



Electronic Control Weapons, known as TASERs, when used appropriately, can play a key role in safely controlling subjects and reducing liability.

# Managing TASER Liability: Applying Best Practices



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# The intent of Public Act 14-149 is to promote the safe and appropriate use of ECWs

“Data reveals that [TASERs] are beneficial for controlling noncompliant suspects while preventing serious injuries, and rarely has their use resulted in death. Much of the public controversy surrounding these weapons centers on when and how often officers use the devices.”

*Michael E. Miller, PhD, Assistant Professor, School of Legal Studies, South College, Knoxville, Tennessee; Captain (Retired), Orange County Sheriff’s Office, Orlando, Florida*

One of the defining characteristics of police organizations is that they are given legal authority to use physical force and deadly force in the course of their duties. This authority creates a challenge for police departments to ensure that the use of force is legitimate while protecting the support and goodwill of their communities.

Every use-of-force incident by law enforcement personnel creates some risk of civil and criminal liability. As a general rule, the greater the risk of injury to suspects, the greater the risk of liability and litigation. The Use-of-Force Continuum provides guidance to police on the use of force and establishes what level of resistance must be present before various use-of-force methods can be employed.

An Electronic Control Weapons (ECW) also known as a TASER, falls in the intermediate level of force on the continuum. Its effectiveness as a “less lethal” weapon has led it to become one of the most popular tools to exert force today.

While the vast majority of police agencies have had tremendous success with the weapon in controlling aggressive behavior safely and without injury, in some instances officers have used the ECW inappropriately or too frequently, increasing potential liability. This liability is not created by the use of the ECW per se; but rather by the inadequate department policies regarding use, training, and deployment of ECWs. Best practices and legal requirements for ECWs are changing as agencies gain operational experience and as medical researchers probe subject injuries and unexpected deaths.

## Establish Policies in Accordance with Public Act 14-149

The State of Connecticut has responded to recent incidents associated with the use of ECWs with the passage in 2014 of Connecticut Public Act 14-149, which states that police departments policies must meet or exceed the Connecticut POST-C “Model Policy for Electronic Control Weapons”:

- “Each law enforcement agency that authorizes a police officer employed by such agency to use an electronic defense weapon shall:
  - No later than January 31, 2015, adopt and maintain a written policy that meets or exceeds the model policy developed by the Police Officer Standards and Training Council regarding the use of an electronic defense weapon.”

The Act, among other requirements, also requires police to document use of ECWs in use-of-force reports, and to submit by January 15th of the following calendar year, a report of ECW use on the form promulgated by POSTC.

## Provide Comprehensive Training

In addition to implementing an ECW, providing ongoing and regular training is one of the best defenses against litigation and liability claims. Comprehensive ECW training programs are a specific defence against §1983 liability claims arising out of the failure to train. Training should not only focus on the “point and shoot” components of using the device, but also include:

- What to do next when the ECW is not effective;
- When to utilize the ECW on an individual who is presenting with a medical or psychological impairment; and
- How to properly document each deployment and justification of the deployment.

The Police Executive Research Forum (PERF) has released its 2011 Guidelines for Electronic Control Weapons for these training components. The 2011 Guidelines are based on a set of principles that foster the responsible and accountable use of ECWs, while recognizing that they are an appropriate tool for officers who must resort to use of force.

## Use-of-Force Continuum

Suspect Resistance	Officer Use of Force
1. No resistance	1. Officer presence
2. Verbal noncompliance	2. Verbal commands
3. Passive resistance	3. Hands-on tactics, chemical spray
4. Active resistance	4. Intermediate weapons: baton, TASER, strikes, non-deadly force
5. Aggressive resistance	5. Intermediate weapons, intensified techniques, non-deadly force
6. Deadly-force resistance	6. Deadly force

“The possible overuse of ECWs has several dimensions. First, they] can be used too often, that is, at inappropriately low levels of suspect resistance....[They] can be used too much. Reported deaths...often involve multiple activations of a device or multiple cycles from a single device.”

*Police Use-of-Force Outcomes: Injuries and Control, Geoffrey P. Alpert, PhD, University of South Carolina; and Michael R. Smith, JD, PhD, Georgia Southern University*

These guidelines offer specific information that assist departments in training officers on the use of ECW, while also striving to limit any potential liability.

The guidelines specifically note:

“Personnel should be trained to use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Training protocols should emphasize that multiple applications or continuous cycling of an ECW resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death and should be avoided.”

*- PERF 2011 Electronic Weapons Guidelines page 18, bullet #13*

These guidelines also include the following:

1. ECWs should be considered “less-lethal” weapons.
2. ECWs should be used as a weapon of need, not a tool of convenience.
3. Officers should not over-rely on ECWs in situations where more effective and less risky alternatives are available.
4. ECWs are just one of a number of tools that police have available to do their jobs, and they should be considered one part of an agency’s overall use-of-force policy.
5. In agencies that deploy ECWs, officers should receive comprehensive training on when and how to use ECWs.
6. Agencies should monitor their own use of ECWs and should conduct periodic analyses of practices and trends.
7. Agencies should consider the expectations of their community when developing an overall strategy for using ECWs.

### **Excited Delirium and Medical Response**

Officers should be trained to identify acute delirium conditions, most notably Excitable Delirium (ExDs). Police usually come in contact with Excited Delirium during a call involving a subject who is aggressively violent and disoriented. The first responsibility of the responding officers is always assuring their own safety, and the safety of their fellow officers, other people at the scene, and the subject who is the focus of the call. The symptoms of ExDs include:

- Bizarre and/or aggressive behavior.
- Shouting, paranoia, and panic.
- Violence towards other people.
- Unexpected physical strength, and hyperthermia.

Subjects with excited delirium are challenging, often leaving police and EMTs struggling to control their aggressive behavior before medical treatment can begin. Although not a formal medical or psychological diagnosis, excited delirium has been recognized by the American College of Emergency Physicians (ACEP) and the National Association of Medical Examiners (NAME).

Excited Delirium cases are frequently associated with psycho-stimulant abuse, representing the extreme end of a psychiatric continuum of drug abuse effects. However, other accounts of acute delirium and physical restraint, and pepper spray or TASER deployment, followed by sudden death have been reported in patients who were not abusing drugs, suggesting that an underlying central nervous system disorder may be the precipitating cause of death. Although the syndrome is not always fatal, many patients experience cardiac arrest and death, sometimes after being subjected to ECWs. Thus deaths from Excited Delirium have provoked allegations of police misconduct, unnecessary force, and improper ECW deployment.

For additional information on this topic, please contact your CIRMA Risk Management Consultant.

Continuous training and partnerships with local and state mental health resources can provide officers the understanding they need to be able to identify the behaviors associated with ExDs, including how to identify and respond to any medical complication quickly. In addition to training, the rapid and coordinated deployment of Emergency Medical Services (EMS) can be a key factor in reducing injury, death, and liability. **Police, ambulance, and fire departments should develop their response strategies together**, so each entity understands its role in controlling the subject and administering any needed medical treatment.

#### Summary

ECWs have made a significant impact on law enforcement agencies, both positively and negatively; perhaps more so than any other tool provided to officers. Departments should take action to ensure that their department policies are appropriate, reflect current understanding and best practices, and are coordinated with emergency medical response teams. Law enforcement officials should ensure that officers receive high quality training that provides them the skills, awareness of the risks, and confidence to effectively use ECWs, so that they can safely protect themselves and the public.

#### Additional Resources

An Act Concerning the Use of Electronic Defense Weapons by Police Officers. [www.cga.ct.gov/2014/ACT/PA/2014PA-00149-R00HB-05389-PA.htm](http://www.cga.ct.gov/2014/ACT/PA/2014PA-00149-R00HB-05389-PA.htm)

General Notice 14-02, Council Action link. This webpage contains links to the Model Policy, Use-of-Force reporting forms, Annual Report Forms, Notice, Text of the Public Act. POST. [www.ct.gov/post](http://www.ct.gov/post)

Taser Use and the Use-of-Force Continuum: Examining the Effect of Policy Change, Michael E. Miller, [www.policechiefmagazine.org](http://www.policechiefmagazine.org) / Archives.

*Police Use-of-Force Outcomes: Injuries and Control*, Geoffrey P. Alpert, PhD, University of South Carolina; and Michael R. Smith, JD, PhD, Georgia Southern University.

Institute for the Prevention of In-Custody Deaths, Inc. [www.ipicd.com](http://www.ipicd.com). Articles.

TASER Use Guidelines.

<http://cops.usdoj.gov/html/dispatch/08-2011/ECW-Guidelines.asp>

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