

Schoharie County Law Enforcement Review Committee (LERC)

January 26, 2021

Attendees: please see attached roster

Meeting called to order at 3:07 p.m.

Chairman Federice – As part of the open items to discuss, today's topic will be the use of *Tasers*, or Conducted Energy Devices.

Sgt. Reinhart – Deputy Minton is our subject matter expert.

Deputy Minton – *Taser* is a brand of conductive energy devices. This brand is widely used and accepted in law enforcement. *Taser* provides training on the use of the device, but they do not make policy. They provide guidelines and recommendations for policy, but each trained agency develops their own policy with *Taser* recommendations in mind.

Sgt. Reinhart – Our draft policy, attached, does not have many changes from what Lexipol recommended.

Ms. Paden – This policy is better than some of the others as far as the “shall” and “should”. This one is much clearer. We only have a couple recommendations for changes.

Ms. Hults – Section 304.7 – Medical Treatment, the last sentence in the second paragraph states, “Additionally, any such individual who falls under any of the following categories **should**, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- a. The person is suspected of being under the influence of controlled substances and/or alcohol.
- b. The person may be pregnant.
- c. The person reasonably appears to be in need of medical attention.
- d. The Taser device probes are lodged in a sensitive area (e.g. groin, female breast, head, face, neck).
- e. The person requests medical treatment.”

We recommend that say **shall** instead of should.

Ms. Paden – We would like there to be an expectation that medical treatment would be provided.

Sgt. Reinhart – That seems general and reasonable.

Chairman Federice – How deep do those probes go into the skin?

Deputy Minton – ¼ inch or less.

Sheriff Stevens – It also depends on the outer layers of clothing.

Ms. Paden – Section 304.4 – Verbal and Visual Warnings, the first sentence states, “A verbal warning of the intended use of the *Taser* device **should** precede its application, unless it would otherwise endanger the safety of deputies or when it is not practicable due to the circumstances.” We would like that to say **shall**.

Inv. Baker – There may be a time when the announcement would put the officer in danger.

Deputy Minton – The warning is also for the other officers that are involved.

Chairman Federice – How about “Shall, when practical”.

Sgt. Reinhart – Much of the body of these policies do say “if or when practicable”, which does give an out. Shall and should is clearer. They set a much clearer expectation. I don’t believe “if practicable” suffices.

Inv. Baker – We are operating in the bounds of State Law.

Sgt. Reinhart – It is difficult to write a policy for a 1-year officer and a 20-year officer. The more experienced officer has more room for discretion. We would not want the new officer to have much discretion.

Inv. Baker – The last suggested recommendations for the Use of Force policy will be finalized and presented at the next meeting.

Chairman Federice – My list of topic areas that still need final recommendation are: Conducted Energy Device, Body Camera, Use of Force, De-escalation, and Bias Based Policing. Any other topics?

Mr. Lape – Are all the Lexipol policies here?

Sgt. Reinhart – There are many Lexipol polices. Their package has over 150 policies. They triage the topics and group them together. We only started working with Lexipol about a year ago.

Sheriff Stevens – We are only talking about the polices that were designated by Executive Order 203. There are other polices that we have either completed or are working on that are not designated in 203. This is a work in progress and will be ongoing.

Mr. Lape – It must always be a work in progress with updates and new recommendations.

Sgt. Reinhart – Policy work is ongoing. There are also policies that are identified by PERMA, our insurance company. We need to satisfy their recommendations, so we don't lose our funding. PERMA's funding is the reason we work with Lexipol. We have had policies in place, and they will all be reviewed and updated.

Chairman Federice – any other topics that anyone feels need to be discussed? Our next meetings will focus on drafting our recommendations to present to the full Board of Supervisors. The deadline to have the response of Executive Order 203 to the State is April 1, 2021. Our next meeting will be next Tuesday, February 2nd at 5:00 p.m., along with the regular monthly Law Committee meeting. The conference phone will be available also.

Meeting adjourned at 3:45 p.m.

Law Review Meeting January 26, 2021 (Board Chambers)

	<u>NAME</u>	<u>AGENCY/DEPT/VISITOR</u>
1	Bill Federice	Chairman of the Board
2	C.J. Smith	BOS
3	Carl Walthers	SchoPeg
4	Debbie Paden	Rural Awakenings
5	Deputy Minton	Sheriff's Dept.
6	Dick Lape	BOS, Law Committee Chair
7	Duane Tilipaugh, Undersheriff	Sheriff's Dept.
8	Jordan/Gretchen	I.T.
9	Pat Hults	Rural Awakenings
10	Sgt. Zach Reinhart	Sheriff's Dept.
11	Sheriff Ron Stevens	Sheriff's Dept.
12	Suzanne Graulich	IIS
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Conducted Energy Device

304.1 PURPOSE AND SCOPE

This policy provides guidelines for the issuance and use of the TASER (TM).

304.2 POLICY

The TASER device is used to control a violent or potentially violent individual. The appropriate use of such a device should result in fewer serious injuries to deputies and suspects.

304.3 ISSUANCE AND CARRYING TASER DEVICES

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

TASER devices are available to Deputies for use while on-duty, particularly Deputies assigned to the Patrol Division.

Deputies shall only use the TASER device and cartridges that have been issued by the Office. Uniformed deputies who have been issued the TASER device shall wear the device in an approved holster. Non-uniformed deputies may secure the TASER device in the driver's compartment of their vehicles.

Members carrying the TASER device should perform a spark test prior to every shift.

When carried while in uniform, deputies shall carry the TASER device in a support-side holster on the side opposite the duty weapon.

- (a) All TASER devices shall be clearly and distinctly identifiable in a manner which makes them easy to differentiate them from the duty weapon and any other device.
- (b) Whenever practicable, deputies should carry two or more cartridges on their person when carrying the TASER device.
- (c) Deputies shall be responsible for ensuring that the issued TASER device is properly maintained and in good working order.
- (d) Deputies should not hold a firearm and the TASER device at the same time.

304.4 VERBAL AND VISUAL WARNINGS

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

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

If, after a verbal warning, an individual fails to voluntarily comply with a deputy's lawful orders and it appears both reasonable and feasible under the circumstances, the deputy may, but is

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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 device. The aiming laser should not be intentionally directed into anyone's eyes.

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

304.5 USE OF THE TASER DEVICE

The TASER device has limitations and restrictions requiring consideration before its use. The TASER device should only be used when its operator can safely approach the subject within the operational range of the device. Although the TASER device is effective in controlling most individuals, deputies should be aware that the device may not achieve the intended results and be prepared with other options.

304.5.1 APPLICATION OF THE TASER DEVICE

The TASER device may be used in any of the following circumstances, when the circumstances perceived by the deputy at the time indicate that such application is reasonably necessary to control a person:

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

Mere flight from a pursuing deputy, without other known circumstances or factors, is not good cause for the use of the TASER device to apprehend an individual. The TASER device shall not be used to psychologically torment, to elicit statements or to punish any individual.

304.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of the TASER device on certain individuals should be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the deputy, the subject or others, and the deputy reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- (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 capsicum (OC) spray.
- (f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

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Because the application of the TASER device in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance, the use of the drive-stun mode should be limited to supplementing the probe-mode to complete the circuit, or as a distraction technique to gain separation between deputies and the subject, thereby giving deputies time and distance to consider other force options or actions.

304.5.3 TARGETING CONSIDERATIONS

The preferred targeting areas include the individual's back or front lower-center mass. The head, neck, chest and groin should be avoided when reasonably practicable. If the dynamics of a situation or officer safety do not permit the deputy to limit the application of the TASER device probes to a precise target area, deputies should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

304.5.4 MULTIPLE APPLICATIONS OF THE TASER DEVICE

Deputies should apply the TASER device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Deputies should not intentionally apply more than one TASER device at a time against a single individual.

If the first application of the TASER device appears to be ineffective in gaining control of an individual, the deputy should evaluate the situation and consider certain factors before additional applications of the TASER device, including:

- (a) Whether it is reasonable to believe that the need to control the individual outweighs the potentially increased risk posed by multiple applications.
- (b) Whether the probes are making proper contact.
- (c) Whether the individual has the ability and has been given a reasonable opportunity to comply.
- (d) Whether verbal commands or other options or tactics may be more effective.

304.5.5 ACTIONS FOLLOWING DEPLOYMENTS

Deputies should take appropriate actions to control and restrain the individual to minimize the need for longer or multiple exposures to the TASER device. As soon as practicable, deputies shall notify a supervisor any time the TASER device has been discharged. Anti-Felon ID (AFID) tags should be collected and the expended cartridge, along with both probes and wire, should be submitted into evidence. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

304.5.6 DANGEROUS ANIMALS

The TASER device may be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

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304.5.7 OFF-DUTY CONSIDERATIONS

Deputies are not authorized to carry office TASER devices while off-duty.

Deputies shall ensure that TASER devices are secured while in their homes, vehicles or any other area under their control, in a manner that will keep the device inaccessible to others.

304.6 DOCUMENTATION

Deputies shall document all TASER device discharges in the related arrest/crime reports, in the TASER device report forms and in a Use of Force form. Notification shall also be made to a supervisor in compliance with the Use of Force Policy. Unintentional discharges, pointing the device at a person, laser activation and arcing the device, other than for testing purposes, will also be documented on the report form.

304.6.1 TASER DEVICE REPORT FORM

Items that shall be included in the TASER device report form are:

- (a) The type and brand of TASER device and cartridge and cartridge serial number.
- (b) Date, time and location of the incident.
- (c) Whether any display, laser or arc deterred a subject and gained compliance.
- (d) The number of TASER device activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications.
- (e) The range at which the TASER device was used.
- (f) The type of mode used (probe or drive-stun).
- (g) Location of any probe impact.
- (h) Location of contact in drive-stun mode.
- (i) Description of where missed probes went.
- (j) Whether medical care was provided to the subject.
- (k) Whether the subject sustained any injuries.
- (l) Whether any deputies sustained any injuries.

The Training Coordinator should periodically analyze the report forms to identify trends, including deterrence and effectiveness. The Training Coordinator should also conduct audits of data downloads and reconcile TASER device report forms with recorded activations.

304.6.2 REPORTS

The deputy should include the following in the arrest/crime report:

- (a) Identification of all personnel firing TASER devices
- (b) Identification of all witnesses
- (c) Medical care provided to the subject
- (d) Observations of the subject's physical and physiological actions

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- (e) Any known or suspected drug use, intoxication or other medical problems

304.7 MEDICAL TREATMENT

Deputies should remove TASER device probes from a person's body in a manner consistent with their training and experience. If a subject has a probe lodged in a sensitive area (head, face, neck, breast, genitals, eye, etc.) medical personnel should be requested to respond to remove the probes and treat the subject as may be needed. Used TASER device probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by TASER device probes or who have been subjected to the electric discharge of the device or who sustained direct exposure of the laser to the eyes shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The TASER device probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another deputy and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting deputy shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the TASER device (see the Medical Aid and Response Policy).

304.8 SUPERVISOR RESPONSIBILITIES

When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the TASER device may be used. A supervisor should respond to all incidents where the TASER device was activated.

A supervisor should review each incident where a person has been exposed to an activation of the TASER device. The device's onboard memory should be downloaded through the data port by a Firearms Instructor and saved with the related arrest/crime report. Photographs of probe sites should be taken if practicable and witnesses interviewed.

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304.9 TRAINING

Personnel who are authorized to carry the TASER device shall be permitted to do so only after successfully completing the initial office-approved training. Any personnel who have not carried the TASER device as a part of their assignments for a period of six months or more shall be recertified by a qualified TASER device instructor prior to again carrying or using the device.

Proficiency training for personnel who have been issued TASER devices should occur every year. A reassessment of a deputy's knowledge and/or practical skills may be required at any time if deemed appropriate by the Training Coordinator. All training and proficiency for TASER devices will be documented in the deputy's training files.

Command staff, supervisors and investigators should receive TASER device training as appropriate for the investigations they conduct and review.

Deputies who do not carry TASER devices should receive training that is sufficient to familiarize them with the device and with working with deputies who use the device.

The Training Coordinator is responsible for ensuring that all members who carry TASER devices have received initial and annual proficiency training. Periodic audits should be used for verification.

Application of TASER devices during training could result in injuries and should not be mandatory for certification.

The Training Coordinator should ensure that all training includes:

- (a) A review of this policy.
- (b) A review of the Use of Force Policy.
- (c) Performing weak-hand draws or cross-draws to reduce the possibility of unintentionally drawing and firing a firearm.
- (d) Target area considerations, to include techniques or options to reduce the unintentional application of probes near the head, neck, chest and groin.
- (e) Handcuffing a subject during the application of the TASER device and transitioning to other force options.
- (f) De-escalation techniques.
- (g) Restraint techniques that do not impair respiration following the application of the TASER device.