

Risk Management Bulletin

A Bulletin for Law Enforcement Members of the South Dakota Public Assurance Alliance

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From PATC Director Jim Alsup

Jack Ryan and PATC/LLRMI have had many conversations with TASER since the release of TASER's new recommended Hit Zone released in October.

Attached is an article we hope will clear some of the confusion since their release of the information. We have also attached an updated model policy on "Response to Resistance" designed specifically for law enforcement agencies in South Dakota that includes the changes discussed in the article.

The article will provide you with what PATC/LLRMI believes is the best practices in training and use of TASER, specifically in the defense of the use of TASER and **liability management**.

We welcome any comments or feed back.

Thank you for your patience while we spent many hours researching current cases to examine court decisions and creating the best practices policy that is user friendly, easily trained, and defensible.

TASER, the Target Zone, Policy & Training

Jack Ryan, PATC

Over the past few weeks, a training bulletin has set off a controversy throughout the law enforcement community. This controversy came to light at the Legal & Liability Risk Management Institute when it was learned that a number of agencies had taken TASER™ ECDs out of service. At the outset it is important to recognize that electronic control devices are a valuable law enforcement tool and are safe for continued use. A great deal of the initial reaction was based on confusion as to the distinction between products liability law and the law related to law enforcement's use of force. The attached article should be read by all officers who presently or in the future will carry a TASER ECD. It should also be read by attorneys who represent law enforcement in TASER/Use of Force cases.

Conclusion and Expectations

The following are the conclusions and expectations that are contained in

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the article that was prepared by PATC and is referenced in the attached article.

- In accordance with the current state of the law related to use of force under the Fourth Amendment, the deployment of an electronic control device or TASER ECD is not deadly force since no court has made such a finding as a matter of law.
- It is unlikely that a court will find that a TASER deployment to the chest is deadly force based on a remote possibility that a deployment may result in death. Simply stated, even if one were to adopt the findings of all of the studies conducted, a TASER ECD has not been found to “create a substantial likelihood of serious bodily harm or death.”
- Notwithstanding the foregoing, it must be recognized by officers that in a lawsuit involving the deployment of a TASER ECD where the probes have struck the chest, an issue will be made with respect to whether the officer properly used this tool.
- In light of the recommended preferred targeting change, officers can be assured that plaintiff’s attorney will be prepared to cross-examine the officer on proper targeting in an effort to show a jury that the officer acted unreasonably by failing to follow the preferred targeting in such deployments.
- In cases where a deployment strikes the chest, irrespective of injury, officers should be prepared to document why the deployment struck the chest rather than the recommended preferred targeting zone in the lower center of mass. In some cases, deadly force would have been justified under the facts but the officer utilized a TASER ECD instead of transitioning to deadly force. In such cases, clearly the deployment would be legally justifiable irrespective of the preferred targeting zone.
- In some cases the officer may be targeting the lower center mass but due to the dynamic and fluid nature of the event including the suspect’s movement; the probes may strike the chest. Again, officers should ensure, irrespective of whether there is injury or not, why the deployment struck the chest rather than the recommended preferred targeting zone.
- These suggestions are made, not because a deployment to the chest is deadly force, but simply because an officer is likely to be confronted with the targeting zone in any case where the probes strike the chest and a lawsuit follows.

Agency Policy & Training Recommendations

Agency policy and training should be changed to reflect the new targeting area recommended by TASER International. Immediate training should be conducted for all officers who are allowed to carry these devices.

The Legal & Liability Risk Management Institute will be monitoring the case law to determine if this new change to the targeting zone has any impact on the liability of officers and their agencies.

Updated Policy - Response to Resistance

Attached is an updated model policy on "Response to Resistance" that was issued by PATC this week. The new model policy reflects the changes in the use of TASER and was specifically drafted for South Dakota Law Enforcement agencies.

We encourage each agency that uses TASER to immediately review this newly updated policy to make sure your current policy and training reflects these important changes.

Policy Update Service

Periodic policy updates and legal issue alerts will continued to be provided to your agency by Jack Ryan and the Public Agency Training Council (PATC) because your entity has your department's Police Professional Liability coverage through the South Dakota Public Assurance Alliance (SDPAA).

This free service is available only to those law enforcement agencies that are covered by the SDPAA. The material provided to you as a result of this service is copyrighted and can be used by your agency without written permission from PATC. We ask that you not share the model policy updates with agencies that are not part of the SDPAA.