

Law Enforcement Liability - Use-of-Force

BACKGROUND

Law Enforcement Liability claims citing Officer's Use-of-Force continue to negatively impact severity. While overall Law Enforcement Liability claim severity had been declining between PY 2015-16 and PY 2017-18, the percentage of claims severity referencing Officer's Use-of-Force relative to total severity has been steadily increasing. In PY 2018-19, Use-of-Force claims exceeded the \$3.0M threshold for the first time since PY 2013-14. Use-of-Force claims make up approximately 53% of all Law Enforcement Liability claim severity.

Since July 1, 2015, the CIRMA Liability-Auto-Property (LAP) Pool has experienced \$6.2M in Use-of-Force claims, led primarily by \$4.1M as a result of Officer-Involved Shootings. The remaining severity is associated with a variety of uses of force including TASER utilization. Included in this severity are payment to the claimant as a result of bodily injury (\$5.4M) and Legal Expenses (\$0.6M).

The large loss incident described below recently settled for over \$2 million and was a result of the deployment of less than lethal use-of-force TASER deployment.

INVESTIGATION

The claims investigation revealed the following facts:

- The decedent had an extensive criminal history, including charges for violent crimes such as assault.
- The decedent had a lengthy history of drug and alcohol abuse and mental health illness; he was diagnosed with a bi-polar disorder and depression.
- The decedent had a son and 4 siblings. He lived with his grandmother, who raised him.
- On the date of the incident, local law enforcement has been called to a parking area for a potential assault-in-progress. Upon arrival, the officers found the decedent standing near a vehicle with a smashed windshield and side window. The officer's investigation found that the decedent had thrown rocks at a vehicle as it passed by him, smashing the windshield and passenger side window. At this time the decedent offered no explanation to his actions, and was cooperative, he did appear to be intoxicated. He was ultimately taken into custody without incident and charged with damaging the passing vehicle. He was transported to the local police department for processing. At that time, it was determined that the decedents blood alcohol level was .241.
- The decedent was then placed into a holding cell where he became agitated and began removing his clothes. Officers responded and opened the cell door. The decedent immediately charged out of the cell and became combative with the officers. As a result, the officers responded by punching the decedent in the head and subsequently deployed a TASER for 20 seconds. The TASER had little effect – it was determined that one of the TASER lines was broken sometime during the altercation. After multiple attempts to physically control the decedent he was subdued and placed into handcuffs. The decedent was left laying on the cell floor. Approximately 5 minutes later, after seeing movement from the decedent, officers entered the cell again to check his condition, and found him in medical distress. The officers called for medical assistance, which took 7 minutes to arrive. During this time, officers did not attempt any lifesaving or life-preserving efforts. EMS arrived and initiated advanced life support efforts and transported the decedent to a local hospital where he later died.

CLAIM LIABILITY ASSESSMENT

The claims were accepted at 100% since the officers were acting within the scope of their assigned duties of the incident. The 12 minute video tape showed that there was little effort to preserve life. It was further determined that one of the officers on scene had been trained in the use of AED's and CPR and offered no assistance. As a result, this claims recently settled for \$2.5 million.

KEY RECOMMENDATIONS/ACTION ITEMS

On July 31, 2020, Governor Ned Lamont signed House Bill 6004 creating Public Act 20-1. The act contains 45 sections with approximately 27 varying sections that address police officer training, oversight, actions in the field, equipment and liability. Public Act 20-1 creates the office of an inspector general to investigate complaints of police misconduct. The act requires police and correctional officers to intervene when witnessing brutality, mandates body and dash cameras, bans chokeholds in most circumstances and clarifies that deadly force can be used only when police exhaust all reasonable alternatives. It also revamps and empowers the Police Officers Standards and Training (POST) Council, giving it the authority to decertify a police officer – revoking a necessary credential

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for employment as a municipal police officer in Connecticut. POST is also tasked with providing training for every police agency in Connecticut, including the State Police, and to help set policies on crowd control and the use of force.

As a result of the findings in this loss and the new legislation identified above it, is recommended that the law enforcement agencies work within the requirement of the new law to investigate these incidents, and provide training relevant to dealing with intoxicated individuals, individuals with special needs, recognizing mental health issues in adults and children (Youth Mental Health First Aid).

Furthermore, it is recommended that law enforcement agencies implement protocols in accordance with the new state legislation in regards to investigating use-of-force complaints, even when not related to the deadly use-of-force by officers.

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Questions on this topic? Ask your Supervisor or CIRMA Risk Management Consultant.