

# FULLERTON POLICE DEPARTMENT

## **CRITICAL ISSUES TRAINING**

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### **TASER USE**

(Electro-Muscular Disruption Technology)

The use of an Electronic Control Device (TASER) as outlined in the Fullerton Police Department policy manual section 309 are a valuable force option among other options available to Department Personnel. The Taser™ is an Electronic Control Device (E.C.D.) that is currently approved for use by this Department, and for purpose of this policy, the term (Taser™) is intended to relate to any Department approved and authorized E.C.D. The Taser device is considered a non-lethal intermediate level force option and in order to deploy a Taser device "the objective facts must indicate that the suspect poses an immediate threat to the officer or a member of the public." (Bryan v. McPherson Case 9th Cir. 2009) As with any use of force, Department Personnel are required to follow all applicable Federal and State laws as well as the Department Use of Force policy.

#### ISSUANCE AND CARRYING TASER DEVICES (Policy Manual Section 309.3)

Only members who have successfully completed department-approved training may be issued and carry the TASER device.

TASER devices are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department's inventory.

Officers shall only use the TASER device and cartridges that have been issued by the Department. Operationsed officers who have been issued the TASER device shall wear the device in an approved holster on their person. Non-uniformed officers may secure the TASER device in the driver's compartment of their vehicle.

Members carrying the TASER device should perform a spark test on the unit prior to every shift. When carried while in uniform officers shall carry the TASER device in a weak-side holster on the side opposite the duty weapon.

- (a) All TASER devices shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- (b) Whenever practicable, officers should carry two or more cartridges on their person when carrying the TASER device.
- (c) Officers shall be responsible for ensuring that their issued TASER device is properly maintained and in good working order.
- (d) Officers should not hold both a firearm and the TASER device at the same time.
- (e) The TASER device generally should not be used as an impact weapon.

### VERBAL WARNING (Policy Manual Section 309.4)

A verbal warning of the intended use of the Taser should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is as follows:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that a Taser may be deployed.

If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the Taser. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the deploying officer in the related report.

### SPECIAL DEPLOYMENT CONSIDERATIONS (Policy Manual Section 309.5.2)

The use of the Taser should be generally avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, or would present a greater danger to the officer, the subject, or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the Taser:

- (a) Individuals who are known to be pregnant.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals with obviously low body mass.
- (d) Individuals who are handcuffed or otherwise restrained.
- (e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capicum (OC) spray.
- (f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

### TARGETING CONSIDERATIONS (Policy Manual Section 309.5.3)

Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the TASER device probes to a precise target area, officer should monitor the condition of the subject if one or more probes strike the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

### MULTIPLE APPLICATIONS OF THE TASER DEVICE (Policy Manual Section 309.5.4)

Officers should apply the TASER device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Multiple applications of the TASER device against a single individual are generally not recommended and should be avoided unless the officer reasonably believes that the need to control the individual outweighs the potentially increased risk posed by multiple applications.

If the first application of the Taser appears to be ineffective in gaining control of an individual and if circumstances allow, the officer should consider the following before additional applications of the Taser:

- Whether the probes are making proper contact.
- Whether the individual has the ability and has been given a reasonable opportunity to comply.
- Whether verbal commands, other options or tactics may be more effective.

Officers should generally not intentionally apply more than one TASER device at a time against a single subject.

This, however, shall not preclude any officer from deploying multiple, reasonable applications of the Taser device on an individual.

After three (3) unsuccessful applications, unless there are articulable circumstances, officers should be instructed to cease using the TASER device and move on to other control methods or force options.

#### APPLICATION (Policy Manual Section 309.5.1)

Authorized personnel may use the Taser when circumstances known to the officer at the time indicate that such an application is **reasonable** to control a person in any of the following circumstances:

- (a) The subject is violent or is physically resisting.
- (b) A subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm officers, himself/herself.

Absent meeting conditions set forth in (a) or (b) above, or a reasonable belief that an individual has committed or threatened to commit a serious offense, mere flight from a pursuing officer shall not serve as good cause for use of the Taser to apprehend an individual.

The officer must be able to articulate a reasonable belief that other available options appeared ineffective, impractical or would have presented a greater danger to the officer, the subject or others. The following factors (Policy Manual Section 309.4.1) include, but are not limited to:

- The conduct of the individual being confronted (as reasonably perceived by the officer)
- Officer/subject factors (i.e., age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects).
- Influence of drugs/alcohol (mental capacity)
- Proximity of weapons.
- The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- Seriousness of the suspected offense or the reason for contact with the individual.
- Training and experience of the officer.
- Potential for injury to citizens, officers and suspects.
- Risk of escape.
- Other exigent circumstances.

Officers should remember that the use of the Taser in the drive stun mode with out a cartridge is only a pain compliance technique and will not cause incapacitation. The application of the drive stun mode should be limited brief applications in which pain compliance would reasonably appear to achieve control. Officers should attempt to avoid drive stuns to sensitive areas such as the throat or

groin because the hard plastic construction of the Taser could cause blunt force trauma type injuries.

#### DOCUMENTATION (Policy Manual Section 309.6)

Officers shall document all TASER device discharges in the related arrest/crime report. Notification shall also be made to a supervisor in compliance with the Force Prevention Policy. Unintentional discharges, pointing the device at a person, laser activation and arcing the device will also be documented on the report form.(Policy Manual 309.6)

#### MEDICAL TREATMENT (Policy Manual section 309.7)

Absent extenuating circumstances or unavailability, only qualified personnel including certified paramedics should remove Taser darts from a person's body. Taser darts that have been removed from the body are considered a sharps biohazard, similar to a hypodermic needle; Universal precautions should be taken accordingly. All persons who have been struck with the Taser darts or subjected to the electric discharge **shall** be medically assessed prior to booking

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain (sometimes called "excited delirium") or who require a protracted physical encounter with multiple officers to be brought under control, May be at an increased risk of sudden death and should be examined by medical personnel as soon as practicable.

If an individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and documented in any related reports. The transporting officer shall inform any person receiving custody or any person placed in a position of care that the individual has been subjected to the application of the Taser.

#### LEGAL CONSIDERATIONS

##### **Graham vs. Connor Case, 490 U.S. 386 (1989)**

*The legal standard used to determine the lawfulness of a use of force. (Fourth Amendment protection of citizens)*

Graham states in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving - about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application." The force must be reasonable under the circumstances known to the officer at the time the force was used.

##### **Bryan v. McPherson Case 9<sup>th</sup> Cir. (2009)**

On December 28, 2009, Judge Wardlaw of the U.S. 9th Circuit Court of Appeals issued a ruling in the case of Bryan vs. McPherson. The case involved the deployment and use of the Taser® Electronic Control Device (ECD) subsequent to a lawful traffic stop. The suspect, while not combative, was uncooperative. It should also be noted that the suspect was shirtless, wearing only boxer type undershorts, and speaking unintelligibly. The suspect, Bryan, was tased by Officer McPherson and fell to the ground, breaking four teeth and sustaining injuries to his face. At the core of the decision was the argument that while it is not refuted that the suspect was half naked,

speaking unintelligibly, and uncooperative, these facts did not rise to the level of danger to the officer or bystanders and did not warrant the deployment of the ECD.

### **California Penal Code 835a**

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

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