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ACLU OF MARYLAND

Policy on Conducted Energy Devices¹ and Best Practices Guidelines²

Without condoning the use of Conducted Energy Devices, the ACLU of Maryland calls for the following Recommended Conducted Energy Device Best Practices Guidelines:

TRAINING

- Prohibit exclusive reliance on Taser International training materials. Agencies should not be permitted to rely exclusively on Taser International's training materials to train their officers. Taser International's training materials focus primarily on technical proficiency, but they specifically disavow any responsibility for providing any use-of-force training. In addition, Taser International's materials downplay the risks of injury and death resulting from CED use, and fail to discuss the special considerations involved in using a CED against the elderly, children, or people known to have heart conditions.
- Educate about the risks of CED use. During training, officers should be informed that CED shocks may pose physiological risks, including death. Many training programs treat CEDs as perfectly safe, non-lethal devices, even though numerous questions surround the potential lethality of CEDs. Officers should be trained to recognize certain classes of individuals who are likely to be more vulnerable to injury or death following CED use.
- Integrate with training on use-of-force policies. Each agency should train its officers on its use-of-force policy for CEDs and how that policy relates to other force options.
- Include mental health and de-escalation training. CED training programs should integrate mental health and de-escalation training as part of the officers' use-of-force or CED training. These programs provide officers with additional tools to safely control situations without having to resort to any physical force, including CEDs. In addition, the training should instruct officials on how to address situations where the subject may have difficulty communicating (e.g., the mentally ill, the deaf, non-English speakers, or intoxicated persons). Officials should be trained to recognize mere non-compliance stemming from a communication breakdown does not warrant CED use absent an imminent threat of significant physical harm.
- Require re-certification training. Agencies should require annual re-certification on the use of CEDs, including use-of-force re-training. As part of that process, an agency should review each officer's history of

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¹ Commonly called "tasers".

² Adopted by the ACLU of Maryland Board of Directors on July 30, 2009.

CED use to determine if additional training is necessary or whether re-certifying the particular officer is appropriate.

- Eliminate shocking of trainees. Until the risks posed by CEDs are better understood, agencies should be prohibited from requiring their trainees to be shocked by a CED. Shocking a trainee with a CED exposes that individual to a risk of injury or death. In addition, if no injury occurs as a result of the shocking, it reinforces a misleading perception that CEDs are perfectly safe.

USE OF FORCE

- Treat CEDs as potentially-lethal weapons. Use-of-force policies should acknowledge that the CED is a potentially-lethal weapon rather than a non-lethal weapon.
- Permit CED use only in the face of imminent threats of serious physical harm. CED use should only be permitted where there is an imminent threat of serious physical harm to the officer or another individual. CEDs should not be employed as a device to simply gain compliance, even if a subject is being physically evasive or uncooperative. To the extent an agency insists on permitting CED use on a suspect who is engaging in active resistance, “active resistance” should be defined narrowly to include only acts that give rise to an imminent threat of serious physical harm. Non-threatening acts such as “tensing” one’s arm to avoid being handcuffed, without more, should not justify CED use.
- Integration with use-of-force policy. An agency’s policy on CED use should be integrated with the agency’s broader use-of-force standards.
- Avoid drive stun use. Use of the “drive stun” mode should be allowed only in exigent circumstances. In contrast to the “probe” deployment mode, the drive stun mode is designed to gain compliance by causing pain. At the same time, a person subjected to the drive stun mode is typically less threatening, as the officer must apply the CED to the person directly, and therefore must feel comfortable enough to approach the person and make direct contact.
- Brandish only when use is justified. Agencies should develop clear policies regarding when an officer may brandish a CED. Law enforcement officers should not be permitted to gain compliance by threatening to use a CED in situations where they do not believe a CED would be justified. As with handguns, officers should only be permitted to gain compliance with the CED where use of the CED itself is, or is likely to be, appropriate.
- Warn before use. A warning should be given to a subject before the CED is used unless such a warning would place any other person at risk.

- Prohibit use on handcuffed persons. Persons restrained in handcuffs should not be tased unless they pose an immediate, *i.e.*, greater than imminent, physical risk to another person.
- Transitioning to other force and de-escalation options. Use-of-force policies should make clear that an officer should not use a CED to shock a subject unless satisfied, on reasonable grounds, that no lesser force option would be effective, and de-escalation and/or crisis intervention techniques would not be effective. This is particularly important when dealing with an emotionally disturbed subject.

APPROPRIATE USE

- Avoid secondary harms. To avoid secondary injuries or death, CED use should be permitted in the following situations only in extraordinary circumstances:
 - persons in elevated positions;
 - persons operating vehicles or machinery;
 - persons who are running;
 - sensitive areas of the body, *e.g.*, face, groin, or breasts;
 - persons who might be in danger of drowning; and
 - persons in flammable environments.
- Narrowly limit use against vulnerable populations. CED use against the following vulnerable populations should be permitted only in extraordinary circumstances:
 - children (especially younger and smaller children).
 - pregnant women;
 - the elderly;
 - the infirm;
 - people known to have heart conditions; and
 - people known to be under the influence of drugs or alcohol.
- Avoid multiple and repeated CED applications. Multiple shocks and long-lasting shocks appear to increase the risk of serious injury and death. Therefore, police should adopt the following policies:
 - Shocks should be administered for as short a time as possible.
 - When a CED is used, the officer should stop and evaluate the situation after one standard cycle. Before administering an additional shock, an officer should pause to evaluate the

situation and determine whether the suspect still poses an imminent threat of significant physical harm. If no such threat is present, no further CED shocks should be permitted.

- Officers should not deploy multiple CEDs against an individual simultaneously.
- Prohibit deployment in schools. CEDs should not be deployed in schools. Children are weaker than adults and are thus both less threatening and easier to control with conventional law enforcement compliance techniques. At the same time, several studies suggest that CEDs are more likely to cause ventricular fibrillation in smaller people. In addition, children are especially vulnerable to pain and fear, and shocking a child in a school setting, where children are typically protected, is likely to be particularly traumatic.

MEDICAL CARE

- Provide EMS care for all uses of a CED. Many persons who die after being shocked by a CED do so after suffering from heart attacks. EMS should therefore be summoned immediately after a person is shocked with a CED. If police expect that they will be forced to deploy a CED, they should contact EMS in advance.
- Monitor health of persons tased while in custody. All persons subjected to CED use should be regularly monitored while in police custody, even after receiving medical care.
- Avoid impairment of respiration. Following use of a CED, officers should not employ any restraint technique that could impair the subject's respiration.
- Access to defibrillators. Officers who are armed with CEDs should carry a defibrillator in their vehicle, and should be trained on defibrillator use.

REPORTING/MONITORING

- Report all deployments of CEDs. All deployments, even accidental discharge, should be reported in a use-of-force report.
- Supervisors should respond to scene of all CED deployments. To help ensure that each CED deployment is appropriate and to underscore the seriousness of using CEDs, a supervising officer should report to the scene of each CED deployment and assess the appropriateness of the deployment. When possible, supervisors should anticipate situations

where CED deployment is likely and respond to the scene as soon as practicable.

- Investigation following each deployment. Following every CED deployment, an inquiry should be conducted and to review whether the use of force was appropriate and if agency guidelines were followed. All investigations should include: location and interview of witnesses (including all officers involved); photographs of any injuries; photographs of cartridge and darts; collection of cartridge, darts, data downloads, car video, and confetti ID tags; copies of the device data downloads; and any other relevant information.
- External investigation following questionable deployment. An investigation outside the chain of command should occur when: a subject dies or is seriously injured by a CED deployment; a person experiences a prolonged CED activation; or there appears to be a substantial deviation from training, including when a vulnerable person has been tased.
- Monitor use on agency level. Each agency should monitor CED use using tracking databases. CEDs provide a data recording of each deployment, and the X-26 Taser also records the duration of each deployment. Agencies should download this data periodically and use it to ensure that there are no unreported deployments of the CED and to assess whether some officers are relying on the CED excessively. Agencies should collect and maintain statistics on their use of CED s. These statistics should be available for public inspection.
- Monitor use on state-wide level. Agencies should be required to report CED use incidents to a state-wide monitor and to make such information publically available. The monitoring entity should ensure that individual departments were not relying on CEDs excessively or using them inappropriately. Data collected and reported should include:
 - Date, time, location of incident.
 - The use of the laser dot or display of the CED that deterred a subject and gained compliance.
 - Identifying and descriptive information of the suspect (including membership in an at-risk population), all officers firing CEDs, all officer witnesses, and all other witnesses.
 - The type and brand of CED used.
 - The number of CED cycles, the duration of each cycle, the duration between cycles and the duration that the subject was actually activated.
 - Level of aggression encountered.
 - Any weapons possessed by the suspect.
 - The type of crime/incident the subject was involved in.
 - Determination of whether deadly force would have been justified.

- The type of clothing worn by the subject.
- The range at which the CED was used.
- The type of mode used (probe or drive stun).
- The point of impact of probes on a subject in probe mode.
- The point of impact on a subject in drive stun mode.
- Location of missed probe(s).
- Terrain and weather conditions during CED use.
- Lighting conditions.
- The type of cartridge used.
- Officer suspicion that subject was under the influence of drugs (specify if available).
- Medical care provided to the subject.
- Any injuries incurred by an officer or subject.

ADDITIONAL RESEARCH

- Conduct independent research regarding dangers posed by CEDs. Taser International claims that CEDs pose virtually no physiological risks, and attributes deaths associated with CEDs to what it calls “excited delirium.” But there has been very little independent research on the effects of CEDs, particularly on vulnerable people like children and the elderly, and established medical authorities have not recognized “excited delirium” as a condition. An independent study should be commissioned to determine what risks CEDs pose, and to examine whether deaths blamed on “excited delirium” can actually be attributed to CEDs or to other causes.
- Comparison of incidents of deadly force used in agencies before and after CED acquisition. Proponents of CED use suggest that the devices reduce use-of-force incidents involving firearms. However, many officers have indicated that they would rarely use a CED when they felt use of a firearm was necessary to protect their own or another individual’s safety. In addition, the perceived safety of the CED may encourage officers to deploy a use-of-force where doing so previously may not have been warranted.