

## RESOLUTION 09-04-2013 (As Amended and Adopted)

### DIGEST

Law Enforcement: Statewide Guidelines for Law Enforcement to use Taser Guns

Adds Penal Code §§835b and 13514.6 to define when a peace officer may use a Taser gun and to institute standards and training for peace officers in the use of Tasers.

### RESOLUTIONS COMMITTEE RECOMMENDATION

~~DISAPPROVE~~ *(amendments address expressed concerns)*

#### History:

Similar to Resolution 03-02-2007, which was approved in principle.

### TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Penal Code section 835b and section 13514.6, to read as follows:

#### §835b

A peace officer, or a person acting in a peace officer's presence and at the officer's direction, is justified in using a Taser against another person only if the officer or person is in reasonable fear of an immediate threat of harm to the officer or person.

#### §13514.6

(a) (1) By July 1, 2015, the Commission on Peace Officer Standards and Training using available funding, shall develop a course to be made available to all law enforcement agencies in California on the use of Tasers and similar weapons designed to temporarily incapacitate a person. The course shall include information on the proper use of such weapons and the circumstances under which they can be deployed. In developing the course, the commission shall consult subject-matter experts which may include, but must not limited to, manufacturers of Tasers and similar weapons.

(2) Every state law enforcement agency, and every local law enforcement agency must provide the course to its peace officers.

(Proposed new language underlined; language to be deleted

stricken.) **PROPONENT:** National Lawyers Guild, San Francisco Bay Chapter

### STATEMENT OF REASONS

The Problem: Current California law does not provide any statewide guidance to law enforcement in the use of Taser guns. As a consequence, law enforcement entities must determine their own guidelines or, in many cases, operate with no guidelines at all. While Tasers have been advertised as a non-lethal alternative to the use of deadly force, many deaths have been attributed to their use. Amnesty International has documented over 500 deaths caused by Taser misuse in the United States between 2001 and 2011. Ninety-two of those deaths occurred in California, the largest number of any state.

This Solution: This resolution resolves the problem of Taser misuse in two ways.

First, it sets a standard in the Penal Code that Taser use is only justified if an officer is in in reasonable fear of an immediate threat of harm to the officer or another person.

There have been several recent incidents in California such as failing to obey a police officer or failing to produce identification during a routine traffic stop in which Tasers were used. In this last incident in November 2012, California Highway Patrol officers used a Taser on Angela Jones, a woman in San Bernardino who was in her car, but not driving. That Taser use caused cardiac arrest. The number of deaths associated with Taser use clearly show that the Taser is more than a non-lethal weapon. This standard would remove the use of Tasers for such inconsequential situations where an officer or member of the public is not in reasonable fear of an immediate threat of harm to the officer or another person.

Second, the resolution requires the Commission on Peace Officer Standards and Training, using available funding, to develop a course to be made available to all law enforcement agencies in California on the use of Tasers and similar weapons designed to temporarily incapacitate a person. The course shall include information on the proper use of such weapons and the circumstances under which they can be deployed. In developing the course, the commission shall consult subject-matter experts which may include, but must not limited to, manufacturers of Tasers and similar weapons.

The Ninth U.S. Circuit Court of Appeals in *Bryan v. MacPherson*, (2009) 630 F.3d 805 (9th Cir.) set judicial standards for the use of Tasers, saying "The objective facts must indicate that the suspect poses an immediate threat to the officer or a member of the public." Despite the issue of this ruling in 2009, California still has not incorporated these judicial standards into a statewide training course.

As the Angela Jones case shows, Tasers can deliver lethal force. In a May, 2012 article in the American Heart Association journal, *Circulation*, Douglas Zipes M.D., of Indiana University's Krannert Institute of Cardiology, found that a shock from the Taser "can cause cardiac electric capture and provoke cardiac arrest" as a result of an abnormally rapid heart rate and uncontrolled, fluttering contractions. The article suggested that guidelines be established to prevent direct Taser shocks to the chest so as to avoid possible cases of cardiac arrest. These guidelines have not been incorporated into statewide training standards either.

## **LEGISLATIVE HISTORY**

Not known

## **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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