases certain of the future period amounts included in bookings are subject to budget appropriation or other contract cancellation clauses. Although the Company has entered into contracts for the delivery of products and services in the future and anticipates the contracts will be fulfilled, if agencies do not exercise contractual options, do not appropriate funds in future year budgets, or do enact a cancellation clause, revenue associated with these bookings may not ultimately be recognized, resulting in a future reduction to bookings. Bookings related to the Company's Software and Sensors segment, net of cancellations, were $291.2 million during 2017, compared to $254.1 million in 2016, an increase of 14.6%.

The chart below illustrates the Company's quarterly Software and Sensors bookings for each of the previous six fiscal quarters (in thousands):



Backlog - As of December 31, 2017 compared to December 31, 2016

Our backlog of $582.7 million as of December 31, 2017 has increased significantly from $384.2 million as of December 31, 2016. The increase in Weapons segment backlog is not expected to have a material impact on revenue or operating margins. Our significant increase in backlog, primarily in the Software and Sensors segment is indicative of expected revenue growth in this segment. Revenue growth in the Software and Sensors segment is expected to result in improved operating margins over time as additional revenue will cover a larger portion of our selling, general and administrative expenses, and research and development costs, while the Company does not expect any material changes in gross margins.

Net Sales - Three Months Ended December 31, 2017 Compared to September 30, 2017

Net sales by product line were as follows for the three months ended December 31, 2017 and September 30, 2017 (dollars in thousands):

	Three Months Ended December 31, 2017		Three Months Ended September 30, 2017		Dollar Change	Percent Change
TASER Weapons segment:						
TASER X26P	$ 19,259	20.3%	$ 13,264	14.7%	$ 5,995	45.2 %
TASER X2	23,662	25.0	22,717	25.2	945	4.2
TASER Pulse and Bolt	1,448	1.5	1,069	1.2	379	35.5
Single cartridges	14,198	15.0	17,474	19.4	(3,276)	(18.7)
Extended warranties	3,506	3.7	3,086	3.4	420	13.6
Other	2,336	2.5	1,806	2.0	530	29.3
TASER Weapons segment	64,409	68.0	59,416	65.8	4,993	8.4
Software and Sensors segment:						
Axon Body	3,459	3.7	4,527	5.0	(1,068)	(23.6)
Axon Flex	2,194	2.3	2,563	2.8	(369)	(14.4)
Axon Fleet	1,661	1.8	1,113	1.2	548	49.2
Axon Dock	2,327	2.5	2,639	2.9	(312)	(11.8)
Evidence.com	17,143	18.1	16,200	17.9	943	5.8
TASER CAM	951	1.0	922	1.0	29	3.1
Extended warranties	2,128	2.2	1,945	2.2	183	9.4
Other	379	0.4	937	1.0	(558)	(59.6)
Software and Sensors segment	30,242	32.0	30,846	34.2	(604)	(2.0)
Total net sales	$ 94,651	100.0%	$ 90,262	100.0%	$ 4,389	4.9 %

Net unit sales for TASER Weapons and Software and Sensors segment were as follows:

	Three Months Ended		Unit Change	Percent Change
	12/31/2017	9/30/2017		
TASER X26P	23,350	13,472	9,878	73.3 %
TASER X2	21,683	21,896	(213)	(1.0)
TASER Pulse and Bolt	3,641	2,944	697	23.7
Cartridges	590,126	643,077	(52,951)	(8.2)
Axon Body	13,944	28,669	(14,725)	(51.4)
Axon Flex	5,253	8,298	(3,045)	(36.7)
Axon Fleet	2,197	1,598	599	37.5
Axon Dock	3,908	6,440	(2,532)	(39.3)
TASER CAM	2,245	1,512	733	48.5

Net sales were $94.7 million and $90.3 million for the three months ended December 31, 2017 and September 30, 2017, respectively, an increase of $4.4 million or 4.9%. Net sales for the TASER Weapons segment were $64.4 million and $59.4 million for the three months ended December 31, 2017 and September 30, 2017, respectively, an increase of $5.0 million or 8.4%. Net sales for the Software and Sensors segment were $30.2 million and $30.8 million for the three months ended December 31, 2017 and September 30, 2017, respectively, a decrease of $0.6 million or 2.0%. International sales were $16.0 million in for the three months ended December 31, 2017 compared to $17.1 million for the three months ended September 30, 2017, a decrease of $1.1 million.

The increase in net sales in the TASER Weapons segment on a sequential basis was partially attributable to the expiration of annual budget appropriations resulting in higher purchases for the quarter ended December 31, 2017 as compared to the quarter

ended September 30, 2017. Increased sales of TASER Weapons handles was partially offset by lower sequential cartridge sales, which was primarily attributable to timing. In the Software and Sensors segment, the Company experienced a decrease in net sales of $0.6 million. Axon hardware and device sales were lower due to timing of deployments, which were partially offset by increased service revenues which were attributable to more cumulative Axon devices in the field with extended warranty coverage and more cumulative active users on the Company's Evidence.com platform.

Net Sales - For the Years Ended December 31, 2016 and 2015

Net sales by product line were as follows for the years ended December 31, 2016 and 2015 (dollars in thousands):

	Year Ended December 31,					
	2016		2015		Dollar Change	Percent Change
TASER Weapons segment:						
TASER X26P	$ 72,490	27.0%	$ 55,969	28.3%	$ 16,521	29.5 %
TASER X2	52,665	19.6	42,746	21.6	9,919	23.2
TASER Pulse and Bolt	3,580	1.3	2,146	1.1	1,434	66.8
Single cartridges	52,305	19.5	41,674	21.1	10,631	25.5
Extended warranties	9,880	3.7	7,402	3.7	2,478	33.5
Other	11,724	4.4	12,438	6.3	(714)	(5.7)
TASER Weapons segment	202,644	75.5	162,375	82.1	40,269	24.8
Software and Sensors segment:						
Axon Body	12,911	4.8	4,029	2.0	8,882	220.5
Axon Flex	5,323	2.0	6,880	3.5	(1,557)	(22.6)
Axon Dock	7,422	2.8	4,022	2.0	3,400	84.5
Evidence.com	29,260	10.9	11,765	5.9	17,495	148.7
TASER CAM	4,888	1.8	5,746	2.9	(858)	(14.9)
Extended warranties	3,710	1.4	1,794	0.9	1,916	106.8
Other	2,087	0.8	1,281	0.6	806	62.9
Software and Sensors segment	65,601	24.5	35,517	17.9	30,084	84.7
Total net sales	$ 268,245	100.0%	$ 197,892	100.0%	$ 70,353	35.6 %

Net unit sales for TASER Weapons and Software and Sensors segment were as follows:

	Year Ended December 31,			
	2016	2015	Unit Change	Percent Change
TASER X26P	79,218	62,383	16,835	27.0 %
TASER X2	47,700	38,050	9,650	25.4
TASER Pulse and Bolt	9,549	8,121	1,428	17.6
Cartridges	1,979,051	1,694,450	284,601	16.8
Axon Body	66,154	17,522	48,632	277.5
Axon Flex	14,173	18,823	(4,650)	(24.7)
Axon Dock	16,983	6,979	10,004	143.3
TASER CAM	9,566	11,634	(2,068)	(17.8)

Net sales were $268.2 million and $197.9 million for the years ended December 31, 2016 and 2015, respectively, an increase of $70.4 million or 35.6%. Net sales for the TASER Weapons segment were $202.6 million and $162.4 million for the years ended December 31, 2016 and 2015, respectively, an increase of $40.3 million or 24.8%. Net sales for the Software and Sensors segment were $65.6 million and $35.5 million for the years ended December 31, 2016 and 2015, respectively, an increase of $30.1 million or 84.7%. International sales were $49.5 million in 2016 compared to $36.1 million in 2015, an increase of 37.1%.

The increase in net sales for 2016 compared to 2015 in the TASER Weapons segment was primarily driven by the Company's ability to increase the frequency of upgrades through trade-in programs along with increased demand for the Company's installment payment plans, OSP and TASER 60. These programs allow customers to pay for hardware and services over an extended contractual life, which is typically five years. In the Software and Sensors segment, the increase in net sales was driven by the continued adoption of the Axon on-officer cameras and Evidence.com application in the law enforcement markets, which was further impacted by a large deployment of Axon Body 2 cameras to a major international customer.

Cost of Product and Service Sales

Cost of product and service sales was as follows for the years ended December 31, 2017, 2016 and 2015 (dollars in thousands):

	Year Ended December 31,				Year Ended December 31,			
	2017	2016	Dollar Change	Percent Change	2016	2015	Dollar Change	Percent Change
TASER Weapons segment:								
Cost of product sales	$ 72,054	$ 61,930	$ 10,124	16.3%	$ 61,930	$ 48,821	$ 13,109	26.9%
Cost as % of sales	30.7	30.6			30.6	30.1		
Software and Sensors segment:								
Cost of product sales	45,943	29,606	16,337	55.2	29,606	16,201	13,405	82.7
Cost of service sales	18,713	6,173	12,540	203.1	6,173	4,223	1,950	46.2
Total cost of product and service sales	64,656	35,779	28,877	80.7	35,779	20,424	15,355	75.2
Cost as % of sales	59.2	54.5			54.5	57.5		
Total cost of product and service sales	$ 136,710	$ 97,709	$ 39,001	39.9	$ 97,709	$ 69,245	$ 28,464	41.1
Cost as % of sales	39.8	36.4			36.4	35.0		

Cost of product and service sales was $136.7 million and $97.7 million for the years ended December 31, 2017 and 2016, respectively, an increase of $39.0 million or 39.9%. As a percentage of net sales, cost of product and service sales increased to 39.8% in 2017 compared to 36.4% in 2016.

Within the TASER Weapons segment, cost of product sales increased $10.1 million, or 16.3%, to $72.1 million in 2017, compared to $61.9 million in 2016, and remained relatively consistent as a percentage of sales at 30.7% from 30.6%. The Company did not experience significant changes in variable manufacturing costs during the year ended December 31, 2017 as compared to 2016. The overall increase in cost of products sold was attributable to higher unit sales.

Within the Software and Sensors segment, cost of product and service sales was $64.7 million, an increase of $28.9 million, or 80.7%, from 2016. As a percentage of net sales, cost of product and service sales increased to 59.2% in 2017 from 54.5% in 2016. The increase in cost of product sales was primarily attributable to higher sales volumes, and the increase in cost of service sales was driven by increased cloud storage costs. The increase in total cost of sales as a percentage of total net sales was primarily attributable to non-recurring expenses related to the Company's data migration to a new cloud-storage provider.

Cost of product and service sales was $97.7 million and $69.2 million for the years ended December 31, 2016 and 2015, respectively, an increase of $28.5 million or 41.1%. As a percentage of net sales, cost of product and service sales increased to 36.4% in 2016 compared to 35.0% in 2015. Within the TASER Weapons segment, cost of product sales increased $13.1 million, or 26.9%, to $61.9 million in 2016, compared to $48.8 million in 2015, and remained relatively consistent as a percent of sales at 30.6% from 30.1%.

Within the Software and Sensors segment, cost of product and service sales was $35.8 million, an increase of $15.4 million, or 75.2% from 2015. As a percentage of net sales, cost of product and service sales decreased to 54.5% in 2016 from 57.5% in 2015. The increase in cost of product and service sales was driven by continued growth, increased data storage costs as more agencies utilized Evidence.com, as well as increased costs for our professional services team. The decrease in total costs as a percentage of sales was primarily driven by improvements in Evidence.com service margins.

Gross Margin

Gross margin was as follows for the years ended December 31, 2017, 2016 and 2015 (dollars in thousands):

	Year Ended December 31,				Year Ended December 31,			
	2017	2016	Dollar Change	Percent Change	2016	2015	Dollar Change	Percent Change
TASER Weapons segment	$ 162,458	$ 140,714	$ 21,744	15.5%	$ 140,714	$ 113,554	$ 27,160	23.9%
Software and Sensors Segment	44,630	29,822	14,808	49.7	29,822	15,093	14,729	97.6
Total gross margin	$ 207,088	$ 170,536	$ 36,552	21.4	$ 170,536	$ 128,647	$ 41,889	32.6
Gross margin as % of net sales	60.2	63.6			63.6	65.0		

Gross margin increased $36.6 million to $207.1 million for the year ended December 31, 2017 compared to $170.5 million for 2016. As a percentage of net sales, gross margin decreased to 60.2% for 2017 from 63.6% for 2016. As a percentage of net sales, gross margin for the TASER Weapons segment was relatively consistent at 69.3% and 69.4% for the year ended December 31, 2017 and 2016, respectively. Within the Software and Sensors segment gross margin as a percentage of net sales was 40.8% and 45.5% for the years ended 2017 and 2016, respectively. Within the Software and Sensors segment, hardware gross margin was 10.5% for the year ended December 31, 2017and 17.6% for the same period in 2016, while the service margins were 67.7% and 79.2% during those same periods, respectively. The decreased hardware margins were primarily attributable to higher discounting. In certain customer contracts, primarily within the Software and Sensors segment, the level of discounting resulted in a portion of the contractual consideration allocated to the delivered hardware to be recognized as revenue ratably over the Evidence.com subscription term. However, the full cost of the product is recognized when the hardware is delivered to the customer resulting in lower gross margins initially. The decrease in service margins was primarily attributable to non-recurring expenses related to the Company's data migration to a new cloud-storage provider.

Gross margin increased $41.9 million to $170.5 million for 2016 compared to $128.6 million for 2015. As a percentage of net sales, gross margin decreased to 63.6% for 2016 from 65.0% for 2015. The decrease in gross margin as a percentage of sales was due primarily to a change in product mix, as lower margin Axon hardware product sales became a greater percentage of the consolidated total. As a percentage of net sales, gross margin for the TASER Weapons segment was relatively consistent at 69.4% and 69.9% for 2016 and 2015, respectively, while the same measure for these years for the Software and Sensors segment were 45.5% and 42.5%, respectively. The improvement in Software and Sensors segment gross margin was primarily attributable to higher service margins due to increased users on the Evidence.com platform.

Sales, General and Administrative Expenses

Sales, general and administrative ("SG&A") expenses were comprised of the following for 2017 and 2016 (dollars in thousands):

	Year Ended December 31,		Dollar Change	Percent Change
	2017	2016		
Salaries, benefits and bonus	$ 58,450	$ 43,058	$ 15,392	35.7%
Stock-based compensation	9,047	5,707	3,340	58.5
Professional, consulting and lobbying	24,267	19,321	4,946	25.6
Sales and marketing	17,368	15,132	2,236	14.8
Travel and meals	10,637	8,970	1,667	18.6
Other	18,923	15,888	3,035	19.1
Total sales, general and administrative expenses	$ 138,692	$ 108,076	$ 30,616	28.3
Sales, general, and administrative as a percentage of net sales	40.3%	40.3%		

Sales, general and administrative expenses were $138.7 million and $108.1 million for the years ended December 31, 2017 and 2016, respectively, an increase of $30.6 million, or 28.3%. As a percentage of total net sales, SG&A expenses were 40.3% for the years ended December 31, 2017 and 2016.

SG&A by type and by segment were as follows for the years ended December 31, 2017 and 2016 (dollars in thousands):

	Year Ended December 31,					
	2017		2016		Dollar Change	Percent Change
TASER Weapons segment:						
Salaries, benefits and bonus	$ 32,009	23.1%	$ 24,534	22.7%	$ 7,475	30.5%
Stock-based compensation	6,115	4.4	3,339	3.1	2,776	83.1
Professional, consulting and lobbying	12,017	8.7	10,128	9.4	1,889	18.7
Sales and marketing	8,357	6.0	8,305	7.7	52	0.6
Travel and meals	4,867	3.5	4,277	4.0	590	13.8
Other	14,837	10.7	13,034	12.1	1,803	13.8
TASER Weapons segment	78,202	56.4	63,617	58.9	14,585	22.9
Software and Sensors segment:						
Salaries, benefits and bonus	26,441	19.1	18,524	17.1	7,917	42.7
Stock-based compensation	2,932	2.1	2,368	2.2	564	23.8
Professional, consulting and lobbying	12,250	8.8	9,193	8.5	3,057	33.3
Sales and marketing	9,011	6.5	6,827	6.3	2,184	32.0
Travel and meals	5,770	4.2	4,693	4.3	1,077	22.9
Other	4,086	2.9	2,854	2.6	1,232	43.2
Software and Sensors segment	60,490	43.6	44,459	41.1	16,031	36.1
Total sales, general and administrative expenses	$ 138,692	100.0%	$ 108,076	100.0%	$ 30,616	28.3

Within the TASER Weapons segment, SG&A increased $14.6 million, or 22.9%, to $78.2 million from $63.6 million in 2016. This increase was primarily attributable to the Company's continued efforts to build the necessary infrastructure to facilitate future growth which was evidenced by higher salaries, benefits, bonus and stock-based compensation of $10.3 million for the year ended December 31, 2017 as compared to 2016. Increased professional, consulting and lobbying fees of $1.9 million were primarily related to accounting and finance consulting costs attributable to the Company's adoption of the new revenue recognition rules, international tax restructuring,and efforts towards remediation of internal control matters. The remaining other operating expenses were primarily attributable to the overall growth of operations during 2017.

Within the Software and Sensors segment, SG&A increased $16.0 million, or 36.1%, to $60.5 million in 2017 in comparison to the prior year. Salaries, benefits, bonus and stock-based compensation in the Software and Sensors segment increased $8.5 million as the Company continued to hire additional engineering, product management personnel, sales and marketing personnel and general support staff to further expand upon existing product offerings as well as the development of new products such as records management systems and computer aided dispatch systems. The increase in professional, consulting and lobbying expenses of $3.1 million was related to higher professional and consulting costs related to the implementation of a new revenue accounting software platform. Additionally, the Company incurred higher marketing consulting fees related to hosted events and conferences for customers as well as internal sales meetings. The increase in sales and marketing expense of $2.2 million relates to higher commissions on increased bookings, increased customer samples attributable to the Company delivering on-officer cameras, Signal Sidearm, among other technologies, to prospective customers for evaluation purposes, as well as increased spending on sponsorships for major city police chief associations and major county sheriffs' associations. The remaining other operating expenses are primarily attributable to the overall growth of operations during 2017.

Sales, general and administrative expenses were comprised of the following for 2016 and 2015 (dollars in thousands):

	Year Ended December 31,		Dollar Change	Percent Change
	2016	2015		
Salaries, benefits and bonus	$ 43,058	$ 25,032	$ 18,026	72.0%
Stock-based compensation	5,707	4,299	1,408	32.8
Professional, consulting and lobbying	19,321	13,165	6,156	46.8
Sales and marketing	15,132	10,776	4,356	40.4
Travel and meals	8,970	5,649	3,321	58.8
Other	15,888	10,777	5,111	47.4
Total sales, general and administrative expenses	$ 108,076	$ 69,698	$ 38,378	55.1
Sales, general, and administrative as a percentage of net sales	40.3%	35.2%		

Sales, general and administrative expenses were $108.1 million and $69.7 million for the years ended December 31, 2016 and 2015, respectively, an increase of $38.4 million, or 55.1%. As a percentage of total net sales, SG&A expenses increased to 40.3% for 2016 compared to 35.2% for 2015.

SG&A by type and by segment were as follows for the years ended December 31, 2016 and 2015 (dollars in thousands):

	Year Ended December 31,				Dollar Change	Percent Change
	2016		2015			
TASER Weapons segment:						
Salaries, benefits and bonus	$ 24,534	22.7%	$ 16,767	24.1%	$ 7,767	46.3 %
Stock-based compensation	3,339	3.1	3,187	4.6	152	4.8
Professional, consulting and lobbying	10,128	9.4	10,258	14.7	(130)	(1.3)
Sales and marketing	8,305	7.7	5,411	7.8	2,894	53.5
Travel and meals	4,277	4.0	3,089	4.4	1,188	38.5
Other	13,034	12.1	8,928	12.8	4,106	46.0
TASER Weapons segment	63,617	58.9	47,640	68.4	15,977	33.5
Software and Sensors segment:						
Salaries, benefits and bonus	18,524	17.1	8,265	11.9	10,259	124.1
Stock-based compensation	2,368	2.2	1,112	1.6	1,256	112.9
Professional, consulting and lobbying	9,193	8.5	2,907	4.2	6,286	216.2
Sales and marketing	6,827	6.3	5,365	7.7	1,462	27.3
Travel and meals	4,693	4.3	2,560	3.7	2,133	83.3
Other	2,854	2.6	1,849	2.7	1,005	54.4
Software and Sensors segment	44,459	41.1	22,058	31.6	22,401	101.6
Total sales, general and administrative expenses	$ 108,076	100.0%	$ 69,698	100.0%	$ 38,378	55.1

Within the TASER Weapons segment, SG&A increased $16.0 million, or 33.5%, to $63.6 million from $47.6 million in 2015. Salaries, benefits, bonus and stock-based compensation in the TASER Weapons increased approximately $7.9 million in 2016 compared to 2015. This increase was primarily attributable to the Company's efforts to build the corporate infrastructure to facilitate future growth in departments such as supply chain, legal, finance and information technology. The increase in travel and meals was primarily attributable to the growth in the direct sales teams both domestically and internationally. The increase in sales and marketing of $2.9 million was primarily attributable to higher commissions of $3.2 million partially offset by a decrease in marketing related costs partially due to lower spending at the 2016 International Association of Chiefs of Police conference as compared to 2015. The

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increase in other expenses was made up mainly of $1.2 million in higher computer related costs, $0.3 million of higher rent expense, and $2.0 million of litigation costs incurred, including resolution expenses, that were not incurred during the same period in 2015.

Within the Software and Sensors segment, SG&A increased $22.4 million, or 101.6%, to $44.5 million in 2016 in comparison to the prior year. Salaries, benefits, bonus and stock-based compensation in the Software and Sensors segment increased $11.5

million as the Company continued to hire additional engineering, product management personnel, sales and marketing personnel and general support staff to further expand upon existing product offerings as well as the development of new apps and cloud technologies. The increase in travel and meals was primarily attributable to the growth in the direct sales teams both domestically and internationally. Of the increase in professional, consulting and lobbying, $4.1 million represented primarily increased lobbying fees aimed at securing long-term body-worn camera and service contracts, $0.8 million of increased legal costs primarily attributable to the ongoing Digital Ally lawsuit, and $0.6 million related to increased patent and trademark costs. The increase in sales and marketing of $1.5 million was primarily attributable to higher commissions of $2.4 million partially offset by a decrease of $0.9 million in marketing related costs partially due to lower spending at the 2016 International Association of Chiefs of Police conference as compared to 2015.

Research and Development Expenses

Research and development ("R&D") expenses were comprised of the following for 2017 and 2016 (dollars in thousands):

	Year Ended December 31,		Dollar Change	Percent Change
	2017	2016		
Salaries, benefits and bonus	$ 33,682	$ 17,205	$ 16,477	95.8%
Stock-based compensation	6,055	3,320	2,735	82.4
Professional and consulting	4,351	3,212	1,139	35.5
Travel and meals	1,674	969	705	72.8
Other	9,611	5,903	3,708	62.8
Total research and development expenses	$ 55,373	$ 30,609	$ 24,764	80.9
Research and development as a percentage of net sales	16.1%	11.4%		

R&D expenses were $55.4 million and $30.6 million for the years ended December 31, 2017 and 2016, respectively, an increase of $24.8 million, or 80.9%. As a percentage of net sales, R&D increased to 16.1% in 2017 in compared to 11.4% in 2016.

R&D by type and by segment were as follows for the years ended December 31, 2017 and 2016 (dollars in thousands):

	Year Ended December 31,					
	2017		2016		Dollar Change	Percent Change
TASER Weapons segment:						
Salaries, benefits and bonus	$ 4,243	7.7%	$ 2,301	7.5%	$ 1,942	84.4 %
Stock-based compensation	517	0.9	639	2.1	(122)	(19.1)
Professional and consulting	1,098	2.0	1,167	3.8	(69)	(5.9)
Travel and meals	388	0.7	345	1.1	43	12.5
Other	2,131	3.8	1,435	4.7	696	48.5
TASER Weapons segment	8,377	15.1	5,887	19.2	2,490	42.3
Software and Sensors segment:						
Salaries, benefits and bonus	29,439	53.2	14,904	48.7	14,535	97.5
Stock-based compensation	5,538	10.0	2,681	8.8	2,857	106.6
Professional and consulting	3,253	5.9	2,045	6.7	1,208	59.1
Travel and meals	1,286	2.3	624	2.0	662	106.1
Other	7,480	13.5	4,468	14.6	3,012	67.4
Software and Sensors segment	46,996	84.9	24,722	80.8	22,274	90.1
Total research and development expenses	$ 55,373	100.0%	$ 30,609	100.0%	$ 24,764	80.9

Within the TASER Weapons segment, R&D expenses increased $2.5 million, or 42.3%, to $8.4 million in 2017. Salaries, benefits, bonus and stock-based compensation in the TASER Weapons increased $1.8 million in 2017 compared to 2016. The increase for 2017 compared to 2016 is primarily driven by additional headcount as the Company continued to invest in the development of new CEW related technologies.

Within the Software and Sensors segment, R&D expenses increased $22.3 million, or 90.1%, to $47.0 million in 2017 from the prior year. The Company's Software and Sensors segment was responsible for approximately 85% of the overall expenses in

R&D. Of the $22.3 million increase in R&D for the Software and Sensors segment, $17.4 million related to salaries, benefits, bonus, and stock-based compensation. The Company remains focused on growing the Software and Sensors segment as it adds headcount and additional resources to develop new products and services, including records management systems and computer aided dispatch systems, to further advance its scalable cloud-connected device platform. The increase in professional and consulting expense of $1.2 million was primarily attributable to increased technical consulting fees related to the development and release of Signal Sidearm. Included in other R&D expenses for the Software and Services segment was $1.9 million of amortization of intangible assets related to acquired developed technology that was yet to be put into service. Additionally, during 2017, the Company abandoned certain developed technology acquired in a business combination resulting in an impairment charge of $1.0 million which was included in other R&D expenses.

Research and development expenses were comprised of the following for 2016 and 2015 (dollars in thousands):

	Year Ended December 31,		Dollar Change	Percent Change
	2016	2015		
Salaries, benefits and bonus	$ 17,205	$ 13,013	$ 4,192	32.2 %
Stock-based compensation	3,320	2,576	744	28.9
Professional and consulting	3,212	3,835	(623)	(16.2)
Travel and meals	969	1,034	(65)	(6.3)
Other	5,903	3,156	2,747	87.0
Total research and development expenses	$ 30,609	$ 23,614	$ 6,995	29.6
Research and development as a percentage of net sales	11.4%	11.9%		

Research and development expenses were $30.6 million and $23.6 million for the years ended December 31, 2016 and 2015, respectively, an increase of $7.0 million, or 29.6%. As a percentage of net sales, R&D decreased to 11.4% in 2016 as compared to 11.9% in 2015.

R&D by type and by segment were as follows for the years ended December 31, 2016 and 2015 (dollars in thousands):

	Year Ended December 31,					
	2016		2015		Dollar Change	Percent Change
TASER Weapons segment:						
Salaries, benefits and bonus	$ 2,301	7.5%	$ 1,596	6.8%	$ 705	44.2 %
Stock-based compensation	639	2.1	394	1.7	245	62.2
Professional and consulting	1,167	3.8	1,196	5.1	(29)	(2.4)
Travel and meals	345	1.1	261	1.1	84	32.2
Other	1,435	4.7	1,023	4.3	412	40.3
TASER Weapons segment	5,887	19.2	4,470	18.9	1,417	31.7
Software and Sensors segment:						
Salaries, benefits and bonus	14,904	48.7	11,417	48.3	3,487	30.5
Stock-based compensation	2,681	8.8	2,182	9.2	499	22.9
Professional and consulting	2,045	6.7	2,639	11.2	(594)	(22.5)
Travel and meals	624	2.0	773	3.3	(149)	(19.3)
Other	4,468	14.6	2,133	9.0	2,335	109.5
Software and Sensors segment	24,722	80.8	19,144	81.1	5,578	29.1
Total research and development expenses	$ 30,609	100.0%	$ 23,614	100.0%	$ 6,995	29.6

Within the TASER Weapons segment, R&D expenses increased $1.4 million, or 31.7%, to $5.9 million in 2016. Salaries, benefits, bonus and stock-based compensation in the TASER Weapons increased approximately $1.0 million in 2016 as compared to 2015. The increase for 2016 as compared to 2015 is primarily driven by additional headcount as the Company continued to invest in the development of new CEW related technologies.

Within the Software and Sensors segment, R&D expenses increased $5.6 million, or 29.1%, to $24.7 million in 2016 from the prior year. The Company's Software and Sensors segment was responsible for approximately 81% of the overall expenses in

R&D. Of the $5.6 million increase in R&D for the Software and Sensors segment, $4.0 million related to salaries and benefits, inclusive of bonus and stock-based compensation. Included in the increase of other R&D for the Software and Sensors segment was sales and marketing expenses of $0.9 million related to contractual earn-outs for legacy MediaSolv employees, who work in R&D. The Company remained focused on growing the Software and Sensors segment as it added headcount and external resources to develop new products and services to further advance its scalable cloud-connected device platform. These increases were partially offset by decreases in professional and consulting of $0.6 million related primarily to the Company being more selective in the utilization of consultants as compared to hiring additional employees. The biggest portion of the increase in other R&D expenses related to tooling and supplies that made up $0.8 million of the overall increase. The remaining increase was attributable to the overall growth in of the Software and Sensors R&D department.

Interest and Other Income (Expense), Net

Interest and other income (expense), net was $2.7 million, $(0.4) million and $26,000 for the years ended December 31, 2017, 2016 and 2015, respectively.

For the year ended December 31, 2017, the Company earned interest income of $1.6 million and had gains from foreign currency transaction adjustments of $1.4 million which were partially offset by interest expense of $0.2 million. For the year ended December 31, 2016, interest income of $0.7 million was more than offset by losses on foreign currency transaction adjustments of $1.1 million. For the year ended December 31, 2015, interest income of $0.3 million was partially offset by losses on foreign currency transaction adjustments of $0.2 million.

Provision for Income Taxes

The provision for income taxes was $10.6 million for the year ended December 31, 2017. The effective income tax rate for 2017 was 66.9%. In connection with our initial analysis of the impact of the Tax Act, we were able to make reasonable estimates of the impact of the Tax Act and recorded a provisional net tax expense of $8.0 million in the period ended December 31, 2017, primarily related to the impact of the tax rate reduction on our deferred tax assets and deferred tax liabilities. $0.4 million of the adjustment impacted the valuation allowance. This was partially offset by a $1.8 million benefit related to excess stock-based compensation deductions, as well as a $2.4 million benefit for research and development credits during the year ended December 31, 2017. In addition, an additional valuation allowance in the amount of $1.9 million was recorded as of December 31, 2017, related to certain research and development credits that may not be utilized prior to expiration and losses in certain foreign jurisdictions in which there was a cumulative loss.

The provision for income taxes was $14.2 million for the year ended December 31, 2016. The effective income tax rate for 2016 was 45.1%. The effect of state income taxes of $0.9 million and the tax effects of intercompany transactions of $0.6 million were offset by a benefit of $1.9 million for research and development credits in the current year. The difference between statutory and foreign tax rates of $1.5 million was largely driven by losses incurred in a foreign entity for which no tax benefit will be realized. In addition, a valuation allowance in the amount of $1.8 million was recorded as of December 31, 2016 related to certain research and development tax credits that may not be utilized prior to expiration and losses in certain foreign jurisdictions in which there was a cumulative loss.

The provision for income taxes was $15.4 million for the year ended December 31, 2015. The effective income tax rate for 2015 was 43.7%. The effect of state income tax of $1.1 million was largely offset by a benefit of $1.0 million of research and development credits in the current year. The difference between statutory and foreign tax rates of $2.4 million was largely driven by losses incurred in a newly formed foreign entity for which no tax benefit will be realized, partially reduced by a tax benefit for newly formed foreign entities for which the statutory tax rate was lower than the U.S. statutory tax rate. In addition, valuation allowance in the amount of $1.2 million was recorded.

Net Income

Our net income decreased by $12.1 million to $5.2 million for the year ended December 31, 2017 compared to $17.3 million in 2016. Net income per basic and diluted share was $0.10 for 2017 compared to $0.33 and $0.32 per basic and diluted share, respectively, for 2016.

Our net income decreased by $2.6 million to $17.3 million for the year ended December 31, 2016 compared to $19.9 million 2015. Net income per basic and diluted share was $0.33 and $0.32 for 2016, respectively, compared to $0.37 and $0.36 per basic and diluted share for 2015, respectively.

Liquidity and Capital Resources

Summary

As of December 31, 2017, we had $75.1 million of cash and cash equivalents, an increase of $34.5 million from the end of 2016.

Cash Flows

The following table summarizes our cash flows from operating, investing and financing activities (in thousands):

	Year Ended December 31,		
	2017	2016	2015
Operating activities	$ 18,490	$ 17,925	$ 46,445
Investing activities	19,082	(3,045)	(36,009)
Financing activities	(3,854)	(34,661)	603
Effect of exchange rate changes on cash and cash equivalents	736	906	120
Net increase (decrease) in cash and cash equivalents	$ 34,454	$ (18,875)	$ 11,159

Operating activities

Net cash provided by operating activities in 2017 of $18.5 million consisted of $5.2 million in net income, the net add-back of non-cash income statement items totaling $28.0 million and a negative $14.8 million net change in operating assets and liabilities. Included in the non-cash items are $8.0 million in depreciation and amortization expense, $1.1 million related to the disposal and abandonment of intangible assets, $15.6 million in stock-based compensation expense, $0.7 million of bond premium amortization and $2.8 million related to deferred income taxes. The most significant increase to the portion of cash from operating activities related to the changes in operating assets and liabilities was a $39.7 million increase in deferred revenue. Of the increase, $7.4 million resulted from additional extended warranty sales, $20.2 million resulted from increased hardware deferred revenue from TASER Assurance Program ("TAP") and OSP sales, and $12.5 million related to prepayments for Software and Sensors services. These increases were offset by increased accounts and notes receivable of $35.3 million, inventory of $11.7 million and prepaid expenses and other assets of $9.0 million during 2017. The increases in accounts and notes receivable were due to increased sales during 2017, specifically sales made under the OSP and TASER 60 installment plans. Operating cash flows were also impacted by increased inventory of $11.7 million in anticipation of higher sales in 2018 and for the Company's National Field Trial Offer for body cameras. The increase in prepaid expenses and other asset accounts of $9.0 million during 2017 was driven primarily by increased deferred cost of product sales of $5.0 million related to increased deferred cost of product and service sales related to contracts where the product had shipped but revenue was deferred due to contractual provisions resulting in the cost of product sales being deferred as an asset to be recognized in subsequent periods when revenue recognition criteria have been met, higher deferred commissions of $2.1 million representing amounts earned when a contract is booked which is then subsequently amortized over the contractual period as products and services are delivered and increased prepaid income taxes of $3.4 million.

Net cash provided by operating activities in 2016 of $17.9 million consisted of $17.3 million in net income, the net add-back of non-cash income statement items totaling $8.9 million and a negative $8.2 million net change in operating assets and liabilities. Included in the non-cash items are $3.7 million in depreciation and amortization expense, $9.4 million in stock-based compensation expense, and $1.3 million of bond premium amortization. These additions were partially offset by an $1.4 million reduction related to excess tax benefit from stock-based compensation and $5.2 million related to deferred income taxes. The most significant increase to the portion of cash from operating activities related to the changes in operating assets and liabilities was a $34.3 million increase in deferred revenue. Of the increase, $8.1 million resulted from additional extended warranty sales, $15.6 million resulted from increased hardware deferred revenue from TAP and OSP sales, and $10.5 million related to prepayments for Software and Sensors services. The Company also had increases in cash provided from operating activities of $17.6 million for increases in accounts payable and accrued liabilities related primarily to increased inventory purchases. These increases were offset by increased prepaid expenses and other current assets of $29.1 million, inventory of $18.7 million and accounts and notes receivable of $13.3 million during 2016. The increases in accounts and notes receivable were due to increased sales during 2016, and increases in inventory resulted from higher anticipated sales for 2017. Long-term accounts receivable increased by $16.4 million during 2016 for sales made under OSP and TASER 60. The increase in prepaid expenses and other asset accounts during 2016 was driven primarily increased prepaid commissions of $1.8 million attributable to higher sales, increased balances under corporate-owed life insurance policies of $1.1 million, $3.3 million of restricted cash related primarily to a customer contract requiring certain contractual payments to be deposited in escrow until approved for release, and $1.7 million of long-term contingent consideration deposited in escrow in connection with a business combination that was completed in December 2016.

Net cash provided by operating activities in 2015 of $46.4 million consisted of $19.9 million in net income, the net add-back of non-cash income statement items totaling $6.3 million, and a positive $20.2 million net change in operating assets and liabilities. Included in the non-cash items was $3.3 million in depreciation and amortization expense, $7.3 million in stock-based compensation expense, and $1.7 million of bond premium amortization. Those additions were partially offset by a $6.9 million reduction related to excess tax benefit from stock-based compensation that was treated as a financing activity for cash flow purposes. The most significant increase to the portion of cash from operating activities related to the changes in operating assets and liabilities was a $15.3 million increase to deferred revenue. Of the increase in deferred revenue, $4.0 million resulted from additional extended warranty sales, $7.3 million resulted from increased hardware deferred revenue from the Company's TAP and OSP sales programs, and $4.0 million related to prepayments for Software and Sensors SaaS and related services. The Company also had increases in cash provided from operating activities of $4.2 million and $3.1 million for decreases in accounts and notes receivable and inventory, respectively. In addition, the $5.9 million increase to cash from operating activities related to increases in accounts payable, accrued and other liabilities that was primarily caused by current income tax expense, which would have resulted in an increase to income tax payable, if it had not been reduced by the excess tax benefit from stock-based compensation discussed above. Those increases were partially offset by increased prepaid expenses and other current assets of $8.6 million during 2015. The increase in other asset accounts during 2015 was driven by primarily by increased prepaid commissions of $2.5 million, increased long-term accounts receivable of $1.2 million for sales made under OSP, increased balances under corporate-owed life insurance policies of $1.1 million, and a deposit made with a foreign component manufacturer of $2.6 million related to future services.

Investing activities

Primarily as the result of investments that matured during the year, we generated $19.1 million from investing activities in 2017. Calls and maturities on our investments, net of purchases, were $41.1 million. During 2017, we invested $10.6 million for the acquisition of Dextro, Inc., to continue building upon the Company's Axon Artificial Intelligence group, and for the acquisition of Breon, the Company's former distributor in Australia. The Company also invested $11.4 million in the purchase of property and equipment and intangibles, net of proceeds related to disposals.

Primarily as a result of investing cash generated from operating activities, we used $3.0 million in investing activities in 2016. Calls and maturities on our investments, net of purchases, were $8.9 million. During 2016, we invested $3.5 million for the acquisition of developed technology and hiring of personnel to form the Axon Artificial Intelligence group. The Company also invested $8.4 million in the purchase of property and equipment and intangibles, net of proceeds related to disposals.

Primarily as a result of investing cash generated from operating activities, the Company used $36.0 million for investing activities in 2015. Purchases of investments, net of calls and maturities, were $18.4 million. During 2015, net cash of $11.2 million was used for the acquisitions of MediaSolv Solutions Corporation and Tactical Safety Responses LTD. The Company also invested $6.5 million in the purchase of property and equipment and intangibles.

Financing activities

Net cash used by financing activities was $3.9 million for the year ended December 31, 2017. During 2017, the Company paid payroll taxes of $3.5 million on behalf of employees who net-settled stock awards during the period. Additionally, the Company paid $1.8 million for contingent consideration amounts earned during 2017 related to the acquisition of certain assets from Fossil Group, Inc. and Fossil Vietnam, Limited Liability Company in 2016. These decreases were partially offset by $1.4 million of proceeds from the exercise of stock options.

Net cash used by financing activities was $34.7 million for the year ended December 31, 2016. During 2016, the Company repurchased $33.7 million of its common stock, which was purchased for a weighted average cost of $18.90 per share, inclusive of applicable administrative costs. Additionally, the Company paid payroll taxes of $1.8 million on behalf of employees who net-settled stock awards during the period. These decreases were partially offset by $0.5 million of proceeds from the exercise of stock options, and $1.4 million of excess tax benefit from stock-based compensation. The purchase of common stock was made under a stock repurchase program authorized by the Company's Board of Directors.

Net cash provided by financing activities was $0.6 million for the year ended December 31, 2015. During 2015, the Company repurchases $7.6 million of the Company's common stock, which was purchased for a weighted average cost of $25.86 per share. The Company also paid payroll taxes of $1.4 million on behalf of employees who net-settled stock awards during the year. These decreases were partially offset by $2.7 million of proceeds from the exercise of stock options, and $6.9 million of excess tax benefit from stock proceeds. The purchase of common stock was made under a stock repurchase program authorized by the Company's Board of Directors.

Liquidity and Capital Resources

Our most significant source of liquidity continues to be funds generated by operating activities and available cash and cash equivalents. In addition, our $10.0 million revolving credit facility is available for additional working capital needs or investment opportunities. Under the terms of the line of credit, available borrowings are reduced by outstanding letters of credit. The line is secured by substantially all of the assets of the Company, and bears interest at varying rates, currently LIBOR plus 1.25% or Prime less 0.50%. As of December 31, 2017, we had letters of credit outstanding of $2.7 million, leaving the net amount available for borrowing of $7.3 million. The facility matures on December 31, 2018. There can be no assurance that we will continue to generate cash flows at or above current levels or that we will be able to maintain our ability to borrow under our revolving credit facility. At December 31, 2017 and 2016, there were no borrowings under the line.

Our agreement with the bank requires us to comply with a maximum funded debt to EBITDA ratio, as defined, of no greater than 2.00 to 1.00 based upon a trailing twelve-month period. At December 31, 2017, the Company's funded debt to EBITDA ratio was 0.34 to 1.00.

TASER 60 installment purchase arrangements typically involve amounts invoiced in five equal installments at the beginning of each year of the five-year term. This is in contrast to a traditional CEW sale in which the entire amount being charged for the hardware is invoiced upon shipment. This impacts liquidity in a commensurate fashion, with the cash for the TASER 60 arrangement received in five annual installments rather than up front. It is our strategic intent to shift an increasing amount of our business to a subscription model, to better match the municipal budgeting process of our customers as well as to allow for multiple product offerings to be bundled into existing subscriptions. We carefully considered the cash flow impacts of this strategic shift and regularly revisit our cash flow forecast with the goal of maintaining a comfortable level of liquidity as we introduce commercial offerings in which we incur upfront cash costs to produce and fulfill hardware sales ahead of the cash inflows from our customers. We anticipate, and have prepared for, the majority of our arrangements in both reportable segments to be offered in similar subscription-type offerings over the coming years.

Based on our strong balance sheet and the fact that we had just $0.1 million in total long-term debt and capital lease obligations at December 31, 2017, we believe financing will be available, both through our existing credit line and possible additional financing. However, there is no assurance that such funding will be available on terms acceptable to us, or at all.

We believe that our sources of funding will be sufficient to satisfy our currently anticipated cash requirements including capital expenditures, working capital requirements, potential acquisitions and other liquidity requirements through at least the next 12 months. The Company and its Board of Directors may consider repurchases of our common stock. Further repurchases of our common stock would take place on the open market, would be financed with available cash and are subject to authorization as well as market and business conditions.

Contractual Obligations

The following table outlines our future contractual financial obligations by period in which payment is expected, as of December 31, 2017 (dollars in thousands):

	Total	Less than 1 Year	1 - 3 Years	3 - 5 Years	More than 5 Years
Non-cancelable operating leases	$ 7,655	$ 2,313	$ 3,129	$ 2,170	$ 43
Capital leases including interest	116	40	76	—	—
Open purchase orders	51,855	51,855	—	—	—
Total contractual obligations	$ 59,626	$ 54,208	$ 3,205	$ 2,170	$ 43

Open purchase orders in the above table represent both cancelable and non-cancelable purchase orders with key vendors, which are included in this table due to the Company's strategic relationships with these vendors.

We are subject to U.S. Federal income tax as well as income taxes imposed by several states and foreign jurisdictions. As of December 31, 2017, we had $4.2 million of gross unrecognized tax benefits related to uncertain tax positions. The settlement period for our long-term income tax liabilities cannot be determined; however, the liabilities are expected to increase by approximately $0.2 million within the next 12 months.

Off-Balance Sheet Arrangements

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The discussion of off-balance sheet arrangements in Note 9 to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K is incorporated by reference herein.

Critical Accounting Estimates

We have identified the following accounting estimates as critical to our business operations and the understanding of our results of operations. The preparation of this Annual Report on Form 10-K requires us to make estimates and assumptions that affect the reported amount of assets and liabilities, disclosure of contingent assets and liabilities at the date of our consolidated financial statements, and the reported amounts of revenue and expenses during the reporting period. While we do not believe that a change in these estimates is reasonably likely, there can be no assurance that our actual results will not differ from these estimates. The effect of these estimates on our business operations is discussed below.

Product Warranties

The Company warranties its CEWs, Axon cameras and certain related accessories from manufacturing defects on a limited basis for a period of one year after purchase and, thereafter, will replace any defective unit for a fee. Estimated costs for the standard warranty are charged to cost of products sold when revenue is recorded for the related product. Future warranty costs are estimated based on historical data related to warranty claims on a quarterly basis and this rate is applied to current product sales. Historically, reserve amounts have been increased if management becomes aware of a component failure or other issue that could result in larger than anticipated warranty claims from customers. The warranty reserve is reviewed quarterly to verify that it sufficiently reflects the remaining warranty obligations based on the anticipated expenditures over the balance of the warranty obligation period, and adjustments are made when actual warranty claim experience differs from estimates. As of December 31, 2017 and 2016, our warranty reserve was approximately $0.6 million and $0.8 million, respectively. Warranty expense (recoveries) for the years ended December 31, 2017, 2016 and 2015 was $0.1 million, $0.6 million and $(0.1) million, respectively. The decrease in warranty reserve and related expense as of and for the year ended ended December 31, 2017 was primarily driven by lower than initially expected warranty claims for the Axon Body 2 on-officer body camera. As of December 31, 2017, the Company's warranty reserve included initial reserves related to the new Axon Flex 2 on-officer camera and Axon Fleet in-car camera systems.

Revenue related to separately-priced extended warranties is initially recorded as deferred revenue at its contractual amount and subsequently recognized as net sales on a straight-line basis over the warranty service period. Costs related to extended warranties are charged to cost of product and service sales when incurred.

Inventory

Inventories are stated at the lower of cost and net realizable value. Cost is determined using the weighted average cost of raw materials, which approximates the first-in, first-out ("FIFO") method and includes allocations of manufacturing labor and overhead. Provisions are made to reduce potentially excess, obsolete or slow-moving inventories, as well as trial and evaluation inventories to their net realizable value. These provisions are based on management's best estimate after considering historical demand, projected future demand, inventory purchase commitments, industry and market trends and conditions among other factors. Management evaluates inventory costs for abnormal costs due to excess production capacity and treats such costs as period costs.

During the year ended December 31, 2017, the Company recorded provisions to reduce inventories to their lower of cost and net realizable value of approximately $2.0 million compared to $1.2 million during 2016. The increase in provisions made during 2017 was primarily attributable to increased deployments of trial and evaluation equipment and was also attributable to the phasing out of certain previous generations of its CEWs, the legacy TASER X26, TASER M26 and TASER C2 models. The remaining increase in the provision for 2017 was driven by analyses looking at projected sales data for existing products and making corresponding adjustments to state inventories at their lower of cost and net realizable value.

Revenue Recognition, Deferred Revenue and Accounts and Notes Receivable

The Company derives revenue from two primary sources: (1) the sale of physical products, including CEWs, Axon cameras, corresponding hardware extended warranties, and related accessories such as Axon docks, cartridges and batteries, among others, and (2) subscription to the Company's Evidence.com digital evidence management software as a service ("SaaS") (including data storage fees and other ancillary services), which includes varying levels of support. To a lesser extent, the Company also recognizes training, professional services and revenue related to other software and SaaS services. Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, title has transferred, the price is fixed and collectability is reasonably assured. Contractual arrangements may contain explicit customer acceptance provisions, and under such arrangements, the Company defers recognition of revenue until formal customer acceptance is received. Extended warranty revenue, SaaS revenue and related data storage revenue are recognized ratably over the term of the contract commencing on a pre-determined date subsequent to the delivery of the hardware. Training and professional service revenues are generally recorded once the services are completed.

Revenue arrangements with multiple deliverables are divided into separate units and revenue is allocated using the relative selling price method based upon vendor-specific objective evidence ("VSOE") of selling price or third-party evidence of the selling prices if VSOE of selling prices does not exist. If neither VSOE nor third-party evidence exists, management uses its best estimate of selling price. The majority of the Company's allocations of arrangement consideration under multiple element arrangements are performed utilizing prices charged to customers for deliverables when sold separately. The Company's multiple element arrangements may include rights to future CEWs and/or Axon devices to be delivered at defined points within a multi-year contract, and in those arrangements, the Company allocates total arrangement consideration over the life of the multi-year contract to future deliverables using management's best estimate of selling price. The Company has not utilized third-party evidence of selling price.

For the the years ended December 31, 2017, 2016 and 2015, the composition of revenue recognized from arrangements containing multiple elements and those not containing multiple elements was as follows:

	For the Year Ended December 31, 2017					
	TASER Weapons		Software and Sensors		Total	
Arrangements with multiple elements	$ 53,865	23.0%	$ 102,529	93.8%	$ 156,394	45.5%
Arrangements without multiple elements	180,647	77.0	6,757	6.2	187,404	54.5
Total	$ 234,512	100.0%	$ 109,286	100.0%	$ 343,798	100.0%

	For the Year Ended December 31, 2016					
	TASER Weapons		Software and Sensors		Total	
Arrangements with multiple elements	$ 34,558	17.1%	$ 56,270	85.8%	$ 90,828	33.9%
Arrangements without multiple elements	168,086	82.9	9,331	14.2	177,417	66.1
Total	$ 202,644	100.0%	$ 65,601	100.0%	$ 268,245	100.0%

	For the Year Ended December 31, 2015					
	TASER Weapons		Software and Sensors		Total	
Arrangements with multiple elements	$ 11,141	6.9%	$ 26,489	74.6%	$ 37,630	19.0%
Arrangements without multiple elements	151,234	93.1	9,028	25.4	160,262	81.0
Total	$ 162,375	100.0%	$ 35,517	100.0%	$ 197,892	100.0%

The Company offers the opportunity to purchase extended warranties that include additional services and coverage beyond the standard limited warranty for certain products. Revenue for extended warranty purchases is deferred at the time of sale and recognized over the warranty period commencing on the date of sale. Extended warranties range from one to five years.

Evidence.com and Axon cameras and related accessories have stand-alone value to the customer and are sometimes sold separately, but in most instances are sold together. In these instances, customers typically purchase and pay for the equipment and one year of Evidence.com in advance. Additional years of service are generally billed annually over a specified service term, which has typically ranged from one to five years. Generally, the Company recognizes revenue for the Axon equipment at the time of the sale consistent with the discussion of multiple deliverable arrangements above. Revenue for Evidence.com is deferred at the time of the sale and recognized over the service period. At times, the Company discounts the price of Axon devices provided to customers to secure long-term Evidence.com service contracts. In such circumstances, revenue related to the Axon devices recognized at the time of delivery is limited to the amount allocated to the Axon device deliverable that the Company is contractually entitled to that is not contingent upon the delivery of future Evidence.com services. The Company recognizes the remaining allocated contingent revenue related to discounted Axon devices over the remaining period it provides the contracted Evidence.com services.

Sales tax collected on sales is netted against government remittances and thus, recorded on a net basis.

Deferred revenue consists of payments received in advance related to products and services for which the criteria for revenue recognition have not yet been met. Deferred revenue that will be recognized during the subsequent twelve month period from the balance sheet date is recorded as current deferred revenue and the remaining portion is recorded as long-term. Generally, customers are billed in annual installments. See Note 7 for further disclosures about the Company's deferred revenue.

The Company records reductions to net sales for expected future product returns based on the Company's historical experience.

Sales are typically made on credit, and the Company generally does not require collateral. Management performs ongoing credit evaluations of its customers' financial condition, and maintains an allowance for doubtful accounts. Uncollectible accounts are charged to expense when deemed uncollectible, and accounts and notes receivable are presented net of an allowance for doubtful accounts. This allowance represents management's best estimate and application of judgment considering a number of factors, including third-party credit reports, actual payment history, cash discounts, customer-specific financial information and broader market and economic trends and conditions.

Valuation of Goodwill, Intangibles and Long-lived Assets

The Company does not amortize goodwill and intangible assets with indefinite useful lives. Such assets are required to be tested for impairment at least annually, or sooner whenever events or changes in circumstances indicate that the assets may be impaired. The Company performs its annual impairment assessment in the fourth quarter of each year. Finite-lived intangible assets and other long-lived assets are amortized over their estimated useful lives. Management evaluates whether events and circumstances have occurred that indicate the remaining estimated useful life of long-lived assets and intangible assets may warrant revision or that the remaining balance of these assets, including intangible assets with indefinite lives, may not be recoverable.

Circumstances that might indicate long-lived assets might not be recoverable could include, but are not limited to, a change in the product mix, a change in the way products are created, produced or delivered, or a significant change in the way the Company's products are branded and marketed. When performing a review for recoverability, management estimates the future undiscounted cash flows expected to result from the use of the assets and their eventual disposition. The amount of the impairment loss, if impairment exists, is calculated based on the excess of the carrying amounts of the assets over their estimated fair value computed using discounted cash flows. During the year ended December 31, 2017, the Company abandoned certain developed technology acquired in a business combination resulting in an impairment charge of $1.0 million. No impairment losses were recorded during the years ended December 31, 2016 and 2015.

Income Taxes

We recognize federal, state and foreign current tax liabilities or assets based on our estimate of taxes payable or refundable in the current fiscal year by tax jurisdiction. We also recognize federal, state and foreign deferred tax assets or liabilities, as appropriate, for our estimate of future tax effects attributable to temporary differences and carry forwards.

We recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such positions are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. Management must also assess whether uncertain tax positions as filed could result in the recognition of a liability for possible interest and penalties if any. We have completed research and development tax credit studies which identified approximately $15.2 million in tax credits for federal, Arizona and California income tax purposes related to the 2003 through 2017 tax years, net of the federal benefit on the Arizona and California research and development tax credits. Management determined that it was more likely than not that the full benefit of the research and development tax credit would not be sustained on examination and accordingly, has established a liability for unrecognized tax benefits of $4.1 million as of December 31, 2017. In addition, we established a $0.1 million liability related to uncertain tax positions for certain state income tax liabilities, for a total unrecognized tax benefit at December 31, 2017 of $4.2 million. Management expects the amount of the unrecognized tax benefit liability to increase by approximately $0.2 million within the next 12 months. Should the unrecognized tax benefit of $4.2 million be recognized, the Company's effective tax rate would be favorably impacted. Our estimates are based on the information available to us at the time we prepare the income tax provisions. Our income tax returns are subject to audit by federal, state, and local governments, generally years after the returns are filed. These returns could be subject to material adjustments or differing interpretations of the tax laws.

Our calculation of current and deferred tax assets and liabilities is based on certain estimates and judgments and involves dealing with uncertainties in the application of complex tax laws. Our estimates of current and deferred tax assets and liabilities may change based, in part, on added certainty or finality to an anticipated outcome, changes in accounting or tax laws in the U.S. and overseas, or changes in other facts or circumstances. In addition, we recognize liabilities for potential U.S. tax contingencies based on our estimate of whether, and the extent to which, additional taxes may be due. If we determine that payment of these amounts is unnecessary, or if the recorded tax liability is greater than our current assessment, we may be required to recognize an income tax benefit, or additional income tax expense, respectively, in our consolidated financial statements.

In preparing our consolidated financial statements, management assesses the likelihood that our deferred tax assets will be realized from future taxable income. In evaluating our ability to recover our deferred income tax assets, management considers all available positive and negative evidence, including operating results, ongoing tax planning and forecasts of future taxable

income on a jurisdiction by jurisdiction basis. A valuation allowance is established if we determine that it is more likely than not that some portion or all of the net deferred tax assets will not be realized.

Although management believes that its tax estimates are reasonable, the ultimate tax determination involves significant judgments that could become subject to audit by tax authorities in the ordinary course of business. As of December 31, 2017, the Company would need to generate approximately $56.0 million of pre-tax book income in order to realize the net deferred tax assets for which a benefit has been recorded. This estimate considers the reversal of approximately $14.6 million of gross deferred tax liabilities, $3.5 million tax-effected. We have state net operating losses ("NOLs") of $4.5 million, which produce deferred tax assets of $0.2 million, which expire at various dates between 2019 and 2036. We anticipate the Company's future income to continue to trend upward from our 2017 results, with sufficient pre-tax book income to realize a large portion of our deferred tax assets. However, based on specific income projections in years in which certain tax assets are set to expire, and cumulative losses in certain foreign tax jurisdictions, a reserve of approximately $5.4 million has been recorded as a valuation allowance against deferred tax assets as of December 31, 2017.

Stock-Based Compensation

We have historically granted stock-based compensation to key employees and non-employee directors as a means of attracting and retaining highly qualified personnel. The Company recognizes expense related to stock-based payment transactions in which it receives employee services in exchange for equity instruments of the Company. Stock-based compensation expense for RSUs is measured based on the closing fair market value of the Company's common stock on the date of grant. The Company recognizes stock-based compensation expense over the award's requisite service period on a straight-line basis for time-based RSUs and on a graded basis for RSUs that are contingent on the achievement of performance conditions. The Company recognizes forfeitures as they occur as a reduction to stock-based compensation expense and to additional paid-in-capital.

The Company calculates the fair value of stock options using the Black-Scholes-Merton option pricing valuation model, which incorporates various assumptions including expected volatility, expected life, expected dividends and risk-free interest rates. No options were awarded during the years ended December 31, 2017, 2016 or 2015.

We have granted a total of approximately 2.0 million performance-based awards (options and restricted stock units) of which approximately 0.7 million are outstanding as of December 31, 2017, the vesting of which is contingent upon the achievement of certain performance criteria including the successful development and market acceptance of future product introductions as well as our future sales targets and operating performance. These awards will vest and compensation expense will be recognized based on management's best estimate of the probability of the performance criteria being satisfied using the most currently available projections of future product adoption and operating performance, adjusted at each balance sheet date. Changes in the subjective and probability-based assumptions can materially affect the estimate of the fair value of stock-based compensation and consequently, the related amount recognized in our statements of operations.

Contingencies and Accrued Litigation Expense

We are subject to the possibility of various loss contingencies arising in the ordinary course of business, including product-related litigation. We consider the likelihood of loss or impairment of an asset or the incurrence of a liability, as well as our ability to reasonably estimate the amount of loss in determining loss contingencies. An estimated loss contingency is accrued when it is probable that an asset has been impaired or a liability has been incurred and the amount of loss can be reasonably estimated. We regularly evaluate current information available to us to determine whether such accruals should be adjusted and whether new accruals are required. Refer to Note 9 of our consolidated financial statements for further discussion.

Item 7A. *Quantitative and Qualitative Disclosures About Market Risk*

Interest Rate Risk

We typically invest in a limited number of financial instruments, consisting principally of investments in money market accounts, certificates of deposit, corporate and municipal bonds with a typical long-term debt rating of "A" or better by any nationally recognized statistical rating organization, denominated in U.S. dollars. All of our cash equivalents and investments are treated as "held-to-maturity." Investments in fixed-rate interest-earning instruments carry a degree of interest rate risk as their market value may be adversely impacted due to a rise in interest rates. As a result, we may suffer losses in principal if we sell securities that have declined in market value due to changes in interest rates. However, because we classify our debt securities as "held-to-maturity" based on our intent and ability to hold these instruments to maturity, no gains or losses are recognized due to changes in interest rates. These securities are reported at amortized cost. Based on investment positions as of December 31, 2017, a hypothetical 100 basis point

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increase across all maturities would result in a $16,000 incremental decline in the fair market value of the portfolio. Such losses would only be realized if the Company sold the investments prior to maturity.

Additionally, we have access to a $10.0 million line of credit borrowing facility which bears interest at varying rates, currently at LIBOR plus 1.25% or Prime less 0.50%. Under the terms of the line of credit, available borrowings are reduced by outstanding letters of credit, which totaled $2.7 million at December 31, 2017. At December 31, 2017, there was no amount outstanding under the line of credit, and the available borrowing under the line of credit was $7.3 million. We have not borrowed any funds under the line of credit since its inception; however; should we need to do so in the future, such borrowings could be subject to adverse or favorable changes in the underlying interest rate.

Exchange Rate Risk

Our results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates, in each case compared to the U.S. Dollar, related to transactions by our foreign subsidiaries. The majority of our sales to international customers are transacted in U.S. dollars and therefore, are not subject to exchange rate fluctuations on these transactions. However, the cost of our products to our customers increases when the U.S. dollar strengthens against their local currency, and the Company may have more sales and expenses denominated in foreign currencies in future years which could increase its foreign exchange rate risk.

To date, we have not engaged in any currency hedging activities. However, the Company may enter into foreign currency forward and option contracts with financial institutions to protect against foreign exchange risks associated with certain existing assets and liabilities, certain firmly committed transactions, forecasted future cash flows and net investments in foreign subsidiaries. However, the Company may choose not to hedge certain foreign exchange exposures for a variety of reasons, including but not limited to the prohibitive economic cost of hedging particular exposures. As such, fluctuations in currency exchange rates could harm our business in the future.

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AXON ENTERPRISE, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	December 31, 2017	December 31, 2016
ASSETS		
Current assets:		
Cash and cash equivalents	$ 75,105	$ 40,651
Short-term investments	6,862	48,415
Accounts and notes receivable, net of allowance of $754 and $443 as of December 31, 2017 and 2016, respectively	56,064	39,466
Inventory	45,465	34,841
Prepaid expenses and other current assets	21,696	13,858
Total current assets	205,192	177,231
Property and equipment, net	31,172	24,004
Deferred income tax assets, net	15,755	19,515
Intangible assets, net	18,823	15,218
Goodwill	14,927	10,442
Long-term investments	—	234
Long-term accounts and notes receivable, net of current portion	36,877	17,602
Other assets	15,366	13,917
Total assets	$ 338,112	$ 278,163
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 8,592	$ 10,736
Accrued liabilities	23,502	18,248
Current portion of deferred revenue	70,401	45,137
Customer deposits	3,673	2,148
Current portion of business acquisition contingent consideration	1,693	1,690
Other current liabilities	89	80
Total current liabilities	107,950	78,039
Deferred revenue, net of current portion	54,881	40,054
Liability for unrecognized tax benefits	1,706	1,896
Long-term deferred compensation	3,859	3,362
Business acquisition contingent consideration, net of current portion	1,048	1,635
Other long-term liabilities	1,224	2,289
Total liabilities	170,668	127,275
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, $0.00001 par value; 25,000,000 shares authorized; no shares issued and outstanding as of December 31, 2017 and 2016	—	—
Common stock, $0.00001 par value; 200,000,000 shares authorized; 52,969,869 and 52,325,251 shares issued and outstanding as of December 31, 2017 and 2016, respectively	1	1
Additional paid-in capital	201,672	187,656
Treasury stock at cost, 20,220,227 shares as of December 31, 2017 and 2016	(155,947)	(155,947)
Retained earnings	123,185	118,275
Accumulated other comprehensive income (loss)	(1,467)	903

Total stockholders' equity	167,444	150,888
Total liabilities and stockholders' equity	$ 338,112	$ 278,163

The accompanying notes are an integral part of these consolidated financial statements.

AXON ENTERPRISE, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME
(in thousands, except per share data)

	For the Years Ended December 31,		
	2017	2016	2015
Net sales from products	$ 285,859	$ 238,573	$ 185,230
Net sales from services	57,939	29,672	12,662
Net sales	343,798	268,245	197,892
Cost of product sales	117,997	91,536	65,022
Cost of service sales	18,713	6,173	4,223
Cost of sales	136,710	97,709	69,245
Gross margin	207,088	170,536	128,647
Sales, general and administrative	138,692	108,076	69,698
Research and development	55,373	30,609	23,614
Total operating expenses	194,065	138,685	93,312
Income from operations	13,023	31,851	35,335
Interest and other income (expense), net	2,738	(354)	26
Income before provision for income taxes	15,761	31,497	35,361
Provision for income taxes	10,554	14,200	15,428
Net income	$ 5,207	$ 17,297	$ 19,933
Net income per common and common equivalent shares:			
Basic	$ 0.10	$ 0.33	$ 0.37
Diluted	$ 0.10	$ 0.32	$ 0.36
Weighted average number of common and common equivalent shares outstanding:			
Basic	52,726	52,667	53,548
Diluted	53,898	53,536	54,638

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

Net income	$ 5,207	$ 17,297	$ 19,933
Foreign currency translation adjustments	(2,370)	820	19
Comprehensive income	$ 2,837	$ 18,117	$ 19,952

The accompanying notes are an integral part of these consolidated financial statements.

AXON ENTERPRISE, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Treasury Stock		Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Stockholders' Equity
	Shares	Amount		Shares	Amount			
Balance, December 31, 2014	53,000,867	$ 1	$ 162,641	18,139,958	$ (114,645)	$ 64	$ 81,045	$ 129,106
Stock options exercised and RSUs vested, net of withholdings	983,525	—	1,303	—	—	—	—	1,303
Stock-based compensation	—	—	7,263	—	—	—	—	7,263
Excess tax benefit from stock-based compensation	—	—	6,936	—	—	—	—	6,936
Purchase of treasury stock	(292,200)	—	—	292,200	(7,556)	—	—	(7,556)
Net income	—	—	—	—	—	—	19,933	19,933
Foreign currency translation adjustments	—	—	—	—	—	19	—	19
Balance, December 31, 2015	53,692,192	1	178,143	18,432,158	(122,201)	83	100,978	157,004
Stock options exercised and RSUs vested, net of withholdings	421,128	—	(1,294)	—	—	—	—	(1,294)
Stock-based compensation	—	—	9,369	—	—	—	—	9,369
Excess tax benefit from stock-based compensation	—	—	1,438	—	—	—	—	1,438
Purchase of treasury stock	(1,788,069)	—	—	1,788,069	(33,746)	—	—	(33,746)
Net income	—	—	—	—	—	—	17,297	17,297
Foreign currency translation adjustments	—	—	—	—	—	820	—	820
Balance, December 31, 2016	52,325,251	1	187,656	20,220,227	(155,947)	903	118,275	150,888
Cumulative effect of applying a change in accounting principle	—	—	475	—	—	—	(297)	178
Stock options exercised and RSUs vested, net of withholdings	644,618	—	(2,069)	—	—	—	—	(2,069)
Stock-based compensation	—	—	15,610	—	—	—	—	15,610
Net income	—	—	—	—	—	—	5,207	5,207
Foreign currency translation adjustments	—	—	—	—	—	(2,370)	—	(2,370)
Balance, December 31, 2017	52,969,869	$ 1	$ 201,672	20,220,227	$ (155,947)	$ (1,467)	$ 123,185	$ 167,444

The accompanying notes are an integral part of these consolidated financial statements.

AXON ENTERPRISE, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the Years Ended December 31,		
	2017	2016	2015
Cash flows from operating activities:			
Net income	$ 5,207	$ 17,297	$ 19,933
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	8,041	3,658	3,291
Loss on disposal and abandonment of intangible assets	1,146	21	225
Purchase accounting adjustments to goodwill	(23)	520	—
(Gain) loss on disposal of property and equipment, net	(28)	42	(19)
Bond premium amortization	657	1,265	1,650
Stock-based compensation	15,610	9,369	7,263
Deferred income taxes	2,830	(5,167)	994
Unrecognized tax benefits	(191)	582	(156)
Tax benefit from stock-based compensation	—	(1,438)	(6,936)
Change in assets and liabilities:			
Accounts and notes receivable	(35,305)	(28,438)	3,017
Inventory	(11,746)	(18,668)	3,140
Prepaid expenses and other assets	(9,007)	(13,928)	(7,352)
Accounts payable, accrued and other liabilities	39	17,584	5,868
Deferred revenue	39,735	34,304	15,289
Customer deposits	1,525	922	238
Net cash provided by operating activities	18,490	17,925	46,445
Cash flows from investing activities:			
Purchases of investments	(19,950)	(56,086)	(62,464)
Proceeds from call / maturity of investments	61,080	64,951	44,105
Purchases of property and equipment	(10,419)	(4,957)	(6,003)
Proceeds from disposal of property and equipment	24	42	40
Purchases of intangible assets	(1,024)	(3,495)	(501)
Business acquisitions, net of cash acquired	(10,629)	(3,500)	(11,186)
Net cash provided by (used in) investing activities	19,082	(3,045)	(36,009)
Cash flows from financing activities:			
Repurchase of common stock	—	(33,746)	(7,556)
Proceeds from options exercised	1,383	478	2,673
Payroll tax payments for net-settled stock awards	(3,453)	(1,772)	(1,370)
Payments on capital lease obligation	(34)	(32)	(80)
Payments on notes payable	—	(75)	—
Payment of contingent consideration for business acquisition	(1,750)	(952)	—
Excess tax benefit from stock-based compensation	—	1,438	6,936
Net cash (used in) provided by financing activities	(3,854)	(34,661)	603
Effect of exchange rate changes on cash and cash equivalents	736	906	120

Net increase (decrease) in cash and cash equivalents	34,454	(18,875)	11,159
Cash and cash equivalents, beginning of year	40,651	59,526	48,367
Cash and cash equivalents, end of year	$ 75,105	$ 40,651	$ 59,526

The accompanying notes are an integral part of these consolidated financial statements.

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Summary of Significant Accounting Policies

Axon Enterprise, Inc. ("Axon" or the "Company") is a developer and manufacturer of advanced conducted electrical weapons ("CEWs") designed for use by law enforcement, military, corrections, private security personnel, and by private individuals for personal defense. In addition, the Company has developed full technology solutions for the capture, secure storage and management of video/audio evidence as well as other tactical capabilities for use in law enforcement. The Company sells its products worldwide through its direct sales force, distribution partners, online store and third-party resellers. The Company was incorporated in Arizona in September 1993, and reincorporated in Delaware in January 2001. The Company's corporate headquarters and manufacturing facilities are located in Scottsdale, Arizona. The Company's software development division is located in Seattle, Washington. Axon Public Safety BV, a wholly owned subsidiary of the Company, supports the Company's international sales and marketing efforts, and is located in Amsterdam, Netherlands. Axon Public Safety BV wholly owns two subsidiaries, Axon Public Safety U.K. LTD and Axon Public Safety AU, that serve as direct sales operations in the United Kingdom ("U.K.") and Australia, respectively. The Company also sells to certain international markets through a wholly owned subsidiary, Axon Public Safety Germany SE. In 2015, the Company formed Axon Public Safety Canada, Inc., a wholly owned subsidiary, to facilitate transactions for its products and services with new and existing customers located in Canada.

The accompanying consolidated financial statements include the accounts of the Company and its subsidiaries. All material intercompany accounts, transactions, and profits have been eliminated.

Basis of Presentation and Use of Estimates

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP"). The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates and assumptions in these consolidated financial statements include:

- product warranty reserves,
- inventory valuation,
- revenue recognition allocated in multiple-deliverable contracts or arrangements,
- valuation of goodwill, intangible and long-lived assets,
- recognition, measurement and valuation of current and deferred income taxes,
- fair value of stock awards issued and the estimated vesting period for performance-based stock awards, and
- recognition and measurement of contingencies and accrued litigation expense.

Actual results could differ materially from those estimates.

Cash, Cash Equivalents and Investments

Cash, cash equivalents and investments include cash, money market funds, certificates of deposit, state and municipal obligations and corporate bonds. The Company places its cash and cash equivalents with high quality financial institutions. Although the Company deposits its cash with multiple financial institutions, its deposits, at times, do exceed federally insured limits.

Cash and cash equivalents include funds on hand and highly liquid investments purchased with initial maturity of three months or less. Short-term investments include securities with an expected maturity date within one year of the balance sheet date that do not meet the definition of a cash equivalent, and long-term investments are securities with an expected maturity date greater than one year. Based on management's intent and ability, the Company's investments are classified as held to maturity investments and are recorded at amortized cost. Held-to-maturity investments are reviewed quarterly for impairment to determine if other-than-temporary declines in the fair value have occurred for any individual investment that may affect the Company's intent and ability to hold the investment until recovery. Other-than-temporary declines in the value of held-to-maturity investments are recorded as expense in the period the determination is made.

Inventory

Inventories are stated at the lower of cost and net realizable value. Cost is determined using the weighted average cost of raw materials, which approximates the first-in, first-out ("FIFO") method and includes allocations of manufacturing labor and overhead.

Provisions are made to reduce potential excess, obsolete or slow-moving inventories, as well as trial and evaluation

inventories to their net realizable value. These provisions are based on management's best estimate after considering historical demand, projected future demand, inventory purchase commitments, industry and market trends and conditions among other factors. Management evaluates inventory costs for abnormal costs due to excess production capacity and treats such costs as period costs.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation and amortization. Additions and improvements are capitalized, while ordinary maintenance and repair expenditures are charged to expense as incurred. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets.

Software Development Costs

The Company expenses software development costs, including costs to develop software products or the software component of products and services to be marketed to external users, before technological feasibility of such products is reached. The Company has determined that technological feasibility is reached shortly before the release of those products and as a result, the development costs incurred after the establishment of technological feasibility and before the release of those products are not material.

Software development costs also include costs to develop software programs to be used solely to meet the Company's internal needs and applications used to deliver its services. The Company capitalizes development costs related to these software applications once the preliminary project stage is complete and it is probable that the project will be completed and the software will be used to perform the intended function. Additionally, the Company capitalizes qualifying costs incurred for upgrades and enhancements to existing software that result in additional functionality. Costs related to preliminary project planning activities, post-implementation activities, maintenance and minor modifications are expensed as incurred. Internal-use software is amortized on a straight line basis over its estimated useful life.

Management evaluates the useful lives of these assets on an annual basis and tests for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

Valuation of Goodwill, Intangible and Long-lived Assets

The Company does not amortize goodwill and intangible assets with indefinite useful lives, rather such assets are required to be tested for impairment at least annually, or sooner whenever events or changes in circumstances indicate that the assets may be impaired. The Company performs its annual impairment assessment in the fourth quarter of each year. Finite-lived intangible assets and other long-lived assets are amortized over their estimated useful lives. Management evaluates whether events and circumstances have occurred that indicate the remaining estimated useful life of long-lived assets and intangible assets may warrant revision or that the remaining balance of these assets, including intangible assets with indefinite lives, may not be recoverable.

Circumstances that might indicate long-lived assets might not be recoverable could include, but are not limited to, a change in the product mix, a change in the way products are created, produced or delivered, or a significant change in the way the Company's products are branded and marketed. When performing a review for recoverability, management estimates the future undiscounted cash flows expected to result from the use of the assets and their eventual disposition. The amount of the impairment loss, if impairment exists, is calculated based on the excess of the carrying amounts of the assets over their estimated fair value computed using discounted cash flows. During the year ended December 31, 2017, the Company abandoned certain developed technology acquired in a business combination resulting in an impairment charge of $1.0 million. The impairment charge was recorded within the Software and Sensors Segment. No impairment losses were recorded during the years ended December 31, 2016 and 2015.

Customer Deposits

The Company requires deposits in advance of shipment for certain customer sales orders. Additionally, customers may elect to make deposits with the Company related to contracts for the Company's products and services that were not executed as of the end of a reporting period. Customer deposits are recorded as a current liability in the accompanying consolidated balance sheets.

Revenue Recognition, Deferred Revenue and Accounts and Notes Receivable

The Company derives revenue from two primary sources: (1) the sale of physical products, including CEWs, Axon cameras, corresponding hardware extended warranties, and related accessories such as Axon docks, cartridges and batteries, among others, and (2) subscription to the Company's Evidence.com digital evidence management software as a service ("SaaS") (including data storage fees and other ancillary services), which includes varying levels of support. To a lesser extent, the Company also recognizes training, professional services and revenue related to other software and SaaS services. Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, title has transferred, the price is fixed and collectability is reasonably assured. Contractual arrangements may contain explicit customer acceptance provisions, and under such arrangements, the Company defers recognition of revenue until formal customer acceptance is received. Extended warranty revenue, SaaS revenue and related data storage revenue are recognized ratably over the term of the contract commencing on a pre-determined date subsequent to the delivery of the hardware. Training and professional service revenues are generally recorded once the services are completed.

Revenue arrangements with multiple deliverables are divided into separate units and revenue is allocated using the relative selling price method based upon vendor-specific objective evidence ("VSOE") of selling price or third-party evidence of the selling prices if VSOE of selling prices does not exist. If neither VSOE nor third-party evidence exists, management uses its best estimate of selling price. The majority of the Company's allocations of arrangement consideration under multiple element arrangements are performed utilizing prices charged to customers for deliverables when sold separately. The Company's multiple element arrangements may include rights to future CEWs and/or Axon devices to be delivered at defined points within a multi-year contract, and in those arrangements, the Company allocates total arrangement consideration over the life of the multi-year contract to future deliverables using management's best estimate of selling price. The Company has not utilized third-party evidence of selling price.

The Company offers the opportunity to purchase extended warranties that include additional services and coverage beyond the standard limited warranty for certain products. Revenue for extended warranty purchases is deferred at the time of sale and recognized over the warranty period commencing on the date of sale. Extended warranties range from one to five years.

Evidence.com and Axon cameras and related accessories have stand-alone value to the customer and are sometimes sold separately, but in most instances are sold together. In these instances, customers typically purchase and pay for the equipment and one year of Evidence.com in advance. Additional years of service are generally billed annually over a specified service term, which has typically ranged from one to five years. Generally, the Company recognizes revenue for the Axon equipment at the time of the sale consistent with the discussion of multiple deliverable arrangements above. Revenue for Evidence.com is deferred at the time of the sale and recognized over the service period. At times, the Company discounts the price of Axon devices provided to customers to secure long-term Evidence.com service contracts. In such circumstances, revenue related to the Axon devices recognized at the time of delivery is limited to the amount allocated to the Axon device deliverable that the Company is contractually entitled to that is not contingent upon the delivery of future Evidence.com services. The Company recognizes the remaining allocated contingent revenue related to discounted Axon devices over the remaining period it provides the contracted Evidence.com services.

In 2012, the Company introduced a program, the TASER Assurance Program ("TAP") whereby a customer purchasing a product and joining the program will have the right to trade-in the original product for a new product of the same or like model in the future. Upon joining TAP, customers also receive an extended warranty for the initial products purchased. Under this program the customer generally pays additional annual installments over the contract period, generally three to five years. The Company records consideration received related to the right to the future hardware product as deferred revenue until all revenue recognition criteria are met, which is generally when the new product is delivered. Consideration related to the right to the future hardware product is determined at the inception of the arrangement using management's best estimate of selling price. Management's estimate is principally based on the current selling price for such products, with evaluation of the impact of any expected product and pricing changes, which have historically had an immaterial influence on management's best estimate of selling price.

In 2015, the Company introduced the Officer Safety Plan ("OSP"), whereby a customer typically enters into a five year Evidence.com subscription that includes all of its standard advanced features along with unlimited storage. The OSP also includes a service plan that includes upgrades of (i) the Axon devices every 2.5 years and (ii) a CEW at any point within the contract period. Upon entering into the OSP, customers also receive extended warranties on the Axon and CEW devices upon delivery to cover the contract periods. Under this program the customer generally makes an initial purchase of Axon cameras and related accessories, and CEWs at inception along with annual installments for services and future hardware deliverables over the contract period. The Company records consideration received related to the right to future hardware product as deferred revenue until all revenue recognition criteria are met, which is generally when the new product is delivered.

In 2016, the Company introduced the TASER 60 Plan ("TASER 60") whereby a customer typically enters into a five year CEW installment purchase arrangement. TASER 60 also includes extended warranties on the CEW devices upon delivery covering the contract periods as well as holsters, cartridges and on-site spares. Generally, the Company allocates revenue to the deliverables using the relative selling price method and recognizes revenue at the time of sale for the amount allocated to the CEW devices, net of imputed interest, and the amount allocated to the extended warranty is recognized over five years. The Company performs an initial credit evaluation prior to execution of TASER 60 arrangements and subsequently performs quarterly credit evaluations by monitoring public municipal bond ratings, as applicable, and any subsequent credit upgrades or downgrades, to monitor for each customer's credit risk. Additionally, the Company tracks payment activity for amounts currently due to assess the credit quality of its notes receivable portfolio. As the Company's customers generally have investment-grade municipal bond ratings, the Company considers collectability of the contracted amounts in such installment purchase arrangements to be reasonably assured, unless other factors or payment history indicate otherwise. For customers where municipal bond information is not available, the Company considers factors such as payment history, customer-specific information and broader market and economic trends and conditions to determine whether collectability is reasonably assured. The Company considers this information when establishing its allowance for doubtful accounts. For the years ended December 31, 2017 and 2016, the Company recorded revenue of $40.7 million and $17.9 million, respectively, under the Company's TASER 60 Plan. No such amounts were recorded during the year ended December 31, 2015.

In 2017, the Company introduced new subscription programs that allow for agencies to purchase the Company's training and duty cartridges over a five-year term whereby the customer makes five equal annual installments at the beginning of each contract year. The Company offers two tiers under this program: the basic and unlimited plan. The Basic Cartridge Plan entitles customers to a fixed number of training and duty cartridges per year as well as a fixed number of battery replacements over the contractual term. For the Basic Cartridge Plan, the Company allocates the contractual consideration to all identified deliverables using the relative selling price method. Generally, the Company recognizes revenue for the amounts allocated to the cartridges and batteries when they are delivered to the customer. The Unlimited Cartridge Plan entitles customers to a fixed number of training cartridges per year and an unlimited amount of duty cartridges and replacement batteries. Due to the unlimited nature of the arrangement whereby the Company is obligated to deliver unlimited products at the customer's request, the Company accounts for these arrangements as stand-ready obligations, and recognizes revenue ratably over the contract period. Cost of product sales is recognized as the products are delivered to the customer.

Sales tax collected on sales is netted against government remittances and thus, recorded on a net basis.

Deferred revenue consists of payments received in advance related to products and services for which the criteria for revenue recognition have not yet been met. Deferred revenue that will be recognized during the subsequent twelve month period from the balance sheet date is recorded as current deferred revenue and the remaining portion is recorded as long-term. Generally, customers are billed in annual installments. See Note 7 for further disclosures about the Company's deferred revenue.

The Company records reductions to net sales for expected future product returns based on the Company's historical experience.

Sales are typically made on credit, and the Company generally does not require collateral. Management performs ongoing credit evaluations of its customers' financial condition, and maintains an allowance for doubtful accounts. Uncollectible accounts are charged to expense when deemed uncollectible, and accounts and notes receivable are presented net of an allowance for doubtful accounts. This allowance represents management's best estimate and application of judgment considering a number of factors, including third-party credit reports, actual payment history, cash discounts, customer-specific financial information and broader market and economic trends and conditions.

Cost of Product and Service Sales

Cost of product sales represents manufacturing costs, consisting of materials, labor and overhead related to finished goods and components. Shipping costs incurred related to product delivery are also included in cost of products sold. Cost of service sales includes third-party cloud services, and software maintenance and support costs, including personnel costs, associated with supporting Evidence.com and other software related services.

Advertising Costs

The Company expenses advertising costs in the period in which they are incurred. The Company incurred advertising costs of $0.5 million, $0.4 million and $0.6 million in the years ended December 31, 2017, 2016 and 2015, respectively. Advertising costs are included in sales, general and administrative expenses in the accompanying statements of operations.

Standard Warranties

The Company warranties its CEWs, Axon cameras and certain related accessories from manufacturing defects on a limited basis for a period of one year after purchase and, thereafter, will replace any defective unit for a fee. Estimated costs for the standard warranty are charged to cost of products sold when revenue is recorded for the related product. Future warranty costs are estimated based on historical data related to warranty claims on a quarterly basis and this rate is applied to current product sales. Historically, reserve amounts have been increased if management becomes aware of a component failure or other issue that could result in larger than anticipated warranty claims from customers. The warranty reserve is reviewed quarterly to verify that it sufficiently reflects the remaining warranty obligations based on the anticipated expenditures over the balance of the warranty obligation period, and adjustments are made when actual warranty claim experience differs from estimates. The warranty reserve is included in accrued liabilities on the accompanying consolidated balance sheets.

Changes in the Company's estimated warranty reserve were as follows (in thousands):

	2017	2016	2015
Balance, January 1	$ 780	$ 314	$ 675
Utilization of reserve	(245)	(155)	(299)
Warranty expense (recoveries)	109	621	(62)
Balance, December 31	$ 644	$ 780	$ 314

Research and Development Expenses

The Company expenses as incurred research and development costs that do not meet the qualifications to be capitalized. The Company incurred research and development expense of $55.4 million, $30.6 million and $23.6 million in 2017, 2016 and 2015, respectively.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement amounts of assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in future years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rate is recognized in income in the period that includes the enactment date. Deferred tax assets are reduced through the establishment of a valuation allowance if, based upon available evidence, it is determined that it is more likely than not that the deferred tax assets will not be realized.

The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. Management also assesses whether uncertain tax positions, as filed, could result in the recognition of a liability for possible interest and penalties. The Company's policy is to include interest and penalties related to unrecognized tax benefits as a component of income tax expense. Refer to Note 10 for additional information regarding the change in unrecognized tax benefits.

Concentration of Credit Risk and Major Customers / Suppliers

Financial instruments that potentially subject the Company to concentrations of credit risk consist of accounts and notes receivable and cash. Sales are typically made on credit and the Company generally does not require collateral. Management performs ongoing credit evaluations of its customers' financial condition and maintains an allowance for estimated losses. Uncollectible accounts are written off when deemed uncollectible, and accounts receivable are presented net of an allowance for doubtful accounts, which totaled $0.8 million and $0.4 million as of December 31, 2017 and 2016, respectively. Historically, the Company has experienced a low level of write-offs related to doubtful accounts.

The Company maintains the majority of its cash at four depository institutions. As of December 31, 2017, the aggregate balances in such accounts were $53.4 million. The Company's balances with these institutions regularly exceed Federal Deposit Insurance Corporation ("FDIC") insured limits for domestic deposits and various deposit insurance programs covering our deposits in the Netherlands, the United Kingdom, Germany and Australia. To manage the related credit exposure, management continually monitors the creditworthiness of the financial institutions where the Company has deposits.

The Company sells some of its products through a network of unaffiliated distributors. The Company also reserves the right to sell directly to the end user to secure the customer's account. No customer represented more than 10% of total net sales for the years ended December 31, 2017, 2016 or 2015.

At December 31, 2017, no customer represented more than 10% of total accounts and notes receivable. As of December 31, 2016, the Company had a trade receivable from one unaffiliated customer comprising 14.5% of the aggregate accounts and notes receivable balance.

The Company currently purchases finished circuit boards and injection-molded plastic components from suppliers located in the U.S., Mexico and Taiwan. Although the Company currently obtains many of these components from single source suppliers, the Company owns the injection molded component tooling used in their production. As a result, management believes it could obtain alternative suppliers in most cases without incurring significant production delays. The Company also purchases small, machined parts from a vendor in Taiwan, custom cartridge assemblies from a proprietary vendor in the U.S., and electronic components from a variety of foreign and domestic distributors. Management believes that there are readily available alternative suppliers in most cases who could consistently meet the Company's needs for these components. The Company acquires most of its components on a purchase order basis and does not have any significant long-term contracts with suppliers.

Fair Value of Financial Instruments

The Company uses the fair value framework that prioritizes the inputs to valuation techniques for measuring financial assets and liabilities measured on a recurring basis and for non-financial assets and liabilities when these items are re-measured. Fair value is considered to be the exchange price in an orderly transaction between market participants, to sell an asset or transfer a liability at the measurement date. The hierarchy below lists three levels of fair value based on the extent to which inputs used in measuring fair value are observable in the market. The Company categorizes each of its fair value measurements in one of these three levels based on the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

- Level 1 – Valuation techniques in which all significant inputs are unadjusted quoted prices from active markets for assets or liabilities that are identical to the assets or liabilities being measured.

- Level 2 – Valuation techniques in which significant inputs include quoted prices from active markets for assets or liabilities that are similar to the assets or liabilities being measured and/or quoted prices for assets or liabilities that are identical or similar to the assets or liabilities being measured from markets that are not active. Also, model-derived valuations in which all significant inputs and significant value drivers are observable in active markets are Level 2 valuation techniques.

- Level 3 – Valuation techniques in which one or more significant inputs or significant value drivers are unobservable. Unobservable inputs are valuation technique inputs that reflect the Company's own assumptions about inputs that market participants would use in pricing an asset or liability.

The Company has cash equivalents and investments, which at December 31, 2017 and 2016, were comprised of money market funds, state and municipal obligations, corporate bonds, and certificates of deposits. See additional disclosure regarding the fair value

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of the Company's cash equivalents and investments in Note 2. Included in the balance of other assets as of December 31, 2017 and 2016 was $3.8 million and $3.2 million, respectively, related to corporate-owned life insurance policies which are used

to fund the Company's deferred compensation plan. The Company determines the fair value of its insurance contracts by obtaining the cash surrender value of the contracts from the issuer, a Level 2 valuation technique.

The Company's financial instruments also include accounts and notes receivable, accounts payable and accrued liabilities. Due to the short-term nature of these instruments, their fair values approximate their carrying values on the balance sheet.

Segment and Geographic Information

The Company is comprised of two reportable segments: the sale of CEWs, accessories and other related products and services (the "TASER Weapons" segment); and the software and sensors business, focused on devices, wearables, applications, cloud and mobile products (the "Software and Sensors" segment). Reportable segments are determined based on discrete financial information reviewed by the Company's Chief Executive Officer who is the chief operating decision maker ("CODM") for the Company. The Company organizes and reviews operations based on products and services, and currently there are no operating segments that are aggregated. The Company performs an annual analysis of its reportable segments. Additional information related to the Company's business segments is summarized in Note 16.

For the years ended December 31, 2017, 2016 and 2015, net sales by geographic area as well as the percentage relationship to total net sales included in the accompanying statements of operations were as follows (in thousands):

	Year Ended December 31,					
	2017		2016		2015	
United States	$ 282,810	82.3%	$ 218,757	81.6%	$ 161,803	81.8%
Other Countries	60,988	17.7	49,488	18.4	36,089	18.2
Total	$ 343,798	100.0%	$ 268,245	100.0%	$ 197,892	100.0%

Sales to customers outside of the U.S. are typically denominated in U.S. dollars and are attributed to each country based on the shipping address of the distributor or customer. For the years ended December 31, 2017, 2016 and 2015, no individual country outside the U.S. represented more than 10% of net sales. Substantially all of the Company's assets are located in the U.S.

Stock-Based Compensation

The Company recognizes expense related to stock-based compensation transactions in which it receives employee services in exchange for equity instruments of the Company. Stock-based compensation expense for RSUs is measured based on the closing fair market value of the Company's common stock on the date of grant. The Company recognizes stock-based compensation expense over the award's requisite service period on a straight-line basis for time-based RSUs and on a graded basis for RSUs that are contingent on the achievement of performance conditions. The Company recognizes forfeitures as they occur as a reduction to stock-based compensation expense and to additional paid-in-capital.

The Company calculates the fair value of stock options using the Black-Scholes-Merton option pricing valuation model, which incorporates various assumptions including expected volatility, expected life, expected dividends and risk-free interest rates. No options were awarded during the years ended December 31, 2017, 2016 or 2015.

Income per Common Share

Basic income per common share is computed by dividing net income by the weighted average number of common shares outstanding during the periods presented. Diluted income per share reflects the potential dilution that would occur if outstanding stock options were exercised utilizing the treasury stock method. The calculation of the weighted average number of shares outstanding and earnings per share are as follows (in thousands except per share data):

	For the Year Ended December 31,		
	2017	2016	2015
Numerator for basic and diluted earnings per share:			
Net income	$ 5,207	$ 17,297	$ 19,933
Denominator:			
Weighted average shares outstanding—basic	52,726	52,667	53,548
Dilutive effect of stock-based awards	1,172	869	1,090
Diluted weighted average shares outstanding	53,898	53,536	54,638
Anti-dilutive stock-based awards excluded	386	443	198
Net income per common share:			
Basic	$ 0.10	$ 0.33	$ 0.37
Diluted	$ 0.10	$ 0.32	$ 0.36

Recently Issued Accounting Guidance

In May 2014, the Financial Accounting Standards Board ("FASB") issued a new standard related to revenue recognition, Accounting Standards Update 2014-09, *Revenue from Contracts with Customers* ("ASU 2014-09" or "Topic 606"). This authoritative guidance includes a comprehensive new revenue recognition model that requires revenue to be recognized in a manner to depict the transfer of promised goods or services to a customer in an amount that reflects the consideration the entity expects to receive in exchange for those goods or services. In addition, the standard requires disclosure of the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. ASU 2014-09 also includes ASC 340-40 which codifies the guidance on other assets and deferred costs relating to contracts with customers. ASC 340-40 specifies the accounting for costs an entity incurs to obtain and fulfill a contract to provide goods and services to customers.

The standard permits two methods of adoption: retrospectively to each prior reporting period presented (the "full retrospective method"), or retrospectively with the cumulative effect of initially applying Topic 606 recognized at the date of initial application (the "modified retrospective method") effective January 1, 2018. The Company has adopted the standard using the modified retrospective method. Under this method, the Company could elect to apply the cumulative effect method to either all contracts as of the date of initial application or only to contracts that are not complete as of that date. The Company has adopted the standard effective January 1, 2018, and has elected to apply the modified retrospective method to contracts that were not complete as of the date of initial application.

The adoption of Topic 606 is expected to have a material effect on the Company's consolidated financial statements. In addition to the enhanced footnote disclosures related to revenue from contracts with customers, the areas most significantly impacted will be contracts with contingent hardware revenue, contracts containing termination for convenience provisions, contracts containing software licenses and post-contract customer support, and the treatment of incremental costs of obtaining contracts with customers. However, due to the terms and conditions in certain customer contracts, the actual revenue recognition treatment under the new standard will be dependent on contract-specific terms, and may vary in some instances from the general recognition discussed below.

- Prior to applying Topic 606, for bundled arrangements containing Evidence.com services in which the Company has provided significantly discounted or free of charge hardware, the Company has limited the amount of revenue it recognizes for the hardware to the amount that it is entitled to and is not contingent on future performance. Revenue allocated to the hardware that is in excess of the invoiced amount of that hardware is recognized over the contractual term when recognition of that revenue is contingent upon the delivery of Evidence.com services. Under the new standard, the Company is generally required to recognize hardware revenue upon fulfillment of the distinct hardware performance obligation, which

is when control of the hardware transfers to the customer, rather than recognizing any contingent hardware revenue over the term of the Evidence.com services.

- Prior to applying Topic 606, for long-term contracts containing termination for convenience provisions, the Company allocates revenue to all identified deliverables included in the contractual term assuming the termination provisions will not be exercised. Under the standard preceding Topic 606, revenue is recognized when it has been earned, which is generally when products have been delivered and services have been provided. For contracts under the new standard containing termination for convenience provisions, the contract term will be limited to the period in which the Company has enforceable rights or the period in which the customer has been granted a material right for goods or services in the future. These material rights create future performance obligations that will not be satisfied until a later date, thereby increasing the contract term. In instances in which the contract term is determined to be less than the term stated in the contract, the portion of transaction price that is subject to present enforceable rights and obligations and the related identified performance obligations shall be accounted for at contract inception. Any future transaction price and performance obligations outside the initial contract term will be accounted for as revenue when customers renew subsequent periods, which is generally when the Company has the right to invoice the customer for the subsequent period. Revenue will then be recognized when the Company fulfills its performance obligations by transferring a promised good or service to a customer.

- Prior to applying Topic 606, for sales of the Company's software products containing software licenses and post-contract customer support ("PCS") that have previously been accounted for under ASC 985-605, the entire arrangement fee was recognized ratably over the PCS term because the Company did not have sufficient VSOE required to allocate the fee to the separate elements. Under the new standard, and the Company will allocate the total transaction price based on the relative stand-alone selling price of each performance obligation and recognize the full amount of revenue attributable to the distinct software license predominately at the time control of the software license is transferred to the customer, while the amount allocated to the PCS performance obligation will be recognized ratably over the support term.

- Prior to applying ASC 340-40, the Company has an established policy within the Software and Sensors segment to defer certain commissions costs, which are direct and incremental costs of obtaining certain long-term customer contracts, and recognize the costs as expense over the contractual term as the goods and services are delivered to the customer. The new standard specifies that all incremental costs of obtaining customer contracts and direct costs of fulfilling contracts with customers should be deferred and recognized as expense when the related performance obligations are fulfilled, which may be at points in time or over the contract term. Under the new standard, the Company will defer all incremental costs of obtaining customer contracts and recognize them as the related performance obligations are fulfilled for both the Software and Sensors and TASER Weapons segments. The Company generally expects that direct costs of fulfilling contracts with customers occur in the same period as the fulfillment of the related performance obligations and as a result, those fulfillment costs will continue to be recognized as incurred.

The cumulative impact of adopting the standard on January 1, 2018 is expected to result in an increase in stockholders' equity (retained earnings) of between $15.0 million and $25.0 million primarily related to the application of the aforementioned impacts to contracts that were not complete as of the date of initial application of Topic 606. As of the date of this report, we have finalized most of our accounting assessment of the new standard and we are nearly complete in determining the impacts of the disclosure requirements of the new standard. Additionally, the Company is in process of updating its internal control framework as it relates to the new standard. While the Company's quantification of the impact is ongoing and the actual opening balance sheet impact may differ from the estimated range above, the Company does expect to be in a position to begin reporting under the new standard beginning with the first quarter of 2018.

In July 2015, the FASB issued ASU 2015-11, Inventory (Topic 330). The amendments require that an entity should measure inventory at the lower of cost and net realizable value. Net realizable value is the estimated price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The Company adopted this guidance effective January 1, 2017 and it did not have a material impact on its consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) in order to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet for those leases classified as operating leases under previous U.S. GAAP. ASU 2016-02 requires that a lessee should recognize a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term on the balance sheet. ASU 2016-02 is effective for the fiscal year beginning after December 15, 2018 (including interim periods within that year) using

a modified retrospective approach and early adoption is permitted. The Company is currently in the process of evaluating the impact of adoption of this ASU on its consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, Improvements to Employee Share-Based Payment Accounting, which amends Accounting Standards Codification (Topic 718), Compensation – Stock Compensation. ASU 2016-09 impacts several aspects of the accounting for share-based payment transactions. The Company adopted this guidance effective January 1, 2017, which required the following changes to the presentation of the Company's financial statements:

- Excess tax benefits or deficiencies for share-based payments are now recorded as a discrete item in the period shares vest or stock options are exercised as an adjustment to income tax expense or benefit rather than additional paid-in capital. This change was applied prospectively as of January 1, 2017. The Company did not have any excess tax benefits that were not previously recognized as of January 1, 2017.
- As of January 1, 2017, the calculation of diluted weighted average shares outstanding was changed prospectively to no longer include excess tax benefits as assumed proceeds. This change resulted in recording an increased number of dilutive shares, but did not have a material impact on the Company's current year diluted earnings per share;
- Cash flows related to excess tax benefits or deficiencies are included in the statement of cash flows as an operating activity rather than as a financing activity. The Company adopted this change prospectively.
- Cash paid to taxing authorities when withholding shares from an employee's vesting or exercise of equity-based compensation awards for tax-withholding purposes is now considered a repurchase of the Company's equity instruments and is classified as cash used in financing activities. The Company already classifies these transactions as a financing activity, and as such, there was no impact upon adoption.
- The Company has made the election to account for forfeitures when they occur rather than estimating forfeitures. The Company adopted this change on a modified retrospective basis, which resulted in an increase to additional paid-in capital and decrease to retained earnings of $0.5 million as of January 1, 2017. The decrease to retained earnings of $0.5 million was partially reduced by the income tax effect of the adjustment of $0.2 million.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments - Credit Losses. The new guidance differs from existing U.S. GAAP in that previous standards generally delayed recognition of credit losses until the loss was probable. ASU 2016-13 eliminates the probable initial recognition threshold and, instead, reflect an entity's current estimate of all expected credit losses. The use of forecasted information is intended to incorporate more timely information in the estimate of expected credit loss. ASU 2016-13 is effective for the fiscal year beginning after December 15, 2019, and interim periods within that fiscal year, and early adoption is permitted. The Company is currently in the process of evaluating the impact of adoption of ASU 2016-13 on its consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments. ASU 2016-15 eliminates the diversity in practice related to the classification of certain cash receipts and payments. ASU 2016-15 designates the appropriate cash flow classification, including requirements to allocate certain components of these cash receipts and payments among operating, investing and financing activities. ASU 2016-15 is effective for the fiscal year beginning after December 15, 2017, and interim periods within that fiscal year, and early adoption is permitted. The retrospective transition method, requiring adjustment to all comparative periods presented, is required unless it is impracticable for some of the amendments, in which case those amendments would be prospectively applied as of the earliest date practicable. The Company does not expect the adoption of this ASU to have a material impact on its consolidated financial statements.

In October 2016, the FASB issued ASU 2016-16, Income Taxes (Topic 740) - Intra-Entity Transfers of Assets Other Than Inventory. ASU 2016-16 requires an entity to recognize income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. This removes the exception allowing postponement of recognition until the asset has been sold to an outside party. ASU 2016-16 is effective for fiscal year beginning after December 15, 2017 using a modified retrospective approach, and early adoption is permitted. The Company is currently in the process of evaluating the impact of adoption of this ASU on its consolidated financial statements.

In November 2016, the FASB issued ASU 2016-18, Statement of Cash Flows - Restricted Cash (Topic 230), which amends the existing guidance relating to the treatment of restricted cash and restricted cash equivalents on the statement of cash flows. ASU 2016-18 is effective for the fiscal years beginning after December 15, 2017, and interim periods within that fiscal year, and early adoption is permitted. The Company does not expect the adoption of this ASU to have a material impact on its consolidated financial statements.

In January 2017, the FASB issued ASU 2017-01, Business Combinations (Topic 805) to provide a more robust framework to use in determining when a set of acquired assets and activities is a business. ASU 2017-01 is effective for the fiscal year beginning after December 15, 2017, and interim periods within that year, and early adoption is permitted. The Company does not expect the adoption of this ASU to have a material impact on its consolidated financial statements.

In January 2017, the FASB issued ASU 2017-04, Intangibles - Goodwill and Other (Topic 350), which simplifies the goodwill impairment test by eliminating Step 2 of the quantitative assessment and should reduce the cost and complexity of evaluating goodwill for impairment. Under the amended guidance, when a quantitative assessment is required, an entity will perform a goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An impairment charge will be measured as the amount by which the carrying amount exceeds the reporting unit's fair value, not to exceed the total amount of recorded goodwill. ASU 2017-04 is effective for the fiscal year beginning after December 15, 2019, and interim periods within that fiscal year, and early adoption is permitted. The Company's early adoption on January 1, 2017 did not have an impact on its consolidated financial statements.

In May 2017, the FASB issued ASU 2017-09, Compensation - Stock Compensation (Topic 718), which provides guidance on determining which changes to the terms and conditions of share-based payment awards require an entity to apply modification accounting under Topic 718. ASU 2017-09 is effective for the fiscal year beginning after December 15, 2017 using a prospective approach, and early adoption is permitted. The Company does not expect the adoption of this ASU to have a material impact on its consolidated financial statements.

Reclassification of Prior Year Presentation

Certain prior year amounts have been reclassified for consistency with the current year presentation. These reclassifications had no effect on the reported results of operations.

2. Cash, Cash Equivalents and Investments

The following tables summarize the Company's cash, cash equivalents, and held-to-maturity investments at December 31, 2017 and December 31, 2016 (in thousands):

	As of December 31, 2017					
	Amortized Cost	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments	Long-Term Investments
Cash	$ 53,459	$ —	$ 53,459	$ 53,459	$ —	$ —
Level 1:						
Money market funds	20,884	—	20,884	20,884	—	—
Corporate bonds	6,632	(6)	6,626	—	6,632	—
Subtotal	27,516	(6)	27,510	20,884	6,632	—
Level 2:						
State and municipal obligations	992	—	992	762	230	—
Total	$ 81,967	$ (6)	$ 81,961	$ 75,105	$ 6,862	$ —

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	As of December 31, 2016					
	Amortized Cost	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments	Long-Term Investments
Cash	$ 32,802	$ —	$ 32,802	$ 32,802	$ —	$ —
Level 1:						
Money market funds	7,849	—	7,849	7,849	—	—
Corporate bonds	33,379	(57)	33,322	—	33,379	—
Subtotal	41,228	(57)	41,171	7,849	33,379	—
Level 2:						
State and municipal obligations	14,477	(10)	14,467	—	14,243	234
Certificates of deposit	793	—	793	—	793	—
Subtotal	15,270	(10)	15,260	—	15,036	234
Total	$ 89,300	$ (67)	$ 89,233	$ 40,651	$ 48,415	$ 234

The Company believes the unrealized losses on the Company's investments are due to interest rate fluctuations. As these investments are short-term in nature, are expected to be redeemed at par value, and because the Company has the ability and intent to hold these investments to maturity, the Company does not consider these investments to be other than temporarily impaired at December 31, 2017.

3. Inventory

Inventories are stated at the lower of cost and net realizable value. Cost is determined using the weighted average cost of raw materials which approximates the FIFO method and includes allocations of manufacturing labor and overhead. Included in finished goods at December 31, 2017 and December 31, 2016 was $1.4 million and $0.7 million, respectively, of trial and evaluation hardware units. Provisions are made to reduce excess, obsolete or slow-moving inventories to their net realizable value. Inventories consisted of the following at December 31 (in thousands):

	2017	2016
Raw materials	$ 20,119	$ 18,002
Finished goods	25,346	16,839
Total inventory	$ 45,465	$ 34,841

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

4. Property and Equipment

Property and equipment consisted of the following at December 31 (in thousands):

	Estimated Useful Life	2017	2016
Land	N/A	$ 2,900	$ 2,900
Building and leasehold improvements	3-39 years	18,383	15,295
Production equipment	3-7 years	19,075	19,849
Computers, equipment and software	3-5 years	6,780	7,985
Furniture and office equipment	5-7 years	5,262	4,990
Vehicles	5 years	1,057	675
Website development costs	3 years	687	601
Capitalized internal-use software development costs	3 years	3,695	3,695
Construction-in-process	N/A	9,810	5,813
Total cost		67,649	61,803
Less: Accumulated depreciation		(36,477)	(37,799)
Property and equipment, net		$ 31,172	$ 24,004

Depreciation and amortization expense related to property and equipment was $3.4 million, $2.5 million and $2.3 million for the years ended December 31, 2017, 2016 and 2015, respectively, of which $1.1 million, $0.7 million and $0.7 million was included in cost of sales for the respective years.

5. Goodwill and Intangible Assets

The changes in the carrying amount of goodwill for the year ended December 31, 2017 were as follows (in thousands):

	TASER Weapons	Software and Sensors	Total
Balance, January 1, 2017	$ 562	$ 9,880	$ 10,442
Goodwill acquired	825	3,505	4,330
Purchase accounting adjustments	—	23	23
Foreign currency translation adjustments	66	66	132
Balance, December 31, 2017	$ 1,453	$ 13,474	$ 14,927

Intangible assets (other than goodwill) consisted of the following (in thousands):

	Useful Life	December 31, 2017 Gross Carrying Amount	December 31, 2017 Accumulated Amortization	December 31, 2017 Net Carrying Amount	December 31, 2016 Gross Carrying Amount	December 31, 2016 Accumulated Amortization	December 31, 2016 Net Carrying Amount
Amortized (definite-lived intangible assets):							
Domain names	5-10 years	$ 3,161	$ (428)	$ 2,733	$ 3,161	$ (125)	$ 3,036
Issued patents	4-15 years	2,697	(913)	1,784	1,942	(780)	1,162
Issued trademarks	3-11 years	860	(397)	463	655	(320)	335
Customer relationships	4-8 years	1,377	(451)	926	914	(240)	674
Non-compete agreements	3-4 years	556	(346)	210	465	(236)	229
Developed technology	3-7 years	13,469	(3,956)	9,513	8,661	(824)	7,837
Re-acquired distribution rights	2 years	2,133	(711)	1,422	—	—	—
Total amortized		24,253	(7,202)	17,051	15,798	(2,525)	13,273
Not amortized (indefinite-lived intangible assets):							
TASER trademark		900		900	900		900
Patents and trademarks pending		872		872	1,045		1,045
Total not amortized		1,772		1,772	1,945		1,945
Total intangible assets		$ 26,025	$ (7,202)	$ 18,823	$ 17,743	$ (2,525)	$ 15,218

Amortization expense of intangible assets was $4.7 million, $0.9 million and $0.8 million for the years ended December 31, 2017, 2016 and 2015, respectively. Estimated amortization for intangible assets with definitive lives for the next five years ended December 31, and thereafter, is as follows (in thousands):

2018	$ 5,415
2019	3,868
2020	2,401
2021	2,266
2022	834
Thereafter	2,267
Total	$ 17,051

6. Other Long-Term Assets

Other long-term assets consisted of the following at December 31 (in thousands):

	2017	2016
Cash surrender value of corporate-owned life insurance policies	$ 3,846	$ 3,240
Deferred commissions [(i)]	6,803	5,302
Restricted cash [(ii)]	3,333	3,317
Prepaid expenses, deposits and other	1,384	2,058
Total other long-term assets	$ 15,366	$ 13,917

(i) Deferred commissions represent cu[illegible]ner acquisition costs to secure long-term contracts. The Company capitalizes incremental and direct costs related to a specific contract and recognizes such costs as expense over the term of the contract in proportion to the contract revenue.

(ii) As of December 31, 2017, restricted cash primarily consisted of $2.7 million of sales proceeds related to a long-term contract with a specific customer. These proceeds are held in escrow until certain billing milestones are achieved, and then specified amounts are transferred to the Company's operating accounts. Restricted cash also contained $0.6 million related to a performance guarantee related to an international customer sales contract.

7. Deferred Revenue

Deferred revenue consisted of the following at December 31 (in thousands):

	December 31, 2017			December 31, 2016		
	Current	Long-Term	Total	Current	Long-Term	Total
Warranty:						
TASER Weapons	$ 12,501	$ 18,619	$ 31,120	$ 9,980	$ 17,319	$ 27,299
Software and Sensors	6,293	4,195	10,488	3,979	2,926	6,905
	18,794	22,814	41,608	13,959	20,245	34,204
Hardware:						
TASER Weapons	4,164	11,401	15,565	1,702	4,390	6,092
Software and Sensors	16,956	14,781	31,737	9,850	11,205	21,055
	21,120	26,182	47,302	11,552	15,595	27,147
Software and Sensors Services	30,487	5,885	36,372	19,626	4,214	23,840
Total	$ 70,401	$ 54,881	$ 125,282	$ 45,137	$ 40,054	$ 85,191

	December 31, 2017			December 31, 2016		
	Current	Long-Term	Total	Current	Long-Term	Total
TASER Weapons	$ 16,665	$ 30,020	$ 46,685	$ 11,682	$ 21,709	$ 33,391
Software and Sensors	53,736	24,861	78,597	33,455	18,345	51,800
Total	$ 70,401	$ 54,881	$ 125,282	$ 45,137	$ 40,054	$ 85,191

8. Accrued Liabilities

Accrued liabilities consisted of the following at December 31 (in thousands):

	2017	2016
Accrued salaries, benefits and bonus	$ 8,957	$ 6,474
Accrued professional, consulting and lobbying fees	3,870	3,673
Accrued warranty expense	644	780
Accrued income and other taxes	2,558	4,581
Other accrued expenses	7,473	2,740
Accrued liabilities	$ 23,502	$ 18,248

9. Commitments and Contingencies

Operating and capital lease obligations

The Company has entered into operating leases for various office space, storage facilities and equipment. As of December 31, 2017, the Company's leases are for terms ranging from less than one year to six years. The Company's leases generally contain multi-

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year renewal options and escalation ses. Rent expense under all operating leases, in ing both cancelable and non-cancelable leases, was $2.9 million, $1.8 million and $1.0 million for the years ended December 31, 2017, 2016, and 2015, respectively.

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Future minimum lease payments under non-cancelable leases at December 31, 2017, are as follows (in thousands):

	Operating	Capital
2018	$ 2,313	$ 40
2019	1,893	40
2020	1,236	36
2021	1,097	—
2022	1,073	—
Thereafter	43	—
Total minimum lease payments	$ 7,655	116
Less: Amount representing interest		(7)
Capital lease obligation		$ 109

Purchase commitments

The Company routinely enters into cancellable and non-cancellable purchase orders with many of its key vendors. Based on the strategic relationships with many of these vendors, the Company's ability to cancel these purchase orders and maintain a favorable relationship would be limited. As of December 31, 2017, the Company has approximately $51.9 million of open purchase orders.

Litigation

Product Litigation

The Company is currently named as a defendant in six lawsuits in which the plaintiffs allege either wrongful death or personal injury in situations in which a TASER CEW was used by law enforcement officers in connection with arrests. While the facts vary from case to case, the product liability claims are typically based on an alleged product defect resulting in injury or death, usually involving a failure to warn or negligent design, and the plaintiffs are seeking monetary damages. The information throughout this note is current through the date of these financial statements.

As a general rule, it is the Company's policy not to settle suspect injury or death cases. Exceptions are sometimes made where the settlement is strategically beneficial to the Company. Also, on occasion, the Company's insurance carrier has settled such lawsuits over the Company's objection where the risk exceeds the Company's liability insurance deductibles. Due to the confidentiality of the Company's litigation strategy and the confidentiality agreements that are executed in the event of a settlement, the Company does not identify or comment on which specific lawsuits have been settled or the amount of any settlement.

In 2009, the Company implemented new risk management strategies, including revisions to product warnings and training to better protect both the Company and its customers from litigation based on "failure to warn" theories – which comprise the vast majority of the cases against the Company. These risk management strategies have been highly effective in reducing the rate and exposure from litigation post-2009. From the third quarter of 2011 through the date of these financial statements, product liability cases have been reduced from 55 active to six active cases.

Management believes that pre-2009 cases have a different risk profile than cases which have occurred since the risk management procedures were introduced in 2009. Therefore, the Company necessarily treats certain pre-2009 cases as exceptions to the Company's general no settlement policy in order to reduce caseload, legal costs and liability exposure. The Company intends to continue its successful practice of aggressively defending and generally not settling litigation except in very limited and unusual circumstances as described above.

With respect to each of the pending lawsuits, the following table lists the name of plaintiff, the date the Company was served with process, the jurisdiction in which the case is pending, the type of claim and the status of the matter.

Plaintiff	Month Served	Jurisdiction	Claim Type	Status
Derbyshire	Nov-09	Ontario, Canada Superior Court of Justice	Officer Injury	Discovery Phase. Trial scheduled for October 14, 2019
Shymko	Dec-10	The Queen's Bench, Winnipeg Centre, Manitoba	Wrongful Death	Pleading Phase
Ramsey	Jan-12	12th Judicial Circuit Court, Broward County, FL	Wrongful Death	Discovery Phase
Bennett	Sep-15	11th Judicial Circuit Court, Miami-Dade County, FL	Wrongful Death	Discovery Phase.
Masters	Nov-16	U.S. District Court, Western District of Missouri	Suspect Injury	Discovery Phase. Trial scheduled for December 10, 2018
Taylor	Mar-17	U.S. District Court, Southern District of Texas	Officer Injury	Discovery Phase. Docket call August 31, 2018

There are no product litigation matters in which the Company is involved that are currently on appeal.

The following case was dismissed during the fourth quarter of 2017:

Plaintiff	Month Served	Jurisdiction	Claim Type	Status
Suarez	Sep-16	U.S. District Court, Southern District of Florida	Wrongful Death	Dismissed

The claims of each of these lawsuits have been submitted to the Company's insurance carriers that maintained insurance coverage during the applicable periods. The Company continues to maintain product liability insurance coverage with varying limits and deductibles. The following table provides information regarding the Company's product liability insurance. Remaining insurance coverage is based on information received from the Company's insurance provider (in millions).

Policy Year	Policy Start Date	Policy End Date	Insurance Coverage	Deductible Amount	Defense Costs Covered	Remaining Insurance Coverage	Active Cases and Cases on Appeal
2009	12/15/2008	12/15/2009	$ 10.0	$ 1.0	N	$ 10.0	Derbyshire
2010	12/15/2009	12/15/2010	10.0	1.0	N	10.0	Shymko
2011	12/15/2010	12/15/2011	10.0	1.0	N	10.0	n/a
Jan-Jun 2012	12/15/2011	6/25/2012	7.0	1.0	N	7.0	Ramsey
Jul-Dec 2012	6/25/2012	12/15/2012	12.0	1.0	N	12.0	n/a
2013	12/15/2012	12/15/2013	12.0	1.0	N	12.0	n/a
2014	12/15/2013	12/15/2014	11.0	4.0	N	11.0	n/a
2015	12/15/2014	12/15/2015	10.0	5.0	N	10.0	Bennett
2016	12/15/2015	12/15/2016	10.0	5.0	N	10.0	Masters
2017	12/15/2016	12/15/2017	10.0	5.0	N	10.0	Taylor

Other Litigation

Phazzer Patent Infringement Litigation

In March 2016, the Company filed a complaint against Phazzer Electronics Inc. ("Phazzer") for patent infringement, trademark infringement and false advertising. On July 21, 2017, the U.S. District Court for the Middle District of Florida granted Axon's Motion for Sanctions and for a Permanent Injunction against Florida-based Phazzer, banning sales of the infringing Phazzer Enforcer CEWs and dart cartridges. The injunction prohibits Phazzer and its officers, agents, employees, and anyone else acting in concert with them, from making, using, offering for sale, selling, distributing, donating, importing or exporting Phazzer CEWs and associated cartridges. The Court also awarded Axon compensatory and treble damages for willful infringement, as well as its reasonable attorneys' fees and costs. Both Phazzer and its U.S. distributors are barred from exporting CEWs or cartridges to fill foreign orders.

In imposing severe sanctions against Phazzer, including an award of Axon's attorneys' fees and costs, the Court found that Phazzer "engaged in a pattern of bad faith conduct designed and intended to delay, stall, and increase the cost of this litigation," and that Phazzer repeatedly disregarded Court orders thereby exhibiting "contemptuous", "egregious", "flagrant" and "intentional obstructionist behavior" resulting in willful "abuse [of] the judicial process."

Axon's patent (U.S. No. 7,234,262) at issue in the litigation relates to the CEW's data recording of date and time of each trigger operation and duration of the stimulus. The Court found that patent was "valid, enforceable, and infringed by Phazzer." The injunction will remain in effect until the patent expires, and includes any CEW or device not colorably different from the Phazzer Enforcer CEW.

The Axon trademark subject to the injunction is Federal Registration No. 4,423,789, relating to the non-functional shape of TASER CEW cartridges used to launch the darts. The Court found the trademark "valid and enforceable, not generic, functional, or merely descriptive, and infringed by Phazzer." The permanent injunction covers all Phazzer CEW dart cartridges that are confusingly similar to, or not more than a colorable imitation of, TASER CEW cartridges, and includes Phazzer product numbers 1-DC15, 1-DC21, 1-DC25, 1-DC21-SIDT, 1-PB30, 1-PB8F, 1-PB15943, 1-RB30, 1-PA30, and 1-LOWIMPT2015. Phazzer has appealed the judgment and injunction.

The Court expressly found that Phazzer cartridges currently marketed and sold as compatible with TASER brand CEWs embody the protected appearance and constitute infringing products enjoined under its Order. Phazzer was also ordered by the Court "not [to] challenge or continue to challenge the validity or enforceability of the '789 Registration in any manner in any forum, including the USPTO." Accordingly, Phazzer's pending USPTO cancellation action, which was stayed while the litigation ran its course, will be dismissed. On August 10 2017, Phazzer filed a notice of appeal.

Digital Ally Patent Litigation

In March 2016, the Company was served with a second amended complaint filed by Digital Ally in the Federal District Court for the District of Kansas alleging infringement of two patents and a variety of antitrust and unfair competition claims, seeking a judgment of infringement, monetary damages, a permanent injunction, punitive damages and attorneys' fees and costs. On January 12, 2017, the court granted the Company's motion to dismiss all six antitrust claims and entered final judgment on those claims in the Company's favor on April 14, 2017. Digital Ally has appealed that judgment to the Federal Circuit.

The Company filed inter parte reviews ("IPRs") with the USPTO to invalidate Digital Ally's patents-in-suit regarding its auto-activation camera technology. On June 6, 2017, the USPTO instituted one IPR on patent No. 8,781,292 (the "'292 patent"). Digital Ally thereafter filed a motion to dismiss the '292 patent with prejudice and a covenant not to sue the Company in the district court litigation. Digital Ally then filed a motion to amend all claims of the '292 patent in the IPR proceedings, which is set for oral argument on February 23, 2018. On July 7, 2017, the USPTO rejected the Company's IPR filed against claim 10 of Digital Ally's patent No. 9,253,452 (the "452 patent"). The Company filed a petition to reconsider that decision, which remains pending with the USPTO. This patent claim 10 is being challenged in District Court based on fraud claims, invalidity claims and non-infringement claims filed by the Company. Although the patent office later also rejected the Company's IPR on claim 1 of the '452 patent, Digital Ally has dismissed that claim from the litigation. In November 2017, the district court lifted its litigation stay and entered a new scheduling order on December 20, 2017. A claim construction hearing on Digital Ally's sole remaining independent claim 10 of the '452 patent will take place on March 7, 2018.

Pending Patent Appeals

Two appeals are pending in the Federal Circuit arising out of patent litigation involving the district court's dismissal of Digital Ally's antitrust claims against the Company, and a judgment and permanent injunction in the Company's favor against Phazzer Electronics Inc., as noted in the following table.

Appellant	Month Served	Jurisdiction	Claim Type	Active Cases and Cases on Appeal
Digital Ally	Mar-16	U.S. District Court, District of Kansas, appealed to Federal Circuit	Antitrust Claims	Axon's motion to dismiss antitrust claims was granted on January 12, 2017 with judgment entered in Axon's favor on April 14, 2017. Digital Ally filed its notice of appeal on April 20, 2017. The appeal has been fully briefed.
Phazzer	Mar-16	U.S. District Court, Middle District of Florida, appealed to Federal Circuit	Judgment and Permanent Injunction Patent Infringement	Axon received judgment in its favor and a permanent injunction against Phazzer's CEW and cartridge infringement on July 21, 2017. Phazzer filed a notice of appeal on August 10, 2017. The appeal is in the briefing stage.

Antoine di Zazzo Arbitration

In April 2016, the Company was served with a notice of arbitration claim filed by Antoine di Zazzo, the Company's former distributor in France, for commissions allegedly owed Mr. di Zazzo. The arbitration claim was filed with the International Court of Arbitration of the International Chamber of Commerce in Paris, France, and the amount in controversy is approximately $0.6 million. The Company's records reflect that all commissions that were due Mr. di Zazzo under his contract were paid or offered to him and the Company will vigorously defend this arbitration claim. In related litigation in the Tribunal of Commerce of Marseille, judgment was entered in favor of the Company on January 18, 2018, and Mr. di Zazzo has appealed.

VieVu Commercial Litigation

In February 2017, the Company was served with a complaint filed by VieVu LLC ("VieVu") alleging tortious interference with a business expectancy. In May 2017, the Company filed and served a complaint against VieVu in the U.S. District Court for Arizona for violation of the Lanham Act. On February 14, 2018, the Company and VieVu entered into an agreement for the dismissal of both lawsuits, with each party to bear its own attorney's fees and costs.

General

From time to time, the Company is notified that it may be a party to a lawsuit or that a claim is being made against it. It is the Company's policy to not disclose the specifics of any claim or threatened lawsuit until the summons and complaint are actually served on the Company. After carefully assessing the claim, and assuming the Company determines that it is not at fault or it disagrees with the damages or relief demanded, the Company vigorously defends any lawsuit filed against it. In certain legal matters, the Company records a liability when losses are deemed probable and reasonably estimable. In evaluating matters for accrual and disclosure purposes, the Company takes into consideration factors such as its historical experience with matters of a similar nature, the specific facts and circumstances asserted, the likelihood of prevailing, and the severity of any potential loss. The Company reevaluates and updates its accruals as matters progress over time.

Based on the Company's assessment of outstanding litigation and claims as of December 31, 2017, the Company has determined that it is not reasonably possible that these lawsuits will individually, or in the aggregate, materially affect its results of operations, financial condition or cash flows. However, the outcome of any litigation is inherently uncertain and there can be no assurance that any expense, liability or damages that may ultimately result from the resolution of these matters will be covered by insurance or will not be in excess of amounts recognized or provided by insurance coverage and will not have a material adverse effect on the Company's operating results, financial condition or cash flows.

Off-Balance Sheet Arrangements

Under certain circumstances, the Company uses letters of credit and surety bonds to guarantee its performance under various contracts, principally in connection with the installation and integration of its Axon cameras and related technologies. Certain of the Company's letters of credit contracts and surety bonds have stated expiration dates, with others being released as the contractual performance terms are completed. The Company expects to fulfill all contractual performance obligations related to outstanding guarantees. At December 31, 2017, the Company had an outstanding letter of credit of approximately $2.7 million, which is expected to expire in May 2018. Additionally, the Company had approximately $7.4 million of outstanding surety bonds at December 31, 2017, with $1.0 million expiring in 2018, $0.1 million expiring in 2020, $2.3 million expiring in 2021 and the remaining $4.0 million expiring in 2023.

10. Income Taxes

On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (the "Tax Act"). The Tax Act made broad and complex changes to the U.S. tax code which impacted 2017 including, but not limited to, reducing the U.S. federal corporate tax rate from 35 percent to 21 percent for tax years beginning 2018.

ASC 740 requires a company to record the effects of a tax law change in the period of enactment, however, shortly after the enactment of the Tax Act, the SEC staff issued Staff Accounting Bulletin 118 ("SAB 118"), which allows a company to record a provisional amount when it does not have the necessary information available, prepared, or analyzed in reasonable detail to complete

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its accounting for the change in the ta[illegible]w. The measurement period ends when the comp[illegible] has obtained, prepared and analyzed the information necessary to finalize its accounting, but cannot extend beyond one year

In connection with the Company's initial analysis of the impact of the Tax Act, it was able to make a reasonable estimate of the impact of the Tax Act and recorded a provisional net tax expense of $8.0 million in the period ended December 31, 2017, primarily related to the impact of the tax rate reduction on the Company's deferred tax assets and deferred tax liabilities. This amount includes a $0.4 million increase in the Company's valuation allowance.

Reasonable estimates have also been made for the effects of other provisions of the Tax Act, but they do not have a material impact on the Company's consolidated financial statements. These estimates may be impacted by the need for further analysis, future clarification and guidance regarding available tax accounting methods and elections. Any subsequent adjustments to these provisional amounts will be recorded in the quarter in 2018 when the analysis is complete.

The Company has completed its analysis of the one-time transition tax on undistributed earnings of its foreign subsidiaries, the Alternative Minimum Tax ("AMT"), and the Base Erosion Anti-abuse Tax ("BEAT") and is not being affected by these provisions.

Income before income taxes included the following components for the years ended December 31 (in thousands):

	2017	2016	2015
United States	$ 14,978	$ 38,414	$ 42,761
Foreign	783	(6,917)	(7,400)
Total	$ 15,761	$ 31,497	$ 35,361

Significant components of the Company's deferred income tax assets and liabilities are as follows at December 31 (in thousands):

	2017	2016
Deferred income tax assets:		
Net operating loss carryforward	$ 3,691	$ 2,405
Deferred revenue	9,442	11,537
Deferred compensation	1,109	1,695
Inventory reserve	702	1,126
Non-qualified and non-employee stock option expense	3,704	4,410
Capitalized research and development	485	1,991
Research and development tax credit carryforward	3,817	2,722
Reserves, accruals, and other	1,921	1,239
Total deferred income tax assets	24,871	27,125
Deferred income tax liabilities:		
Depreciation	(2,027)	(2,364)
Amortization	(1,398)	(1,473)
Other	(256)	(294)
Total deferred income tax liabilities	(3,681)	(4,131)
Net deferred income tax assets before valuation allowance	21,190	22,994
Valuation allowance	(5,435)	(3,479)
Net deferred income tax assets	$ 15,755	$ 19,515

For the year ended December 31, 2017, the provision for income taxes, in accordance with the provisions set forth in ASC 2016-09, included $1.8 million of tax expense resulting from stock-based compensation tax benefits that were recorded as a decrease in the provision for income taxes, and for the years ended December 31, 2016 and 2015, $1.4 million and $6.9 million, respectively, of tax expense resulting from stock-based compensation tax benefits that have been recorded as increases to additional paid-in capital on the consolidated statement of changes in stockholders' equity.

The Company has $4.5 million of state net operating losses ("NOLs") which expire at various dates between 2019 and 2036. The Company also has Federal NOLs of $2.2 million which expire between 2035 and 2036, and are subject to limitation under

Internal Revenue Code ("IRC") Section 382. The Company has $0.1 million of federal R&D credits, which expire in 2024 and 2027, and are also subject to limitation under IRC Section 382. The Company has $7.3 million of Arizona R&D credits carrying forward, which expire at various dates between 2018 and 2032. In Australia, the U.K., Canada, and Germany, the Company has $2.2 million, $10.3 million, $1.6 million, and $0.3 million of NOLs, respectively, which expire at various dates or may be carried forward indefinitely.

In preparing the Company's consolidated financial statements, management has assessed the likelihood that deferred income tax assets will be realized from future taxable income. In evaluating the ability to recover its deferred income tax assets, management considers all available evidence, positive and negative, including the Company's operating results, ongoing tax planning and forecasts of future taxable income on a jurisdiction by jurisdiction basis. A valuation allowance is established if it is determined that it is more likely than not that some portion or all of the net deferred income tax assets will not be realized. Management exercises significant judgment in determining the Company's provisions for income taxes, its deferred income tax assets and liabilities and its future taxable income for purposes of assessing its ability to utilize any future tax benefit from its deferred income tax assets.

Although management believes that its tax estimates are reasonable, the ultimate tax determination involves significant judgments that could become subject to audit by tax authorities in the ordinary course of business. As of each reporting date, management considers new evidence, both positive and negative, that could impact management's view with regards to future realization of deferred tax assets. As of December 31, 2017, the Company continues to demonstrate three-year cumulative pre-tax income in the U.S. federal and Arizona tax jurisdictions; however, the Arizona R&D Tax Credits start to expire in 2018 with a significant tranche with a gross value of $1.2 million expiring in 2019. Therefore, management has concluded that it is more likely than not that a portion of the Company's U.S. deferred tax assets will not be realized.

As of December 31, 2017, the Company has cumulative losses in Australia, the U.K., and Canada, and a history of losses in Germany, which limits the ability to consider other subjective evidence, such as projections for future growth. On the basis of this evaluation, a full valuation allowance has been recorded for these jurisdictions. The amount of the deferred tax asset considered realizable, however, could be adjusted in future periods if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as projections for growth.

Significant components of the provision for income taxes are as follows for the years ended December 31 (in thousands):

	2017	2016	2015
Current:			
Federal	$ 6,039	$ 16,346	$ 13,594
State	1,263	1,534	996
Foreign	656	1,050	—
Total current	7,958	18,930	14,590
Deferred:			
Federal	4,539	(4,145)	288
State	(1,631)	(977)	984
Foreign	(78)	(45)	(278)
Total deferred	2,830	(5,167)	994
Tax provision recorded as an increase (decrease) in liability for unrecorded tax benefits	(234)	437	(156)
Provision for income taxes	$ 10,554	$ 14,200	$ 15,428

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

A reconciliation of the Company's effective income tax rate to the federal statutory rate follows for the years ended December 31 (in thousands):

	2017	2016	2015
Federal income tax at the statutory rate	$ 5,518	$ 11,024	$ 12,347
State income taxes, net of federal benefit	339	889	1,061
Difference between statutory and foreign tax rates	(560)	1,521	2,442
Permanent differences [(i)]	300	(457)	(205)
Research and development	(2,380)	(1,928)	(1,050)
Return to provision adjustment	23	327	(67)
Change in liability for unrecognized tax benefits	7	700	(156)
Excess stock-based compensation benefit	(1,819)	(77)	(144)
Change in valuation allowance	1,949	1,779	1,200
Tax effects of intercompany transactions	(277)	630	—
Adjustments to deferreds resulting from enactment of new tax law[(ii)]	7,601	—	—
Other	(147)	(208)	—
Provision for income taxes	$ 10,554	$ 14,200	$ 15,428
Effective tax rate	66.9%	45.1%	43.6%

(i) Permanent differences include certain expenses that are not deductible for tax purposes including lobbying fees as well as favorable items including the domestic production activities deduction.

(ii) The adjustment to deferreds of $7.6 million was a result of the impact of changes in the U.S. federal effective tax rate, as well as a reduction of the stock-based compensation deferred tax asset due to expected permanent limitations on its deductibility for certain key executives under the recently enacted tax law.

The Company has completed R&D tax credit studies, which identified approximately $15.2 million in tax credits for federal, Arizona and California income tax purposes related to the 2003 through 2017 tax years. Management has made the determination that it is more likely than not that the full benefit of the R&D tax credit will not be sustained on examination and recorded a liability for unrecognized tax benefits of $4.1 million as of December 31, 2017. In addition, management accrued approximately $0.1 million for estimated uncertain tax positions related to certain state income tax liabilities. Should the unrecognized tax benefit of $4.2 million be recognized, the Company's effective tax rate would be favorably impacted.

The Company recognizes interest and penalties related to unrecognized tax benefits within the income tax expense line in the accompanying consolidated statements of operations. As of December 31, 2017 and 2016, the Company had accrued interest of $0.1 million.

The following table presents a roll forward of the Company's liability for unrecognized tax benefits, exclusive of accrued interest, as of December 31 (in thousands):

	2017	2016	2015
Balance, beginning of period	$ 4,050	$ 3,396	$ 3,325
Increase (decrease) in previous year tax positions	123	—	(389)
Increase in current year tax positions	587	448	270
Decrease due to lapse of statute of limitations	(773)	—	(14)
Increase related to adjustment of previous estimates of activity	256	206	204
Balance, end of period	$ 4,243	$ 4,050	$ 3,396

Federal income tax returns for 2014 through 2017 remain open to examination by the U.S. Internal Revenue Service (the "IRS"), and state taxing authorities. The 2004 through 2013 income tax returns are only open to the extent that net operating loss or other tax attributes carrying forward from those years were utilized in 2014 through 2017. The foreign tax returns for 2013 through 2017 also

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generally remain open to examination. The Company has not been notified by any major U.S., foreign, or state tax jurisdictions that it will be subject to examination.

The Company considers the earnings of certain non-U.S. subsidiaries to be indefinitely reinvested outside of the United States on the basis of estimates that future domestic cash generation will be sufficient to meet future domestic cash needs and the Company's specific plans for reinvestment of those subsidiary earnings. It is not practicable to estimate the amount of the deferred tax liability, if any, related to investments in those foreign subsidiaries. If the Company decides to repatriate the foreign earnings, it would need to adjust its income tax provision in the period it determined that the earnings will no longer be indefinitely invested outside the United States.

11. Line of Credit

The Company has a $10.0 million revolving line of credit with a domestic bank. At December 31, 2017 and 2016, there were no borrowings under the line. Under the terms of the line of credit, available borrowings are reduced by outstanding letters of credit. As of December 31, 2017, the Company had letters of credit outstanding of approximately $2.7 million under the facility and available borrowing of $7.3 million. The line is secured by substantially all of the assets of the Company, and bears interest at varying rates (currently LIBOR plus 1.25% or Prime less 0.50%). The line of credit matures on December 31, 2018, and requires monthly payments of interest only. The Company's agreement with the bank requires it to comply with a maximum funded debt to earnings before interest, taxes, depreciation and amortization ("EBITDA") ratio, as defined, of no greater than 2.00 to 1.00 based upon a trailing twelve-month period. At December 31, 2017, the Company's funded debt to EBITDA ratio was 0.34 to 1.00.

12. Stockholders' Equity

Common Stock and Preferred Stock

The Company has authorized the issuance of two classes of stock designated as "common stock" and "preferred stock," each having a par value of $0.00001 per share. The Company is authorized to issue 200 million shares of common stock and 25 million shares of preferred stock.

Stock Repurchase

In February 2016, the Company announced that Axon's Board of Directors authorized a stock repurchase program to acquire up to $50.0 million of the Company's outstanding common stock subject to stock market conditions and corporate considerations. During the year ended December 31, 2016, the Company purchased, under a Rule 10b5-1 plan, approximately 1.8 million common shares for a total cost of approximately $33.7 million, or a weighted average cost of $18.90 per share. As of December 31, 2017 and 2016, $16.3 million remained available under the plan for future purchases. During 2016, the Company suspended its 10b-5 plan, and any future purchases would be discretionary.

Stock-based Compensation Plans

The Company has historically utilized stock-based compensation, consisting of RSUs and stock options, for key employees and non-employee directors as a means of attracting and retaining quality personnel. Service-based grants generally have a vesting period of 3 to 5 years and a contractual maturity of ten years. Performance-based grants generally have vesting periods ranging from 1 to 5 years and a contractual maturity of ten years.

On February 26, 2016, the Company's Board of Directors approved the 2016 Stock Incentive Plan (the "2016 Plan"), which was subsequently approved by stockholders at the Annual Meeting of Stockholders on May 26, 2016. Under the 2016 Plan, the Company reserved for future grants: (i) 2.0 million shares of common stock, plus (ii) the number of shares of common stock that were authorized but unissued under the Company's 2013 Stock Incentive Plan (the "2013 Plan") as of the effective date of the 2016 Plan, and (iii) the number of shares of stock that have been granted under the 2013 Plan or the 2009 Stock Incentive Plan that either terminate, expire or lapse for any reason after the effective date of the 2016 Plan. As of December 31, 2017, approximately 0.8 million shares remain available for future grants. Shares issued upon exercise of stock awards from these plans have historically been issued from the Company's authorized unissued shares.

Performance-based stock awards

The Company has issued performance-based stock options and performance-based RSUs, the vesting of which is generally contingent upon the achievement of certain performance criteria related to the operating performance of the Company, as well as successful and timely development and market acceptance of future product introductions. In addition, certain of the performance RSUs have additional service requirements subsequent to the achievement of the performance criteria. Compensation expense is recognized over the implicit service period (the longer of the period the performance condition is expected to be achieved or the required service period) based on management's estimate of the probability of the performance criteria being satisfied, adjusted at each balance sheet date.

Restricted Stock Units

The following table summarizes RSU activity for the years ended December 31 (number of units and aggregate intrinsic value in thousands):

	2017		2016		2015	
	Number of Units	Weighted Average Grant-Date Fair Value	Number of Units	Weighted Average Grant-Date Fair Value	Number of Units	Weighted Average Grant-Date Fair Value
Units outstanding, beginning of year	1,330	$ 20.40	1,139	$ 19.30	1,226	$ 13.23
Granted	1,731	24.59	718	19.75	516	26.18
Released	(519)	18.85	(414)	15.91	(488)	11.82
Forfeited	(194)	24.61	(113)	21.65	(115)	16.72
Units outstanding, end of year	2,348	23.47	1,330	20.40	1,139	19.30
Aggregate intrinsic value at year end	$ 62,222					

Aggregate intrinsic value represents the Company's closing stock price on the last trading day of the period, which was $26.50 per share at December 29, 2017, multiplied by the number of RSUs. The fair value as of the respective vesting dates of RSUs that vested during the year ended December 31, 2017 was $14.5 million. Certain RSUs that vested in 2017 were net-share settled, such that the Company withheld shares with value equivalent to the employees' minimum statutory obligation for the applicable income and other employment taxes, and remitted the cash to the appropriate taxing authorities. Total shares withheld during 2017 were 0.1 million and had a value of approximately $3.5 million on their respective vesting dates as determined by the Company's closing stock price. Payments for the employees' tax obligations are reflected as a financing activity within the statement of cash flows. These net-share settlements had the effect of share repurchases by the Company as they reduced the amount of shares that would have otherwise been issued as a result of the vesting.

In 2017, 2016 and 2015, the Company granted approximately 353,000, 79,000 and 49,000 performance-based RSUs, respectively (included in the table above). Certain of the performance-based RSUs outstanding as of December 31, 2017 can vest with a range of shares earned being between 0% and 200% of the targeted shares granted, depending on the final achievement of pre-determined performance criteria as of the vesting date. As of December 31, 2017, the performance criteria had been met for 36,000 of the 0.4 million performance-based RSUs outstanding. The Company recognized $2.5 million, $2.1 million and $1.5 million of compensation expense related to performance-based RSUs during the years ended December 2017, 2016 and 2015, respectively.

Stock Option Activity

The following table summarizes stock option activity for the years ended December 31 (number of options in thousands):

	2017		2016		2015	
	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price
Options outstanding, beginning of year	1,008	$ 5.40	1,103	$ 5.37	1,641	$ 5.26
Exercised	(198)	6.99	(95)	5.02	(525)	4.95
Expired / terminated	(6)	8.32	—	—	(13)	7.27
Options outstanding, end of year	804	4.99	1,008	5.40	1,103	5.37
Options exercisable, end of year	775	5.00	977	5.42	1,072	5.39
Options expected to vest, end of year	25	4.75				

No stock options were granted in 2017, 2016 or 2015. Total intrinsic value of options exercised was $3.2 million, $2.0 million and $13.6 million for the years ended December 31, 2017, 2016 and 2015, respectively. The intrinsic value for options exercised was calculated as the difference between the exercise price of the underlying stock option awards and the market price of the Company's common stock on the date of exercise.

The following table summarizes information about stock options outstanding and exercisable as of December 31, 2017 (number of options in thousands):

	Options Outstanding			Options Exercisable		
Range of Exercise Price	Number of Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Number of Options Exercisable	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)
$4.15 - $7.01	733	$ 4.78	1.49	704	$ 4.78	1.51
$7.13 - $7.21	71	7.14	0.41	71	7.15	0.41
$4.15 - $7.21	804	4.99	1.40	775	5.00	1.41

The aggregate intrinsic value of options outstanding and options exercisable at December 31, 2017 was $17.3 million and $16.7 million, respectively. Aggregate intrinsic value represents the difference between the exercise price of the underlying stock option awards and the closing market price of the Company's common stock of $26.50 on December 29, 2017.

At December 31, 2017, the Company had 29,350 unvested options outstanding with a weighted average exercise price of $4.75 per share, weighted average grant-date fair value of $2.58 per share and weighted average remaining contractual life of 1.0 year. The aggregate intrinsic value of unvested options at December 31, 2017 was $0.6 million.

The Company granted approximately 1.0 million performance-based stock options (included in the table above) from 2008 through 2011. As of December 31, 2017, approximately 0.2 million performance-based stock options are outstanding, of which approximately 29,350 are unvested and 25,000 are expected to vest. The aggregate grant-date fair value of the 0.2 million performance-based stock options vested and expected to vest as of December 31, 2017 was approximately $0.5 million. The Company recognized no stock-based compensation expense related to performance-based stock options during the years ended December 31, 2017 and 2016, and $0.1 million during the year ended December 31, 2015.

Stock-based Compensation Expense

The Company accounts for stock-based compensation using the fair-value method. Reported stock-based compensation was classified as follows for the years ended December 31 (in thousands):

	2017	2016	2015
Cost of product and service sales	$ 508	$ 342	$ 402
Sales, general and administrative expenses	9,047	5,707	4,285
Research and development expenses	6,055	3,320	2,576
Total stock-based compensation expense	$ 15,610	$ 9,369	$ 7,263

There was no stock-based compensation expense recognized in the consolidated statements of operations for the years ended December 31, 2017 and 2016 related to incentive stock options ("ISOs"). Total stock-based compensation expense for the year ended December 31, 2015 included $0.1 million related to ISOs for which no tax benefit was recognized. The Company recorded a tax benefit in 2017, 2016, and 2015 of $0.1 million, $0.2 million, and $0.2 million, respectively, to offset taxes payable related to the non-qualified disposition of ISOs exercised and sold.

As of December 31, 2017, there was $42.8 million in unrecognized compensation costs related to RSUs under the Company's stock plans. The Company expects to recognize the cost related to the RSUs over a weighted average period of 2.80 years.

13. Related Party Transactions

The Company subscribes to a mobile collaboration software suite from Quip, a company that was co-founded and managed by Bret Taylor, a member of the Company's Board of Directors. In April 2016, Quip was acquired by Salesforce, and subsequent to the acquisition, the Company continued to consider Quip a related party. In November 2017, Mr. Taylor was appointed to President and Chief Product Officer of Salesforce. The Company now considers the consolidated Salesforce entity to be a related party. The cost to subscribe to various cloud-based hosting arrangements from Salesforce and Quip was $1.2 million, $0.8 million and $0.5 million for the years ended December 31, 2017, 2016 and 2015, respectively, and amounts owed as of December 31, 2017 were $0.5 million. Amounts owed as of December 31, 2016 were negligible.

14. Employee Benefit Plans

The Company has a defined contribution profit sharing 401(k) plan for eligible employees, which is qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1986, as amended. Employees are entitled to make tax-deferred contributions of up to the maximum allowed by law of their eligible compensation. Contributions to the plans are made by both the employee and the Company. Company contributions are based on the level of employee contributions and are immediately vested. The Company's matching contributions to the plan for the years ended December 31, 2017, 2016 and 2015, were approximately $2.5 million, $1.6 million and $1.2 million, respectively.

The Company also has a non-qualified deferred compensation plan for certain executives, key employees and non-employee directors through which participants may elect to postpone the receipt and taxation of a portion of their compensation, including stock-based compensation, received from the Company. The non-qualified deferred compensation plan allows eligible participants to defer up to 80% of their base salary and up to 100% of other types of compensation. The plan also allows for matching and discretionary employer contributions. Employee deferrals are deemed 100% vested upon contribution. Distributions from the plan generally commence upon retirement, death, separation of service, specified date or upon the occurrence of an unforeseeable emergency. Distributions can be paid in a variety of forms from lump sum to installments over a period of years. Participants in the plan are entitled to select from a wide variety of investments available under the plan and are allocated gains or losses based upon the performance of the investments selected by the participant. All gains or losses are allocated fully to plan participants and the Company does not guarantee a rate of return on deferred balances. Assets related to this plan consist of corporate-owned life insurance contracts and are included in other assets in the consolidated balance sheets. Participants have no rights or claims with respect to any plan assets and any such assets are subject to the claims of the Company's general creditors. Subsequent to December 31, 2017, the Company made contributions to the non-qualified deferred compensation plan related to the year ended December 31, 2017 of approximately $29,000. Future matching or profit sharing contributions to the plans are at the Company's sole discretion.

15. Business Acquisitions

Axon Artificial Intelligence

On December 30, 2016, the Company acquired certain intellectual property from Fossil Group, Inc. and Fossil Vietnam, Limited Liability Company. This transaction, which was accounted for as a business combination under ASC 805, was part of the Company's efforts to expand on the Software and Sensors platform by transforming workflows using computer vision and natural language with machine learning techniques in order to analyze data and multimedia captured throughout the course of policing. Additionally, as part of the acquisition, a team of researchers and software engineers joined the Company as part of the newly established Axon AI team. The purchase price, totaling approximately $6.8 million, consisted of $3.5 million cash at close, and up to an additional $3.3 million of consideration contingent upon the satisfaction of certain conditions. As of September 30, 2017, no amounts were earned relative to the earn-out provisions.

The major classes of assets and liabilities to which the Company has allocated the purchase price were as follows (in thousands):

Developed technology	$	5,210
Goodwill		1,615
Total purchase price	$	6,825

The Company assigned the goodwill to the Software and Sensors segment. The acquired developed technology was assigned an amortization period of five years. Costs related to the acquisition were expensed as incurred and were considered insignificant.

Dextro, Inc.

On February 8, 2017, the Company acquired all of the outstanding common stock of Dextro for a total purchase price of $7.5 million. Dextro's technology provides one of the first computer-vision and deep learning systems to make the visual contents in video searchable in real time. This technology will allow law enforcement agencies and departments to quickly isolate and analyze critical seconds of footage from massive amounts of video data. The technology acquired, along with the Dextro employees that joined the Company, were key additions to the Axon AI team.

The purchase price of $7.5 million consisted primarily of cash, net of cash acquired, and contingent consideration of $1.0 million representing potential earn-outs to former stockholders based on predetermined future metrics. As of December 31, 2017, no amounts were earned relative to the former stockholder earn-out provisions. The Company also agreed to additional earn-out provisions to former Dextro employees totaling approximately $1.4 million based, in part, on predetermined future metrics. The additional earn-outs were not included as part of the purchase price and are being expensed as compensation for the employees in the period earned.

The major classes of assets and liabilities to which the Company has allocated the purchase price were as follows (in thousands):

Accounts receivable	$	12
Property and equipment		46
Developed technology		5,800
Goodwill		2,703
Deferred income tax liabilities, net		(1,074)
Total purchase price	$	7,487

The Company has assigned the goodwill to the Software and Sensors segment. Identifiable definite-lived intangible assets were assigned a total weighted average amortization period of 3.4 years. Dextro has been included in the Company's consolidated results of operations subsequent to the acquisition date. Pro forma results of operations for Dextro have not been presented because they are not material to the consolidated results of operations. In connection with the acquisition, the Company incurred and expensed costs of approximately $0.2 million, which included legal, accounting and other third-party expenses related to the transaction.

Breon Enterprises

On July 1, 2017, the Company acquired certain tangible and intangible assets from Breon, which was the Company's distributor in the Australia region. This transaction, which was accounted for as a business combination under ASC 805, is intended to expand the Company's growth across Australia and surrounding regions by growing its in-country sales and support team.

The purchase price of $4.2 million was paid in full through two wire transactions completed during July 2017. As of the acquisition date, the Company had a $2.2 million pre-existing accounts receivable balance from Breon for the Company's sales of goods and services to Breon prior to the acquisition date. This receivable balance was cash settled in full separately from the business combination at its book value, which was considered to be the fair value due to the short-term nature of the receivable.

The major classes of assets to which the Company has allocated the purchase price were as follows (in thousands):

Re-acquired distribution rights	$	2,100
Customer relationships		400
Goodwill		1,650
Total purchase price	$	4,150

The Company has assigned $0.8 million of the goodwill to each of the TASER Weapons and Software and Sensors segments. The assignment of goodwill was based on the Company's estimate of how the acquired assets would contribute cash flows to the Company over time. Identifiable definite-lived intangible assets were assigned a total weighted average amortization period of 2.1 years. Breon has been included in the Company's consolidated results of operations subsequent to the acquisition date. Pro forma results of operations for Breon have not been presented because they are not material to the consolidated results of operations. Costs related to the acquisition were expensed as incurred and were considered insignificant.

16. Segment Data

The Company's operations are comprised of two reportable segments: TASER Weapons segment and Software and Sensors segment. The Company includes only revenues and costs attributable to the Software and Sensors products in that segment. Included in Software and Sensors segment costs are: costs of sales for both products and services, overhead allocation based on direct labor, selling expense for the Software and Sensors sales team, product management expenses, trade shows and related expenses, and research and development for products included in the Software and Sensors segment. All other costs are included in the TASER Weapons segment. The CODM does not review assets by segment as part of the financial information provided; therefore, only limited asset information is provided in the following tables.

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Information relative to the Company's reportable segments was as follows (in thousands):

	For the year ended December 31, 2017		
	TASER Weapons	Software and Sensors	Total
Net sales from products	$ 234,512	$ 51,347	$ 285,859
Net sales from services	—	57,939	57,939
Net sales	234,512	109,286	343,798
Cost of product sales	72,054	45,943	117,997
Cost of service sales	—	18,713	18,713
Cost of sales	72,054	64,656	136,710
Gross margin	162,458	44,630	207,088
Sales, general and administrative	78,202	60,490	138,692
Research and development	8,377	46,996	55,373
Income (loss) from operations	$ 75,879	$ (62,856)	$ 13,023
Purchase of property and equipment	$ 4,341	$ 6,078	$ 10,419
Purchase of intangible assets	259	765	1,024
Purchase of property and equipment and intangible assets, including goodwill, in connection with business acquisitions	2,075	10,624	12,699
Depreciation and amortization	2,705	5,336	8,041

	For the year ended December 31, 2016		
	TASER Weapons	Software and Sensors	Total
Net sales from products	$ 202,644	$ 35,929	$ 238,573
Net sales from services	—	29,672	29,672
Net sales	202,644	65,601	268,245
Cost of product sales	61,930	29,606	91,536
Cost of service sales	—	6,173	6,173
Cost of sales	61,930	35,779	97,709
Gross margin	140,714	29,822	170,536
Sales, general and administrative	63,617	44,459	108,076
Research and development	5,887	24,722	30,609
Income (loss) from operations	$ 71,210	$ (39,359)	$ 31,851
Purchase of property and equipment	$ 4,129	$ 828	$ 4,957
Purchase of intangible assets	262	3,233	3,495
Purchase of intangible assets, including goodwill, in connection with business acquisitions	—	6,825	6,825
Depreciation and amortization	2,207	1,451	3,658

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	For the year ended December 31, 2015		
	TASER Weapons	Software and Sensors	Total
Net sales from products	$ 162,375	$ 22,855	$ 185,230
Net sales from services	—	12,662	12,662
Net sales	162,375	35,517	197,892
Cost of product sales	48,821	16,201	65,022
Cost of service sales	—	4,223	4,223
Cost of sales	48,821	20,424	69,245
Gross margin	113,554	15,093	128,647
Sales, general and administrative	47,640	22,058	69,698
Research and development	4,470	19,144	23,614
Income (loss) from operations	$ 61,444	$ (26,109)	$ 35,335
Purchase of property and equipment	$ 4,159	$ 1,844	$ 6,003
Purchase of intangible assets	277	224	501
Purchase of property and equipment and intangible assets, including goodwill, in connection with business acquisitions	1,453	11,146	12,599
Depreciation and amortization	2,311	980	3,291

17. Selected Quarterly Financial Data (unaudited)

Selected quarterly financial data for years ended December 31, 2017 and 2016 follows (in thousands, except per share data):

	Quarter Ended			
	March 31, 2017	June 30, 2017	September 30, 2017	December 31, 2017
Net sales	$ 79,242	$ 79,643	$ 90,262	$ 94,651
Gross margin	48,670	45,637	49,765	63,016
Net income (loss)	4,580	2,276	422	(2,071)
Earnings per share [1]:				
Basic	$ 0.09	$ 0.04	$ 0.01	$ (0.04)
Diluted	$ 0.09	$ 0.04	$ 0.01	$ (0.04)

	Quarter Ended			
	March 31, 2016	June 30, 2016	September 30, 2016	December 31, 2016
Net sales	$ 55,530	$ 58,756	$ 71,882	$ 82,077
Gross margin	36,902	37,299	46,565	49,770
Net income	3,463	3,650	3,843	6,341
Earnings per share [1]:				
Basic	$ 0.06	$ 0.07	$ 0.07	$ 0.12
Diluted	$ 0.06	$ 0.07	$ 0.07	$ 0.12

[1] Basic and diluted earnings per share are computed independently for each of the quarters presented. Therefore, the sum of quarterly basic and diluted per share information may not equal annual basic and diluted earnings per share.

AXON ENTERPRISE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

18. Supplemental Disclosure to Cash Flows

Supplemental non-cash and other cash flow information were as follows for the years ended December 31 (in thousands):

	2017	2016	2015
Cash paid for income taxes, net of refunds	$ 11,487	$ 14,048	$ 6,759
Non-cash transactions:			
Contingent consideration related to business combinations	$ 1,007	$ 3,325	$ 952
Property and equipment purchases in accounts payable	133	82	315
Purchase of assets under capital lease obligations	—	134	—

19. Subsequent Event

On February 26, 2018, the Company's Board of Directors approved a new stock option grant to Patrick W. Smith, the Company's Chief Executive Officer ("CEO Performance Award"), which is subject to shareholder approval. The CEO Performance Award will consist of 12 vesting tranches, each equal to 1% of our outstanding common stock as of February 23, 2018, the business day prior to the award date. The CEO Performance Award will have a per share exercise price equal to $28.58, the closing price of our common stock on February 23, 2018, and will have a vesting schedule based entirely on the attainment of both operational and market capitalization milestones.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Axon Enterprise, Inc.

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Axon Enterprise, Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2017 and 2016, the related consolidated statements of operations and comprehensive income, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2017, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2017, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of December 31, 2017, based on criteria established in the 2013 *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), and our report dated March 1, 2018 expressed an adverse opinion.

Basis for opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2005.

Phoenix, Arizona
March 1, 2018

Item 9. ***Changes in and Disagreements With Accountants on Accounting and Financial Disclosure***

None.

Item 9A. ***Controls and Procedures***

Attached as exhibits to this Form 10-K are certifications of the Chief Executive Officer (as the principal executive officer) and Chief Financial Officer (as the principal financial and accounting officer), which are required in accordance with Rule 13a-14 of the Exchange Act. This "Controls and Procedures" section includes information concerning the controls and controls evaluation referred to in the certifications. This section should be read in conjunction with the certifications and the Grant Thornton LLP attestation report for a more complete understanding of the topics presented. Grant Thornton LLP has independently assessed the effectiveness of our internal control over financial reporting and its report is included below.

Evaluation of Disclosure Controls and Procedures

Our Chief Executive Officer and Chief Financial Officer are responsible for the evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Our disclosure controls and procedures are designed to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Based on that evaluation, our Chief Executive Officer and Principal Financial and Accounting Officer have concluded that because a material weakness exists in our internal control over financial reporting, as further described below, our disclosure controls and procedures were not effective as of December 31, 2017 at a level that provides reasonable assurance as of the last day of the period covered by this report.

Management Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2017 based on criteria set forth in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). As a result of this assessment, management concluded that, as of December 31, 2017, our internal control over financial reporting was not effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

During the years ended December 31, 2017 and 2016, we identified material weaknesses in our internal control over financial reporting. A material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

We previously identified and disclosed in our Annual Report on Form 10-K for the year ended December 31, 2016, as well as in our Quarterly Reports on Form 10-Q for each interim period in fiscal 2017, material weaknesses in our internal control over financial reporting. Specifically, during the quarter ended March 31, 2017, we identified a material weakness over accounting for income taxes. During the year ended December 31, 2016, we identified material weaknesses in our internal controls over revenue recognition, cost of goods sold and services delivered and the reporting of deferred revenue. Further, we identified material weaknesses in our account reconciliations and monitoring processes. These material weaknesses in internal control over financial reporting resulted from a breakdown in the operation of identified preventative and detective controls which led to the Company not initially recording some transactions correctly.

To remediate the material weaknesses described above, we designed and implemented controls and enhanced and revised the design of existing controls and procedures. Specifically:

- we added resources to our revenue, tax and general accounting teams to ensure that we have the knowledge and resources to properly account for transactions in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"),
- we implemented additional internal reporting procedures, including those designed to add depth to our detailed review processes of sales transactions and related accounting for deferred revenue and cost of product and service sales,

- we implemented additional monitoring controls that help detect data entry errors of transactional information within the Company's general ledger system, as well as added and refined existing system reports to help isolate outliers within the Company's transactional data for further review, and
- we improved communication and coordination among our finance and accounting departments and we expanded cross-functional involvement and input into period-end accruals.

We successfully completed the testing of these remedial controls related to the previously reported material weaknesses and concluded that they are designed and operating effectively to provide reasonable assurance regarding the reliability of our financial reporting and preparation of financial statements in accordance with generally accepted accounting principles.

During the fourth quarter of 2017, we identified a material weakness related to account reconciliations and monitoring over our U.K. subsidiary, Axon Public Safety U.K. Ltd. ("APS U.K"), which resulted from a breakdown in the operation of identified preventative and detective controls which led to the Company not initially recording some transactions correctly during 2016 and the interim periods in 2017.

To remediate the material weakness described above and related to APS U.K., we designed a specific plan to design new controls, and enhanced the design of existing controls and procedures. Specifically:

- during the 2017 year-end close of our accounting records we sent accounting personnel from our headquarters in Arizona to the U.K. to perform additional review procedures of the account reconciliations for APS U.K. and our corporate accounting team performed additional reviews of APS U.K. activity,
- we plan for our corporate accounting team to continue to perform these additional review procedures on an ongoing basis, and
- we plan to add internal reporting procedures, including those designed to add depth to our detailed review processes of inventory, sales transactions and related accounting for deferred revenue and cost of goods sold and services delivered for APS U.K.

The material weakness specific to APS U.K. will not be considered remediated until the applicable remedial controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. As remediation has not yet been completed, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were not effective as of December 31, 2017 at a level that provides reasonable assurance as of the last day of the period covered by this report.

Grant Thornton LLP has independently assessed the effectiveness of our internal control over financial reporting and its report is included below.

Changes in Internal Control over Financial Reporting

Except as noted above, there was no change in our internal control over financial reporting during the fiscal quarter ended December 31, 2017, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Axon Enterprise, Inc.

Opinion on internal control over financial reporting

We have audited the internal control over financial reporting of Axon Enterprise, Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2017, based on criteria established in the 2013 Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). In our opinion, because of the effect of the material weakness described in the following paragraphs on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2017, based on criteria established in the 2013 Internal Control-Integrated Framework issued by COSO.

A material weakness is a deficiency, or combination of control deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management's assessment.

Management identified deficiencies in the Company's internal controls related to account reconciliations and monitoring controls over its wholly-owned subsidiary, Axon Public Safety U.K. Ltd. ("APS-UK"). The combination of these deficiencies, when aggregated, resulted in a material weakness in the design and operating effectiveness of the Company's controls.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated financial statements of the Company as of and for the year ended December 31, 2017. The material weakness identified above was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2017 consolidated financial statements, and this report does not affect our report dated March 1, 2018 which expressed an unqualified opinion on those financial statements.

Basis for opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management Report on Internal Control over Financial Reporting ("Management's Report"). Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and limitations of internal control over financial reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Other information

We do not express an opinion or any other form of assurance on management's description of the steps the Company has taken to remediate any of the material weaknesses as described in Management's Report.

/s/ GRANT THORNTON LLP

Phoenix, Arizona
March 1, 2018

Item 9B. ***Other Information***

None.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

The information required to be disclosed by this item is incorporated herein by reference to our definitive proxy statement for the 2018 Annual Meeting of Stockholders (the "2018 Proxy Statement"), which proxy statement we expect to file with the SEC within 120 days after the end of our fiscal year ended December 31, 2017.

Item 11. ***Executive Compensation***

The information required to be disclosed by this item is incorporated herein by reference to our 2018 Proxy Statement.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

Equity Compensation Plan Information

A description of our equity compensation plans approved by our stockholders is included in Note 12 to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K. The following table provides details of our equity compensation plans at December 31, 2017:

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights (b) (1)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)
Equity compensation plans approved by security holders	3,152,315	$ 4.99	1,154,395
Equity compensation plans not approved by security holders	—		—
Total	3,152,315	$ —	1,154,395

(1) The weighted average exercise price is calculated based solely on the exercise prices of the outstanding options and does not reflect the shares that will be issued upon the vesting of outstanding awards of RSUs which have no exercise price.

All other information required to be disclosed by this item is incorporated herein by reference to our 2018 Proxy Statement.

Item 13. ***Certain Relationships and Related Transactions, and Director Independence***

The information required to be disclosed by this item is incorporated herein by reference to our 2018 Proxy Statement.

Item 14. ***Principal Accounting Fees and Services***

The information required to be disclosed by this item is incorporated herein by reference to our 2018 Proxy Statement.

PART IV

Item 15. ***Exhibits, Financial Statement Schedules***

(a) The following documents are filed as part of this report:

1. Consolidated financial statements: All consolidated financial statements as set forth under Part II, Item 8 of this report.
2. Supplementary Financial Statement Schedules: Schedule II — Valuation and Qualifying Accounts

Other schedules have not been included because they are not applicable or because the information is included elsewhere in this report. *(Dollars in thousands)*

SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS

Description	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts	Deductions	Balance at End of Period
Allowance for doubtful accounts:					
Year ended December 31, 2017	$ 443	$ 592	$ —	$ (306)	$ 729
Year ended December 31, 2016	322	205	—	(84)	443
Year ended December 31, 2015	251	86	—	(15)	322
Warranty reserve:					
Year ended December 31, 2017	$ 780	$ 109	$ —	$ (245)	$ 644
Year ended December 31, 2016	314	621	—	(155)	780
Year ended December 31, 2015	675	(62)	—	(299)	314

3. Exhibits:

Exhibit Number	Description
3.1	Certificate of Incorporation, as amended (incorporated by reference to Exhibit 3.1 to Registration Statement on Form SB-2, effective May 11, 2001 (Registration No. 333-55658))
3.2	Bylaws, as amended, effective January 17, 2016 (incorporated by reference to Exhibit 3.2 to Annual Report filed on Form 10-K, filed March 7, 2016)
3.3	Certificate of Amendment to Certificate of Incorporation dated September 1, 2004 (incorporated by reference to Exhibit 3.3 to Annual Report on Form 10-KSB, filed March 31, 2005)
3.4	Amended and Restated Certificate of Incorporation (incorporated by reference to Annex A to 2016 Proxy Statement, filed April 15, 2016.
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.2 to Registration Statement on Form SB-2, effective May 11, 2001 (Registration No. 333-55658))
10.1*	Form of Indemnification Agreement between the Company and its directors (incorporated by reference to Exhibit 10.4 to Registration Statement on Form SB-2, effective May 11, 2001 (Registration No. 333-55658))
10.2*	Form of Indemnification Agreement between the Company and its officers (incorporated by reference to Exhibit 10.15 to Registration Statement on Form SB-2, effective May 11, 2001 (Registration No. 333-55658))
10.3*	2001 Stock Option Plan (incorporated by reference to Exhibit 10.7 to Registration Statement on Form SB-2, effective May 11, 2001 (Registration No. 333-55658))
10.4*	Executive Employment Agreement with Daniel Behrendt, dated April 28, 2004 (incorporated by reference to Exhibit 10.14 to Annual Report on Form 10-KSB, filed March 31, 2005)
10.5*	2004 Stock Option Plan (incorporated by reference to Exhibit 10.15 to the Annual Report on Form 10-KSB, filed March 31, 2005)

Exhibit Number	Description
10.6*	2004 Outside Director Stock Option Plan, as amended (incorporated by reference to Exhibit 10.16 to the Annual Report on Form 10-KSB, filed March 31, 2005)
10.7*	2009 Stock Incentive Plan (incorporated by reference to Appendix A to 2009 Proxy Statement, filed April 15, 2009)
10.8*	Executive Employment Agreement with Jeff Kukowski, dated August 9, 2010 (incorporated by reference to Exhibit 10.18 to the Annual Report on Form 10-K, filed March 8, 2013)
10.9*	2013 Stock Incentive Plan (incorporated by reference to Appendix of 2013 Proxy Statement, filed on April 3, 2013)
10.10*	TASER International, Inc. Deferred Compensation Plan (incorporated by reference to Exhibit 10.1 to Form 8-K, filed on July 12, 2013)
10.11	Amended and Restated Credit Agreement dated August 18, 2014 between the Company and JP Morgan Chase Bank, NA (incorporated by reference to Exhibit 10.13 to Form 10-K, filed on March 11, 2015)
10.12	Note Modification Agreement dated as of July 29, 2015, between the Company and JP Morgan Chase Bank, N.A. (incorporated by reference to Exhibit 10.1 to Form 10-Q, filed on November 6, 2015)
10.13*	2016 Stock Incentive Plan (incorporated by reference to Annex B of 2016 Proxy Statement, filed on April 15, 2016)
10.14**	Executive Employment Agreement with Jawad A. Ahsan, dated March 20, 2017
10.15*	Executive Employment Agreement with Patrick W. Smith, dated December 1, 2017 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K, filed December 4, 2017)
10.16*	Executive Employment Agreement with Luke S. Larson, dated December 1, 2017 (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K, filed December 4, 2017)
10.17*	Executive Employment Agreement with Douglas E. Klint, dated December 1, 2017 (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K, filed December 4, 2017)
10.18*	Executive Employment Agreement with Joshua M. Isner, dated December 1, 2017 (incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K, filed December 4, 2017)
10.19**	Line of Credit Note dated December 18, 2017 between the Company and JP Morgan Chase Bank, NA
10.20**	Second Amendment to Credit Agreement dated December 18, 2017 between the Company and JP Morgan Chase Bank, NA
21.1**	List of Subsidiaries
23.1**	Consent of Grant Thornton, LLP, independent registered public accounting firm
24.1**	Powers of attorney (see signature page)
31.1**	Principal Executive Officer Certification pursuant to Rule 13a-14(a) or Rule 15d-14(a)
31.2**	Principal Financial Officer Certification pursuant to Rule 13a-14(a) or Rule 15d-14(a)
32***	Principal Executive Officer and Principal Financial Officer Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS**	XBRL Instance Document
101.SCH**	XBRL Taxonomy Extension Schema Document
101.CAL**	XBRL Taxonomy Calculation Linkbase Document
101.LAB**	XBRL Taxonomy Label Linkbase Document
101.PRE**	XBRL Taxonomy Presentation Linkbase Document

* Management contract or compensatory plan or arrangement
** Filed herewith
*** Furnished herewith

Item 16. ***Form 10-K Summary***

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AXON ENTERPRISE, INC.

Date: March 1, 2018

By: /s/ PATRICK W. SMITH

Chief Executive Officer, Director

(Principal Executive Officer)

Date: March 1, 2018

By: /s/ JAWAD A. AHSAN

Chief Financial Officer

(Principal Financial and Accounting Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Patrick W. Smith his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ PATRICK W. SMITH Patrick W. Smith	Chief Executive Officer, Director (Principal Executive Officer)	March 1, 2018
/s/ JAWAD A. AHSAN Jawad A. Ahsan	Chief Financial Officer (Principal Financial and Accounting Officer)	March 1, 2018
/s/ MICHAEL GARNREITER Michael Garnreiter	Director	March 1, 2018
/s/ HADI PARTOVI Hadi Partovi	Director	March 1, 2018
/s/ MARK W. KROLL Mark W. Kroll	Director	March 1, 2018
/s/ RICHARD H. CARMONA Richard H. Carmona	Director	March 1, 2018
/s/ BRET S. TAYLOR Bret S. Taylor	Director	March 1, 2018
/s/ MATTHEW R. MCBRADY Matthew R. McBrady	Director	March 1, 2018
/s/ JULIE A. CULLIVAN Julie A. Cullivan	Director	March 1, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2017

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 001-16391

Axon Enterprise, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**86-0741227**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
17800 North 85th Street Scottsdale, Arizona	**85255**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code:

(480) 991-0797

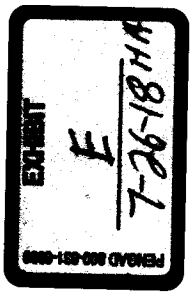
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Name of exchange on which registered**
Common Stock, $0.00001 par value per share	**The Nasdaq Global Select Market**

Securities registered pursuant to Section 12(g) of the Act:

None

(Title of Class)



Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Due to municipal government funding rules, certain of our contracts are subject to appropriation, termination for convenience, or similar cancellation clauses, which could allow our customers to cancel or not exercise options to renew contracts in the future.

Although Axon has entered into contracts for the delivery of products and services in the future and anticipates the contracts will be completed, if agencies do not appropriate money in future year budgets, terminate contracts for convenience or if other cancellation clauses are invoked, revenue associated with these bookings will not ultimately be recognized, and could result in a reduction to bookings.

An increasing percentage of our revenue is derived from subscription billing arrangements which may result in delayed cash collections and may increase customer credit risk on receivables

A growing portion of our sales are derived from subscription billing arrangements and on an open credit basis. While we perform ongoing credit evaluations of our customers' financial condition, if we become aware of information related to the creditworthiness of a major customer, or if future actual default rates on receivables in general differ from those currently anticipated, we may have to adjust our allowance for doubtful accounts, which could adversely affect our business, financial condition or operating results.

Changes in civil forfeiture laws may affect our customers' ability to purchase our products

Some of our customers use funds seized through civil forfeiture proceedings to fund the purchase of our products. Changes in state legislatures could impact our customers' ability to seize funds or use seized funds to fund purchases. Changes in civil forfeiture statutes or regulations are outside of our control and could limit the amount of funds available to our customers, which could adversely affect the sale of our products.

SaaS revenue for Evidence.com is recognized over the terms of the contracts, which may be several years, and, as such, trends in new business may not be immediately reflected in our operating results.

Our SaaS service revenue is generally recognized ratably over the terms of the contracts, which generally range from one to five years. As a result, most of the SaaS revenue we report each quarter is the result of agreements entered into during previous quarters. Consequently, current positive or negative trends in this portion of our business may not be fully reflected in our revenue results for several periods.

We utilize multiple third-party cloud-based storage providers to host the Axon Evidence.com platform.

Utilizing and administering multiple cloud-based storage providers may result in duplication of efforts and resources, increased cost structure, and organization complexities. These complexities and additional costs could adversely affect our business, financial condition or operating results.

We may face personal injury, wrongful death and other liability claims that harm our reputation and adversely affect our sales and financial condition.

Our CEW products are often used in aggressive confrontations that may result in serious, permanent bodily injury or death to those involved. Our CEW products may be associated with these injuries. A person, or the family members of a person, injured in a confrontation or otherwise in connection with the use of our products, may bring legal action against us to recover damages on the basis of theories including wrongful death, personal injury, negligent design, defective product or inadequate warning. We are currently subject to a number of such lawsuits and we have been subject to significant adverse judgments and settlements. We may also be subject to lawsuits involving allegations of misuse of our products. If successful, wrongful death, personal injury, misuse and other claims could have a material adverse effect on our operating results and financial condition and could result in negative publicity about our products. Although we carry product liability insurance, we do incur significant legal expenses within our self-insured retention in defending these lawsuits and significant litigation could also result in a diversion of management's attention and resources, negative publicity and a potential award of monetary damages in excess of our insurance coverage. The outcome of any litigation is inherently uncertain and there can be no assurance that our existing or any future litigation will not have a material adverse effect on our business, financial condition or operating results.

POWER OF ATTORNEY

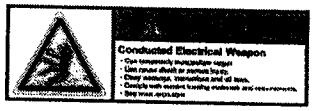
KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Patrick W. Smith his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

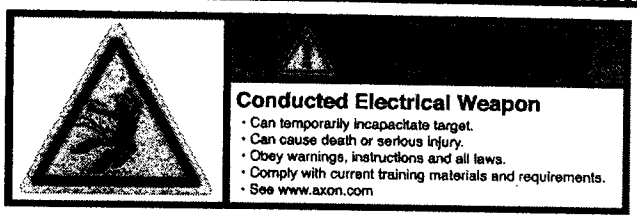
Signature	Title	Date
/s/ PATRICK W. SMITH Patrick W. Smith	Chief Executive Officer, Director (Principal Executive Officer)	March 1, 2018
/s/ JAWAD A. AHSAN Jawad A. Ahsan	Chief Financial Officer (Principal Financial and Accounting Officer)	March 1, 2018
/s/ MICHAEL GARNREITER Michael Garnreiter	Director	March 1, 2018
/s/ HADI PARTOVI Hadi Partovi	Director	March 1, 2018
/s/ MARK W. KROLL Mark W. Kroll	Director	March 1, 2018
/s/ RICHARD H. CARMONA Richard H. Carmona	Director	March 1, 2018
/s/ BRET S. TAYLOR Bret S. Taylor	Director	March 1, 2018
/s/ MATTHEW R. MCBRADY Matthew R. McBrady	Director	March 1, 2018
/s/ JULIE A. CULLIVAN Julie A. Cullivan	Director	March 1, 2018

TASER
Protect Life

TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement



IMPORTANT SAFETY AND HEALTH INFORMATION



This document presents important safety warnings, instructions, and information intended to minimize hazards associated with the use of Axon Enterprise, Inc. ("Axon") TASER Conducted Electrical Weapons (CEWs). These instructions and warnings are for your protection as well as the safety of others. **Read the entire document before using a CEW.**

When used as directed in probe-deployment mode, CEWs are designed to temporarily incapacitate a person from a safer distance than some other force options, while reducing the likelihood of death or serious injury. However, any use of force, including the use of a CEW, involves risks that a person may get hurt or die due to the effects of the CEW, physical incapacitation, physical exertion, unforeseen circumstances, or individual susceptibilities. Following the instructions and warnings in this document will reduce the likelihood that CEW use will cause death or serious injury.

These warnings and instructions are effective **May 19, 2017**, and supersede all prior revisions and relevant Training Bulletins. **Immediately distribute this document to all TASER CEW users**. The most current warnings are also available online at www.axon.com.

1. **Complete training first.** Significant differences exist between different TASER CEW models. Do not use or attempt to use any CEW model unless you have been trained by a Certified TASER Instructor on that particular model.[1]
2. **Read and obey.** Read, understand, and follow all current instructions, warnings, and relevant TASER training materials before using TASER CEWs. Failure to do so could increase the risk of death or serious injury to the user, force recipient, or others.
3. **Obey applicable laws, regulations, and agency Guidance.** Use of CEWs must be legally justified and comply with applicable federal, state, and local laws and regulations. The decision to use a CEW in a particular manner or circumstance must follow applicable law enforcement agency Guidance.[2]

Always follow all current instructions, warnings, and TASER training materials to minimize CEW risks.

This document uses a signal word panel to mark specific warnings:

WARNING This signal word panel indicates **a potentially hazardous situation which if not avoided could result in death or serious injury.**

Warnings may be followed by instructions and information to help avoid the hazard and improve CEW safety.

SAFETY INFORMATION: CEW RISKS AND RISK AVOIDANCE

WARNING **Cumulative Effects.** CEW exposure causes certain effects, including physiologic and metabolic changes, stress, and pain. In some individuals, the risk of death or serious injury may increase with cumulative CEW exposure. Repeated, prolonged, or continuous CEW applications may contribute to cumulative exhaustion, stress, cardiac, physiologic, metabolic, respiratory, and associated medical risks

[1] A Certified TASER Instructor is not an Axon agent, but maintains a current TASER instructor certification and complies with Axon's most current training requirements, materials and license agreement. Representations inconsistent with this document made by any Certified TASER Instructor are expressly disclaimed.

[2] Law enforcement agencies are force experts and are solely responsible for their own Guidance. "Guidance" includes policy, custom, procedure, rule, order, directive, training, continuum, and standard. Axon has no authority to mandate Guidance, set policy, require training, or establish standards of care or conduct.

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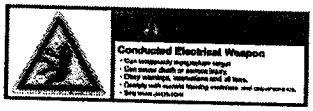
EXHIBIT F T26-18 #11



which could increase the risk of death or serious injury. Minimize repeated, continuous, or simultaneous exposures.

Physiologic and Metabolic Effects. CEW use causes physiologic and/or metabolic effects that may increase the risk of death or serious injury. These effects include changes in blood chemistry, blood pressure, respiration, heart rate and rhythm, and adrenaline and stress hormones, among others. In human studies of electrical discharge from a single CEW of up to 15 seconds, the effects on acid/base balance, creatine kinase, electrolytes, stress hormones, and vital signs were comparable to or less than changes expected from physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques.

Some individuals may be particularly susceptible to the effects of CEW use. These susceptible individuals include the elderly, those with heart conditions, asthma or other pulmonary conditions, and people suffering from excited delirium, profound agitation, severe exhaustion, drug intoxication or chronic drug abuse, and/or over-exertion from physical struggle. In a physiologically or metabolically compromised person, any physiologic or metabolic change may cause or contribute to sudden death.

Stress and Pain. CEW use, anticipation of use, or response to use can cause startle, panic, fear, anger, rage, temporary discomfort, pain, or stress which may be injurious or fatal to some people.

To reduce the risk from CEW exposure:

1. **Minimize the number and duration of CEW exposures.** Most human CEW lab testing has not exceeded 15 seconds of CEW application, and none has exceeded 45 seconds. Use the shortest duration of CEW exposure objectively reasonable to accomplish lawful objectives, and reassess the subject's behavior, reaction, and resistance before initiating or continuing the exposure. If a CEW deployment is ineffective in incapacitating a subject or achieving compliance consider alternative control measures in conjunction with or separate from the CEW.
2. **Avoid simultaneous CEW exposures.** Do not use multiple CEWs or multiple completed circuits at the same time without justification. Multiple CEWs or multiple completed circuits at the same time could have cumulative effects and result in increased risks.
3. **Control and restrain immediately.** Begin control and restraint procedures, including during CEW exposure ("cuffing under power"), as soon as reasonably safe and practical to minimize CEW cumulative effects and the total duration of exertion and stress experienced by the subject.
4. **Avoid touching probes/wires during CEW discharge.** Controlling and restraining a subject during CEW exposure may put the CEW user and those assisting at risk of accidental or unintended shock. Avoid touching the probes and wires and the areas between the probes during the electrical discharge.

WARNING **Cardiac Capture.** CEW exposure in the chest area near the heart has a low probability of inducing extra heart beats (cardiac capture). In rare circumstances, cardiac capture could lead to cardiac arrest. When possible, avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death.

Cardiac capture may be more likely in children and thin adults because the heart is usually closer to the CEW-delivered discharge (the dart-to-heart distance). Serious complications could also arise in those with impaired heart function or in those with an implanted cardiac pacemaker or defibrillator.

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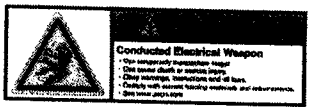
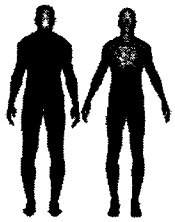
TASER
Protect Life

TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement



To reduce the risk of injury:

1. **Use preferred target areas.** The preferred target areas (blue) are below the neck area for back shots and the lower center mass (below chest) for front shots. The preferred target areas increase dart-to-heart distance and reduce cardiac risks. Back shots are preferable to front shots when practicable.
2. **Avoid sensitive areas.** When practicable, avoid intentionally targeting the CEW on sensitive areas of the body such as the face, eyes, head, throat, chest area (area of the heart), breast, groin, genitals, or known pre-existing injury areas.



WARNING **Muscle Contraction or Strain-Related Injury.** CEWs in probe-deployment mode can cause muscle contractions that may result in injury, including bone fractures.

WARNING **Higher Risk Populations.** CEW use on a pregnant, infirm, elderly, or low body-mass index person or on a small child could increase the risk of death or serious injury. As with any force option, CEW use has not been scientifically tested on these populations. Use a CEW on such persons **only** if the situation justifies an increased risk.

CEWs in probe-deployment mode can cause muscle contractions resulting in injuries similar to those from physical exertion, athletics, or sports, including hernia rupture, dislocation, tear, or other injury to soft tissue, organ, muscle, tendon, ligament, cartilage, disc, nerve, bone, or joint; or injury or damage associated with or to orthopedic or other hardware. Fractures to bone, including compression fracture to vertebrae, may occur.

These injuries may be more serious and more likely to occur in people with pre-existing injuries, orthopedic hardware, conditions or special susceptibilities, including pregnancy; low bone density; spinal injury; or previous muscle, disc, ligament, joint, bone, or tendon damage or surgery. Such injuries may also occur in drive-stun applications or when a person reacts to the CEW deployment by making a rapid or unexpected movement.

WARNING **Secondary Injury.** The loss of control resulting from a CEW exposure may result in injuries due to a fall or other uncontrolled movement. When possible, avoid using a CEW when secondary injuries are likely.

Loss of control associated with CEW use can have several causes:

- **Seizure.** Repetitive stimuli (e.g., flashing light or electrical stimuli) can induce seizure in some people, which may result in death or serious injury. This risk may be increased in a person with epilepsy, a seizure history, or if electrical stimuli pass through the head. Emotional stress and physical exertion, both likely in incidents involving CEW and other uses of force, are reported as seizure-precipitating factors.
- **Fainting.** A person may experience an exaggerated response to a CEW exposure, or threatened exposure, which may result in fainting or falling.
- **Muscle contraction, incapacitation, or startle response.** CEW use may cause loss of control from muscle contraction, incapacitation, or startle response.

To reduce these risks, consider the person's location before using a CEW. When practicable, avoid using a CEW on a person in the following circumstances unless the situation justifies a higher risk.

When practicable, avoid using a CEW on a person who:

- is on an elevated or unstable surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, or stair);
- could fall and suffer impact injury to the head or other area;
- could fall on a sharp object or surface (e.g., holding a knife, falling on glass);
- is less able to catch or protect self in a fall (e.g., restrained, handcuffed, incapacitated, or immobilized);
- has impaired reflexes (e.g., from alcohol, drugs or certain medications);
- is running, in motion, or moving under momentum;

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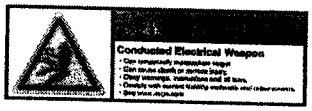

- is operating or riding any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, or train), conveyance (e.g., escalator, moving walkway, elevator, skateboard, rollerblades), or machinery; or
- is located in water, mud, or marsh environment if the ability to move is restricted.

SAFETY INFORMATION: INJURY OR INFECTION

A CEW may cause injury as a result of the probe or electrical discharge. The nature and severity of these effects depends on numerous factors including the area of exposure, method of application, individual susceptibility, and other circumstances surrounding CEW use, exposure, and after care. Medical care may be required.

WARNING **Eye Injury Hazard.** A TASER probe, electrode, or electrical discharge that contacts or comes close to an eye can result in serious injury, including permanent vision loss. DO NOT intentionally aim a CEW, including the LASER, at the eye of a person or animal without justification.

LASER Light Hazard. CEWs use a LASER targeting aid. LASERs can cause serious eye injury, including permanent vision loss. **NEVER** aim a LASER at an aircraft or the operator of an aircraft or moving vehicle.

WARNING **Probe or Electrode Injury, Puncture, Scarring, or Infection Hazard.** CEW use may cause a permanent mark, burn, scar, puncture, or other skin or tissue damage. Infection could result in death or serious injury. Scarring risk may be increased when using a CEW in drive-stun mode. Increased skin irritation, abrasion, mark, burning, or scarring may occur with a CEW with multiple cartridge bays when used in drive-stun or three-point deployment modes.

WARNING **Penetration Injury.** The TASER probe has a small dart point which may cause a penetration injury to a blood vessel or internal organ, including lung, bone, or nerve. The probe or dart point (which may detach or break) can puncture or become embedded into a bone, organ, or tissue, which may require immediate medical care, surgical removal, or may result in scarring, infection, or other serious injury.

To reduce the risk of serious or permanent injury:

1. **Provide medical care as needed.** Injury due to penetration of a probe or dart point into a blood vessel, organ, nerve, or bone may require medical care. A probe, dart point, or barb embedded in a sensitive area such as the eye, genitals, breast, neck, throat, or vascular structure may cause serious injury and require medical care. CEW use may cause skin irritation, puncture wound, abrasion, mark, rash, burn, or other scar or infection, which may require medical care and may be permanent. As with any injury of this type, infection or tetanus and resulting complications may occur. In accordance with your agency's Guidance, ensure access to medical care if needed.
2. **Follow agency Guidance for removing probes.** Probe removal may cause injury. Leaving a probe in the body may result in pain or injury. Follow your agency's Guidance and biohazard protocols for probe removal. In the case of embedment, organ or bone penetration, or probe, dart point, or barb detachment, immediate medical care and possible surgical removal may be required.
3. **Follow biohazard protocols.** Use appropriate biohazard protocols including isolation procedures and protective equipment (e.g., gloves, masks, and washing of hands and exposed areas as necessary). Follow your agency's Guidance and appropriate biohazard, waste, and evidence protocols when dealing with biohazards.

SAFETY INFORMATION: CEW DEPLOYMENT AND USE

WARNING CEWs and cartridges are weapons and as with any weapon follow safe weapon-handling practices and store your CEW securely. Follow practices herein and additional requirements in your agency's Guidance. Failure to follow these warnings may result in death or serious injury to the user or others.

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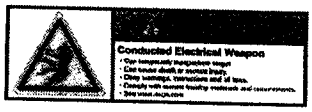

WARNING **Confusing Handgun with CEW.** Confusing a handgun with a CEW could result in death or serious injury. Learn the differences in the physical feel and holstering characteristics between your CEW and your handgun to help avoid confusion. Always follow your agency's Guidance and training.

WARNING **Trigger Hold-Back Model Differences.** If the trigger is held back, most CEWs will continue to discharge until the trigger is released or the power source is expended. With an APPM installed, the X2 and X26P can be programmed to stop a CEW discharge at 5 seconds *even if the user continues to hold back the trigger*, requiring a deliberate action to re-energize the deployed cartridge. Know your model and how it works. Avoid repeated, prolonged, or continuous CEW applications when practicable.

WARNING In stressful or noisy circumstances, the APPM's audible warning may not be heard.

1. **Use properly.** Use a CEW only for its intended purpose, in legally justifiable situations, and in accordance with your agency's Guidance. Do not use for torture.
2. **Store in a secure location.** Store CEWs, cartridges, and accessories in secure locations inaccessible to children and other unauthorized persons to prevent inappropriate access or use.
3. **Use the safety switch.** Place the CEW safety switch in the down (SAFE) position when the CEW is not in use. Remember to place the CEW safety switch in the up (ARMED) position when you intend to use the CEW.
4. **Assume CEW is loaded.** Always assume that a CEW is loaded and capable of discharging. To help avoid unexpected discharge, ensure that no live cartridge is in the CEW when inserting a battery pack; TASER CAM or TASER CAM HD recorder; or while performing spark tests (except when function testing the X2 or X3), maintenance, data downloading, or battery charging.
5. **Be aware of CEW trigger.** Keep your finger off the trigger until it is legally justifiable to use the CEW and you are ready to deploy.
6. **Know how the CEW works.** Significant differences exist between different TASER CEW models. Before using any CEW, including a multi-shot CEW, ensure you understand the functioning and effects of that model.
7. **Be aware of X2 and X3 deployment mode.** Be aware of which deployment mode (manual or semi-automatic) is set on the X2 and X3 before use.
8. **Be Aware of X2 Static (Fixed) LASER Sight Mode.** The X2 has static dual LASERs. One LASER is intended to approximately align with the top dart and the other with the bottom dart, both of which are set-up for 15′ (4.6 meters (m)) and 25′ (7.62 m) cartridges at a 15′ distance from the target. The trajectory of the 35′ (10.7 m) long range cartridge will not line up with the bottom LASER when placed in the X2.
9. **Use simulation (training) cartridges ONLY for training or practice. DO NOT** use a CEW loaded with a simulation training cartridge for field use or self-defense. Simulation cartridges are intended for practice only and will have no incapacitating effect on a subject. Simulation cartridges use non-conductive wires and will not transmit electrical pulses to the probes.

SAFETY INFORMATION: CEW EFFECTIVENESS

A CEW, like any weapon or force option, does not always function as intended and is not effective on every subject. As with any use of force, if a particular option is not effective, consider using other force options, disengaging, or using other alternatives per agency Guidance. **Always have a back-up plan.**

WARNING **Subject Not Incapacitated.** An ineffective CEW application could increase the risk of death or serious injury to the user, the subject, or others. If a CEW does not operate as intended or if subject is not incapacitated, disengage, redeploy the CEW, or use other force options in accordance with agency Guidance.

A CEW's effects may be limited by many factors, including absence of delivered electrical charge due to misses, clothing disconnect, intermittent connection, or wire breakage; probe locations or spread; subject's

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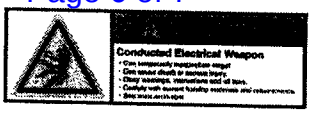

muscle mass; or movement. Some of the factors that may influence the effectiveness of CEW use in effecting or achieving control of a subject include:

- **Subject may not be fully incapacitated.** Even though a subject may be affected by a CEW in one part of his body, the subject may maintain full muscle control of other portions of his body. Control and restrain a subject as soon as possible, and be prepared in case the subject is not fully incapacitated.
- **Subject may recover immediately.** A subject receiving a CEW discharge may immediately regain physical or cognitive abilities upon cessation of the delivered CEW discharge. Control and restrain a subject as soon as possible, and be prepared in case the subject immediately recovers.
- **Drive-stun mode is for pain compliance only.** The use of a handheld CEW in drive-stun mode is painful, but generally does not cause incapacitation. Drive-stun use may not be effective on emotionally disturbed persons or others who may not respond to pain due to a mind-body disconnect. Avoid using repeated drive-stuns on such individuals if compliance is not achieved.
- **Probes may deviate.** CEWs are not precision-aimed weapons. Probe discharge, flight trajectory, and impact location can be affected by numerous factors, including cartridge or probe accuracy; failure of cartridge to properly deploy; strong air movements; user and subject movements; or probe striking subject, clothing, or object with insufficient force or trajectory to penetrate or adhere to subject. Deviations can result in limited or lack of effectiveness due to misses, failure to complete or maintain the electrical circuit, a small probe spread, or failure to deliver a sufficient charge to the subject.
- **CEW or cartridge may fail to fire or operate.** No weapon system, force option, or CEW is always operational or effective. If a CEW, cartridge, or accessory is inoperable or fails to function, consider reloading and redeploying, using other force options, disengaging, or using other alternatives per agency Guidance.

SAFETY INFORMATION: OTHER HAZARDS

WARNING **Probe Recoil or Ricochet**. If your target is farther away than the length of the probe wire, or if one or more probes miss the target, the probe can recoil and bounce back to strike the user or a bystander, causing injury. Probe recoil is more likely with simulation cartridges because of the nylon probe wire used.

Always be sure your target is within range. Wear protective eyewear when deploying any CEW in training or for practice. Be sure practice targets have a firm backing that will allow the probes to stick and not bounce off and strike an unintended person, animal, or object, or continue through the backing and strike objects behind the target.

WARNING **Untethered Discharged Probe.** A discharged probe that does not impact a subject or target may become untethered from the wire and travel a significant distance causing serious injury. Always be sure your target is within range.

WARNING **Fire and Explosion Hazard**. CEW use can result in a fire or explosion when flammable gases, fumes, vapors, liquids, or materials are present. Use of a CEW in presence of fire or explosion hazard could result in death or serious injury. When possible, avoid using a CEW in known flammable hazard conditions.

A CEW can ignite explosive or flammable clothing or materials, liquids, fumes, gases, or vapors (e.g., gasoline, vapor or gas found in sewer lines or methamphetamine labs, butane-type lighters, flammable hair gels or some self-defense sprays). Do not knowingly use a CEW in the presence of any explosive or flammable substance unless the situation justifies the increased risk.

SAFETY INFORMATION: GENERAL PRECAUTIONS

WARNING **Unintentional CEW Deployment or Discharge Hazard.** Unintentional CEW activation or unexpected cartridge discharge could result in death or serious injury to the user, subject, or others.

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TASER
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TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement

To reduce the risk of unintentional deployment or discharge:

1. **Avoid static electricity.** Keep cartridge away from sources of static electricity. Static electricity can cause a CEW or X26, X26P, or M26 cartridge to discharge unexpectedly, possibly resulting in serious injury.
2. **Keep body parts away from front of CEW or cartridge.** Always keep your hands and body parts away from the front of the CEW and cartridge. If the CEW discharges unexpectedly you could be injured.
3. **Avoid electronic equipment interference.** Electronic transmission equipment close to a CEW could interfere with the proper CEW operation and cause the CEW to deploy or discharge. Keep the CEW at least several inches away from other electronic equipment. Place the CEW safety switch in the down (SAFE) position whenever it is near electronic equipment, including transmitting radios and cell phones. Remember to place the CEW safety switch in the up (ARMED) position before use.
4. **Avoid dropping CEW or cartridge.** If a CEW or cartridge is dropped or damaged it may unintentionally deploy or discharge, become inoperable, or fail to function, making it unsafe for continued use. If a CEW or cartridge has been dropped or damaged refer to the procedure recommended in the current version of the TASER Training materials.

SAFETY INFORMATION: MAINTENANCE

[redacted] Failure to maintain a CEW as instructed may cause the CEW to malfunction or fail to function optimally, increasing the risk of death or serious injury. Follow recommended maintenance procedures.

To reduce these risks:

1. **Safely perform spark (function) test before each shift.** Testing helps verify that the CEW is functioning properly. See the current version of the TASER Training materials for further information on testing.
2. **Avoid using a damaged CEW or cartridge.** Do not use a cartridge with a missing blast door unless facing an immediate threat. CEW repair or modification by an unauthorized person may cause the CEW to fire or malfunction, will void the warranty, and may put the user or other person at risk of death or serious injury. Cartridges with blast doors that have been repaired should only be used for training and not for field use.
3. **Update CEW software.** Some CEWs have updateable software. Current CEW software may be obtained by contacting Axon's Customer Service Department or following instructions at www.evidence.com or www.axon.com.
4. **Use only Axon-approved components, batteries, accessories, and cartridges.** The CEW is a sophisticated electronic system. For proper function, use only Axon-approved components, batteries, accessories, and cartridges with your CEW. Use of anything other than Axon-approved components, batteries, accessories, and cartridges will void the warranty, may cause malfunction, and may put the user or other person at risk of death or serious injury.
5. **Avoid exposure to wet conditions.** If the CEW is drenched or immersed in water or other liquid, **DO NOT** use or attempt to use the CEW until completing the procedure recommended by the manufacturer.
6. **Keep Smart Cartridge contacts clean.** If the contacts on the Smart Cartridge or inside the Smart Cartridge bay of the X2 or X3 are not kept clean the CEW may fail to deploy the Smart Cartridge.
7. **Know CEW and cartridge expected useful life.** Under normal storage, handling, and operating conditions, a CEW and cartridges have a 5-year expected useful life. Use or attempted use of a CEW or cartridge after its expected useful life may result in malfunctions and lack of effectiveness. Failure to properly care for and maintain a CEW or cartridge may substantially reduce or eliminate the expected useful life of the product.

SAFETY INFORMATION: DISASSEMBLY AND DISPOSAL

[redacted] Do not disassemble. Refer to your agency's Guidance for proper handling and disposal.

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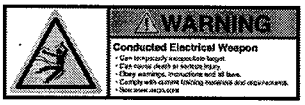
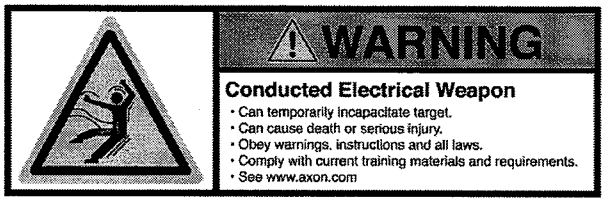
TASER CEW Warnings, Instructions, and Information: Citizen



IMPORTANT SAFETY AND HEALTH INFORMATION



This document presents important safety warnings, instructions, and information intended to minimize hazards associated with the use of Axon Enterprise, Inc. (Axon) TASER Conducted Electrical Weapons (CEWs). These instructions and warnings are for your protection as well as the safety of others. **Read the entire document before using a CEW.**

The TASER CEW is to be used only for lawful self-defense or in the defense of others. A TASER CEW is not a substitute for caution, common sense, or other preventive self-protection actions such as ensuring doors are locked, parking in well-lighted areas, avoiding suspicious individuals, or calling 911.

When used as directed in probe-deployment mode, CEWs are designed to temporarily incapacitate a person from a safer distance than some other force options, while reducing the likelihood of death or serious injury. However, any use of force, including the use of a CEW, involves risks that a person may get hurt or die due to the effects of the CEW, physical incapacitation, physical exertion, unforeseen circumstances, or individual susceptibilities. Following the instructions and warnings in this document will reduce the likelihood that CEW use will cause death or serious injury.

These warnings and instructions are effective **May 19, 2017**, and supersede all prior revisions. The most current warnings are also available online at www.axon.com.

1. **Read and obey.** Significant differences exist between different TASER CEW models. Do not use or attempt to use any CEW model unless you have read, understood, and are following all current instructions, warnings, and relevant TASER training materials before using TASER CEWs. Failure to do so could increase the risk of death or serious injury to the user or others.
2. **Obey applicable laws.** Use of CEWs must be legally justified and comply with applicable federal, state, and local laws and regulations.

Always follow all current instructions, warnings, and TASER training materials to minimize CEW risks.

This document uses a signal word panel to mark specific warnings:

⚠WARNING This signal word panel indicates **a potentially hazardous situation which if not avoided could result in death or serious injury.**

Warnings may be followed by instructions and information to help avoid the hazard and improve CEW safety.

SAFETY INFORMATION: CEW RISKS AND RISK AVOIDANCE

⚠WARNING **Cumulative Effects.** CEW exposure causes certain effects, including physiologic and metabolic changes, stress, and pain. In some individuals, the risk of death or serious injury may increase with cumulative CEW exposure. Repeated, prolonged, or continuous CEW 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. Minimize repeated, continuous, or simultaneous exposures.

Physiologic and Metabolic Effects. CEW use causes physiologic and/or metabolic effects that may increase the risk of death or serious injury. These effects include changes in blood chemistry, blood pressure, respiration, heart rate and rhythm, and adrenaline and stress hormones, among others. In human studies of electrical discharge from a single CEW of up to 15 seconds, the effects on acid/base balance, creatine kinase, electrolytes, stress hormones, and vital signs were comparable to or less than changes expected from

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physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques.

Some individuals may be particularly susceptible to the effects of CEW use. These susceptible individuals include the elderly, those with heart conditions, asthma or other pulmonary conditions, and people suffering from excited delirium, profound agitation, severe exhaustion, drug intoxication or chronic drug abuse, and/or over-exertion from physical struggle. In a physiologically or metabolically compromised person, any physiologic or metabolic change may cause or contribute to sudden death.

Stress and Pain. CEW use, anticipation of use, or response to use can cause startle, panic, fear, anger, rage, temporary discomfort, pain, or stress which may be injurious or fatal to some people.

To reduce the risk from CEW exposure:

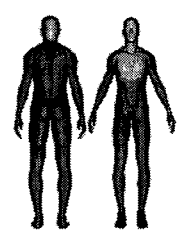
1. **Minimize the number and duration of CEW exposures.** Most human CEW lab testing has not exceeded 15 seconds of CEW application, and none has exceeded 45 seconds. Use the shortest duration of CEW exposure reasonable for self-defense. If a CEW deployment is ineffective in incapacitating an attacker or achieving compliance consider escaping from the situation or consider alternative force options.
2. **Avoid simultaneous CEW exposures.** Do not use multiple CEWs or multiple completed circuits at the same time without justification. Multiple CEWs or multiple completed circuits at the same time could have cumulative effects and result in increased risks.
3. **Avoid touching probes/wires during CEW discharge.** Touching a person during CEW exposure may put the CEW user and those assisting at risk of accidental or unintended shock. Avoid touching the probes and wires and the areas between the probes during the electrical discharge.

⚠WARNING **Cardiac Capture**. CEW exposure in the chest area near the heart has a low probability of inducing extra heart beats (cardiac capture). In rare circumstances, cardiac capture could lead to cardiac arrest. When possible, avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death.

Cardiac capture may be more likely in children and thin adults because the heart is usually closer to the CEW-delivered discharge (the dart-to-heart distance). Serious complications could also arise in those with impaired heart function or in those with an implanted cardiac pacemaker or defibrillator.

To reduce the risk of injury:

1. **Use preferred target areas.** The preferred target areas (blue) are below the neck area for back shots and the lower center mass (below chest) for front shots. The preferred target areas increase dart-to-heart distance and reduce cardiac risks. Back shots are preferable to front shots when practicable.
2. **Avoid sensitive areas.** When practicable, avoid intentionally targeting the CEW on sensitive areas of the body such as the face, eyes, head, throat, chest area (area of the heart), breast, groin, genitals, or known pre-existing injury areas.



⚠WARNING **Muscle Contraction or Strain-Related Injury.** CEWs in probe-deployment mode can cause muscle contractions that may result in injury, including bone fractures.

⚠WARNING **Higher Risk Populations.** CEW use on a pregnant, infirm, elderly, or low body-mass index person or on a small child could increase the risk of death or serious injury. As with any force option, CEW use has not been scientifically tested on these populations. Use a CEW on such persons **only** if the situation justifies an increased risk.

CEWs in probe-deployment mode can cause muscle contractions resulting in injuries similar to those from physical exertion, athletics, or sports, including hernia rupture, dislocation, tear, or other injury to soft tissue,

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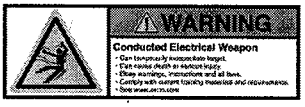

organ, muscle, tendon, ligament, cartilage, disc, nerve, bone, or joint; or injury or damage associated with or to orthopedic or other hardware. Fractures to bone, including compression fracture to vertebrae, may occur.

These injuries may be more serious and more likely to occur in people with pre-existing injuries, orthopedic hardware, conditions or special susceptibilities, including pregnancy; low bone density; spinal injury; or previous muscle, disc, ligament, joint, bone, or tendon damage or surgery. Such injuries may also occur in drive-stun applications or when a person reacts to the CEW deployment by making a rapid or unexpected movement.

WARNING **Secondary Injury.** The loss of control resulting from a CEW exposure may result in injuries due to a fall or other uncontrolled movement. When possible, avoid using a CEW when secondary injuries are likely.

Loss of control associated with CEW use can have several causes:

- **Seizure.** Repetitive stimuli (e.g., flashing light or electrical stimuli) can induce seizure in some people, which may result in death or serious injury. This risk may be increased in a person with epilepsy, a seizure history, or if electrical stimuli pass through the head. Emotional stress and physical exertion, both likely in incidents involving CEW and other uses of force, are reported as seizure-precipitating factors.
- **Fainting.** A person may experience an exaggerated response to a CEW exposure, or threatened exposure, which may result in fainting or falling.
- **Muscle contraction, incapacitation, or startle response.** CEW use may cause loss of control from muscle contraction, incapacitation, or startle response.

To reduce these risks, consider the person's location before using a CEW. When practicable, avoid using a CEW on a person in the following circumstances unless the situation justifies a higher risk.

When practicable, avoid using a CEW on a person who:

- is on an elevated or unstable surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, or stair);
- could fall and suffer impact injury to the head or other area;
- could fall on a sharp object or surface (e.g., holding a knife, falling on glass);
- is less able to catch or protect self in a fall (e.g., restrained, handcuffed, incapacitated, or immobilized);
- has impaired reflexes (e.g., from alcohol, drugs or certain medications);
- is running, in motion, or moving under momentum;
- is operating or riding any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, or train), conveyance (e.g., escalator, moving walkway, elevator, skateboard, rollerblades), or machinery; or
- is located in water, mud, or marsh environment if the ability to move is restricted.

SAFETY INFORMATION: INJURY OR INFECTION

A CEW may cause injury as a result of the probe or electrical discharge. The nature and severity of these effects depends on numerous factors including the area of exposure, method of application, individual susceptibility, and other circumstances surrounding CEW use, exposure, and after care. Medical care may be required.

WARNING **Eye Injury Hazard.** A TASER probe, electrode, or electrical discharge that contacts or comes close to an eye can result in serious injury, including permanent vision loss. DO NOT intentionally aim a CEW, including the LASER, at the eye of a person or animal without justification.

LASER Light Hazard. CEWs use a LASER targeting aid. LASERs can cause serious eye injury, including permanent vision loss. **NEVER** aim a LASER at an aircraft or the operator of an aircraft or moving vehicle.

WARNING **Probe or Electrode Injury, Puncture, Scarring, or Infection Hazard.** CEW use may cause a permanent mark, burn, scar, puncture, or other skin or tissue damage. Infection could result in death or

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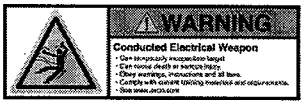

serious injury. Scarring risk may be increased when using a CEW in drive-stun mode. Increased skin irritation, abrasion, mark, burning, or scarring may occur with a CEW with multiple cartridge bays when used in drive-stun or three-point deployment modes.

WARNING **Penetration Injury.** The TASER probe has a small dart point which may cause a penetration injury to a blood vessel or internal organ, including lung, bone, or nerve. The probe or dart point (which may detach or break) can puncture or become embedded into a bone, organ, or tissue, which may require immediate medical care, surgical removal, or may result in scarring, infection, or other serious injury.

To reduce the risk of serious or permanent injury:

1. **Medical care may be needed.** Injury due to penetration of a probe or dart point into a blood vessel, organ, nerve, or bone may require medical care. A probe, dart point, or barb embedded in a sensitive area such as the eye, genitals, breast, neck, throat, or vascular structure may cause serious injury and require medical care. CEW use may cause skin irritation, puncture wound, abrasion, mark, rash, burn, or other scar or infection, which may require medical care and may be permanent. As with any injury of this type, infection or tetanus and resulting complications may occur.
2. **Probe Removal.** Probe removal may cause injury. Leaving a probe in the body may result in pain or injury. In the case of embedment, organ or bone penetration, or probe, dart point, or barb detachment, immediate medical care and possible surgical removal may be required.
3. **Biohazards.** Use appropriate biohazard protocols and protective equipment (e.g., gloves, masks, and washing of hands and exposed areas as necessary).

SAFETY INFORMATION: CEW DEPLOYMENT AND USE

WARNING CEWs and cartridges are weapons and as with any weapon follow safe weapon-handling practices and store your CEW securely. Follow practices herein. Failure to follow these warnings may result in death or serious injury to the user or others.

WARNING **Confusing Handgun with CEW.** Confusing a handgun with a CEW could result in death or serious injury. Learn the differences in the physical feel and holstering characteristics between your CEW and handguns to help avoid confusion.

WARNING **Trigger Hold-Back Continuous Discharge.** If the trigger is held back, most CEWs will continue to discharge until the trigger is released or the power source is expended. Know the pre-programmed cycle for your model CEW and how it works.

1. **Use properly.** Use a CEW only for its intended purpose, in legally justifiable situations for lawful self-defense or in the defense of others. Do not use for torture. Misuse can result in criminal prosecution or civil litigation.
2. **Store in a secure location.** Store CEWs, cartridges, and accessories in secure locations inaccessible to children and other unauthorized persons to prevent inappropriate access or use. CEWs and cartridges are weapons and are not toys.
3. **Use the safety switch.** Place the CEW safety switch in the SAFE position when the CEW is not in use. Remember to place the CEW safety switch in the ARMED position when you intend to use the CEW.
4. **Assume CEW is loaded.** Always assume that a CEW is loaded and capable of discharging. To help avoid unexpected discharge, ensure that no live cartridge is in the CEW when inserting a battery pack; TASER CAM or TASER CAM HD recorder; or while performing spark tests (except when function testing multi-shot CEWs), maintenance, data downloading, or battery charging.
5. **Be aware of CEW trigger.** Keep your finger off the trigger until it is legally justifiable to use the CEW and you are ready to deploy.

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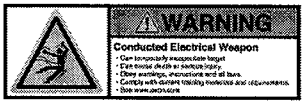
TASER CEW Warnings, Instructions, and Information: Citizen



6. **Know how the CEW works.** Significant differences exist between different TASER CEW models. Before using any CEW, including a multi-shot CEW, ensure you understand the functioning and effects of that model.
7. **Be aware of multi-shot CEW's deployment mode.** Be aware of which deployment mode (manual or semi-automatic) is set on the multi-shot CEW before use.
8. **Use simulation (training) cartridges ONLY for training or practice. DO NOT** use a CEW loaded with a simulation training cartridge for self-defense. Simulation cartridges are intended for practice only and will have no incapacitating effect on an attacker. Simulation cartridges use non-conductive wires and will not transmit electrical pulses to the probes.
9. **Do not use Bolt, C2, or Pulse simulation cartridges with a simulation suit**. Bolt, C2, and Pulse simulation cartridges have extended probes that may penetrate a TASER simulation suit and cause injury to the person wearing the suit.

SAFETY INFORMATION: CEW EFFECTIVENESS

A CEW, like any weapon or force option, does not always function as intended and is not effective on every person. As with any use of force, if a particular option is not effective, consider using other force options or escaping from the situation. **Always have a back-up plan.**

WARNING **Subject Not Incapacitated.** An ineffective CEW application could increase the risk of death or serious injury to the user or others. If a CEW does not operate as intended or if an attacker is not incapacitated, redeploy the CEW, use other force options, or escape the situation.

A CEW's effects may be limited by many factors, including absence of delivered electrical charge due to misses, clothing disconnect, intermittent connection, or wire breakage; probe locations or spread; attacker's muscle mass; or movement. Some of the factors that may influence the effectiveness of CEW use in effecting or achieving control of an attacker include:

- **Attacker may not be fully incapacitated.** Even though an attacker may be affected by a CEW in one part of his body, the attacker may maintain full muscle control of other portions of his body. Be prepared in case the attacker is not fully incapacitated.
- **Attacker may recover immediately.** An attacker receiving a CEW discharge may immediately regain physical or cognitive abilities upon cessation of the delivered CEW discharge. Be prepared in case the attacker immediately recovers.
- **Drive-stun mode is for pain compliance only.** The use of a handheld CEW in drive-stun mode is painful, but generally does not cause incapacitation. Drive-stun use may not be effective on emotionally disturbed persons or others who may not respond to pain due to a mind-body disconnect. Avoid using repeated drive-stuns on such individuals if compliance is not achieved.
- **Probes may deviate.** CEWs are not precision-aimed weapons. Probe discharge, flight trajectory, and impact location can be affected by numerous factors, including cartridge or probe accuracy; failure of cartridge to properly deploy; strong air movements; user and attacker movements; or probe striking subject, clothing, or object with insufficient force or trajectory to penetrate or adhere to the attacker. Deviations can result in limited or lack of effectiveness due to misses, failure to complete or maintain the electrical circuit, a small probe spread, or failure to deliver a sufficient charge to the attacker.
- **CEW or cartridge may fail to fire or operate.** No weapon system, force option, or CEW is always operational or effective. If a CEW, cartridge, or accessory is inoperable or fails to function, consider reloading and redeploying, using other force options, or escaping the situation.

SAFETY INFORMATION: OTHER HAZARDS

WARNING **Probe Recoil or Ricochet**. If your practice target or attacker is farther away than the length of the probe wire, or if one or more probes miss, the probe can recoil and bounce back to strike the user or a

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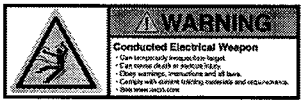

bystander, causing injury. Probe recoil is more likely with simulation cartridges because of the nylon probe wire used.

Always be sure your practice target or attacker is within range. Wear protective eyewear when deploying any CEW in training or for practice. Be sure practice targets have a firm backing that will allow the probes to stick and not bounce off and strike an unintended person, animal, or object, or continue through the backing and strike objects behind the target.

WARNING **Untethered Discharged Probe.** A discharged probe that does not impact a practice target or attacker may become untethered from the wire and travel a significant distance causing serious injury. Always be sure your practice target or attacker is within range.

WARNING **Fire and Explosion Hazard.** CEW use can result in a fire or explosion when flammable gases, fumes, vapors, liquids, or materials are present. Use of a CEW in presence of fire or explosion hazard could result in death or serious injury. When possible, avoid using a CEW in known flammable hazard conditions.

A CEW can ignite explosive or flammable clothing or materials, liquids, fumes, gases, or vapors (e.g., gasoline, vapor or gas found in sewer lines or methamphetamine labs, butane-type lighters, flammable hair gels or some self-defense sprays). Do not knowingly use a CEW in the presence of any explosive or flammable substance unless the situation justifies the increased risk.

SAFETY INFORMATION: GENERAL PRECAUTIONS

WARNING **Unintentional CEW Deployment or Discharge Hazard.** Unintentional CEW activation or unexpected cartridge discharge could result in death or serious injury to the user or others.

To reduce the risk of unintentional deployment or discharge:

1. **Avoid static electricity.** Keep cartridge away from sources of static electricity. Static electricity can cause a CEW or standard cartridge to discharge unexpectedly, possibly resulting in serious injury.
2. **Keep body parts away from front of CEW or cartridge.** Always keep your hands and body parts away from the front of the CEW and cartridge. If the CEW discharges unexpectedly you could be injured.
3. **Avoid electronic equipment interference.** Electronic transmission equipment close to a CEW could interfere with the proper CEW operation and cause the CEW to deploy or discharge. Keep the CEW at least several inches away from other electronic equipment. Place the CEW safety switch in the SAFE position whenever it is near electronic equipment, including transmitting radios and cell phones. Remember to place the CEW safety switch in the ARMED position before use.
4. **Avoid dropping CEW or cartridge.** If a CEW or cartridge is dropped or damaged it may unintentionally deploy or discharge, become inoperable, or fail to function, making it unsafe for continued use. If a CEW or cartridge has been dropped or damaged refer to the manufacturer's instructions.

SAFETY INFORMATION: MAINTENANCE

WARNING Failure to maintain a CEW as instructed may cause the CEW to malfunction or fail to function optimally, increasing the risk of death or serious injury. Follow recommended maintenance procedures.

To reduce these risks:

1. **Safely perform spark (function) test.** Testing helps verify that the CEW is functioning properly. See manufacturer's instructions for further information on testing.
2. **Avoid using a damaged CEW or cartridge.** Do not use a cartridge with a missing blast door unless facing an immediate threat. CEW repair or modification by an unauthorized person may cause the CEW to fire or malfunction, will void the warranty, and may put the user or other person at risk of death or serious injury.

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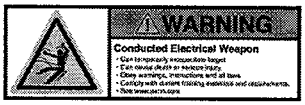
TASER
Protect Life

TASER CEW Warnings, Instructions, and Information: Citizen



3. **Update CEW software.** Some CEWs have updateable software. Current CEW software may be obtained by contacting Axon's Customer Service Department.
4. **Use only Axon-approved components, batteries, accessories, and cartridges.** The CEW is a sophisticated electronic system. For proper function, use only Axon-approved components, batteries, accessories, and cartridges with your CEW. Use of anything other than Axon-approved components, batteries, accessories, and cartridges will void the warranty, may cause malfunction, and may put the user or other person at risk of death or serious injury.
5. **Avoid exposure to wet conditions.** If the CEW is drenched or immersed in water or other liquid, **DO NOT** use or attempt to use the CEW until completing the procedure recommended by the manufacturer. Incidental exposure to moisture, such as brief exposure to moderate rain, should not unduly affect the operation of the CEW.
6. **Keep Smart Cartridge contacts clean.** If the contacts on the Smart Cartridge or inside the Smart Cartridge bay of the multi-shot CEW are not kept clean the CEW may fail to deploy the Smart Cartridge.
7. **Know CEW and cartridge expected useful life.** Under normal storage, handling, and operating conditions, a CEW and cartridges have a 5-year expected useful life. Use or attempted use of a CEW or cartridge after its expected useful life may result in malfunctions and lack of effectiveness. Failure to properly care for and maintain a CEW or cartridge may substantially reduce or eliminate the expected useful life of the product.

SAFETY INFORMATION: DISASSEMBLY AND DISPOSAL

WARNING Do not disassemble. Refer to local laws for proper handling and disposal.

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Formulations: Heat, Strength and the Law

Because human pepper sprays are not government-regulated, manufacturers can make unchecked, exaggerated claims implying their sprays are more effective than they are.

The truth is that SABRE is the only pepper spray manufacturer that controls and *guarantees* formula strength! Our exclusive HPLC (High Performance Liquid Chromatography) Guarantee (/hottest-pepper-spray)means **our pepper sprays never fail due to inconsistent heat levels. No other brand can make the same claim.**

So don't be fooled by misleading numbers. Know that the following claims could be deceiving:

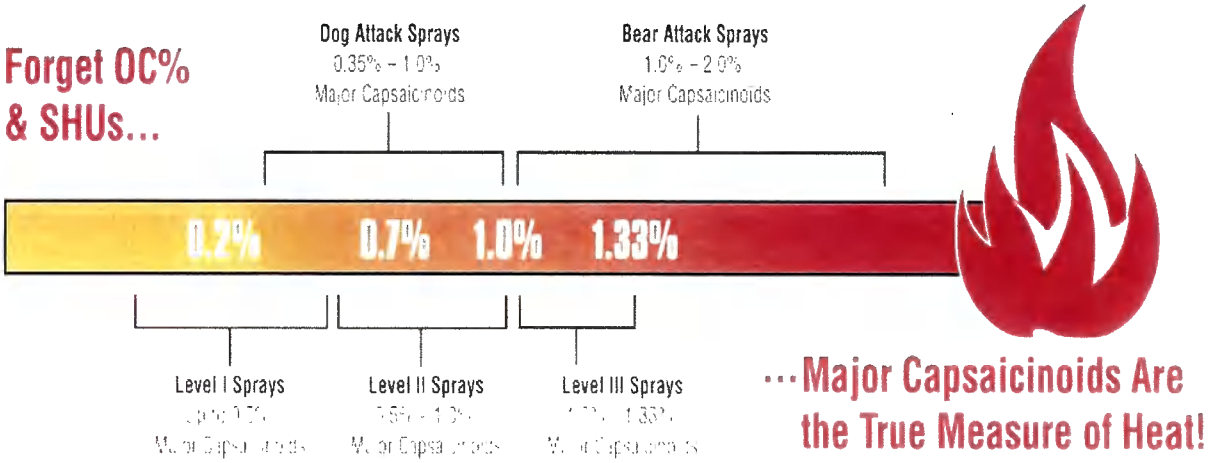
OC Percentage

Some brands hope you believe a higher OC percentage means a more effective spray. But this number only measure the amount of pepper within the spray, not the heat strength or effectiveness.

Scoville Heat Units (SHU)

Some brands advertise the SHU of the raw pepper, not of the pepper spray formulation. The SHU of the raw peppers is highly diluted in the pepper spray

formula, and **therefore not an accurate indicator of strength**.



Major capsaicinoids are the true heat measure and can only be guaranteed through High Performance Liquid Chromatography (HPLC) testing - and, again, we're the only brand that does. The only portion of pepper sprays that are government regulated (by the EPA & Health Canada) are animal pepper sprays. Dog sprays range from 0.25% to 1.0% major capsaicinoids and bear sprays range from 1.0% to 2.0% major capsaicinoids. WARNING: Do not purchase pepper spray without checking its content of major capsaicinoids.

While browsing our wide selection of HPLC guaranteed self-defense solutions, you'll see three different types of products: SABRE Red Pepper Spray, SABRE Red Pepper Gel and SABRE 3-IN-1 Pepper Spray. Please note that individual state laws prohibit shipment of certain products.

- SABRE Red Pepper Spray

  1.33% major capsaicinoids! Strongest available single ingredient pepper spray contains UV marking dye.

  Can't be shipped to: **AK**, **DC**, **HI**, **MA** & **NY**.

  Can't be sold in: **NY**.

- SABRE Red Pepper Gel

Essentially eliminates wind blow-back. Safe for indoor and outdoor use with no effect on bystanders.

Can't be shipped to: **AK**, **DC**, **HI**, **MA** & **NY**.

- SABRE 3-IN-1 Pepper Spray

Comprised of pepper spray, CS military tear gas and UV marking dye. Maximum stopping power unmatched by any single ingredient defense spray!

Can't be shipped to: **AK**, **FL**, **HI**, **MA**, **MI**, **NJ**, **NY**, **SC** & **WI**.

Can't be sold in: **HA**, **MI**, **NY** & **WI**.

Find out which pepper spray formulation (/which-formulation-should-i-use)is best for you!

Bad guys beware!

— HISTORY

PRACTICE, PRACTICE, PRACTICE

SABRE® Pepper Spray offers a superior shelf life, police strength formulas, an exclusive HPLC guarantee (/hplc), and more. Ready to maximize your safety with our industry-leading pepper spray trusted by law enforcement worldwide? Get some practice first.

(https://www.youtube.com /watch?v=tOiY_m--JHY)

(https://www.youtube.com /watch?v=tOiY_m--JHY)

FOR YOUR PROTECTION

EXCLUSIVE HPLC GUARANTEE

GUARANTEED HEAT

MAXIMUM STRENGTH

MAXIMUM STRENGTH

Your pepper spray (https://www.sabrered.com/on-the-go) will feature maximum heat, every single time—that's SABRE's exclusive guarantee. Offering state-of-the-art protection in the times you need it most, SABRE is the only manufactuerer with an on-site facility eliminating the 30% heat failure rate experienced with other brands (https://www.sabrered.com/hottest-pepper-spray).

Peace of mind comes from knowing that your pepper spray is double the average strength (https://www.sabrered.com/formulations-heat-strength-and-law). To put it into perspective, that's 67x hotter than hot sauce, and just as potent as our industry-leading police sprays.

POLICE-STRENGTH PROTECTION

Want confidence in your product? Choose the #1 brand trusted by police and consumers worldwide (https://www.sabrered.com/sites/default/files/SABRE%20Agency%20User%20List.pdf). Our global brand supplies agencies on six continents in more than 40 countries with the same pepper spray you'll soon have at your fingertips.

FREE TRAINING

Learn how to better use your new pepper spray with the free instructional video that comes with each product. Just find the URL on the back of your product packaging.

⚠ WARNING:

Don't be fooled by our competitors' misleading numbers! Get the facts on heat, strength and the law! (/formulations-heat-

strength-and-law)

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- Athletic ›
- Home Defense ›
- Tactical ›
- Inert Pepper Sprays ›
- Students & Parents ›
- Seniors ›
- NBCF Products ›

SHOP MORE PROTECTION

- Stun Guns ›
- Personal Alarms ›
- Bear Sprays ›
- Dog Sprays ›
- Wireless Home Security ›
- Standalone Home Alarms ›

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

MATTHEW AVITABILE, *Plaintiff,* -against- LT. COL. GEORGE BEACH, in his official capacity as Superintendent of the New York State Police, et al., *Defendants.*	1:16-CV-01447 (DNH)(CFH)

AFFIDAVIT OF TROOPER PHILIP SHAPPY

PHILIP SHAPPY, being duly sworn, deposes and states the following:

1. I am a sworn member of the New York State Police ("State Police") with the current rank of Trooper. I have been a member of the State Police since January 2002.

2. Since 2012, I have been assigned in a full time capacity to the State Police Academy in Albany, New York, where I am a senior defensive tactics instructor involved in the daily training operations that take place at the Academy. My duties include training new State Police recruits and current State Police members in use of force and defensive tactics. Attached hereto as Exhibit A is a copy of my resume.

3. I am presently a certified Taser Master Instructor, having attended and successfully completed Taser International Inc./Axon Enterprise Inc.'s Master Instructor School Program on multiple occasions. I have maintained this certification since 2012. In addition, I am the head Taser training officer for the State Police. In my capacity as a Taser Master Instructor and head training officer, I develop and maintain the classroom and field components of the State Police's Taser training program. In addition, I helped create and over the years modify the State Police's

policies governing the appropriate use of Tasers in law enforcement activities. I also conduct and oversee all aspects of the Taser training program for new recruits attending the State Police Academy, as well as the recertification programs for current State Police members designated as Taser Users and Instructors. I conduct regular research (legal and otherwise) on the use of Taser's in order to keep abreast of any developments in the field. Attached hereto as Exhibit B is a more thorough description of my job responsibilities as the State Police's Taser Master Instructor.

4. I have been directly involved in the State Police's Taser program since its inception in 2010, when the State Police implemented an Electronic Control Device Pilot Program that tested the operation and effectiveness of Tasers. My initial Taser training was conducted by Taser International, Inc. instructors. After this initial Taser instruction, I received additional use of force training as it relates to Tasers, which was conducted by Strategos International.

5. Based on my training and professional experience as a member of the State Police, I am familiar with the safe and proper use of Tasers in both probe and drive-stun modes. As discussed in greater detail below, deployment of a Taser requires tremendous situational awareness and an understanding of the extensive safety considerations and operational limitations inherent in using a Taser.

Taser "Probe Mode"

6. In probe mode, a Taser utilizes a replaceable cartridge which, when the Taser is activated and the trigger depressed, deploys two metal projectile barbs that are connected to the cartridge by conductive wires that automatically transmit an electrical current to the intended target for a preset amount of time depending on the Taser model used (civilian v. law enforcement). Depending on the model utilized, the initial preset cycle will be either 5 or 30 seconds, with the

ability to discharge limitless additional preset cycles by continuing to press the trigger until the unit's battery expires.

7. Use of a Taser in "probe mode" is intended to achieve temporary neuromuscular incapacitation (NMI) in the subject target. This requires that both metal probes must either make direct contact with the subject's skin or be lodged into clothing which must stay within approximately 1 inch of the subject's skin, while also attaining sufficient probe spread, which will then create an electrical circuit in the target. Several factors, however, impact the Taser's utility and the occurrence or extent of NMI in the subject.

8. Both probes must make direct contact with the intended target in order for the electrical current to flow between the probes to the target. If one or both probes miss, the Taser is unable to create an electrical circuit for purposes of achieving NMI. A Taser user's ability to hit the intended target with both probes is greatly impacted by his/her level of skill, comfort and experience in using a Taser, as well as the conditions in which the Taser is being deployed.

9. Proper aim and placement of a Taser's probes is necessary for appropriate operation and, perhaps more importantly, crucial for safety reasons. When aiming a Taser at a subject, the user should avoid sensitive areas of the body, including the head/face, throat/neck, chest/breast area, and pelvic/groin region. The preferred target areas for Taser deployment are the front lower-center mass (below the chest), legs and back. However, the mobility of an intended target in a high stress situation will greatly impact a user's ability to accurately and effectively deploy a Taser to these preferred target areas.

10. To the extent both probes hit the intended target, direct contact with the subject's muscle mass and sufficient probe spread will impact the effectiveness and ability to achieve NMI.

Probe contact may be effected by the intended target's loose or bulky clothing, which can cause the probe to become lodged in the subject's clothing. Where the probe fails to make sufficient contact with the subject's body/skin, the electrical circuit needed for NMI cannot be completed, thereby negating the effectiveness of the Taser's utility in probe mode. Further, contact with certain areas of the body that contain low nerve or muscle mass will greatly diminish the level of NMI. Finally, a lack of sufficient spread between the two probes imbedded in the subject target will greatly reduce or eliminate the chance of achieving NMI in that subject. Where insufficient probe spread occurs, the Taser's utility is limited to a pain compliance mechanism only. The optimal range for adequate probe spread is seven to fifteen feet.

11. While adequate probe spread increases with the distance between the Taser user and intended target, the ability to aim and achieve proper probe placement significantly decreases. Discharging a Taser requires tremendous accuracy, which can be extremely challenging for even the most qualified and well-trained Taser user in a high stress and precarious situation. Should a Taser user miss their intended target, the time needed to reload a new Taser cartridge varies depending on the skill, comfort level and experience of the user. While a seasoned Taser user in a pristine environment can reload a new cartridge in a matter of a few seconds, in my experience a trained Taser user generally requires 15-25 seconds to reload a new cartridge (assuming one is available or easily accessible) when placed in a stressful and dynamic situation.

12. Situational awareness when deploying a Taser is crucial, as misuse of a Taser could result in death or serious injury to the subject target. A Taser's impact and effectiveness varies from subject to subject, with some more susceptible to the effects of a Taser exposure. For example, certain population groups (e.g., small children, elderly, individuals with heart problems,

pregnant woman, etc.) have a higher risk of serious injury or death from a Taser exposure.[1] On the other hand, certain individuals under the influence of drugs or with other physiological disorders/illnesses have shown to be less likely to cease aggressive activities following a Taser exposure. Thus, Taser users must constantly assess the situation and effectiveness of the Taser. It is imperative that Taser users limit the duration and/or frequency of exposure to a subject to avoid the risk of injury or death.

13. A Taser user must also be fully cognizant of their and the subject target's physical surroundings when deploying a Taser. Taser users should avoid deploying a Taser where the intended target is in an elevated or vulnerable position where a fall due to NMI may cause substantial injury or death to that person. Furthermore, Taser users should avoid deploying a Taser in the vicinity of flammable or combustible materials, as there is a potential to ignite the substance via the electrical spark produced by the Taser. The misuse of a Taser in these types of situations could result in serious injury or death.

Taser "Drive-Stun Mode"

14. In drive-stun mode, a Taser operates similar to an ordinary stun gun, requiring close, hands-on direct contact with the subject's body. Each Taser unit includes two metal contacts (i.e., electrodes) that are close together and, when the Taser is activated and trigger depressed, an electrical arc is discharged between the electrodes.

15. Drive-stun will not incapacitate or result in NMI. Rather, it is intended to cause only localized pain to achieve compliance by the subject. In order to be effective in drive-stun

[1] Attached as Exhibit C is a copy of the State Police's policy concerning the use of Conducted Electrical Weapons, more commonly known as CEWs. Section 31D3 provides a more extensive list of those within this sensitive population group.

mode, the Taser must be in direct contact with the subject. If the contact is broken, the Taser will not achieve the desired effect. Deployment of a Taser drive-stun tends to dramatically increase the subject's level of agitation, which may only further exacerbate a dangerous situation if the user is unable to gain control of the subject and deescalate the conflict.

16. In general, exposure to a Taser drive-stun will result in highly visible burn marks on the subject's skin, which could vary in number depending on the length and scope of exposure. Attached hereto as Exhibit D are several photos of drive-stun marks.

17. In deploying a Taser drive-stun, the user should again avoid the sensitive areas noted above, refrain from using on certain populations (see above) and limit the subject's exposure.

Alternative Self-Defense Mechanism

18. Whether used as a law enforcement tool or self-defense mechanism, a Taser is not appropriate in all situations. Based on my training and experience, it is my professional opinion that a Taser is best used as a law enforcement tool to deescalate a precarious situation for purposes of controlling and gaining compliance of actively resistant and violent subjects. A Taser is only an intermediate and temporary solution, which if used inappropriately could have grave and deadly consequences.

19. For civilian self-defense purposes, Oleoresin Capsicum (OC) spray is an easier to use and more effective alternative to a Taser. While use of a Taser requires robust training and an understanding of the inherent safety considerations and operational limitations, the dispersal of OC spray requires little, if any, training and experience.

20. OC spray has a wide area of impact when dispersed, thereby alleviating the need for precision accuracy that is required for deployment of a Taser. Generally, OC spray does not

require direct impact on a subject, nor is the user's accuracy severely impacted by the target's mobility. Anyone in the immediate vicinity of the dispersal area may be affected. OC spray canisters also typically provide users with the ability to dispense multiple short bursts, thus increasing the chance of incapacitating the subject target if initial efforts fail.

21. Further, OC spray has a longer lasting impact with a greater temporary incapacitation, with only minimal risk of injuries or death. OC spray significantly impacts a subject's senses and abilities to fight back or resist, with the effects generally lasting for up to 45 minutes after exposure, if not longer depending on the extent of the exposure and the susceptibility of the subject. On the other hand, a Taser's utility ceases once the Taser runs through its full cycle and/or detaches from the subject's body.

Conclusion

22. Lastly, pursuant to Fed. R. Civ. Proc. 26(a)(2)(B), I hereby attest that I have not authored an article in a publication in the last ten (10) years, I have not testified as an expert witness in the past four (4) years, and I am not being compensated for my testimony in this case.

Trooper Philip D. Shappy

Sworn to before me this
12th day of June 2018

Notary Public

SHANNON MARIE SPRATT
NOTARY PUBLIC-STATE OF NEW YORK
No. 02SP6270972
Qualified in Albany County
My Commission Expires October 29, 2020

Exhibit A

PHILIP D. SHAPPY

TROOPER- NEW YORK STATE POLICE

PROFESSIONAL EXPERIENCE

October 2010 – Present, Albany, NY
New York State Police, Master Taser Instructor

- Lead training for officers being certified in the use of the Taser
- Develop and revise the Taser courses for Taser users, supervisors, and the basic familiarization course for all officers of the New York State Police
- Maintain all records pertaining to training of instructors and users
- Maintain all records pertaining to usages of the Taser by field personnel
- Designated as the head Taser training officer for the New York State Police
- Assist with the repair, return and replacement of all Taser products, including repairing broken blast doors of all damaged Taser cartridges
- Give Taser presentations to civilian groups requesting assistance from the New York State Police
- Responsible for the ordering of all Taser and Taser related products which are used for the training of police recruits at the New York State Police Academy
- Assist in creation and maintenance of the New York State Police Conducted Electrical Weapon Policy, to ensure policy is within current scope of law
- Point of contact for the New York State Police and Attorney General's Office regarding Taser inquiries

October 2010 – October 2012, Princetown, NY
New York State Police, Taser Instructor

- One of twelve initial Taser Instructors for the New York State Police
- Conduct Taser Initial User certification training
- Conduct Annual Taser User certification training
- Point of contact for New York State Police Troop G regarding Taser issues

November 2007 – Present, Albany, NY
New York State Police, Senior Defensive Tactics Instructor

- Lead training for new recruits attending the New York State Police Academy
- Lead training for officers of all ranks currently in the field as continuance training
- Lead training for officers who are going through Defensive Tactics Instructor Candidate School
- Share responsibilities for training and certifying both new and current officers in the use of expandable batons, wooden batons
- Share responsibilities for training and certifying both new and current officers of the Mobile Force Unit (riot control)
- Share responsibilities for training both new and current officers in the use of force
- Share responsibilities for training new recruits in daily physical training while attending the New York State Police Academy
- Assist in training military soldiers who have requested New York State Police hand-to-hand combat training
- Assist with developing and revising Defensive Tactics Instructor School, Defensive Tactics Basic School, Use of Force, Mobile Field Unit, and annual officer training curriculums

January 2002 – 2012, Princetown, NY
New York State Police, Trooper

- Perform a broad range of patrol and dispatch duties
- Perform criminal and accident investigations without supervision until completion
- Deploy as part of the Mobile Force Unit (riot control), acting as assistant squad leader and the arrest team take down member
- Deploy as the zone patrol rifleman to critical incidents anywhere in the state where needed
- Perform police duties while coordinating efforts with the Schenectady Police Force, and assisting Schenectady PD with operations in their high crime rate areas
- Perform duties as a Field Training Officer for recruits graduating from the New York State Police Academy
- Perform duties as an instructor for the Field Training Officer program
- Perform duties as a LIDAR operator for traffic enforcement
- Assigned to protection detail for the Presidential Visit (2010)

November 1998 – May 2007, New York Army National Guard, Schenectady, NY
Scout Sniper, Squad Leader

- Member of the small team Forward Reconnaissance Scout Unit
- Worked as a Battalion Scout Sniper
- Lead annual training for basic and advanced rifle qualifications
- Lead training for land navigation courses
- Participated in international training operations in Germany, St. Croix, Puerto Rico, and Iceland
- Activated and Deployed in response to the 9/11 incident in New York City
- Deployed to Samarra, Iraq during Operation Iraqi Freedom II for combat operations in an austere environment

SPECIALIZED TRAINING

LAW ENFORCEMENT

- Force Science Certification Course – 2018
- DCJS Defensive Tactics Instructor – 2017
- DCJS Reality Based Instructor – 2017
- DCJS Use of Force Instructor - 2017
- 3 Range Combatives – 2017
- Force Science 2 Day Basics Course – 2016
- DCJS Instructor Evaluator - 2013
- Taser Master Instructor – 2012
- Mobile Field Unit – 2010
- Taser Instructor – 2010
- Strategos International Use of Force – 2010
- NYSP Patrol Rifle Operator Course – 2009
- DCJS Instructor Development Course – 2007
- NYSP Defensive Tactics Instructor - 2007
- Monadnock Baton Instructor – 2007
- Field Training Officer School – 2006
- ARIDE: Advanced Roadside Impairment Driving Enforcement – 2006

PERSONAL INFORMATION

Current Law Enforcement Rank: Trooper
Master Taser Instructor ID: 10102651727141287134 6C
Military Rank at time of Honorable Discharge: Sergeant
Station Address: New York State Police Academy
1220 Washington Ave. Bldg 24
Albany, NY 12226
Office Phone: 518-457-4674
Front Desk: 518-457-7254
Cell Phone: 518-470-2032
E-Mail Address: Philip.Shappy@troopers.ny.gov

Exhibit B

Job Responsibilities for Taser Master Instructor

In-service Responsibilities

- Prepare, teach, and supervise all Taser Initial Instructor Courses, this is a thirty-two (32) hour course. **This course can be only conducted by a certified Taser Master Instructor.**

- Prepare, teach, and supervise Biennial certification of Taser Instructors, this is a thirty-two (32) hour course and would include all currently certified Taser Instructors. **This course can be only conducted by a certified Taser Master Instructor.**

- Responsible for entering all Taser Initial Instructor and Taser Instructor Re-certification training into SLMS. Must have administrative access to SLMS and have working knowledge on how to create and maintain classes in SLMS system. Must have working knowledge on how to enter students and complete their training in SLMS system.

- Prepare and conduct all Taser Supervisor Courses taught at Basic Leadership Courses. This includes instruction on procedures following a Taser usage in the field (completion of proper paperwork, evidence procedures, and Taser downloading instructions), administrative procedures regarding Taser equipment at the station, and instruction regarding quarterly downloads of Taser information.

- Responsible for downloading and accountability of Taser assigned to NYSP Academy front desk.

- Responsible for accountability and maintenance of all Tasers assigned to NYSP Academy for training purposes.

- Prepare, conduct, and supervise all Taser annual certification courses taught to all currently certified Members. This is a six (6) hour course that is conducted over two (2) month period in each Troop. Also responsible for preparing and conducting a train-the-trainer week prior to start of each annual certification.

- Maintain records for training and re-certification of all Taser training (Instructor, Users, remedial), to include Acad-1's, test material, answer keys, signed Instructor and User liability release forms, certifications forms, drills and scenarios sheets, voluntary exposure guidelines, lesson plans, etc.

- Maintain database regarding trained Members and expiration dates on training. Updating database to reflect personnel changes occurring from transfers, promotions, and separation from Division.

- Prepare and conduct all "remedial" training for Members designated by Division as needing same.

Basic School Responsibilities

- Prepare, teach, and/or supervise all Taser Initial User Courses held at NYSP Academy or in the field, this is a twelve (12) hour course.

- Responsible for entering all Taser Initial User training into SLMS. Must have working knowledge on how to create and maintain classes in SLMS system. Must have working knowledge on how to enter students and complete their training in SLMS system.

- Conduct and/or supervise all live Taser exposures of recruits during training at the NYSP Academy.

- Responsible for purchasing of necessary safety equipment for Taser training conducted at Academy.

- Responsible for the repair of damaged Taser cartridges received from the Troops. Maintain stock of same for future use in Taser training sessions.

- Maintain stock of all depleted batteries received from field. Same to be maintained for future Taser training.

- While Basic School is in session, assist Defensive Tactics section with creation of Defensive Tactics program, assist with instruction of curriculum to recruits and supervision of Defensive Tactics Instructors on orders to teach at the Academy.

- While Basic School is in session, assist Defensive Tactics section with recruit physical training.

Field Command Responsibilities

- Maintain and update supervisory access to Evidence.com download storage system.

- Monitor Evidence.com database to ensure compliance with Division downloading policy.

- Remove supervisor access to Evidence.com upon separation from Division or removal from supervisory rank.

- Respond to all field requests for assistance in troubleshooting Taser issues.

- Respond to all field requests for assistance with downloading issues, to include downloading software applications on Division computers and correcting any problems encountered. Must have working knowledge of NYS ITSM system and the ability to update and close out ITS help desk tickets.

- Prepare and track all Tasers disbursed out for normal field use.

- Track shipping and receiving of malfunctioning Tasers from field. Updating record systems with any equipment changes and/or serial number changes to equipment assigned to stations throughout the State.

- Prepare, disburse, and track all Tasers assigned out and used on Special Assignments around the state.

- Track expiration of all Tasers in field and coordinate replacement program of Tasers after five (5) years of field service.

- Responsible for the ordering of all Taser related products.

- Handle replenishment of Taser related supplies to all Troop Quartermasters.

- Assist with creating and maintaining of Taser purchasing contracts.

- Track and maintain records regarding all Taser usages in Division (AMS messages) and keep current Division Taser usage statistics.

- Review all Gen'l-90 Taser usage forms. Responsible for the end storage of all Gen'l-90 Taser usage forms on Division share drive.

- Prepare a report of all Taser usages to Field Command on a quarterly basis.

- Responsible for reviewing and being familiar with current court decisions regarding Taser usage.

- Responsible for maintaining Division Conducted Electrical Weapon Policy to ensure Policy is within the scope of current case law and necessary training standards.

- Responsible for preparing and presenting Taser presentations to civilian and other third parties upon direction from Division.

- Point of Contact for Division and any Taser expert witness responsibilities.

- Point of Contact for outside agencies with Taser information requests.

Exhibit C

Article 31D: Conducted Electrical Weapon (CEW)

31D1 Introduction

a. Members have the lawful authority to use force in their performance of their duties in accord with the mandates of Article 35 of the Penal Law.

Note: Conducted Electrical Weapon operators are individually responsible for it's deployment and usage and must be consistent with the Penal Law §35, however, if a superior officer orders that the Taser will not be deployed, the operator must comply with the order.

- The decision to deploy a CEW must be based on the totality of the circumstances, including Article 35 of Penal Law, Division policy, and balancing the risk of injury versus the risk of the threat.

Refer: Penal Law §35

b. Such force is only used as is reasonable and necessary to control a situation or effect an arrest, while at the same time protecting the Member's own well-being and the well-being of others.

31D2 Policy

a. Division-issued Conducted Electrical Weapons (CEWs) are provided as a tool in controlling actively resistant and/or violent subjects in the context of an arrest or detention situation to enhance the safety of our Members, the arrestee, and the general public.

- Passive Resistance - A refusal by an unarmed person to comply with an officer's verbal commands or physical control techniques that do not involve the use of physical force, control, or resistance of any kind by that person.

b. A Member authorized to use deadly physical force may, if the circumstance allow, use any lesser level of force, including Tasers.

- However, the issuance of a CEW is not intended to change the standards applicable to the use of deadly physical force.
- With this is mind, Members **SHALL NOT** consider a CEW an acceptable force option when they are confronted with a subject armed with a firearm or long gun.

c. CEWs shall only be used by UF Troopers or those otherwise authorized, who have received the required course of instruction and possess a current qualification.

- CEW operators must recertify annually.

d. Division-issued CEWs shall not be used for demonstration except during approved training sessions.

31D3 Safety Considerations

a. Sensitive Population Groups:

1. Any use of force on certain populations may increase risk of injury due to possible heightened risk factors.
2. Added caution should be used when deploying a CEW on the below-mentioned persons:
   - Smaller people or children.
   - Individuals with known heart disease.
   - Elderly.

- Subject who is obviously pregnant or whom the Member has reason to believe is pregnant.
- Those who are frail or infirm.
- Individuals with known neuromuscular illness (i.e., multiple sclerosis, muscular dystrophy).
- Individuals that require more than three applications to gain custody and control.
- A subject in water; due to risk of drowning.
- Potential for a secondary injury to the subject from a fall after the discharge of a CEW, especially from an elevated position.
- Individuals exhibiting signs of a "behavioral emergency."
  - Behavioral emergencies are not a recognized medical or psychiatric diagnosis, but is a term often used to describe a state in which someone presents themselves.
  - The manifestations of behavioral emergencies vary depending on the individual.
  - Many of the following characteristics may be observed in an individual in the condition often called a state of behavioral emergency:
    - Violent behavior.
    - Extreme agitation and restlessness.
    - Incoherent and rambling speech.
    - Hallucinations and delusions with paranoid features.
    - Lack of purposeful activity and/or destruction.
    - Elevated body temperature, profusely sweating.
    - Little or no clothing.
    - Lack of response to pain stimuli.
    - Combativeness and extra ordinary strength.
    - History of stimulant abuse, most commonly cocaine and/or methamphetamine.
  - If a CEW has been used on a subject displaying signs of a behavioral emergency, EMS should be immediately contacted whether or not the subject has calmed down.
    - A subject who suddenly calms down may be experiencing a serious medical condition that requires immediate attention.
    - If EMS has responded, when feasible, obtain rhythm strips, digital downloads, and the maintenance downloads from the heart monitor as evidence.
      - These heart monitor readings will show what rhythm the heart was experiencing, which may be useful in subsequent investigations.
    - If clothing has been cut off or removed, it should be secured as evidence.
      - The clothing can indicate placement or probe strikes, which may be useful in subsequent investigations.
    - When feasible, obtain depositions from EMS personnel after the incident.
      - This can provide information about the subject's mental and physical state that might not be apparent to a coroner at the time of an autopsy in the event of a death and use of CEW, which may be useful in subsequent investigations.

b. When possible, Members deploying a CEW should do so from a position of cover.
    - When possible, another armed Member or law enforcement officer should provide backup in the event that deadly physical force becomes necessary.

c. Hands shall be kept away from the front of the CEW at all times, unless it is in a safe condition and deactivated.

d. Members shall not intentionally aim the laser/CEW sights at the eyes of a subject as potential eye (retinal) damage may occur.

e. Probes and wires should not be touched during discharge of the CEW.
    - Any person who comes in contact with a probe or wires during activation will receive the full effect of the electrical current.
    - Members must work closely with K-9 handlers before deploying a CEW.
        - If a K-9 bites a probe or bites the suspect between the probes, the K-9 can receive a shock.
            - This can have a negative impact on the future duty use of the K-9.

f. In ordinary circumstances, no more than one CEW at a time should be discharged against a subject.
    - If the initial deployment is not having the desire effect or fails, a second CEW deployment may be appropriate.

g. Members should be aware that in certain situations the enhanced risk of injury due to a fall from an elevated position or even a standing position onto a hard surface such as asphalt or concrete may outweigh the need to immediately secure a subject.
    - Members should consider the gravity of the situation, the potential criminal charges involved, and the threat posed by the subject against this enhanced risk of injury before deploying a CEW.

h. Members **shall not** deploy CEWs:
    1. Against a subject who has committed a traffic infraction or violation level penal law offense, absent physical force or attempted physical force against the Member or another.
    2. Against an individual who is in control of a vehicle in motion, or a vehicle that could be immediately put into motion.
    3. Near flammable gases, liquids, fumes, or other highly combustible materials or in a flammable environment (i.e., around a known or suspected clandestine drug lab, etc).
        - Potential for ignitability may exist if a CEW is used on a subject who has been sprayed with an alcohol-based chemical/pepper spray.
            - If alcohol-based spray has been deployed on a subject prior to the CEW application, the Member should not deploy the CEW and instead use another appropriate force option.
                - Division-issued Saber Red OC Spray has been tested and has been certified by the manufacturer to be CEW compatible.
                - In the event other agencies are present at the scene, coordinate to ensure alcohol-based spray has not or will not be used on a subject who may receive a CEW application.

i. When using a CEW direct contact mode (drive stun), Members should attempt to avoid the following:
   1. Trachea.
   2. Back of neck.
   3. Cervical portion of spine (neck region).
   4. Pelvic region.
   5. Base of sternum (may cause a contraction of diaphragm and affect breathing).
   6. Head.
   7. Female breasts.

31D4 Proper Handling and Method of Carry

a. Currently, the Division-issued CEWs are the Taser model X26 and the Taser model X26P.

b. Members shall carry and use only Division-issued Tasers and Taser cartridges.

c. If a CEW is not individually issued, it will be stored in the station armory in an unloaded condition, to include the spare cartridge, when not in use.
   - The CEW will be signed in/out utilizing the Taser Accountability Record (CB-13A).
     - This will assist in completing the NYSP Use of Taser X26/X26P (GENL-90).
     - The CB-13A will be maintained for one year.

d. Members must carry a CEW during their shift if one is available.
   - Members carrying a CEW during their shift shall ensure the tour strength message indicated “Taser” in the narrative of the Tour Strength Message at the start of their tour.

e. Members shall inspect the CEW and cartridges to ensure that they are clean and functioning properly.
   1. Members shall not load the Taser until a spark test has been accomplished.
      - The spark test shall be conducted only after confirming there is no cartridge in the Taser.
      - A spark test shall be conducted within the first hour of each scheduled shift to ensure proper functioning of the CEW.
        - A spark test at any other time shall be considered an unauthorized firing of the device.
      - The spark test and loading/unloading of a device with a new cartridge will be conducted in a designated safe area of each station following posted instructions and safe testing training.
        - For uniformity, Members will face the mugshot background wall in a Division installation.
          - The spark test shall be conducted only after confirming there is no cartridge in the Taser.
          - This wall will act as a backstop in case of any unintended discharge.
        - Allow the CEW to cycle for a full five seconds and visibly verify a spark between the electrodes.
   2. The transfer or “hot swap” of a CEW from one Member to another may be accomplished in the field when returning to a Division installation is not possible or otherwise impractical.

- However, no spark tests shall be conducted in the field.
- If the transfer is conducted at the station, it will occur in the designated safe area.
- The Member transferring the Taser to another Member shall be responsible for updating the Taser Accountability Record (CB-13A).

f. Malfunctioning or damaged CEWs shall be immediately removed from service and brought to the attention of a supervisor.
   - The supervisor will bring all malfunctions to the attention of the Technical Sergeant - Physical Training/Defensive Tactics, SP Academy, as soon as practical.

g. Members shall not remove the battery from the CEW except when required to perform maintenance.
   - The battery will be replaced only under the direct instruction from a CEW Instructor or Supervisor when the battery life indicator reads 20 percent.

h. The Taser X26 and X26P are carried in a holster on the opposite side of the Member's firearm with the battery facing forward (cross draw style).
   - This is done to prevent a Member from mistaking a firearm for a CEW and accidentally drawing and/or firing their duty weapon.
     - The Taser X26 And Taser X26P are bright yellow in color to make it readily identifiable as a CEW.
       - SORT Members are issued all black Tasers.

i. The device is carried with the safety switch in the down position (safety on) and loaded with a cartridge.

j. Members will be issued one spare cartridge as a backup in case of cartridge failure or the need for redeployment.
   - The spare cartridge will be stored and carried in a manner consistent with training and the cartridges will be replaced following the manufacturer's expiration requirements.
     - The cartridges currently used by Division have a maximum effective range of 25 feet.

k. Only when a Member cannot reasonably fit the Taser on his/her gun belt, may he/she remove the baton.
   - The baton, however, must be kept readily available in the event it is needed.

31D5 Usage

a. When consistent with personal safety, give a warning to the subject prior to deployment, and atttempt to gain compliance through verbal commands. If the Member makes a determination that the use of the Taser is required:

   1. The device will be pointed at the intended target and the safety switch placed in the up position (Fire Mode).
      - When in Fire Mode, the CID display on the rear of the device will illuminate and the LED light and laser will be functional.
   2. When possible, give a verbal warning "Taser, Taser, Taser" to other Members or law enforcement personnel that the Taser will be deployed.
   3. Upon deployment, the propelled wires automatically discharge electrical current for a five second cycle.
      - Pulling the trigger during this period neither increases nor decreases the discharge.

- To discontinue the discharge during this period, the safety switch is placed in the down (safe) position.
- Holding the trigger continuously beyond the five second cycle will continue the electrical discharge until the trigger is released.
  - After the initial five second cycle, the discharge will cease immediately once the trigger is released.

4. The greater the spread between the probes on the target, the greater the effectiveness.
   - Causes of ineffective deployments include:
     - Loose or bulky clothing.
     - Low nerve or muscle mass deployments.
     - Miss or single probe contact.

       Note: Use of the cartridge-on drive stun feature may complete the circuit in a single probe impact.
5. “Cartridge-off drive stun” shall only be used under the following two specific exigent circumstances:
   - A Member is in the midst of a cartridge change and does not have time to reload, or
   - When the Member has deployed and discarded both cartridges and Taser use would have otherwise been authorized.

b. Following the initial discharge of a CEW, Members shall provide an opportunity for an individual to comply with verbal commands prior to delivery of another discharge.
   1. Members shall limit the frequency of discharge cycles to the minimum necessary to achieve compliance and/or their lawful objective, and place the subject in handcuffs.
   2. Each discharge cycle should be considered a window of opportunity to attempt to establish control or restraints while the subject is affected by the cycle.
   3. Members should be aware that the associated risks with multiple exposures to a CEW are unknown and the role of CEWs causing death in these cases is unclear.
      - Caution should be exercised in using multiple activations to subdue a subject.
   4. If more than three consecutive cycles are required, Members should reassess the situation and consider transitioning to another force option.

c. Members shall attempt to handcuff the subject once they have been immobilized.
   1. When possible, employ the assistance of another Member to accomplish handcuffing the subject.
   2. A CEW **will not** be used against a handcuffed subject under any circumstance.

      Warning: If possible, avoid placing a restrained subject face down in a horizontal position for an extended period of time after taking that subject into custody or when transporting the subject.

      - Place the subject in a seated position or on their side if practical.

d. Following the discharge of the CEW, when a subject is brought under control, the subject shall be monitored for indications of medical distress and shall not be left alone while in custody.
   1. Probe removal shall be accomplished by Division personnel consistent with the protocol outlined during training and certification.
   2. Members should inspect the probes after removal to ensure the entire probe and probe barb have been removed.

- The CEW probes should be treated as a biohazard risk.

3. Personnel shall request EMS response, or the person shall be transported to a medical facility for examination if any of the following occur:
   - He/she requests medical attention.
   - If there is an obvious need for medical attention.
   - He/she is hit in a sensitive area (i.e., groin, face, eyes, neck, and breast).
   - In the event that a probe or probe barb has broken off and is still embedded in the subject's skin, or the Member has difficulty removing a probe, the subject should be provided appropriate medical attention.
   - He/she does not appear to recover in a reasonable period of time after being exposed, as determined by the Member following training guidelines.
   - He/she is part of a sensitive population group.

     See: Section: Safety Considerations, Subsection: Sensitive Population Groups
   - He/she has been exposed to more than three cycles.
   - He/she has been exposed to the effects of more than one CEW device.
   - He/she is may have been exposed to a continuous cycle of 15 seconds or more.
   - He/she has exhibited signs of a behavioral emergency, prior to and/or during the CEW exposure.

e. Members shall ensure that correctional facility personnel are made aware that a CEW was used on any subject who is transferred to their custody.
   1. Some counties may require the probes be removed or a subject be evaluated by a medical professional prior to commitment to a correctional facility.
      - Troop Commanders shall maintain an up-to-date list of county jails in their area which require a medical examination and will ensure their Members are familiar with these requirements.

31D6 Use on Animals

a. In certain circumstances, CEWs have been shown to be an effective option on animals by reducing the need for more injurious force.

b. Because of uncertain effects on animals, the CEW use against attacking animals is only recommended as a last resort alternative to lethal force.
   - CEWs may be deployed on an animal when an:
     - Animal is threatening (posing active threat) or attacking an officer, other persons, another animal, or property.
     - Animal needs to be immediately captured for reason of nuisance to public peace or safety, and preservation of property.

c. Due to the rapid and unpredictable movements of animals, it is more likely unintended areas may be struck.
   - Center mass of an animal should be targeted.

d. Animals will most likely be momentarily incapacitated and then quickly leave the scene, breaking the wires.
   - When applicable, consider having animal control stand by to collar/capture the animal, or in the event the animal's health is in jeopardy and its welfare needs to be provided for.

31D7 Reporting Procedures and Data Download

a. Involved Member:

1. Notify a supervisor.
2. Ensure a Taser usage is documented in an incident report.
3. Complete the NYSP Use of Taser X26/X26P Report (GENL-90) on the intranet, electronically sign the form, and e-mail to the incident supervisor.
   - Carbon Copy (CC) your station sergeant's in-box.
   - If multiple Tasers are used, a GENL-90 should be completed for each Taser used.

Note: Any unintentional discharge/deployment should be reported to the Troop/Detail Commander through Channels.

- The Troop/Detail Commander will consult with the Regional Staff Inspector to determine the level of investigation.

b. Incident Supervisor:

1. Notify Zone or Detail Commander.
2. Send an AMS Message.
   - Include the serial number of both the Taser and any deployed cartridge(s).
3. Photograph the subject, including probe sites, face and full-body view.
4. Following the discharge of a CEW, supervisors shall remove the CEW from service and, as soon as practical, download the usage data from the data port on the device.
   - A printed copy of the usage data shall be attached to the GENL-90.
   - Supervisors shall ensure that the serial number of the cartridge used in the incident corresponds to Division-issued cartridges and the serial number is recorded on the GENL-90.
   - Supervisors should also be aware that usage data from Tasers will be stored electronically at http://nystatetroopers.evidence.com/login.html for review and retrieval.
   - Cables used to connect the CEW port to a computer should be stored in the station armory to prevent loss and be accessible to all supervisors.
   - Only supervisors shall be authorized to access data saved on a CEW or on software stored on a Division computer.
5. Upon receipt of the GENL-90 review for accuracy and electronically sign.
6. Ensure that the serial number of the cartridge used in the incident corresponds to Division-issued cartridges and the serial number recorded on the GENL-90.
7. E-mail the completed GENL-90, downloaded usage data, and subject photographs to useofforce@troopers.ny.gov.
   - Carbon Copy (CC) your respective Zone in-box.

Note: All incidents where an injury is the direct result of a CEW deployment (i.e., contact burns/wounds from a drive stun, fall injuries, probe embedded in sensitive areas) will be reported as an Injury to Prisoner while being taken into custody and so titled on the AMS message.

- Where the only injury incurred by a person subjected to a CEW is a minor probe site irritation/discoloration, it should not be reported as an Injury to Prisoner while being taken into custody.

See: Subsection: Injury to Prisoner in Custody

X-Ref: Article 8: Attendance and Leave

X-Ref: Article 9: Complaints Against Personnel

c. Chief Inspector:
   1. Review all Taser Usage Reports.
   2. Enter pertinent information into the Use of Force database.
   3. Forward to defensivetactics@troopers.ny.gov for filing.

d. Technical Sergeant Defensive Tactics:
   1. Review all GENL-90s received for trends and training needs.
   2. Enter pertinent information into the Taser Usage database.
   3. Save submitted GENL-90s in a folder on the Division Share drive organized by Troop.
      - Each Troop folder should be sub-divided by year, each year sub-divided by month.
   4. Retain for five years, then purge yearly.
   5. Report Taser Usages to Field Command on a quarterly basis.

e. Evidence Retention:
   1. Supervisors investigating the discharge of a Taser will collect a sample of the Anti-Felon Identification Device (AFID) tags, unless conditions make recovery impossible/impractical.
   2. The spent Taser cartridge(s) and deployed probes should also be collected as soon as practical.
   3. These items will be retained in evidence for a period of six months and then forwarded for destruction, unless otherwise directed to retain for a longer time period.
      - These items may need to be retained for a longer period in the following instances:
        - Incidents which are likely to become the subject of civil litigation against Division or it's personnel.
        - Incidents in which a complaint of Excessive Force or a Personnel Complaint is initiated or likely to be initiated.
        - Any incident which results in serious physical injury or in-custody death.

f. Auditing:
   1. All Division CEWs will be subject to periodic and random data downloading.
      - The data obtained will be reconciled with the existing NYSP Use of Taser X26/X26P (GENL-90) reports to ensure accountability between the cycles recorded and those documented in such reports and occurring in pre-shift testing.
   2. Station Commanders:
      - Ensure each CEW assigned to your station or to individuals assigned to your station are downloaded quarterly.
      - Print out a copy of the prior six months activity for each Taser download.
        - Review the results of this download and investigate any indications of inappropriate firing of the device.
      - Retain this record for one year.

31D8 Replacement and Repair Procedures

a. When a Taser cartridge or battery needs replacement due to damage or usage:
   1. Station Commander:
      - When a cartridge is used, e-mail the Troop QM requesting a replacement cartridge.
      - When a cartridge is damaged, forward the cartridge to the Troop QM for replacement, and request a replacement cartridge.
      - When received, keep all files of the Firearms/Taser Transmittal (QM-6) form in station inventory records.
   2. Troop QM:
      - Forward the new cartridge and a completed QM-6 (including serial number of the used or damaged cartridge) to the Station Commander.
      - Retain a copy for your records.
      - Forward the originals to the Division Quartermaster.
      - Forward the damaged cartridge(s) or depleted batteries to the Technical Sergeant Physical Training/Defensive Tactics, SP Academy

b. If a Taser needs to be returned to Taser International for repair or replacement:
   1. Station Commander:
      - Ensure the Taser is downloaded prior to being returned to Taser International.
        - This download will prevent the loss of any internally stored information, should the Taser need to be replaced.
   2. Troop Quartermaster:
      - Return the Taser to Taser International utilizing the procedures outlined on the Taser International website (www.taser.com).
      - Notify the Technical Sergeant-Physical Training/Defensive Tactics, SP Academy, of returns.

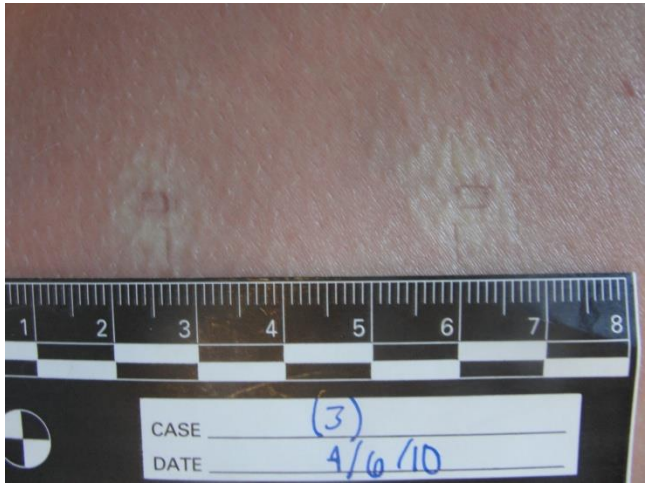
c. The Technical Sergeant-Physical Training/Defensive Tactics, SP Academy, will maintain a supply of other Taser products.
      - Troop Quartermasters needing to replace their download cables and/or replacement holsters shall contact the SP Academy-Defensive Tactics at 518-457-4674.

Exhibit D

X26
Drive-Stun
15 Sec. Duration
M26
Drive-Stun
15 Sec. Duration

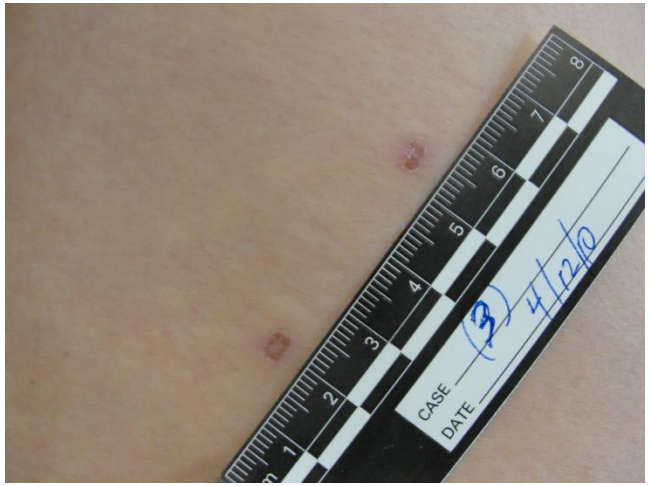
Drive-Stun Marks (M26)

Drive-Stun Marks (X26)



Drive stun marks - fresh

Drive stun marks – 1 day



Drive stun marks – 6 days

Drive stun marks – 7 days

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW AVITABILE,

Plaintiff,

-against-

SUPERINTENDENT GEORGE P. BEACH II, SUPERINTENDENT OF THE NEW YORK STATE POLICE,

Defendants.

RESPONSE TO PLAINTIFF MATTHEW AVITABILE'S STATEMENT OF MATERIAL FACTS

16-CV-1447

DNH/CFH

Defendant George P. Beach II, by his attorney, Barbara D. Underwood, Attorney General of the State of New York, responds to plaintiff's Statement of Material Facts as follows:

1. Matthew Avitabile is an adult male resident of the State of New York and resides in Schoharie County. [Docket #12-1], Declaration of Matthew Avitabile.

Response: Admitted.

2. Plaintiff has not purchased a stun gun or a Taser due to fear of prosecution for owning and carrying a stun gun or a Taser. *Id*

Response: Admit that plaintiff has not purchased a Taser due to fear of prosecution. Deny that plaintiff has not purchased a stun gun due to fear of prosecution. Avitabile Deposition, p. 19, lines 10-14. (Plaintiff merely testified: "… I think that a stun gun would be on the – on the table.")

3. Plaintiff would like to purchase a stun gun or a Taser for lawful self-defense and in appropriate circumstances would carry a stun gun or Taser for self-defense. *Id*.

Response: Admit that plaintiff would like to purchase a Taser for lawful self defense. Deny that plaintiff would like to purchase a stun gun for lawful self defense. Avitabile Deposition, p. 19, lines 10-14. (Plaintiff merely testified: "… I think that a stun gun would be on the – on the table.")

4. Plaintiff has never been convicted of a crime, either misdemeanor or felony, and has never been convicted of a crime of domestic violence. *See* Deposition of Matthew Avitabile, Exhibit "1", 10:16-25.

Response: Admitted.

5. He has never been deemed by a mental health professional to have a mental illness. *Id*. at 11:15-19.

Response: Admitted.

6. He currently does not own a handgun but does own a shotgun and bolt-action rifles. *Id*. at 13:2-22.

Response: Admitted.

7. He would possess a Taser if it were legal in New York. *Id*. at 17:7-9.

Response: Admitted.

8. He would carry a Taser "in accordance with state law, wherever [he] could carry it" as well as his home. *Id*. at 17:15-24.

Response: Admitted.

9. He would purchase a stun gun if legal in New York. *Id*. at 19:10-14.

Response: Denied. Avitabile Deposition, p. 19, lines 10-14. (Plaintiff merely testified: "… I think that a stun gun would be on the – on the table.")

10. New York State bans possession and carry of electric arms, including stun guns and Tasers. N.Y. Penal Law § 265.01.

Response: Admit that N.Y. Penal Laws prohibit the possession of "electronic dart gun[s]" (commonly known as Tasers) and "electronic stun gun[s]"; otherwise denied. *See* N.Y. Penal Law § 265.01; § 265.00(15-a); and § 265.00(15-c).

11. Plaintiff and Defendant have stipulated that there are 300,000 Tasers and 4,478,330 stun guns currently owned by private civilians in the United State of America.

Response: Admitted.

12. Electric arms are "widely owned and accepted as a legitimate means of self-defense across the county." *Cautano v. Massachusetts*, 136 S. Ct. 1027, 1033 (2016) (J. Alito, concurring).

Response: Objection/Denied. The issue as to whether Tasers are "in common use" is an issue of *law* for the Court to decide. *See, e.g., Hollis v. Lynch*, 827 F.3d 436 (5th Cir. 2016); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015).

13. Electric arms are legal in forty-seven states. Only New York, Hawaii and Rhode Island currently ban electric arms.

Response: Objection, plaintiff has failed to comply with N.D.N.Y. Local Rule 7.1(a)(3) in that plaintiff has failed to cite to the record to support this assertion.

14. Electric arms are less dangerous than firearms. *See* Deposition of Trooper Shappy, Exhibit "2" at 29-30:18-6 and 66:5-12 (Trooper Shappy has voluntarily exposed six to seven hundred recruits with a Taser with no deaths and has himself been voluntarily exposed approximately four times without adverse effects) (*cf*. with 70:14-21 – a person would have a high likelihood of death depending on where that person was shot). See also Exhibit "4", Defendant's Interrogatory Response No. 16.

Response: Denied, as this is not the case in all circumstances. *See., e.g.*, McCartin Decl., Exhibit 4, p. 1 (Axon's Taser warnings state: "Can cause death or serious injury."; "[A]ny use of force, including the use of a CEW, involves risks that a person may get hurt or die due to the effects of the CEW, physical incapacitation, physical exertion, unforeseen circumstances, or individual susceptibilities."; "In some individuals, the risk of death or serious injury may increase with cumulative CEW exposure.").

15. No civilian deaths by CEWs have been reported in the lawful use of CEWs by other civilians. *See* Expert Report of Mark Kroll, PhD, FACC, FHRS, FIEEE, FAIMBE, p.17, Exhibit "5".

Response: Defendant is not aware of any civilian-on-civilian deaths that have occurred due to the use of a CEW. There are, however, many law enforcement-on-civilian deaths that have occurred that have had a CEW involved. The following is a small sample of cases over the past several years that discuss these types of fatalities:

- *Armstrong v. Village of Pinehurst*, 810 F.3d 892, 897-98 (4th Cir. 2016) (mentally ill patient died after being subjected to five Taser deployments lasting approximately 2 minutes).

- *Mitchell v. City of Warren*, 803 F.3d 223, 226 (6th Cir. 2015) ("One metal dart hit just inches above Robert's heart, the other just inches below. Mitchell fell to the ground. … The medical team tried to resuscitate him but could not.").

- *Bachtel v. TASER Int'l, Inc.*, 747 F.3d 965, 967 (8th Cir. 2014) ("A Moberly police officer shot Stanley Harlan in the chest with an electronic control device (ECD) after a traffic stop just past midnight on August 28, 2008. Harlan died within two hours[.]").

- *Williams v. City of Cleveland*, 736 F.3d 684, 686 (5th Cir. 2013) ("The evaluating physician listed the cause of death as '[t]oxic effects of cocaine in association with shocks with Taser during police chase.'").

- *Fontenot v. Taser Int'l, Inc.*, 736 F.3d 318, 321 (4th Cir. 2013) ("Darryl Wayne Turner, age seventeen, died from cardiac arrest after a confrontation with police in which he was struck in the chest by electrical current emitted from a device commonly known as a 'taser,' manufactured by TASER International, Inc.").

- *Piskura v. Taser Int'l,* 2013 U.S. Dist. LEXIS 46332, *7-*8 (S.D. Ohio Mar. 29, 2013) ("Dr. Zipes, a preeminent scholar in the field of electrophysiology (a subspecialty of cardiology that 'focuses on the electrical impulses that regulate heart rhythm') had the necessary training, knowledge, experience, and education to assist the trier of fact in understanding the evidence and in resolving the causation issue in this case, *i.e.* whether Piskura died of cardiac arrest as a result of being tased in the chest").

- *Russell ex rel. Russell v. Wright*, 916 F. Supp. 2d 629, 634 (W.D. Va. 2013) ("[Officer] Wright then triggered his device using a single five second cycle, striking Russell directly in the chest. ... Upon being struck, Russell's body stiffened and he fell to the ground … and [he] is heard making loud, guttural breathing sounds for at least the next 48 seconds. … The rescue workers managed to restart his heart, but Russell had gone without oxygen for over eight minutes, causing severe brain damage. He fell into a coma and died six months later.").

- *Marquez v. City of Phoenix*, 693 F.3d 1167, 1171 (9th Cir. 2012) (after multiple uses of a Taser against him, "[d]espite resuscitation efforts, Ronald went into cardiac arrest and died").

- *Rosa v. TASER Int'l, Inc.*, 684 F.3d 941, 944 (9th Cir. Cal. 2012) ("We are called upon to decide whether, in August 2004, a manufacturer of electronic control devices, commonly referred to as 'tasers,' was under a duty to warn that repeated exposure to its products could lead to fatal levels of metabolic acidosis.").

- *Rich v. Taser Int'l, Inc.*, 2012 U.S. Dist. LEXIS 44584, *3-*4 (D. Nev. Mar. 30, 2012) ("Officer Lazoff discharged his TASER Model X26 Electronic Control Device ('ECD') three times into Dr. Rich's chest … Paramedics arrive[d] shortly thereafter to transport Dr. Rich to Spring Valley Hospital where he was pronounced dead.").

- *McKenney v. Harrison*, 635 F.3d 354, 357-358 (8th Cir. 2011) ("[Officer] Pollreis deployed her Taser as Barnes was passing her but before he reached the window. The Taser's two probes lodged in Barnes's back, but Barnes continued through the window. … Barnes died from his injuries four days later.").

Furthermore, Axon SEC filings states: "Our CEW [Taser Conducted Electrical Weapons] products are often used in aggressive confrontations that may result in serious, permanent bodily injury or death to those involved. Our CEW products may be associated with these injuries." Avitabile Deposition, Exhibit E, p. 2.

16. Use of CEWs reduce both suspect and officer injury compared to alternative force options. *Id*. at p.30.

Response: Denied, as this is not always the case. *See* Response to SMF No. 15 above.

17. CEWs are bearable arms. *See People v*. *Yanna*, 824 N.W.2d 241 (Mich. Ct. App. 2012) and *Ramirez v*. *Commonwealth* No. SJC-12340, 2018 Mass. LEXIS 237 (Apr. 17, 2018).

Response: Objection, this is an issue of law for the Court to decide.

18. New York limits the size and strength of pepper spray that can be purchased and carried by non-law enforcement. N.Y. Penal Law §265.20(a)(14), (15) N.Y. Comp. Codes R. & Regs. Tit. 10 § 54.1-54.3

Response: Admitted.

19. New York pepper spray is limited to not more than 0.7% by weight total capsaicinoids and shall not exceed more than 0.75 ounces. *Id*.

Response: Admitted. And affirmatively assert that each such pepper spray sold in New York State must contain the following waring: "The contents are dangerous – use with care." 10 NYCRR § 54.3. Furthermore, affirmatively assert that Sabre's own website states: "Some brands hope you believe a higher OC percentage means a more effective spray. But this number only measure the amount of pepper within the spray, not the heat strength or

effectiveness." https://www.sabrered.com/formulations-heat-strength-and-law (last visited on August 31, 2018). *See* McCartin Decl., Exhibit 5, p. 1.

20. Only licensed firearms dealers and pharmacists may sell self-defense sprays. N.Y. Comp. Codes R. & Regs. Tit. 10 § 54.3. *See also* Exhibit "3", Report of Robert Nance.

Response: Admitted.

21. The form required to purchase self-defense sprays must include the purchaser's social security number. *Id*.

Response: Admitted.

22. New York is the only state in the United States that limits the strength of self-defense sprays. *Id*.

Response: Denied. Sabre's own website lists other states that Sabre cannot ship to as well. *See* https://www.sabrered.com/formulations-heat-strength-and-law. McCartin Exhibit 5, pp. 2-3.

23. Persons deploying pepper spray always suffers some blowback. *See* Deposition of Shappy, Exhibit "2", 18:6-11.

Response: Denied. Deposition of Shappy, pp. 18-19. *See also* the Sabre video at https://www.sabrered.com/formulations-heat-strength-and-law which shows individuals practicing the use of pepper spray without any "blowback." McCartin Exhibit 5.

24. Trooper Shappy carries 10% OC with a size volume of 1.8 ounces. *See* Deposition of Trooper Shappy, Exhibit "2", 16:14-21.

Response: Admitted.

Dated: Albany, New York
September 9, 2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW AVITABILE, *Plaintiff*, -against- SUPERINTENDENT GEORGE P. BEACH II, SUPERINTENDENT OF THE NEW YORK STATE POLICE, *Defendant*.	**STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT** 1:16-CV-1447 (DNH/CFH)

Pursuant to Rule 7.1(a)(3) of the Local Rules of this Court, the Defendant support his cross-motion for summary judgment by contending that, as to the following material facts, no genuine issue exists:

The New York State Legislature's Ban on Tasers and Stun Guns

1. The Taser ban was enacted in New York State as a crime-fighting measure in 1976 because Tasers had been used in "holdups and robberies" within the State. Declaration of Michael G. McCartin, Exhibit 1, p. 4 (the Bill Jacket for Senate Bill 7151-A/Assembly Bill 9187-A).

2. Also, at that time, New York State law enforcement and public officials determined that Tasers were hazardous if used against police officers and members of the general public. *Id*., Exhibit 1, pp. 7-8, 19-20.

3. The ban against stun guns was enacted in New York State in 1990 as another public-safety measure; it was supported by New York State law enforcement and public officials, at least in

part, because stun guns were "show[ing] up" in "domestic disputes." *Id.*, Exhibit 2, pp. 7, 10-11 (the Bill Jacket for Senate 5301/Assembly 5398-A).

Plaintiff Matthew Avitabile

4. Plaintiff Matthew Avitabile owns three (3) bolt-action rifles and a .12 gauge, pump-action shotgun. Avitabile Depo., pp. 13-14.

5. When asked if he would ever use one of these firearms to defend his home, plaintiff testified, "… if the situation ever occurred that I felt it necessary, I would do so in compliance with state law." *Id.*, p. 15.

6. Plaintiff further testified that he would also like to purchase a Taser, but the purchase of a stun gun was still, "depending on how things shake out, … on the table." *Id.*, p. 19.

7. Plaintiff further testified: "… [I]f I could place any additional barriers between myself and using lethal force, I think it would – it would make me more comfortable." *Id.*, p. 20.

8. Plaintiff does not own any pepper spray, nor has he given the purchase of it any serious consideration, as plaintiff testified:

Q: Do you presently own any type of what I'll generally refer to as pepper spray?

A: No.

Q: And why is that?

A: I don't know where I would purchase it, for starters. And beyond that, it hasn't come to mind very much.

Q: Well you have a desire to have a form of non-lethal self defense in your home. Would you agree that pepper spray is a form of non-lethal self defense?

A: I would say that it is a form of non-lethal self-defense, yes.

***

Q. But to date, you haven't even basically researched where you could purchase pepper spray?

A. I've given it no serious consideration.

Id., pp. 25-26.

9. Plaintiff was well aware of less lethal forms of ammunition like "rubber bullets" and "also different shotgun ammunition that includes almost like beanbags," which plaintiff described as being used to "more disperse[] a crowd or push[] someone back rather than potentially kill[] them." *Id*., p. 27.

10. During his deposition, plaintiff was shown two short videos that depicted law-enforcement officials demonstrating less lethal forms of ammunition, more particularly beanbag rounds being shot out of a shotgun. *Id*., p. 29-30, Exhibit B.

11. After reviewing those videos, the plaintiff testified as follows:

Q: Okay. I just have a few questions for you to follow up on those videos. It seems to me that you have a – a goal in mind in this – in defending your home. One is to minimize the likelihood that you would use deadly force if someone were to break into your home, for instance. Would you agree with me that the forms of non – or less lethal ammunition that you've seen in the videos there would be one alternative means of achieving that goal?

A: Based upon what I saw, I think that it – in certain circumstances, it could be.

Id., p. 30.

12. Later, the plaintiff testified with regard to those videos:

Q: So would you agree that beanbag rounds like you've seen on the videos today in Exhibit B, and different forms of non-lethal ammunition, are alternatives to lethal forms of ammunition that you presently own?

A: It could be under different circumstances.

Id., 32.

13. Plaintiff also admitted that non-lethal ammunition is permitted in New York State and that he would certainly consider using it even though it is possible that a beanbag round shot from a .12 gauge shotgun could still be lethal. *Id*., pp. 34, 40.

Axon Enterprise, Inc.

14. Axon Enterprise, Inc. is the name of the company that manufactures Tasers, only 300,000 of which have been sold to civilians in the United States. Brave Decl., p. 2, ¶ 3.

15. On Axon's Form 10-K filed with the United States Securities and Exchange Commission, which was signed on March 1, 2018 by plaintiff's expert, Mark W. Kroll (among others), Axon states the following: "Our CEW [Taser Conducted Electrical Weapons] products are often used in aggressive confrontations that may result in serious, permanent bodily injury or death to those involved. Our CEW products may be associated with these injuries." Avitabile Deposition, Exhibit E, p. 2.

16. Plaintiff was asked about this in his deposition:

Q: Okay. So having read that, do you understand that the manufacturer of Tasers has basically stated that Tasers can lead to permanent bodily injury or death on occasion?

A: Yes, that there is a potential that that could occur.

***

Q: Well, a home invasion would be an aggressive confrontation. Would you agree?

A: Yes.

Q: So it is possible, based on Taser's own manufacturer warning, that that could lead to death if you were to ever defend your home with a Taser? Would you agree with that statement?

A: To the best of my knowledge regarding their statement, yes.

Id., pp. 44-47.

17. Indeed, Axon's Taser warnings state as much: "Can cause death or serious injury."; "[A]ny use of force, including the use of a CEW, involves risks that a person may get hurt or die due to the effects of the CEW, physical incapacitation, physical exertion, unforeseen circumstances, or individual susceptibilities."; "In some individuals, the risk of death or serious injury may increase with cumulative CEW exposure." *Id*., Exhibit F, p. 1; *see also* McCartin Decl., Exhibit 4, p. 1 (same for warnings related to civilian use of Tasers).

New York State Trooper Philip Shappy

18. New York State Trooper Philip Shappy has been a Trooper with the New York State Police since 2002, and he is the Defendant's expert. Affidavit of Trooper Philip Shappy, ¶ 1.

19. Since 2012, Trooper Shappy has been assigned in a full-time capacity to the State Police Academy in Albany where he is a Senior Defensive Tactics Instructor involved in the daily training operations that take place at the Academy. *Id*., ¶ 2.

20. Trooper Shappy's duties include training new State Police recruits and current State Police members in use of force and defensive tactics. *Id*.

21. Trooper Shappy asserts that, in his professional expert opinion, based upon his many years of experience, Tasers are best used as strictly a "law enforcement tool" by trained officers in order to "deescalate a precarious situation for purposes of controlling and gaining compliance of actively resistant and violent subjects. A Taser is only an intermediate and temporary solution, which if used inappropriately could have grave and deadly consequences." *Id*., ¶ 18.

22. Trooper Shappy further asserts that for "civilian self-defense purposes, Oleoresin Capsicum (OC) spray," which is usually referred to as pepper spray, "is an easier to use and more effective alternative to a Taser. While use of a Taser requires robust training and an understanding of the inherent safety considerations and operational limitation, the dispersal of OC spray requires little, if any, training and experience." *Id*., ¶ 19.

23. Further, Trooper Shappy asserts, "OC spray has a wide area of impact when dispersed, thereby alleviating the need for precision accuracy that is required for deployment of a Taser." *Id*., ¶ 20.

24. Also, Trooper Shappy asserts that "OC spray does not require direct impact on a subject, nor is the user's accuracy severely impacted by the target's mobility." *Id*.

25. Additionally, Trooper Shappy asserts that:

> OC spray has a longer lasting impact with a greater temporary incapacitation, with only minimal risk of injuries or death. OC spray significantly impacts a subject's senses and abilities to fight back or resist, with the effects generally lasting for up to 45 minutes after exposure, if not longer depending on the extent of the exposure and the susceptibility of the subject. On the other hand, a Taser's utility ceases once the Taser runs through its full cycle and/or detaches from the subject's body.

Id., ¶ 21.

Dated: Albany, New York
September 9, 2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW AVITABILE,

Plaintiff,

-against-

1:16-CV-01447

(DNH)(CFH)

SUPERINTENDENT GEORGE P. BEACH II, SUPERINTENDENT OF THE NEW YORK STATE POLICE,

Defendant.

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

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September 9, 2018

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Preliminary Statement

Plaintiff Matthew Avitabile ('plaintiff") brings this 42 U.S.C. § 1983 action against George P. Beach II, the Superintendent of the New York State Police. In this lawsuit, plaintiff alleges that certain N.Y. Penal Laws which prohibit the possession of "electronic dart gun[s]" (commonly known as Tasers) and "stun guns" violate the Second Amendment of the United States Constitution. Amend. Complt., ¶¶ 59-60; *see* N.Y. Penal Law § 265.01; § 265.00(15-a); and § 265.00(15-c). For the reasons that follow, however, plaintiff's Second Amendment rights clearly have not been violated by the New York State Legislature's ban of these two weapons. Thus, plaintiff's motion for summary judgment should be denied, and defendant's cross-motion for summary judgment should be granted.

To begin, providing some preliminary background information, the Taser ban was enacted in New York as a crime-fighting measure in 1976 because Tasers had been used in "holdups and robberies" within the State. *See* Declaration of Michael G. McCartin, Exhibit 1, p. 4 (the Bill Jacket for Senate Bill 7151-A/Assembly Bill 9187-A). Also, New York law enforcement and public officials determined that Tasers were hazardous if used against police officers and members of the general public. *See, e.g., id*., pp. 7-8, 19-20. Similarly, the ban against stun guns was enacted in New York in 1990 as another public-safety measure. It was supported by New York law enforcement and public officials, at least in part because stun guns were "show[ing] up" in "domestic disputes." *Id*., Exhibit 2, pp. 7, 10-11 (the Bill Jacket for Senate 5301/Assembly 5398-A).

Despite these laudable legislative objectives, though, plaintiff has seized upon a short, five-paragraph per curium decision issued by the U.S. Supreme Court in *Caetano v. Massachusetts*, 136 S.Ct. 1027 (2016), and he attempts to use that rather ambiguous Second Amendment decision to undue the four-decade ban against Tasers, as well as an almost three-

decade ban against stun guns, prohibitions that the New York State Legislature saw fit to impose years ago in order to protect New Yorkers. *See, e.g.*, Amend. Complt., ¶ 15. Yet, as this Court rightly ruled in its preliminary injunction decision, "the *Caetano* majority did not actually make any affirmative pronouncements about the continuing permissibility of the Massachusetts stun gun ban.[] 136 S. Ct. at 1028. Instead, the Court simply rejected as inconsistent with its precedent the three reasons the lower court had offered for upholding the law. *Id*." Dkt. No. 38, p. 14.[1] This Court's ruling remains entirely correct and it is fully consistent with another State court within New York that also got it exactly right when it properly interpreted *Caetano*'s quite limited holding in a similar way:

> [I]n *Caetano*, the Supreme Court did not hold … that a Massachusetts statute banning the possession of stun guns violated the Second Amendment. Rather, the Supreme Court held that the reasons offered by the Supreme Judicial Court of Massachusetts in upholding the statute contradicted the Supreme Court's opinion in *Heller*. The judgment of the Supreme Judicial Court of Massachusetts was then vacated and the case was remanded for further proceedings.

People v. Buchholz, 53 Misc. 3d 563, 566-567 (N.Y. City Crim. Ct. 2016). Thus, *Caetano*, which stands for no more than a high court's summary rebuke of a poorly-reasoned lower court decision, one that improperly applied well-known Supreme Court precedent, is of *zero assistance* to the plaintiff's facial and as-applied challenge to New York State's ban against Tasers and stun guns.

With that stated, this Court can largely lay *Caetano* aside and it can deny plaintiff's request for a permanent injunction preventing enforcement of the Taser and stun gun ban. And it can do so for two primary reasons, neither of which were the basis of the Massachusetts' court decision that was reversed, and both of which are entirely consistent with U.S. Supreme Court

[1] Notably, *Caetano* did not even concern a Taser; it merely related to a stun gun. *Caetano*, 136 S.Ct. at 1027. Furthermore, while the parties and amici curiae in *Caetano* all framed the issue as whether the Massachusetts statute violates the Second Amendment, the Supreme Court did not address that issue directly, but merely rejected the lower court's reasoning for its decision.

and Second Circuit precedent regarding the Second Amendment (including the quite limited holding of *Caetano*).

First, when it comes to Tasers, this Court should summarily conclude that the challenged legislation does not even begin to impinge upon conduct protected by the Second Amendment. This is so because discovery in this action has now revealed that there are only about 300,000 Tasers in use by civilians across the entire United States. Declaration of Michael Brave, Dkt. No. 52-12, p. 2, ¶ 3. However, that figure – which includes only about 0.09 % of the civilian population of the United States – is simply not enough to show that Tasers are "in common use" today, a necessary element in order to even begin to state a claim under the Second Amendment.

Second, when it comes to stun guns, plaintiff's Second Amendment rights are not violated because he has "adequate alternatives" at his disposal in order to protect his home. These adequate alternatives include handguns, rifles, and shotguns. They can be lawfully loaded with lethal ammunition, or, if plaintiff so prefers, they can also be lawfully loaded with less-lethal ammunition – ammunition such as .12 gauge shotgun shells packed with rubber pellets or even beanbags. And, if plaintiff does not prefer to use guns loaded with lethal or less-lethal ammunition, he can still lawfully use items like pepper spray. Under Second Circuit precedent, this quite frankly means that plaintiff's Second Amendment rights have not been violated because New York's stun gun ban passes the required intermediate level scrutiny as it easily is shown to advance public safety.[2]

Consequently, there is no Second Amendment violation here, and if plaintiff wants the ban on Tasers and stun guns lifted within New York State, he must seek to do it the old-

[2] Alternatively, if the Court were to determine that Tasers are "in common use" today despite the fact that there are only 300,000 civilians that possess them, this same "adequate alternatives" argument is equally applicable to Tasers. In other words, instead of Tasers, plaintiff still has access to numerous other lethal and non-lethal means to defend his home. Thus, plaintiff's Second Amendment rights have not been infringed.

fashioned, democratic way: he must petition his representatives in the New York State Legislature to do so. That's the proper forum for plaintiff's arguments. This Court is not. As the Seventh Circuit has properly held, "[t]he central role of representative democracy is no less part of the Constitution than is the Second Amendment: when there is no definitive constitutional rule, matters are left to the legislative process." *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015).

Statement of Facts

A. Plaintiff Matthew Avitabile

Plaintiff Matthew Avitabile owns three (3) bolt-action rifles and a .12 gauge, pump-action shotgun. Avitabile Depo., pp. 13-14. When asked if he would ever use one of these firearms to defend his home, plaintiff testified, "… if the situation ever occurred that I felt it necessary, I would do so in compliance with state law." *Id*., p. 15. Plaintiff further testified that he would also like to purchase a Taser, but the purchase of a stun gun was still, "depending on how things shake out, … on the table." *Id*., p. 19. Plaintiff continued: "… [I]f I could place any additional barriers between myself and using lethal force, I think it would – it would make me more comfortable." *Id*., p. 20. Yet, according to the plaintiff, he does not own any pepper spray, nor has he given the purchase of it any serious consideration:

> Q: Do you presently own any type of what I'll generally refer to as pepper spray?
>
> A: No.
>
> Q: And why is that?
>
> A: I don't know where I would purchase it, for starters. And beyond that, it hasn't come to mind very much.
>
> Q: Well you have a desire to have a form of non-lethal self defense in your home. Would you agree that pepper spray is a form of non-lethal self defense?

A: I would say that it is a form of non-lethal self-defense, yes.

***

Q. But to date, you haven't even basically researched where you could purchase pepper spray?

A. I've given it no serious consideration.

Id., pp. 25-26.

As of the time of plaintiff's deposition, though, plaintiff was well aware of less lethal forms of ammunition like "rubber bullets" and "also different shotgun ammunition that includes almost like beanbags," which plaintiff described as being used to "more disperse[] a crowd or push[] someone back rather than potentially kill[] them." *Id.*, p. 27. Along these lines, during his deposition, plaintiff was shown two short videos that depicted law-enforcement officials demonstrating less lethal forms of ammunition, more particularly beanbag rounds. *Id.*, p. 29-30, Exhibit B.[3] After reviewing those videos, the plaintiff testified as follows:

[3] The Court can admit these videos and consider them in deciding summary judgment because "[d]emonstrative evidence is admissible in the judge's discretion, and variations between the demonstration and the original event may affect the *weight* of the evidence, but do not require exclusion." *Parkinson v. Kelly*, 2006 U.S. Dist. LEXIS 54661, at *36 (N.D.N.Y. Jan. 23, 2006) (emphasis in original). *See also Allen v. Artus*, No. 09-CV-4562 (JFB), 2014 U.S. Dist. LEXIS 66455, at *57 (E.D.N.Y. May 14, 2014) ("It is within the court's discretion as to whether a computer-edited video may be admitted as demonstrative evidence for the purpose of helping a jury understand a concept."); *United States v. Stone*, No. 10-20123, 2012 U.S. Dist. LEXIS 5920, at *11 (E.D. Mich. Jan. 19, 2012) ("Demonstrative evidence is admissible if it is relevant and probative."); *Conboy v. Wynn Las Vegas, LLC*, No. 2:11-CV-1649 JCM (CWH), 2013 U.S. Dist. LEXIS 55558, at *28 (D. Nev. Apr. 18, 2013) ("Demonstrative evidence is evidence used to explain or illustrate other evidence already on the record."); *United States v. Martinez*, 588 F.3d 301, 311 (6th Cir. 2009) ("Demonstrative evidence is admissible to assist jurors in understanding basic principles."); *In re Air Crash Disaster*, 86 F.3d 498, 539 (6th Cir. 1996) (affirming admittance of video "to demonstrate [a] circuit breaker's inner workings," in part, because "[u]se of the videotape was limited to demonstration, and the court instructed the jury about the limited basis of its admission"); *United States v. Metzger*, 778 F.2d 1195, 1204 (6th Cir. 1985) (holding that video of FBI re-enactment of explosion in car was properly admitted despite the fact that not every variable was identical); *People v. Castillo*, 230 Mich. App. 442, 444, 584 N.W.2d 606, 608 (1998) ("Demonstrative evidence, including physical objects alleged to be similar to those involved in the incident at issue, is admissible where it may aid the fact finder in reaching a conclusion on a matter material to the case.").

> Q: Okay. I just have a few questions for you to follow up on those videos. It seems to me that you have a – a goal in mind in this – in defending your home. One is to minimize the likelihood that you would use deadly force if someone were to break into your home, for instance. **Would you agree with me that the forms of non – or less lethal ammunition that you've seen in the videos there would be one alternative means of achieving that goal?**
>
> A: Based upon what I saw, I think that it – in certain circumstances, **it could be.**

Id., p. 30 (emphasis added). Later, the plaintiff testified with regard to those videos:

> Q: So would you agree that beanbag rounds like you've seen on the videos today in Exhibit B, and different forms of non-lethal ammunition, are alternatives to lethal forms of ammunition that you presently own?
>
> A: It could be under different circumstances.

Id., 32. Plaintiff also admitted that non-lethal ammunition is permitted in New York State and that he would certainly consider using it even though it is possible that a beanbag round shot from a .12 gauge shotgun could still be lethal. *Id*., pp. 34, 40.

B. Axon Enterprise, Inc.

Axon Enterprise, Inc. is the name of the company that manufactures Tasers, only 300,000 of which have been sold to civilians in the United States. Brave Decl., p. 2, ¶ 3. On Axon's Form 10-K filed with the United States Securities and Exchange Commission, which was signed on March 1, 2018 by plaintiff's expert, Mark W. Kroll (among others), Axon states the following: "Our CEW [Taser Conducted Electrical Weapons] products are often used in aggressive confrontations that may result in serious, permanent bodily injury or death to those involved. Our CEW products may be associated with these injuries." Avitabile Deposition, Exhibit E, p. 2. Plaintiff was asked about this in his deposition:

> Q: Okay. So having read that, do you understand that the manufacturer of Tasers has basically stated that Tasers can lead to permanent bodily injury or death on occasion?

A: Yes, that there is a potential that that could occur.

***

Q: Well, a home invasion would be an aggressive confrontation. Would you agree?

A: Yes.

Q: So it is possible, based on Taser's own manufacturer warning, that that could lead to death if you were to ever defend your home with a Taser? Would you agree with that statement?

A: To the best of my knowledge regarding their statement, yes.

Id., pp. 44-47. Indeed, Axon's Taser warnings state as much:

- "Can cause death or serious injury."
- "[A]ny use of force, including the use of a CEW, involves risks that a person may get hurt or die due to the effects of the CEW, physical incapacitation, physical exertion, unforeseen circumstances, or individual susceptibilities."
- "In some individuals, the risk of death or serious injury may increase with cumulative CEW exposure."

Id., Exhibit F, p. 1; *see also* McCartin Decl., Exhibit 4, p. 1 (same for warnings related to civilian use of Tasers).

C. New York State Trooper Philip Shappy

New York State Trooper Philip Shappy has been a Trooper with the New York State Police since 2002, and he is the Defendant's expert. Since 2012, he has been assigned in a full-time capacity to the State Police Academy in Albany where he is a Senior Defensive Tactics Instructor involved in the daily training operations that take place at the Academy. His duties include training new State Police recruits and current State Police members in use of force and defensive tactics. Affidavit of Trooper Philip Shappy, ¶¶ 1-2.

Trooper Shappy asserts that, in his professional expert opinion, based upon his many years of experience, Tasers are best used as strictly a "law enforcement tool" by trained officers

in order to "deescalate a precarious situation for purposes of controlling and gaining compliance of actively resistant and violent subjects. A Taser is only an intermediate and temporary solution, which if used inappropriately could have grave and deadly consequences." *Id.*, ¶ 18. He further asserts that for "civilian self-defense purposes, Oleoresin Capsicum ("OC") spray," which is usually referred to as pepper spray, "is an easier to use and more effective alternative to a Taser. While use of a Taser requires robust training and an understanding of the inherent safety considerations and operational limitation, the dispersal of OC spray requires little, if any, training and experience." *Id.*, ¶ 19.

Further, in Trooper Shappy's expert opinion, "OC spray has a wide area of impact when dispersed, thereby alleviating the need for precision accuracy that is required for deployment of a Taser." *Id.*, ¶ 20. Also, Trooper Shappy asserts that "OC spray does not require direct impact on a subject, nor is the user's accuracy severely impacted by the target's mobility." *Id.* Additionally, Trooper Shappy states that:

> OC spray has a longer lasting impact with a greater temporary incapacitation, with only minimal risk of injuries or death. OC spray significantly impacts a subject's senses and abilities to fight back or resist, with the effects generally lasting for up to 45 minutes after exposure, if not longer depending on the extent of the exposure and the susceptibility of the subject. On the other hand, a Taser's utility ceases once the Taser runs through its full cycle and/or detaches from the subject's body.

Id., ¶ 21. For these reasons, Trooper Shappy asserts that pepper spray is a much more effective means of self-defense for the civilian community than are Tasers or stun guns, which means that *pepper spray is a sufficient alternative to the use of Tasers or stun guns in New York State*.

Argument

Point I

Plaintiff Avitabile does not have a Second Amendment right to possess a Taser because Tasers are not "*in common use*" across the United States.

The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., Amend. II. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court concluded that the Second Amendment codifies a pre-existing "individual right to possess and carry weapons in case of confrontation." *Id.*, 554 U.S. at 592. Once it made that determination, the Supreme Court struck down the District of Columbia's prohibition on the possession of firearms in the home because, quite importantly, the law banned "*the quintessential self-defense weapon*" – the *handgun* – and it did so in the place that Americans hold most dear – within their own homes. *Id.* at 628-29 (emphasis added). *See also Kolbe v. Hogan*, 849 F.3d 114, 132 (4th Cir. 2017). But the high court still noted that the Second Amendment does not ensure a right to possess "any weapon whatsoever":

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry ***any weapon whatsoever*** in any manner whatsoever and for whatever purpose.

Heller, at 626 (emphasis added). The Second Amendment right includes an "important limitation" relating to the type of weapon that is protected. *Id.*, at 626–27. For instance, it is clear that the government can regulate and even ban certain types of weapons, including but not limited to short-barreled shotguns and machine guns. *See, e.g., United States v. Miller*, 307 U.S. 174 (1939); *Heller*, 554 U.S. at 626-27. Thus, the Second Circuit has held, "*Heller* was never meant to clarify the entire field of Second Amendment jurisprudence." *Kachalsky v. County of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) (upholding New York State's concealed weapon

licensing requirements) (omits internal quotations). Indeed, within the Second Circuit, district courts have stated that "'the contours of [the Second Amendment right to bear arms] are as of yet underdeveloped and ill-defined.'" *Hudson v. County of Dutchess*, 2015 U.S. Dist. LEXIS 154632, *42 (S.D.N.Y. Nov. 14, 2015) (quoting *Doutel v. City of Norwalk*, 2013 U.S. Dist. LEXIS 93436, 2013 WL 3353977, at *23 (D. Conn. July 3, 2013)).

And this is true even though two years after *Heller*, the Supreme Court further addressed a Second Amendment case and held there that the Second Amendment's protections apply fully to the states through the Fourteenth Amendment. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026, 3042 (2010). Importantly, though, while *McDonald* struck down a Chicago law that banned handguns in the home, *id*. at 3050, it also reaffirmed *Heller*'s assurances that Second Amendment rights are far from absolute and that many longstanding handgun regulations are "presumptively lawful." *Heller*, 554 U.S. at 627 n.26; *see McDonald*, 130 S. Ct. at 3047. Furthermore, the Court explicitly noted that the doctrine of "incorporation does not imperil every law regulating firearms." *McDonald*, 130 S. Ct. at 3047. This has caused the Second Circuit to recognize that "*McDonald* did not expand upon *Heller*'s analysis and simply reiterated *Heller*'s assurances regarding the viability of many gun-control provisions." *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015), cert. denied sub nom. *Shew v. Malloy*, 136 S. Ct. 2486 (2016)).

As the Second Circuit held just this year in *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, 883 F.3d 45 (2d Cir. 2018), following *Heller*, there is a "two-step inquiry" for "determining the constitutionality of firearm restrictions." *Id*., at 55 (omits internal quotations). First, the court "determine[s] whether the challenged legislation impinges upon conduct protected by the Second Amendment," and second, if the court "conclude[s] that the statute[] impinge[s] upon Second Amendment rights, [the court] must next determine and apply the appropriate level of scrutiny."

Id. (omits internal quotations). When it comes to Tasers, though, this Court should conclude that the challenged legislation does not even impinge upon conduct protected by the Second Amendment, and thus this Court should not even get to the second step in the Second Circuit's analysis.

On this point it is critical to note that the *Heller* Court struck down the handgun ban at issue in that case because it "amount[ed] to a prohibition of an entire class of 'arms' that is ***overwhelmingly*** *chosen by American society*" for the "lawful purpose" of self-defense in the home, "where the need for defense of self, family, and property is most acute." *Heller*, at 628 (emphasis added). Stated differently, while "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding", *id*., at 582, there is no prima facie case when the weapon is not one "in common use at the time," "possessed at home," and for "lawful purposes like self-defense." *Id*. at 627, 624.

For this reason, the Second Circuit has held that "[t]he Second Amendment protects ***only*** 'the sorts of weapons' that are (1) '***in common use***' *and* (2) '***typically possessed*** by law-abiding citizens for lawful purposes.'" *N.Y. State Rifle*, 804 F.3d at 254-255 (emphasis added). And, following this same line of thought, in *Maloney v. Singas*, 106 F. Supp. 3d 300, 310 (E.D.N.Y. 2015), a district court previously held that this means that "there is a separate and distinct requirement that a weapon be 'in common use at the time' in order to be protected by the Second Amendment." *Id*., at 310 (citing *Heller*, 554 U.S. at 627). "[T]o reiterate," the *Maloney* district court went on to properly state, "the weapon at issue must be 'in common use' *and* its common use must be a lawful one." *Maloney*, at 310 (emphasis in the original). When it comes to Tasers, this is the key point of law that the Court needs to apply, and it means that there is no Second Amendment violation because Tasers are not "in common use" today.

In *N.Y. State Rifle*, the court reviewed gun-control legislation by the New York and Connecticut legislatures prohibiting the possession of certain semi-automatic assault weapons and large-capacity magazines. *Id.*, at 247. In addressing the issue of whether those weapons were "in common use," the court examined statistics advanced by the parties that asserted there were between *four million* and *seven million* such assault weapons in general use by the public across the Nation. *Id.*, at 255. Looking to these high numbers, the Second Circuit concluded, "[t]his much is clear: Americans own *millions* of the firearms that the challenged legislation prohibits." *Id.* (emphasis). Based upon this fact, that is, that *millions* of such firearms were held across the country, the Second Circuit assumed for the sake of argument that those weapons were indeed "in common use." *Id.*, at 257 ("In the absence of clearer guidance from the Supreme Court or stronger evidence in the record, we …. assume for the sake of argument that these 'commonly used' weapons and magazines are also "typically possessed by law-abiding citizens for lawful purposes."). This is not the case with Tasers, though.

Here, plaintiff can only show that about 300,000 Tasers are in use by civilians in the entire United States. Brave Decl., p. 2, ¶ 3. This figure for Tasers is markedly different from the "*millions*" of firearms that were at issue in *N.Y. State Rifle*. Indeed, this figure is closer to the figure that was addressed by the Fifth Circuit in *Hollis v. Lynch*, 827 F.3d 436 (5th Cir. 2016). There, the Fifth Circuit found that a machinegun was an *unusual* weapon because one ATF statistic indicated that there were only "175,977 pre-1986 civilian-owned machineguns in existence", and, thus, because of that, the circuit court concluded, "Hollis does not have the numbers to support his [Second Amendment] claims." *Id.*, at 449-50. The same is true here. And this is especially so in light of the fact that in *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), the Seventh Circuit determined that AR-15s were not in common use, and it cited the fact that only "9 % of the nation's firearms owners have assault weapons." *Id.*, at 409.

In this instance, ***only about 0.09 % of the entire 325,000,000 civilian population in the U.S. owns a Taser***. That has got to be the epitome of when a weapon is *not* "in common use" and when it is *not* "*typically possessed* by law-abiding citizens". This is especially so when compared to the fact that, "[i]n 2017, about 42 percent of U.S. households had at least one gun in possession."[4] Handguns, rifles and shotguns are "in common use" today; Tasers quite simply are not. Indeed, there is no court in the United States that has ever found that a weapon is "in common use" based upon the fact that there are 300,000 of them found in the Nation, or that less than 1 % of the population owns that weapon. This Court should not be the first one to do so. To the contrary, this Court should find that "in common use" means what it says.[5]

Thus, when it comes to his Taser Second Amendment claim, plaintiff "does not have the numbers to support" that claim. *Hollis*, at 450. And it must be dismissed as a result because the Second Amendment *is not even implicated* by New York's "electronic dart gun" ban found at N.Y. Penal Law §§ 265.01 and 265.00(15-a).

[4] https://www.statista.com/statistics/249740/percentage-of-households-in-the-united-states-owning-a-firearm/

[5] Quite interestingly, a discussion of what the phrase "in common use" from *Heller* means was recently had on September 5, 2018 during the confirmation hearings of Judge Brett M. Kavanaugh. Under questioning by Sen. Dianne Feinstein, Judge Kavanaugh asserted that, under *Heller*, semi-automatic rifles are "widely possessed in the United States" because "there are millions and millions and millions of semi-automatic rifles that are possessed, so that seemed to fit 'common use' and not being a 'dangerous and unusual' weapon." (Notably, Judge Kavanaugh also asserted that "all weapons are dangerous.") *See* https://www.youtube.com/watch?v=FFC1-PvSe14. Applying that same numerical logic here, which is similar to the logic used by the Second Circuit in *N.Y. State Rifle*, it would seem that when there is a weapon that has only 300,000 sold and possessed in the entire United States – not "millions and millions and millions" sold and possessed – that does not meet the "in common use" test of *Heller*.

Point II

Even assuming that stun guns are "in common use" across the United States, New York's stun gun ban does not violate the Second Amendment because plaintiff has numerous other "adequate alternatives" in order to protect his home, including handguns, rifles, and shotguns – that can be loaded with lethal *and less-lethal ammunition* – in addition to other items, such as pepper spray.

Although plaintiff has obtained evidence that there are *millions* of stun guns that have been purchased by civilians in the United States over the past decade,[6] plaintiff's Second Amendment claim as it relates to stun guns is still without merit, even assuming for the sake of argument that stun guns are in fact "in common use" today.

Importantly, in this Court's decision on the plaintiff's preliminary injunction motion, the Court properly suggested that, when there are a "myriad other non-lethal or less-lethal devices that exist for in-home self-defense purposes", it is "hard to conclude … that the stun gun ban effectively disarms individuals or substantially affects their ability to defend themselves." Dkt. No. 38, p. 15 (citing *N.Y. State Rifle*, 804 F.3d at 260).

This point is vital here because the Second Circuit has repeatedly found, as it did in *Decastro*, that a "law that regulates the availability of firearms is *not a substantial burden on the right to keep and bear arms if* ***adequate alternatives*** *remain for law-abiding citizens to acquire a firearm for self-defense*." *United States v. Decastro*, 682 F.3d 160, 168 (2d Cir. 2012) (emphasis added). Similarly, in *N.Y. State Rifle*, the Second Circuit underscored this point by stating that "[n]o substantial burden exists … if ***adequate alternatives*** remain for law-abiding citizens to acquire a firearm for self-defense." 804 F.3d at 259 (internal quotation marks omitted) (emphasis added). And finally, most recently just this year, in *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, 883 F.3d at 60, the Second Circuit reiterated this same point by quoting the same

[6] *See* Dkt. No. 52-1, ¶ 11.

language from *Decastro* that is quoted above, and then it cited a case from the Ninth Circuit that made the same point that the Second Circuit had made in *Decastro*: "[W]hen deciding whether a restriction on gun sales substantially burdens Second Amendment rights, we should ask whether the restriction leaves law-abiding citizens with *reasonable alternative means for obtaining firearms sufficient for self-defense purposes*." *Nordyke v. King*, 644 F.3d 776, 787 (9th Cir. 2011), aff'd. en banc, 681 F.3d 1041 (9th Cir. 2012) (emphasis added).

This simple rule of law is quite plainly dispositive here because plaintiff has "adequate alternatives" at his disposal – that is, handguns, rifles, and shotguns – all of which can be lawfully purchased by him to protect his home. Indeed, plaintiff presently owns three (3) rifles and a .12 gauge, pump-action shotgun. Avitabile Depo., pp. 13-14. And if plaintiff still wants a "less lethal" form of self-defense for his home, he can load these same types of firearms with effective ***less-lethal ammunition***. *See* Avitabile Deposition, pp. 29-30, Exhibit B (two videos showing the demonstration of the use of less-lethal ammunition). This less-lethal ammunition includes .12 gauge shotgun shells that shoot large rubber pellets or even beanbags at a potential home intruder. *Id.*, Exhibits A and C. And, if plaintiff wants to use a handgun, less-lethal rubber bullets can similarly be loaded into handguns. *Id.*, p. 52.[7] Furthermore, if plaintiff does not prefer that form of less-lethal self-defense, he still has access to items like pepper spray, which are also effective and can be lawfully purchased in New York State. *See* Trooper Philip Shappy Decl., ¶¶ 18-21.

Thus, under the rule of law set forth by the Second Circuit in (a) *Decastro*, (b) *N.Y. State Rifle*, and (c) *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, these "adequate alternatives"

[7] https://www.conceptsinammunition.com/Pistol_Products/40cal.htm ("Our 40 caliber Rubber Ammunition is a specially designed composite that packs a punch on any assailant, with less chance of penetrating walls and interior doors subjecting innocent people to what could be catastrophic injury or death.").

necessarily mean that plaintiff's Second Amendment rights have not been substantially burdened as relates to stun guns. (And this would also be the circumstance with regard to Tasers, if the Court were to determine that Tasers are "in common use", even though there are only 300,000 of them – not millions – in use by civilians throughout the United States.)

As this Court noted in its decision on the plaintiff's preliminary injunction motion, the Second Circuit has held that, under these types of circumstances, courts within this Circuit need only apply intermediate scrutiny even to those laws found to implicate the Second Amendment. *See* Dkt. No. 38, p. 12 ("[T]he Second Circuit concluded intermediate scrutiny was appropriate where the gun-control legislation at issue left open numerous alternative ways for a citizen to lawfully acquire and possess a weapon for self-defense.") (citing *N.Y. Rifle*, 804 F.3d at 260). *See also Mishtaku v. Espada*, 669 Fed. Appx. 35, 35-36 (2d Cir. 2016) ("We apply intermediate scrutiny to laws implicating the Second Amendment.") (omits internal quotation); *Decastro*, 682 F.3d at 166 ("Given *Heller*'s emphasis on the weight of the burden imposed by the D.C. gun laws, we do not read the case to mandate that any marginal, incremental *or even appreciable restraint* on the right to keep and bear arms be subject to heightened scrutiny.") (emphasis added); *Maloney v. Singas*, 106 F. Supp. 3d at 311 ("a majority of courts have applied intermediate scrutiny to general challenges under the Second Amendment, even when reviewing statutes or laws that may restrict the possession of [weapons] in the home") (internal quotations omitted); *United States v. Laurent*, 861 F. Supp. 2d 71, 101 (E.D.N.Y. 2011) ("most courts of appeals have found that regulations which substantially burden the right to keep and to bear arms for the purpose of self-defense should receive intermediate scrutiny").

And since strict scrutiny does not apply to the ban of stun guns, and intermediate scrutiny does, that means that "New York's law need only be substantially related to the state's important public safety interest" and a "perfect fit between the means and the governmental objective is not

required." *Kachalsky*, 701 F.3d at 98. Thus, in the Second Circuit, under this intermediate scrutiny test, "a regulation that burdens a plaintiff's Second Amendment rights passes constitutional muster if it is substantially related to the achievement of an important governmental interest." *Kwong v. Bloomberg*, 723 F.3d 160, 168 (2d Cir. 2013). On this point, it is beyond cavil that "New York has substantial, indeed compelling, governmental interests in public safety and crime prevention." *Id.* (omits internal quotations).

In this regard, the Legislature of New York has simply acted within this time-worn historical tradition in order to protect its citizens from a weapon that it considers to be "dangerous" to public safety. And, even considering plaintiff's expert witness evidence to the contrary, this determination certainly has a sufficiently sound basis in law. *See, e.g., United States v. Agron*, 921 F.2d 25 (2d Cir. 1990) (holding that the stun gun that defendant possessed during the commission of underlying drug offense caused a physical impairment consonant with serious bodily injury, so his sentence was properly enhanced under the United States Sentencing Guidelines' "dangerous weapon" provision); *United States v. Wallace*, 800 F.2d 1509, 1513 (9th Cir. 1986) (holding that a stun gun is a "dangerous weapon" under Federal Aviation Act of 1958, § 902(l), 49 U.S.C. § 1472 (L)), cert. denied, 481 U.S. 1019 (1987)); *United States v. Quiver*, 805 F.3d 1269, 1272 (10th Cir. 2015) ("As the burn marks to [the police officer's] thigh show, a Taser in drive-stun mode is capable of causing serious bodily injury if applied to a sensitive spot, for instance, an eye.")[8]; *Gordon v. Runyon*, 1994 U.S. Dist. LEXIS 4959 (E.D. Pa. 1994) ("case law suggests that stun guns are inherently dangerous").

In fact, in *People v. MacCary*, 173 A.D.2d 646 (2d Dep't 1991), a New York Appellate Division court held as follows:

[8] Notably, Exhibit D of the Declaration of Trooper Philip Shappy shows several photographs of Tasers "drive-stun marks."

> Evidence was adduced at the trial to the effect that a stun gun, if applied to the body for a sufficient period of time, could cause serious or protracted disfigurement, substantial pain and burns to the body and, if applied to the eye, loss or impairment of the functioning of the eye. Additionally, evidence was adduced at the trial that, while the defendant restrained the complainant, the defendant's accomplice applied the stun gun several times to the complainant's body for several seconds during each application and that extreme pain, severe skin lesions and 'significant' burns were thereby caused. There was an ample basis upon which the jury could reasonably conclude that a stun gun, as used herein, was a dangerous instrument.

People v. MacCary, 173 A.D.2d at 647. *See also State v. Geier*, 484 N.W.2d 167, 171 (Iowa 1992) ("many courts as well as legislatures have deemed it appropriate to characterize stun guns as dangerous or deadly weapons"); *State v. Smith*, 2014 Ohio App. LEXIS 4219, **14 (Ct. of App. Ohio September 30, 2014) ("We note that many courts, as well as legislatures, have deemed it appropriate to characterize stun guns as dangerous or deadly weapons, possible of inflicting substantial physical injury.").

Because "New York has substantial, indeed compelling, governmental interests in public safety and crime prevention", *Kwong*, 723 F.3d at 168 (omits internal quotations), and because stun guns are inherently dangerous under both Second Circuit and New York State case law – as well as other legal precedent throughout the Nation – there is no doubt that the New York Legislature was properly permitted to ban stun guns in order to advance its laudable public safety goals. Thus, plaintiff's Second Amendment challenge to the stun gun ban fails as a matter of law.[9]

[9] Again, even if the Court were to conclude that Tasers are "in common use" today, despite the fact that there are only 300,000 in use in the United States, plaintiff still would not be able show a Second Amendment violation here. Despite plaintiff's insistence that Taser's are a non-lethal means of self-defense, that is plainly *not always true*. In fact, Axon itself warns of the risks of serious injury and death associated with the use of its products. *See Williams v. City of Cleveland*, 736 F.3d 684, 687 (5th Cir. 2013) ("Taser's product warnings explicitly and repeatedly warned of the risks of serious injury and death ..."). The Axon warnings in evidence in this case show that this is still true. In fact, in an SEC Form 10-K filing, Axon admitted the following: "Our CEW [Taser] products are often used in aggressive confrontations that may result in **serious, permanent bodily injury or death to those involved. Our CEW products may be associated with these injuries.**" Avitabile Depo., Exhibit D and E;

As the Second Circuit recognized in *Kachalsky*, "[i]n the context of firearm regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Kachalsky*, 701 F.3d at 97. *See also Kolbe*, 849 F.3d at 140 ("enacting the [gun ban at issue] is precisely the type of judgment that legislatures are allowed to make without second-guessing by a court"). That is true here, too.

Conclusion

Based upon the above, summary judgment should be granted to Defendant Beach and plaintiff's sought-after relief of a permanent injunction against New York's Taser and stun gun ban should be denied by the Court.

Dated: Albany, New York
September 9, 2018

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https://perma.cc/Y3WY-SPKR (emphasis added). Further, Axon's Taser warnings for civilians plainly state that Tasers **"[c]an cause death or serious injury**." McCartin Decl., Exhibit 4, p. 1 (emphasis added). Thus, the intermediate level of scrutiny is met here as public policy allows for the banning of dangerous weapons, as long as "adequate alternatives" are permitted to protect the home.

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