
Human Rights and U.S. Policy Review:
Law Enforcement Use of Conducted Energy Devices

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Law enforcement agencies in the United States of America are turning to a new kind of weapon, conducted—or directed—energy devices (CED), also known as electronic control devices (ECD). These devices, “primarily designed to disrupt a subject’s central nervous system by means of deploying electrical energy sufficient to cause uncontrolled muscle contractions and override an individual’s voluntary motor responses” (Cronin & Ederheimer, 2006, p. 17), were developed in response to growing complaints among civilian and law enforcement communities that were seeking more efficient means to control dangerous persons with a reduced risk of fatality or serious injury, relative to firearms and clubs. CEDs have become a topic of great controversy since their introduction into law enforcement practices. Despite the intended purpose of reducing fatalities in police-public confrontations, reports indicate a link between the devices and numerous deaths – Amnesty International stating this week that police use of the technology can trace to at least 334 known fatalities (Amnesty International USA, 2008). The devices are also under scrutiny for their potential use in torture-tactics, and general misuse of CEDs is already a well-documented phenomenon. Some manufacturers of the weapons have taken measures to improve accountability to address these issues, offering digital usage recording among other features (TASER International, Inc., 2008). However, the actions taken on behalf of manufacturers are insufficient. Various political actors are campaigning for the introduction and updating of formal policies regarding police use of CEDs. Police officers, managers, executives, and

administrators, policymakers, victims and survivors, NGOs, and the general public all offer different perspectives on the matter, delaying the incorporation and implementation of even the most fundamental policy proposals. Considering just the core values of these proposals presents an excellent opportunity for all sides to move forward and address peripheral issues, such as funding or consumption of time, as needed. This first demonstration of progress is necessary to address the rifts between public opinion, human rights obligations, police practice and demands, and current policy, to improve police and public-policy relations with at-risk minorities, to improve U.S. international standing and reputation by realigning the United States with its traditionally progressive human rights history and responsibilities.

Understanding this debate requires—at a minimum—a basic understanding for the problems these groups are trying to address. One potential problem that arises with officer use of CEDs include the death of the target—an issue because the primary purpose of CEDs is to offer a less-lethal alternative to firearms, and because their less-lethal nature often justifies police use on subjects who do not warrant use of *deadly* force, despite any potential for death. The potential for abuse of the technology by law enforcement officers is a second problem facing policymakers. To address these issues, federal, private, and NGO research has created various guidelines. Specifics vary from proposal to proposal, but many key themes recur among the guidelines. A survey of significant proposals relevant to this debate offers a starting-ground for analysis.

Behind each proposal are various supporting and opposing groups, each with unique reasons for its position on any particular issue. The following recommendations are of primary concern to a majority of parties involved¹:

The first common proposal indicates that each use of a conducted energy device necessitates a detailed, full report of the incident, including a description of the subject and his/her behavior, thorough interviews with witnesses, and supervisor reviews. These reports are to be uniform among all agencies. The second common proposal is a consistent training and usage-policy program that transcends jurisdictions; in other words, police in one community will receive the same training as police in another. Proposals specify that training should incorporate restricted rules of engagement—including who can be *tased*, how the officer should properly use the CED to minimize risk to the subject, and under what circumstances the use of a CED is justified. The third and final proposal addressed herein dictates, to a degree, certain responsibilities of the law enforcement or corrections officers who utilize a CED against a subject. Such responsibilities would include notifying medical personnel and ensuring that proper medical care is provided to the subject—either requiring expanded medical training for CED-equipped officers or increased cooperation between police agencies and emergency medical personnel—as well as monitoring

¹ See Appendix A; see also pages 57-60 of the 130-page document, *'Less Than Lethal'?*, published in mid-December, 2008, by Amnesty International.

the subject closely from the time of CED-activation until appropriate medical care is provided. Taking such responsibilities one step further, some parties have suggested that officers should give subjects a warning, to notify a subject that the officer will utilize a CED against him/her—unless this notification presents a greater risk to the subject, the officer, or any third-party.

Before delving into these issues, it is important to note that no discussion of banning CEDs has ever garnered a significant backing. While the removal of CEDs from enforcement and corrections practices may serve as a ‘quick-fix,’ it would ultimately result in a return to the very conditions that prompted the invention of such devices: high rates of serious injuries and fatalities in police-public confrontations. Technologically speaking, all significant players in this policy debate recognize the value of Tasers and other such devices. Further, as Herbert Jenkins points out, disarming the police to any degree would necessitate a public disarming (1970, p. 188); and it logically follows that a partial-disarmament would necessitate a public disarming of any equivalent or more dangerous technology. Though idealistically valuable, propositions with no pragmatic reality cannot further a discussion of legitimate policy changes. Because the various opinions on the Second Amendment will not soon disappear, and because there is overwhelming support—idealistically—for the introduction of CEDs into law enforcement and corrections applications, recommendations and their implicit and explicit consequences are, for the purpose of this analysis,

limited to those with sufficient viability in the public forum. No proposal comes without opposition.

The notion of increased documentation regarding police use of CEDs has arisen on many fronts. Though, in general, the public supports police possession and use of Tasers (The Virginia Coalition of Police and Deputy Sheriffs, 2005), public forums have raised this issue time and time again. Opposition to the proposal of uniform CED-usage reporting comes from two main sources, both of which are common to all proposals for more paperwork. Some police officers oppose this imposition idealistically, condemning the implications that the public and agency supervisors cannot trust sworn-officers to report the truth without a full investigation and documentation of events (Jenkins, 1970). Officers have also presented opposition to a request for more documentation on the grounds that it ties up valuable, limited resources. This latter, more pragmatic complaint resonates with law enforcement administrators, who not only cite a greater demand on manpower, but also on financial and planning resources. Simply put, creating and implementing uniform reporting systems for CED activations will not be cheap for anyone involved—it will involve not only the creation and dissemination of the forms, but also training to officers and supervisors to ensure proper completion of the paperwork (Cronin & Ederheimer, 2006) (U.S. Department of Justice OJP NIJ/BJIS, 1999) (McEwen, 1996).

The proposal that agencies ought to implement uniform training and usage-policies also finds various opposing arguments and, due to its potential for

restricting of the authority of officers, bolsters the greatest opposition. Firstly, this proposal suffers the same financial implications as the suggestion of more paperwork and forms. Any added cost, particularly in the current economic situation, finds opposition among policymakers and police administrators. Also, training often interferes with the amount of time an officer has to spend actively performing his/her duties to protect and serve the community. While in training sessions, an officer is not investigating or intervening in crimes. This is particularly the case for smaller police departments that do not have the human resources to keep the same number of officers on the streets while their force completes extensive training requirements (Wilson, 1970, pp. 152-153). Secondly, many officers have raised practical concerns over the suggestion of restricting CED use. An officer's reasonable judgment is often the determining factor in whether the use of force is justified or not, and his/her judgment can supplement department policy because 'he was there and the policymakers were not,' (U.S. Department of Justice OJP NIJ/BJS, 1999) (Wikimedia Foundation, Inc., 2008). This judgment may also take the form of legally-recognized *probable cause*, which generally holds significant value in policing for allowing an officer to conduct certain procedures that may not otherwise be warranted. Probable cause, for example, can be sufficient justification for a homicide if an officer believes the suspect presents a "significant threat of death or serious physical injury to the officer or others," even if the suspect is attempting to flee (Wikimedia Foundation, Inc., 12) (471 U.S. 1), though

some cases present more complex details and the potential for dispute (550 U.S. 372).

Many officers have suggested that removing the benefit-of-the-doubt in their reasonable judgment, and replacing that judgment instead with universal standards, runs risks that threaten public safety and the safety of officers. Mandating whom may be subjected to a CED stun or what behaviors the subject must exhibit in order to justify CED deployment, some have said, can lead to a tragedy in the same way that such restrictive rules of engagement allowed perpetrators to carry-out a genocide in Rwanda in defiance of a peacekeeping force that was not allowed to take action (Wikimedia Foundation, Inc., 2008). Too-severe restrictions and too much attention paid over a specific weapon (the CED) could lead officers to resort to using other weapons against subjects, according to some outspoken officers (Lawrence, 2000) (Cronin & Ederheimer, 2006). Though quantifiable data on this is lacking, the suggestion that increased training and regulations could proscribe the use of CEDs under certain circumstances has not been well-received among the general police community and has inspired similar concerns in all the acting parties. The argument here declares that police effectiveness is not a fair compromise for the safety and well-being of the small number of people on whom the police use CEDs. Statistics supporting the anomalies of CED-related deaths suggest that they not only account for a small number of arrest-related homicides—including justifiable homicides—committed by law enforcement officers (only 2 out of 1095 homicides by law enforcement officers between 2003 and 2005 were

caused by CED weapons (Mumola, 2007, p. 16)). Additionally, thorough investigations of CED-related deaths indicate that the average individual is not susceptible to CED-caused fatality, but that the majority of those killed by CED activations are under the influence of drugs or alcohol at the time of the incident (Amnesty International, 2008) (Mumola, 2007) (Cronin & Ederheimer, 2006).

Regardless of who is most susceptible to CED-caused fatality or what influences or choices that individual has made, CEDs are not intended to be lethal. To reduce the deadliness of these *less lethal* weapons, the third proposal suggests that officers should take medical precautions when using any conducted energy device. Perhaps inspired by a United Nations inquiry into human rights abuses by Colombian police in 1979, some formal proposals have indicated that officers should attempt to warn subjects prior to using a CED, as studies have indicated that a CED can be psychologically effective in some cases without necessitating the actual engagement of the device (Cronin & Ederheimer, 2006, pp. 23-29) (Amnesty International, 2008) (see also Appendix A). These proposals make the concession that fair-warning is not always possible or effective. In the case that an electro-shock device is engaged against a subject, the involved officers should be properly trained to provide adequate first aid until professional medical personnel can provide treatment. Some suggest that medical personnel should be notified and on-scene at any incident which runs the risk of CED activation; however, other proposals acknowledge difficulties in managing such communication and essentially

forecasting the outcome of an police-incident, so the suggestion has simply arisen that officers should call for medical personnel upon activation of a stun weapon (refer to Appendix A for these proposals). Opposition to this suggestion is largely based on the idea that officers cannot and should not predict the outcome of any situation, and it is a misuse of medical resources to have crews attend any scene without knowing whether their services will be necessary (Cronin & Ederheimer, 2006). Additionally, the recurring theme of funding for training and providing officers with sufficient time to attend training arises with any such proposal.

Though all three of these major policy guidelines have found heavy idealistic and pragmatic opposition, they also have strong support from the various players in policymaking, with each player offering different incentives to the proposals. The suggestion of increased documentation and reporting of CED activations offers both idealistic and pragmatic support. To start with the latter, practical implications of investigating each use of a CED – whether fatal or not – includes not only improving officer accountability, but also improving a general understanding of CEDs. Police reports on the use of any weapon can allow for data-collection that leads to discoveries such as the effects of the weapons. This overlaps with officer accountability, suggesting that reports could indicate whether the weapons are utilized disproportionately against certain groups of people. Reports, in this sense, can indicate the existence of a ‘problem police officer’ and can lead to a rectification of any problems resulting of this officer’s behavior

(Jenkins, 1970, pp. 184-186) (Walker, Alpert, & Kenney, 2001). This offers an opportunity to improve relations between the police in America and ‘at-risk’ minorities (related to the discussion of government relations with peoples discussed by Ted Robert Gurr in People versus States). Discrimination among police has a long-documented history, and continues today. The use of CEDs is, in fact, most controversial among the African-American population (The Virginia Coalition of Police and Deputy Sheriffs, 2005), and addressing any implication of unfair use could stand to strengthen community relations. The advantages of detailed reports do not stop at implicating abuses, however. An officer can be cleared of wrongdoing by an accurate, detailed report. Such is the purpose of any investigation, to prove guilt or innocence, and it applies as well to law enforcement and corrections officers as to any other person (Brodeur, 1998). Despite the implications of police fraternity and solidarity—the Thin Blue Line—the prospect that these investigations could weed-out problem officers has support from all groups (Niederhoffer, 1969) (Wilson, 1970) (Cronin & Ederheimer, 2006). The human rights implications of this proposal cannot be ignored. Amnesty International has campaigned for years to correct human rights violations tied to CEDs, and a major component of this campaign has focused on reporting and investigating events (United States of America: Race, Rights and Police Brutality, 2000) ('Less Than Lethal?': The Use of Stun Weapons in US Law Enforcement, 2008).

Human rights implications go further than investigations, however, and account for the bulk of

support behind the second policy guideline—regulating and ensuring proper use of the Taser and other CEDs. Despite the fact that reports have, for years, suggested a connection between CED-fatalities and the victim’s physical sobriety, stature and development, fatalities continue among groups known to be at risk for conducted-energy-related death. The majority of case-studies presented in Amnesty International’s *‘Less Than Lethal’?* indicate this correlation. While some of these deaths were arguably unavoidable, restricting use of CEDs could protect the individual’s right to life (Amnesty International USA, 2008). As Winnfield, LA coroner Dr. Randolph Williams said while investigating the death of an individual stunned nine times by a CED, “‘This case may be the most unnecessary death I have ever had to investigate,’” (Amnesty International, 2008, p. 6). *Amnesty* has condemned CEDs not solely on the grounds of their potential for causing death, but in fact because CEDs have reduced the threshold for use-of-force in police confrontations (2008, p. 14) (Tasers -- potentially lethal and easy to use, 2008). In fact, when compared to use-of-force reported in incidents dealing with toy guns, the use of CEDs is questionable in many cases (Carter, Sapp, & Stephens, 1990) (Amnesty International, 2008, pp. 61-81). Because the technology is designed for increased safety as compared to firearms and clubs, officers often resort to using the directed-energy weapons as a simple solution to matters which may not normally justify the use of force. Taking this a step further, human-rights watchdog groups, as Michael Ignatieff would call them (2003, pp. 8, 10), have indicated that the use of CEDs

can run dangerously close to the practice of torture. Because the devices leave little marks, yet still inflict pain on the subject, they have become popular torture devices around the world (Amnesty International, 2008, p. 13) (Amnesty International USA, 2000).

The argument in support of increased medical responsibility and liability for agencies that use CEDs parallels the human rights argument for increased regulations and training. As a matter of the right to healthcare and life, officers are duty-bound to ensure that proper care is provided to any subject they stun, just as they are required to get care for any subject who is shot with a firearm or otherwise injured as a direct or indirect result of police action (Cronin & Ederheimer, 2006). It is simple, yet fundamentally necessary to uphold the obligations of the police to the people.

In fact, all of these proposals are necessary to uphold the obligations of the United States to its people and to the world community. Human rights critics have pointed to U.S. inconsistencies as a major failure of the American polity. On the idea that policymakers are too often dismissive of matters presented in the frame of human rights, Ignatieff suggests that “we need to stop thinking of human rights as trumps and begin thinking of them as a language that creates the basis for deliberation,” (2003, p. 95). Furthermore, international law expert Catherine Powell wrote for the American Constitution Society that the United States has a responsibility to incorporate human rights into policymaking decisions, based on common beliefs among its citizens, on international human rights conventions and treaties to which the United States is a member party (and those

which the U.S. ought to ratify and implement), and on the United States' historical significance in the founding of human rights (Human Rights at Home: A Domestic Policy Blueprint for the New Administration, 2008). Having a Constitution and Declaration of Independence that imbue the American citizens with such inalienable rights, the United States owes itself a healthy respect for human rights and ought to strive to uphold those rights within its borders. As Powell and other rights activists suggest, it is necessary to improve the international reputation of the United States that the nation's current human rights abuses end immediately and that proper restitution to the affected persons be made. Abu Ghraib and Guantanamo Bay illustrate America's poor judgment on matters of human rights in recent years, but if the nation cannot guarantee basic human rights to its own citizens over simple matters, such war-time abuses off combatant rights have little hope of correction. Despite media attention to the abuse of prisoners permitted by the Bush administration, evidence of such abuses persists. Media representations of abuses in the United States—against citizens, no less—has yet to result in any sweeping enlightenment among U.S. officials (Lawrence, 2000). There are strong reasons to enact each of these policy guidelines, as illustrated above. An overarching and, idealistically, more important reason for implementing these rules cannot be ignored: U.S. citizens – even suspected criminals – deserve human rights.

In recent years, many agencies have adopted these guidelines to some extent. The enactment of a consistent, trans-jurisdiction national policy, however,

has yet to happen. Support is on the rise, despite deep-rooted oppositions, and the coming of a new federal administration offers hope. Making these guidelines firm policy and enacting and regulating that policy would demonstrate great progress. This progress is necessary to address the rifts between public opinion, human rights obligations, police practice and demands, and current policy, to improve police and public-policy relations with at-risk minorities, to improve U.S. international standing and reputation by realigning the United States with its traditionally progressive human rights history and responsibilities.

Appendix A

“All departments should introduce training programs designed to minimize the risk of unnecessary force and death or injury in certain common situations, including... coping with mentally ill or disturbed individuals. Training programs should also include gender issues and sensitivity to minority groups.”

“Law enforcement and correctional agencies should... suspend the use of all... electro-shock weapons pending the outcome of a rigorous independent inquiry into the use and effects of such equipment.”

“All police departments should establish early warning systems to identify and deal with officers involved in human rights violations. They should establish clear reporting systems and keep detailed records in order to identify, and take remedial action in respect of, any patterns of abuse, including racial bias or other discriminatory treatment.”

“State, local and federal authorities should establish effective, independent oversight bodies for their respective police agencies, with powers to investigate and review complaints against the police as well as broader policy issues and patterns of concern, and to issue detailed public reports.”

(Amnesty International USA, 2000, p. 14)

“CEDs should only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others. CEDs should not be used against a passive suspect.”

“Training protocols should emphasize that multiple activations and continuous cycling of a CED appear to

increase the risk of death or serious injury should be avoided where practical.”

“That a subject is fleeing should not be the sole justification for police use of a CED. Severity of offense and other circumstances should be considered before officers’ use of a CED on the fleeing subject.”

“CEDs should not generally be used against pregnant women, elderly persons, young children, and visibly frail persons unless exigent circumstances exist.”

“When possible, emergency medical personnel should be notified when officers respond to calls for service in which it is anticipated that a CED may be activated against a person.”

“A warning should be given to a person prior to activating the CED unless to do so would place any other person at risk.”²

“A supervisor should respond to all incident scenes where a CED was activated.”

“A supervisor should conduct an initial review of a CED activation.”

“Every instance of CED use, including an accidental discharge, should be accounted for in a use-of-force report.”

Agencies should consider implementing additional internal investigations under certain circumstances. Substantial investigations should include basic information, including witnesses and photographs and device recorded-data, as well as details ranging from the make and model of the device to terrain and

² The concept behind this recommendation also appears in a general discussion of force presented in The Face of Human Rights (64) regarding a U.N. Human Rights Committee review of police behavior in Colombia, 1979.

weather conditions at time of use to a full description of the suspect and his/her behavior, and more.

Agencies should provide additional CED training, above and beyond what is offered by CED manufacturers. Training and rules should comply with the agency's broad use-of-force policy.

(Cronin & Ederheimer, 2006, pp. 23-29)

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