

PROJECTILE ELECTRIC- SHOCK WEAPONS

AN AMNESTY INTERNATIONAL POSITION PAPER - EXTENDED VERSION



AMNESTY
INTERNATIONAL



Amnesty International Netherlands
Keizersgracht 177
PO Box 1968
1000 BZ Amsterdam
The Netherlands
P 020 626 44 36
E phrp@amnesty.nl
I www.amnesty.nl/policeandhumanrights

Cover page: Odilo Girod

© February 2019



Contents

Introduction and rationale of the position paper	4
1. The international human rights framework governing the use of force and its implications for police weapons	5
2. Elements to consider in the decision-making process as to whether or not to introduce PESWs	7
2.1 A PESW is NOT an ordinary law enforcement tool – it is a weapon that has an inherent risk of causing loss of life	7
2.2 PESWs should only be introduced based on a clearly identified operational gap	12
2.2.1 General considerations for the introduction of new weapons	12
2.2.2 Specific considerations with regard to PESWs	13
2.3 Two different modes of PESW use	15
2.3.1 Dart-firing mode – operational gap: the need to incapacitate a person?	15
2.3.2 Drive-stun mode – operational gap: the need to achieve compliance through pain?	16
2.4 Use of PESWs in specific settings	18
2.4.1 Operational gap: intervention in the case of persons undergoing a mental health crisis?	18
2.4.2 Operational gap counter-terrorism?	21
2.4.3 Operational gap in crowd control / public order?	22
2.4.4 Operational gap in custody settings?	23
3. Introduction of PESWs – an important pre-condition: a human rights compliant legal framework and police regulations regarding the use of force and firearms	24
3.1 Review of the existing framework	24
3.2 Requirements for policy instructions governing the use of PESWs	25
3.2.1 Defined threshold, prohibitions and precautions	25
3.2.2 Preventing function creep	28
3.3 Training requirements	30
3.3.1 Trainers	30
3.3.2 Content of training	31
4. Accountability, evaluation and review	33
5. Summary of key recommendations	37

Introduction and rationale of the position paper

For several decades, projectile electric-shock weapons (PESWs)¹ have been the subject of considerable controversy as regards their usefulness in law enforcement, their consequences for the lives and physical integrity of persons against whom they are used, as well as the risk of these weapons being used in an abusive manner, often amounting to cruel, inhuman or degrading treatment, or even torture. Over this long period of time, there has been a lot of technical development, changing many of the features of the weapon; more and more law enforcement agencies have started to use the weapon, and there is more data available with regard to the use of the weapon (when, for what purpose, in what circumstances) as well as the outcome of the situations in which it was used (control or not of the situation; injuries, other harm or death that occurred in the course of its use). Most worryingly, many people have lost their lives, and many more have been subjected to cruel deployment of the weapon simply to obtain compliance or even for the purpose of punishment. At the same time, the weapon is increasingly introduced in law enforcement, without sufficient consideration for the inherent risks and with insufficient regulation of, and accountability for, its use. It is the purpose of this paper to provide a clearer picture of the problems involved in the deployment of PESWs and what law enforcement agencies are supposed to do to ensure that – if introduced – this weapon is only used in a lawful and human rights compliant manner. Selected country examples as well as statements from international institutions and bodies are used to illustrate the current reality of PESWs in law enforcement, covering both problematic situations as well as possible solutions.

1 A projectile electric-shock weapon as discussed in this paper is a pistol shaped weapon which holds a cartridge. On activation this fires two darts attached to the weapon by fine wires, which on impact with the target deliver an electric shock to the person. The shock can be continuous and prolonged if the trigger is held down (up to minutes), repeated numerous times if retriggered, or can be interrupted. Most models can also display a spark across the electrodes and can be used as direct contact stun weapons, administering a painful localised electric shock. See: Amnesty International and Omega Research Foundation, *The human rights impact of less lethal weapons and other law enforcement equipment* (Index: ACT 30/1305/2015), p. 20, <https://www.amnesty.org/download/Documents/ACT3013052015ENGLISH.PDF>. This paper uses the term projectile electric-shock weapon [PESW]: however, there are a number of different terms used by different law enforcement agencies, international institutions or authors, such as: conducted energy device [CED], electronic control weapon [ECW], Distance electric-impulse device [DEID] etc., and in any quote the terminology is kept as it is used in the original text quoted.

1 ■ The international human rights framework governing the use of force and its implications for police weapons

In order to fulfil their duties, law enforcement officials are granted the power to resort to the use of force and firearms. However, when resorting to the use of force they must respect and protect the right of every person to life, security of person, and dignity as well as the right to be free from torture and other cruel, inhuman or degrading treatment (or other ill-treatment). This obligation requires that if law enforcement officials resort to the use of force they do so only for the purpose of achieving a legitimate law enforcement objective (legality); not to use more force than strictly necessary in the actual case to achieve that objective (necessity); and that the consequences of that use of force do not outweigh the legitimate objective to be achieved (proportionality).² In application of these principles, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials³ require law enforcement officials not to resort to the use of force if non-violent means are available and likely to be effective; these include all available communication and de-escalation efforts. They furthermore require law enforcement officials to minimize harm and to respect and to protect life.⁴

These principles must be complied with in their entirety not only by individual law enforcement officials, but also by law enforcement agencies in the formulation of their overall policies regarding the use of force. In particular, law enforcement agencies are required to regulate the use of force and firearms in line with the UN Basic Principles, to ensure that law enforcement officials have at their disposal a range of means allowing for a differentiated response; and that they are properly trained not only in the use of any weapons and equipment, but also in conflict resolution, negotiation and de-escalation techniques. With regard to the use of firearms, there are specific requirements regarding training and certification. Finally, law enforcement agencies must take effective steps to prevent any excessive or otherwise unlawful use of force, including any possible misuse of the weapons law enforcement officials are provided with, through appropriate human rights compliant policies and instructions for the use of force in general and for each specific weapon, as well as through an effective system of accountability for any unlawful use of force and weapons.

These standards and principles have direct implications for the introduction of any new weapon:

- In order to define where a weapon should be placed on the scale of the available force-options, the weapon must be fully understood in terms of the potential harm it might cause (including possible unwarranted effects and risks).
- The introduction of the weapon must serve the purpose to fill an existing and clearly defined operational gap – i.e. there must be specified law enforcement circumstances for which this weapon is needed and a specified type of threat it is intended to respond to.

2 Amnesty International – The Netherlands, *Use of force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (2015), pp. 17-19, https://www.amnesty.nl/content/uploads/2017/07/guidelines_use_of_force_eng.pdf?x68103 (hereinafter: AINL Use-of-force-Guidelines); Report to the Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/26/36 (2014), paras 56 -73, <http://policehumanrightsresources.org/wp-content/uploads/2016/08/Report-of-the-SR-Protection-of-the-right-to-life-during-law-enforcement.pdf>.

3 The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <https://www.un.org/ruleoflaw/files/BASICP-3.PDF>.

4 Principles 4, 5b) and 20.

It is only when both elements are clearly identified and defined, that it will be possible to assess the likelihood that the principles of necessity and proportionality are respected in practice should the decision be taken to deploy the weapon, i.e. whether there are other, less harmful options available and likely to be effective in response to such a situation (necessity). If such less harmful options do exist, the introduction of a more harmful weapon to respond to the defined operational situation(s) would violate the principle of necessity. In addition, the harm likely to be caused as a result of the use of the weapon should not outweigh the harm which its use aims to prevent, otherwise the principle of proportionality would be violated. It is thus completely insufficient to introduce a new weapon simply because it is available, or because it is considered “useful” in “solving” difficult law enforcement situations. Such a limited level of analysis would constitute a violation of the State’s legal duty to minimize harm and damage and not to cause unnecessary or disproportionate harm.

2.

Elements to consider in the decision-making process as to whether or not to introduce PESWs

2.1 A PESW is NOT an ordinary law enforcement tool – it is a weapon that has an inherent risk of causing loss of life

PESWs deliver an electric current to the body that is meant to temporarily incapacitate a person by disrupting muscular function (dart-firing mode) or to achieve compliance by causing extreme pain but without causing neuromuscular incapacitation (drive-stun mode). PESWs present specific risks and these must be taken into account in the decision whether, when and for what purpose they may be deployed and used. When assessing the risks involved in the use of PESWs, **all** factors need to be taken into consideration. These include more than simply a consideration of the direct lethal impact of the weapon as a result of the electric current discharged, but also the different indirect effects of the discharge on the human body and how these in turn can contribute to increased risks of death or serious injury.

The possible effects of a PESW on a person can include for instance:⁵

- cardiac arrhythmias – particularly in case of a heightened sensitivity to the effects of the discharge as a result of drug or alcohol intoxication or pre-existing heart disease, or if it is discharged at a critical moment in the heart's cycle, or if the darts hit too close to the heart;
- increased stress leading to an adverse effect on the heart;
- intense muscle contraction affecting respiratory muscles, leading to respiratory and/or cardiac arrest in the case of pre-existing heart disease or in the case of repeated or prolonged discharge;
- or the build-up of blood acid (acidosis) leading to cardiac arrest.

In addition, the discharge of a PESW causes great pain, which should in any case not be treated merely as a negligible side effect, and which furthermore can also contribute to more serious effects on the health and life of a person – e.g. exacerbating an already dangerous state of emotional or mental agitation or distress.

⁵ There have been abundant studies and publications highlighting these possible effects and at this stage it is not necessary to go into more detail. More in-depth analysis of possible effects is provided for instance by: Amnesty International, *'Less than lethal'? The use of stun weapons in US law enforcement* (Index: AMR 51/010/2008), <https://www.amnesty.org/en/documents/AMR51/010/2008/en/>; the cases presented by Reuters in a recent investigation: <https://www.reuters.com/investigates/special-report/usa-taser-911/>; DOMILL, *Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults*, DstI/BSC/27/01/11 dated 4th April 2011 (amended 27th January 2012), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443842/DOMILL14_20120127_TASER06.2.pdf; SACMILL, *Statement on the Medical Implications of Use of the TASER X2 Conducted Energy Device System*, HQSG/SACMILL/STATEMENTS/001/TASER_X2_CED, dated 30 August 2016 (amended 12 October 2016), <https://www.gov.uk/government/publications/medical-implications-of-the-taser-x2>; Braidwood Commission on Conducted Energy Weapon Use, *Restoring Public Confidence – Restricting the Use of Conducted Energy Weapons in British Columbia* [Canada], 2009, chapter 9: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/braidwoodphase1report.pdf>.

Accounts from the Reuter's report, *Shock Tactics: Inside the Taser, the weapon that transformed policing, 2017, Part 1, The Toll, 2017*:⁶

“Many officers have taken a Taser shock in training, and they attest to its agonizing power. ‘The Taser caused my whole body to lock up, and the pain would compare to a whole-body charley horse [i.e. painful involuntary spasms or cramps],’ Salt Lake County Deputy Sheriff Tiana Broos once testified. ‘I felt like I was going to suffocate.’

Account of the death of MacAdam Lee Mason:

‘I was screaming, ‘Don’t Taser him! He just had a seizure, you’ll kill him!’ Davidonis said. ‘But the cop just fired, and the barbs hit him in the chest and he kind of crumbled, like slow motion.’ Mason went into cardiac arrest and died. The medical examiner attributed the cause of death to the Taser: ‘sudden cardiac death due to conducted electrical weapon discharge, [...]’

While these risks today seem to be widely acknowledged, it is quite surprising that in very few instances do they have a bearing on the decision-making process as to how PESWs may or may not be used, and in which situations. This seems to be linked to two factors: the (relatively) low number of deaths compared to the number of uses and the difficulty in establishing the concrete cause of death in fatal cases.

Indeed, the use of the PESW in itself may not lead to death or serious injury in most cases, particularly when it is only discharged once, for a cycle of five seconds, and against a young healthy adult. However, these weapons can seriously aggravate pre-existing risks depending on the circumstances and against whom they are used. In addition, these risks are even further exacerbated in cases of multiple discharge, an occurrence in a large proportion of the cases of death reported after the use of a PESW.⁷

USA: Police Executive Research Forum (PERF) and Community Oriented Policing Services (COPS), 2011 Electronic Control Weapon [ECW] Guidelines, p. 13:⁸

“[...] although causation factors are not clear, the most common factors that appear to be associated with fatal and other serious outcomes include 1) repeated and multiple applications, 2) cycling time [i.e. the length of time of the discharge] that exceeds 15 seconds in duration, whether the time is consecutive or cumulative, and 3) simultaneous applications by more than one ECW. Officers must be trained to understand that repeated applications and continuous cycling of ECWs may increase the risk of death or serious injury and should be avoided.”

In fact, in the vast majority of deaths reviewed by Amnesty International after a PESW discharge the deceased had gone into cardiac or respiratory arrest. Other elements that must be attributed to the use of a PESW are injuries, death and miscarriages as a result of falling, when the person would not have fallen in the first place without the use of a PESW.

6 For their report, the news agency Reuters had documented and reviewed 1005 deaths (including 712 autopsy reports) associated with the use of an electric-shock weapon since the early 2000s in the USA, the circumstances of the use of the weapon, the contributing factors to the cause of deaths and the outcome of proceedings. The positions of experts, police and the manufacturing company were also discussed in this report. Reuters, *Shock Tactics: Inside the Taser, the weapon that transformed policing, 2017*, <https://www.reuters.com/investigates/special-report/usa-taser-911/>.

7 Amnesty International, ‘*Less than lethal? The use of stun weapons in US law enforcement* (Index: AMR 51/010/2008)’, <https://www.amnesty.org/en/documents/AMR51/010/2008/en/>.

8 See: https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf.

It is crucial to underline here that this important assessment of the risks involved has nothing to do with a critique of the weapon as being inherently unsuitable or not functioning properly. Instead, the assessment **to be made by law enforcement agencies is to the level of risk that is acceptable and in what circumstances**. In this regard **all** possible contributing factors need to be considered and the manufacturing company's safety instructions for the "Taser"⁹ are quite illustrative with their long list of potential risks and warnings regarding:

- The risks involved in persons falling, depending on where they are standing (e.g. at an elevated location or in water) or their personal circumstances (e.g. suffering from osteoporosis, being elderly, pregnant, under the influence of alcohol etc.)
- The risks involved when discharged against particular persons at risk (elderly, children, pregnant persons, persons with certain diseases such as heart arrhythmia or asthma, or under the influence of drugs or medication, etc.). The manufacturer particularly highlights that the effects of PESWs were not tested on these groups of people¹⁰ and recommends using the PESW against these groups of people only in cases of threats of serious injury or death [thus, implicitly recognizing the potential lethal effect of the weapon in these cases and that – in line with the principle of proportionality – running such a risk can only be accepted in response to an equally serious threat].
- The risks involved when discharging on certain parts of the body: the head, the neck, the chest region close to the heart.
- The risks involved in prolonged and/or multiple discharges.

Many police institutions indirectly recognize the above-mentioned risks involved in the use of PESWs: They prohibit the use of PESWs on certain vulnerable groups: children, pregnant persons, people with noticeable heart disease or breathing difficulties, the elderly etc. – but this prohibition depends on the vulnerability being known or noticeable to the police official which will often not be the case.¹¹ Thus, there remains a risk that PESWs will nevertheless be used against such groups who are particularly vulnerable to suffering serious harm to their health or even to their lives. The precaution of such prohibitions is thus inadequate to protect these vulnerable groups from the potentially serious consequences of PESW use. However, they confirm the extent to which great caution must be exercised in making the decision to deploy and use this weapon in the first place.

Accounts from the Reuter's special report, *Shock Tactics: Inside the Taser, the weapon that transformed policing, 2017, Part 1, The Toll, 2017*:¹²

"Reuters obtained autopsy findings for 712 of the 1,005 deaths it documented. In 153 of those cases, or more than a fifth, the Taser was cited as a cause or contributing factor in the death, typically as one of several elements triggering the fatality. Most of the other autopsies cited a combination of heart and medical conditions, drug use and various forms of trauma."

9 Axon, Legal Information, <https://uk.axon.com/legal>; *Taser, TASER® X3™, X26™, and M26™ ECD Warnings, Instructions, and Information: Law Enforcement*, 2010, <https://fingfx.thomsonreuters.com/gfx/rngs/USA-TASER/0100503907S/images/warnings-2010.pdf>.

10 In Austria, there has been an evaluation that has used numerical-anatomic calculations to review the potential effect of PESWs on certain vulnerable persons such as children, pregnant women, and persons with a pace-maker. However, these were only theoretical calculations, and no real tests have ever been carried out on specific groups at risk. Furthermore, this study also acknowledged that it is not possible through this measure to draw conclusions as to the effects on the fetus: Austrian Ministry of Internal Affairs, *Elektroimpuls-Waffe Taser X26: Forschungsergebnisse Einsatzerfahrungen*, n.d., <https://slideplayer.org/slide/1290946/> and Austrian Ministry of Internal Affairs, *Taser als Dienstwaffe in Öffentliche Sicherheit 9-1/12, 2012*, https://www.bmi.gv.at/magazinfiles/2012/09_10/files/taser.pdf.

11 This point was also raised in a report of the Ombudsman of Catalonia, Spain: Sindic de Greuges de Catalunya, el defensor de les persones, *Las pistolas eléctricas como dotación policial en Cataluña: elementos para el debate*, 2016; p. 10, http://www.sindic.cat/site/unitFiles/4038/Informe%20sobre%20us%20pistoles%20el%C3%A8ctriques_cast_ok.pdf.

12 Reuters, *Shock Tactics: Inside the Taser, the weapon that transformed policing, 2017*, <https://www.reuters.com/investigates/special-report/usa-taser-911/>.

To summarize, whenever a person subjected to a PESW has a condition of increased risk of cardiac or respiratory arrest (e.g. because of age, mental or physical health condition or drug use), it is unlikely that these above-mentioned effects of the PESW do not increase this risk; therefore, in such circumstances these effects must be considered as a contributing factor to death or serious harm (even if in the end the direct cause of death or serious harm might have been the underlying medical condition). The same applies to deaths or serious injuries of persons falling, in particular if that person is particularly susceptible to sustain serious or lethal injuries in case of an uncontrolled fall due to a physical condition.

Unfortunately, it is quite common that the reasoning of authorities is just the opposite: The fact that it has not been possible to establish that the discharge of a PESW was the direct and immediate cause of death has been claimed to be sufficient to consider the PESW as a weapon that does not present a significant risk of death:

Report of the Swiss Federal Council on the use of destabilization devices, 2011, p. 16:¹³

“In the Canadian province of British Columbia, the taser was used 3145 times between 1999 and 2007, with eight people (2.5%) dying. It was not possible to conclusively determine through the autopsy what role the electric shock played in the death of any of the deceased. In forensic medicine, it is difficult to determine with morphological means whether a physically otherwise healthy heart fails due to the effects of the electric current or for other reasons, and whether heart failure was the primary cause of death.

Further, there is no known statistic which determines, in comparison to the use of Taser, how high the mortality rate is in operations involving negotiation, physical force, baton, pepper spray and firearms.” [translation by Amnesty International]¹⁴

This conclusion is not acceptable: it is not necessary to establish that the weapon is the sole and direct cause of death; it would be sufficient if it is a contributory factor without which death would not have occurred – and the PESW cannot be ruled out as having contributed to death simply because it is not possible to establish a clear proof that it was the electrical discharge that caused the death. The absence of comparative statistics regarding other weapons is another argument for not yet widely distributing the weapon: the weakness in effective analysis by law enforcement agencies about the causes of death in police interventions cannot be used as an argument in favour of PESWs; to the contrary, this should be used as a call to get this analysis conducted in the first place.

Finally, there is a risk of the weapon not being effective – as also explicitly stated in the manufacturer’s “Taser”-user manual.¹⁵ Some reports cite failure rates of up to 30% in dart-firing mode.¹⁶

13 <https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/archiv/zwangsanwendung/ber-br-d.pdf>.

14 Original text: “In der kanadischen Provinz Britisch-Kolumbien wurde der Taser von 1999 bis 2007 3145-mal eingesetzt, wobei acht Personen (2,5 %) verstarben. Bei allen Verstorbenen konnte durch eine Autopsie nicht abschliessend geklärt werden, welche Rolle der Stromstoss am Todesgeschehen hatte. Es ist in der Rechtsmedizin mit morphologischen Mitteln kaum abzuklären, ob ein organisch sonst gesundes Herz aufgrund einer Stromeinwirkung oder aus anderen Gründen ausgesetzt hatte, und ob das Aussetzen des Herzens die primäre Ursache für den Tod darstellte. Weiterhin ist keine Statistik bekannt, welche ermittelt, wie hoch im Vergleich zum Taser-Einsatz die Sterblichkeitsrate bei Einsätzen mit Verhandeln, körperlicher Gewalt, Schlagstock, Pfefferspray und Schusswaffen liegt.” Bericht des Bundesrates, *Evaluation der Destabilisierungsgeräte*, 2012, <https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/archiv/zwangsanwendung/ber-br-d.pdf>.

15 Taser, Taser X2 CEW User Manual, 2015, p. 35, [taser.cdn.prismic.io/taser%2Fed6b19eb-4410-46a8-9559-90ad95d66aba_x2-user-manual.pdf](https://www.taser.com/~/media/Products/2015-01-20/Taser-X2-CEW-User-Manual.pdf).

16 A study in Austria found that out of 111 discharges in dart-firing mode, 19 were only effective after several discharges, 17 had no effect at all (which amounts to a definite failure of more than 15 % or one failure within every 6 discharges!). Ministry of Internal Affairs, *Elektroimpuls-Waffe Taser X26: Forschungsergebnisse Einsatzerfahrungen*, n.d., <https://slideplayer.org/slide/1290946/>; SACMILL, *Statement on the Medical Implications of Use of the TASER X2 Conducted Energy Device System*, 2017, <https://www.gov.uk/government/publications/medical-implications-of-the-taser-x2> even mentions

Depending on the mode used, there are many reasons why the weapon can fail to be effective: the darts can hit too close to each other resulting in no electric circuit; one or both darts may not stick to the target or can be impeded by thick clothing; or technical failure or physical conditions of the person targeted can reduce the effect of the weapon. In drive-stun mode, the pain inflicted can make the person even more aggressive instead of achieving compliance. This implies two important risks to be considered: 1) Failure may incite the law enforcement officials to attempt repeated and / or prolonged discharges (especially when drive-stun mode is being used, but possibly also in dart-firing mode), which increases the health risks mentioned above.¹⁷ 2) The loss of time and momentum for a distinct intervention, such as de-escalation or taking cover to wait for back-up, may aggravate the situation to the extent that police in the end have to resort to the use of a firearm.

Overall, the risk involved in the use of PESWs is the loss of life – and here it is sufficient if the electric discharge has a contributory effect by increasing the risks involved as a result of the specific vulnerabilities of an individual. In this regard it is important to highlight that in assessing the risks involved in using a weapon, not only the degree of probability needs to be considered, but also the seriousness of the risk if it materializes (even if that only happens in a limited number of cases). Since the purpose of the deployment of a new weapon must be to **minimize** harm and injury (and not to increase the risks of possible harm), any decision as to when and for which operational situation PESWs should be introduced or not must take into account the risk PESWs present to the lives of people. Consequently, the operational situation must be one in which PESWs would serve the purpose of avoiding the loss of life or of serious injury.

Additional note: The so-called “excited delirium”

“Excited delirium” has frequently been mentioned as the cause of death in incidents that involved the discharge of a PESW. In this regard it is important to note that “excited delirium” is not a generally recognized medical condition and even less is it a recognized cause of death. It is rather a term used to describe a symptom of underlying factors that may contribute to causing deaths and that might either be caused or exacerbated through the discharge of a PESW.

Canadian Police Research Centre, Review of Conducted Energy Devices [CEDs], 2005, p. 4:¹⁸

- “Excited Delirium (ED), although **not a universally recognized medical condition**, is gaining increasing acceptance as a main contributor to deaths proximal to CED use.”
- “The issue related to multiple CED applications and its impact on respiration, pH levels, and other associated physical effects, **offers a plausible theory on the possible connection between deaths, CED use, and people exhibiting the symptoms of ED.**” [emphasis added]

Canada: Braidwood Commission on Conducted Energy Weapon Use: Restoring public confidence – Restricting the Use of Conducted Energy Weapons in British Columbia, 2009, p. 15:¹⁹

“It is not helpful to blame resulting deaths on ‘excited delirium’, since this conveniently avoids having to examine the underlying medical condition or conditions that actually caused death, let alone examining whether use of the conducted energy weapon and/or subsequent measures to physically restrain the subject contributed to those causes of death.”

reports of 30% of failure to subdue a subject in probe-mode (= dart-firing mode).

17 According to a report referred to in the report of the Braidwood Commission on Conducted Energy Weapon Use (see: footnote 5), there is a linear relationship between the number and/or the length of the exposure and the risk, p. 271: “[...] if you double the exposure, you double the risk of death”.

18 See: <https://dnn9ciwm8.azurewebsites.net/portals/0/pdfs/tr-2006-01.pdf>.

19 See: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/braidwoodphase1report.pdf>.

p. 250:

“Dr. Lu told me that psychiatrists do not use the term ‘excited delirium.’ In their understanding, most patients with delirium are in an excited and agitated state. Those who use the term ‘excited delirium’ appear to be describing a patient who has delirium with a highly agitated and extremely restless presentation – ‘the more severe spectrum of delirious presentation’. Dr. Lu emphasized that delirium is not a medical disease. It is a syndrome, and it is a symptom of many underlying problems.”

p. 263:

“Fifth, it is equally troubling to hear, after a death proximate to conducted energy weapon use, that it was not the weapon that caused the death, but ‘excited delirium’. The danger with that line of reasoning is that the clusters of extreme behaviours observed by the police did not cause the death any more than extreme pain causes the death of a burn victim. Assigning responsibility to such symptoms (in the guise of a diagnosis) conveniently avoids having to examine the underlying medical condition or conditions that actually caused death, let alone examining whether use of the conducted energy weapon and/or subsequent measures to physically restrain the subject contributed to those causes of death.”

USA: Police Executive Research Forum (PERF), 2011 Electronic Control Weapon Guidelines [ECW], p. 14:²⁰

“Personnel should be trained about the medical complications that may occur after ECW use and should be made aware that certain individuals, such as those in a state of excited delirium, may be at a heightened risk for serious injury or death when subjected to ECW application or other uses of force to subdue them.”

Identifying so-called “excited delirium” as a “cause” of death does not exclude the PESW from being a contributory factor to the cause of death. To the contrary – for persons in such a highly agitated mental state, it is even likely that they had a specific vulnerability to the effects of PESWs and therefore, the PESW presents an even higher risk of causing death or serious injury.

2.2 PESWs should only be introduced based on a clearly identified operational gap

2.2.1 General considerations for the introduction of new weapons

Law enforcement agencies are obliged to provide their officials with a range of means (weapons and equipment) to allow for a differentiated use of force with a view to minimizing harm and damage.²¹ In this sense any new weapon to be introduced should respond to an identified operational gap in law enforcement situations that involves injury or harm to a person; its introduction should not simply be motivated by the availability of a new device on the market.

Therefore, when introducing a new weapon, it is important that the law enforcement agency introducing it fully understands its own operational requirements, with a view to minimizing harm and injury. It should be mandatory for a law enforcement agency, before introducing any new weapon or equipment, to carry out a thorough review of past situations in which use of the new weapon (in this instance PESW) is contemplated – particular regard should be had to the following factors:

- the reason to resort to the use of force;
- whether the use of force was justified in the concrete case;

²⁰ See: Fn. 8.

²¹ UN Basic Principles 2) and 5b).

- whether the existing policies, instructions and equipment were appropriate to respond to a given situation; and
- whether the law enforcement officials involved had received adequate training allowing them to respond in an appropriate manner to the situation they faced.

In order to avoid simply introducing a new weapon because of its availability on the market, law enforcement agencies should first of all critically review use-of-force-situations, considering these factors, and if other measures – e.g. revision of policies or better training – might be more appropriate to address the problems at hand. Unfortunately, a key problem here is that very few law enforcement agencies have the methods and mechanisms in place to critically review incidents in which force was used: either the reporting systems are non-existent, insufficient, or not respected, and as a result, law enforcement agencies do not have a comprehensive understanding of the situations in which force was used.

Furthermore, some statistical analysis is also required. It must be taken into consideration that there is a limit to the number of devices law enforcement officials can reasonably be expected to carry, to be proficient in their use, and to be able to decide – often in a fraction of a second – which of the available devices and means to use. New weapons and equipment should thus also respond to scenarios of sufficient relevance in the daily law enforcement work. Introducing a new device that would only be used in very exceptional and rare situations will bring limited operational benefit while creating challenges in terms of training requirements, slowing down the decision-making process in the concrete situation regarding the device or means to be used, and increasing the risk of taking a wrong or inappropriate decision. An important consideration should therefore be which units of a law enforcement agency should be equipped with a PESW considering the likelihood to face the type of critical situations in which the PESW can be an appropriate option.

USA: Police Executive Research Forum (PERF), 2011 Electronic Control Weapon Guidelines, p. 11:²²

“ECWs should be used as a weapon of need, not a tool of convenience.”

2.2.2 Specific considerations with regard to PESWs

The introduction of PESWs is sometimes justified by the need for law enforcement officials to respond to very specific situations, e.g. to incapacitate people who are posing a risk of violence as a result of being in a state of extreme mental agitation, are undergoing an acute mental health crisis or – as a result of alcohol or drugs – are resistant to the pain inflicted by other means of force (e.g. baton strikes, pepper spray).²³

When such concrete scenarios are used to justify the introduction of a new weapon, a law enforcement agency should seek to answer the following questions:

- How frequent are these situations?
- Which officials within the agency are most likely to encounter such a situation?
- How frequently was the situation not dealt with appropriately because a PESW was not available?

²² See: Fn. 8.

²³ See for instance in The Netherlands the Interim report on the projectile electric-shock weapon pilot: O. Adang (redactie), S. Orbons, B. Mali, K. Vermeulen, *Tussenrapportage pilot stroomstootwapen*, September 2017, p. 3, https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z16292&-did=2017D34095; as well as the communication of the Dutch police regarding the pilot project: *Nieuwsbericht Politie over start proef stroomstootwapen*, 1 feb 2017: <https://www.politie.nl/nieuws/2017/februari/1/00-politie-begint-proef-met-stroomstootwapen.html>.

- Or was the inappropriate response linked to other problems (inappropriate protocols and instructions, insufficient training, individual failures etc.)?
- What other options exist to respond to the operational needs (e.g. creation of crisis intervention teams, special training for dealing with mentally agitated persons, emergency hotlines to call for the intervention of medical staff specialized in dealing with persons undergoing a mental health crisis)?
- Would the weapon indeed help to address the situation, or would it rather create unacceptable risks?

This latter point is also particularly important given that persons undergoing a mental health crisis frequently are among the groups identified as presenting a particular vulnerability to the harmful effects of a PESW (e.g. because of drug use, medication they are taking or have omitted to take, or emotional agitation). Thus, before introducing PESWs for dealing with such a specific and, most likely particularly vulnerable, group all other less dangerous ways to deal with them need to be put in place – and if at all, PESWs should then only be introduced as a complementary measure to be used as a last resort if other options have failed or are clearly ineffective.

Another, often rather vaguely formulated, reason to introduce the weapon is for the purpose of reducing injuries to law enforcement officials.²⁴ In this regard a sound analysis of incidents in which law enforcement officials have been injured should be conducted:

- How many injuries? What type of injuries and how serious were they?
- Would the injury have been avoided if the law enforcement official had had a PESW?
- What other options exist to prevent such an injury from occurring (e.g. other equipment, better training in de-escalation skills and peaceful settlement of conflicts, better planning and / or intervention policies, greater precautions such as waiting for back up, taking cover)?

PESWs should only be introduced based on a thorough analysis of past situations and incidents, identifying the extent to which these situations were not appropriately dealt with and could have been dealt with better by the use of a PESW, how frequent they are, who within the law enforcement agency is most likely to encounter such situations, and what other measures might address the identified problems. If necessary, before introducing PESWs – as for any other weapon – reporting and lessons learned processes need to be established or improved in order to have the relevant information available. In any case, as far as possible, priority should always be given to less dangerous means and all possible options need to be explored and eventually implemented to that end – bearing in mind that the risk involved in the use of a PESW may be the loss of life and its use should therefore only be justified if it is to avoid using force that is even more likely to cause the loss of life, i.e. lethal force. This means that the use of PESWs should be limited to situations that are close to those that would justify the use of a firearm – i.e. in cases of a threat to life or of serious injury.

24 See for instance, Germany, Landtag Rhineland-Palatinate, *Abschlussbericht zum Pilotprojekt der Landesregierung über die Einführung des Distanzelektroimpulsgeräts für den Streifendienst bei der Polizeiinspektion Trier* (DRS 17/6054), 25 April 2018, <https://www.landtag.rlp.de/landtag/drucksachen/6054-17.pdf>, p. 19: “Der Einsatz von DEIG ist sowohl zum Schutz von Einsatzkräften der Polizei als auch der Betroffenen geeignet.” [Translation: “The use of distance-electric-shock-devices is suitable for both the protection of the police forces deployed as well as the affected person”] – As well as: The Netherlands; communication of the Dutch police regarding the pilot project: *Politie begint proef met stroomstootwapen* (Nieuwsbericht, 1 February 2017), <https://www.politie.nl/nieuws/2017/februari/1/00-politie-begint-proef-met-stroomstootwapen.html>.

The PSNI's [Police Service of Northern Ireland] proposed introduction of Taser – Human Rights advice, Keir Starmer and Jane Gordan, 2007, paras 143 – 144:²⁵

“In our view, therefore, the proper test for the use of Taser is that it can be **used where its use is immediately necessary to prevent or reduce the likelihood of recourse to lethal force. This is a test that is just below that for the use of lethal force** (such as conventional firearms), but a much stricter test than that which applies for other uses of (non-lethal) force. It means that Taser can be used in **circumstances where there is a threat to life or a threat of serious injury, but that threat has not quite reached the threshold where lethal force (such as conventional firearms) could be justified.**” [emphasis added]

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 20th report:²⁶

“70. In the CPT’s view, the use of EDW [electrical discharge weapons] should be limited to situations where there is a real and immediate threat to life or risk of serious injury. Recourse to such weapons for the sole purpose of securing compliance with an order is inadmissible.”

Report to the Government of the United Kingdom on the visit to the United Kingdom by the CPT, 2009, para. 12:²⁷

“The CPT considers that the criteria for any use of electric-shock weapons by police officers at least closely correspond those governing the use of firearms; [...]”

2.3 Two different modes of PESW use

2.3.1 Dart-firing mode – operational gap: the need to incapacitate a person?

The key feature of PESWs is their ability to instantly incapacitate through directly impacting a person from a certain distance (several meters, the precise distance depending on the type of PESW to be used): this mode causes neuromuscular incapacitation through which the person instantly loses control of his/her muscles and is unable to act. Other weapons able to respond to any threat at such a distance would be either a lethal option, such as a firearm, or – as a less-lethal option – a gun that fires kinetic impact projectiles (commonly referred to as rubber bullets). All other options require a much closer range: open hand techniques, the baton, pepper spray. The rubber bullet firing weapon relies

²⁵ See: [http://www.weaponslaw.org/assets/downloads/Taser+Police+Service+Northern+Ireland+Human+Rights+advice_\(1\).pdf](http://www.weaponslaw.org/assets/downloads/Taser+Police+Service+Northern+Ireland+Human+Rights+advice_(1).pdf).

²⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Electrical discharge weapons, Extract from the 20th General Report of the CPT, published in 2010, CPT/Inf(2010)28-part, <https://rm.coe.int/16806cce1c>.

²⁷ Council of Europe, Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008, CPT/Inf (2009) 30, <https://rm.coe.int/1680698700>.

principally on causing pain and surprise to the person. It is not designed to have an instantaneously incapacitating effect; the targeted person keeps control over their body functions and remains able to act. It is therefore not reliable as a means to instantaneously stop a person who shows the clear determination to cause serious harm. Thus, the introduction of PESWs may be an appropriate response to fill an operational gap when seeking an effective means to stop a serious threat from a distance without resorting to the use of lethal force.

2.3.2 Drive-stun mode – operational gap: the need to achieve compliance through pain?

In drive-stun mode, the PESW is applied directly on the body of the person over whom control is sought, which means it will be applied in a close contact situation, often during wrestling with officers trying to control a violent and/or resistant person. Because the two points of contact of the weapon that are releasing the electric current are too close to each other to complete an electric circuit, this mode will not cause neuro-muscular contraction and the concomitant incapacitation.²⁸ It relies on obtaining the individual's compliance through the extreme pain it causes.

This means that this mode is useless in response to the situations frequently cited to justify the introduction of PESWs: their use against persons who are resistant to pain, such as due to the effects of alcohol or drugs, which makes other means and methods of use of force ineffective – the PESW used in drive-stun mode will be equally ineffective in these cases. Furthermore, in a close contact setting, in which drive-stun mode can be applied, there are a range of other means available: Empty hand techniques, pure body weight from the officers, the baton. In addition, pepper spray might be used just before any wrestling starts (in a wrestling situation, pepper spray would present too high a risk for the officer him/herself). As such, and in clear contrast to the obvious advantage when used as an incapacitating weapon at a distance (i.e. in dart-firing mode), PESWs used in drive-stun mode might widen the available use-of-force-options in close-contact situations, but do not fill a relevant or significant operational gap.²⁹

Furthermore, compared to other techniques that not only inflict pain, but can also immobilize a person, such as certain empty hand techniques [i.e. techniques to control a person without the use of any device or weapon], the infliction of immense pain can have the contrary effect and make a person even more violent and angry, thus being ineffective in terms of the desired result.

28 It is deeply concerning that this fundamental difference is not explained in the instructions issued by police to their officials; this was for instance the case during the pilot-project in The Netherlands where the instructions on the PESW use only mention drive-stun mode, but did not explain the different effect compared to dart-firing mode, nor did they provide guidance on whether or how this mode should (or not) be used. Similar problems were found: in British Columbia, Canada, where the policies of eight out of 18 police forces did not mention the fact that drive-stun mode only inflicts pain but does not lead to incapacitation by disrupting muscular function (see: Braidwood Commission on Conducted Energy Weapon Use, *Restoring public confidence – Restricting the Use of Conducted Energy Weapons in British Columbia* [Canada], 2009, p. 409); in Rhineland-Palatinate, Germany, where the instructions only mention the option of use in drive-stun mode without any further explanation: see: Landesarbeitsgruppe "DEIG", *Ausbildung und Einsatz der Polizei Rheinland-Pfalz mit Distanz-Elektroimpulsgeräten – Abschlussbericht*, 2016, <https://www.landtag.rlp.de/landtag/vorlagen/1165-V-17.pdf>, Annex 1, 3.2: "DEIG können alternativ als Kontaktgerät eingesetzt werden". [Translation: "Alternatively, it is possible to use distance electric-shock-devices as contact devices."].

29 Thus, it is difficult to understand why some police agencies even go so far as to explicitly state the availability of the drive-stun mode as a required technical feature of the weapon, see: Germany, Landtag Rhineland-Palatinate, *Abschlussbericht zum Pilotprojekt der Landesregierung über die Einführung des Distanzelektroimpulsgeräts für den Streifendienst bei der Polizeiinspektion Trier* (DRS 17/6054), 25 April 2018, <https://www.landtag.rlp.de/landtag/drucksachen/6054-17.pdf>, p. 24: "The possibility to deliver an electric current by applying the PESW in contact mode (contact weapon) is an indispensable performance feature in terms of the legal principle of proportionality and an extended range of use. The typical deployment situations here however regularly include the already ongoing physical confrontation with the disturber / perpetrator." [translation by Amnesty International]. Original text: „Die Möglichkeit der Stromabgabe durch Aufsetzen des DEIG im Kontaktmodus (Kontaktwaffe) ist im Hinblick auf den rechtlichen Verhältnismäßigkeitsgrundsatz und eines erweiterten Einsatzspektrums ebenso ein unverzichtbares Leistungsmerkmal. Die typischen Einsatzlagen beinhalten hier allerdings regelmäßig die bereits stattfindende körperliche Auseinandersetzung mit dem Störer / Täter.“

USA: Police Executive Research Forum (PERF), 2011 Electronic Control Weapon Guidelines, p. 14:³⁰

“Using the ECW to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the subject. ... agencies should discourage its use as a pain compliance tactic.”

In the “**IPCC review of Taser complaints and incidents 2004-2013**” (POL/44, July 2014, p.4) the IPCC [Independent Police Complaints Commission for England and Wales] has voiced “major concerns about the use of Tasers in ‘drive-stun’ mode, [...]. When used in this way, the Taser does not have the incapacitating effect it has when used with a cartridge and is purely a means of pain compliance. Yet in several of the cases we reviewed, where it was used for the purpose of gaining compliance, **it in fact had the opposite effect, stimulating further resistance.**” [emphasis added]

When law enforcement officials have applied PESWs in drive-stun mode, there is a high proportion of cases where they have used multiple discharges,³¹ thus illustrating the limited effectiveness of this mode. This also increases further the risk of over-use through several discharges without achieving the desired compliance, resulting in an even higher risk of causing death or serious injury. Therefore, it must be questioned in which concrete circumstances this type of force can actually meet the requirements of the principles of necessity and proportionality. In addition, due to the almost “clinical” nature of the PESW, leaving almost no traces, no visible serious injuries or loss of blood, there is a heightened risk of “function creep”: i.e. an increase in the use of the PESW beyond situations where it is justified, to situations where it is (unlawfully) used as a tool of convenience, including simply to overcome passive resistance to an order, as a means of punishment and / or when a person is already under control. This risk is particularly high and difficult to prevent.

In summary:

- PESWs used in drive-stun mode do not fill a significant and relevant operational gap in policing.
- Drive-stun mode has limited effectiveness and carries the risk that it might even contribute to worsening a situation. This may lead to the use of multiple or prolonged discharges in order to obtain the desired result, which greatly increases the risk of causing death or serious injury.
- There is a high risk of function creep, resulting in the use of PESW in drive-stun mode in an abusive way (e.g. against persons who are already under control, as a means of punishment).

The combination of these aspects leads to the conclusion that drive-stun mode should be prohibited. As soon as it is technically practicable the manufacturer should block this function of the weapon. Finally, as should clearly be uncontroversial – based on the afore mentioned arguments – there can be no justification whatsoever for the deployment of stun guns, i.e. ESW that are exclusively applied directly on the skin. It is therefore particularly shocking that the Catalanian police, in their instructions 16/2013 of 5 September 2013 still count such a weapon among the officially listed police weapons.³²



30 See: Fn. 8.

31 See for instance a large proportion of the deaths reviewed by Amnesty International in ‘Less than lethal?’ *The use of stun weapons in US law enforcement* (Index: AMR 51/010/2008), <https://www.amnesty.org/en/documents/AMR51/010/2008/en/>; see also the interim report on the PESW pilot project of the Dutch police: O. Adang (redactie), S. Orbons, B. Mali, K. Vermeulen, *Tussenrapportage pilot stroomstootwapen*, September 2017, https://www.tweede-kamer.nl/kamerstukken/brieven_regering/detail?id=2017Z16292&did=2017D34095, Annex 6: 44% of the actual discharges during the 6 month-pilot phase were in drive-stun mode, with an average number of discharges of 2.6, in individual cases going up to 5, 6 and 7 times. This percentage even increased during the second half of the project, getting up to 54 % of all discharges, with on average 2.1 discharges, in individual cases between 5 and 8 discharges; see: O. Adang, B. Mali, K. Vermeulen, Met medewerking van L. Brakenhoff en S. Orbons, *Het stroomstootwapen in de basispolitiezorg? Evaluatie van de pilot*, April 2018, <https://www.rijksoverheid.nl/documenten/rapporten/2018/06/01/tk-eindrapport-stroomstootwapen>, p. 21 and p. 26.

32 Instrucció 16/2013, de 5 setembre, sobre la utilització d’armes i eines d’ús policial, 3.3., p. 5; <http://www.elsindi.cat/pdf/juridiques/Instru1316armesPolicials.pdf>.

2.4 Use of PESWs in specific settings

2.4.1 Operational gap: intervention in the case of persons undergoing a mental health crisis?

As a rule, dealing with agitated patients in mental health institutions is the task of specially trained health personnel. It is not a law enforcement task. It must be taken into consideration that a heavy police deployment in such a setting is already in itself a life-threatening situation for patients who are undergoing a mental health crisis.

UK Home Office, Elish Angiolini, Report of the Independent Review of Deaths and Serious Incidents in Police Custody, January 2017 (published October 2017) p. 47:³³

“Health care professionals should take primary responsibility for the conduct and safe management of restraint of patients in any healthcare setting. This should be part of NHS [National Health Service] and police policy.”

Canada: Braidwood Commission Commission on Conducted Energy Weapon Use, Restoring public confidence – Restricting the Use of Conducted Energy Weapons in British Columbia, 2009, p. 263:³⁴

“The unanimous view of mental health presenters was that the best practice is to deescalate the agitation, which can best be achieved through the application of recognized crisis intervention techniques. Conversely, the worst possible response is to aggravate or escalate the crisis, such as by deploying a conducted energy weapon and/or using force to physically restrain the subject. I was impressed with how effective these crisis intervention techniques are, and how routinely mental health professionals use them.

It seems clear that the ‘command and control’ philosophy underlying police recruit training, however appropriate generally, is both inappropriate and counterproductive when dealing with emotionally disturbed people.”

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on The Netherlands, 2017, para. 138:³⁵

“Moreover, police officers are not trained to manage psychiatric patients and their presence and use of force could well result in a patient being traumatised. Psychiatric establishments should have a sufficient number of properly trained staff to manage agitated patients with psychiatric disorders. It is particularly problematic to remove agitated psychiatric patients from a psychiatric setting to police custody. **The CPT recommends that the Dutch authorities put an end to the practice of involving police officers or private security guards in managing agitated patients in psychiatric establishments. Further, all nursing staff in psychiatric establishments should be trained in the appropriate ways of managing agitated patients and refresher courses should be organised at regular intervals.**” [emphasis added]

33 See: <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>.

34 See: Fn. 5.

35 Council of Europe, Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 May 2016, CPT/Inf (2017) 1, <https://rm.coe.int/16806ebb7c>.

Further, persons with mental health problems are likely to be more vulnerable than other people to the effects of PESWs, not only in terms of their physical effects, but also psychologically. In certain cases, they may have limited capacity to respond to warnings or to comprehend the situation, which might increase fear and panic, as well as limited abilities to complain afterwards about what has happened to them. This increases the risks of abusive use of PESWs in the setting of mental health institutions.

It must be also underscored that responding to a situation involving a person who is undergoing a mental health crisis is a medical emergency rather than a law enforcement issue. It should primarily be dealt with by competent and specially trained health professionals. Thus, police should not be called to intervene in mental health institutions except in situations with a law enforcement element, such as hostage situations. Only in such exceptional, particularly dangerous, situations should the involvement of law enforcement officials be contemplated. Such interventions must then be considered life threatening, given the likelihood to further increase the emotional agitation of the person and the level of stress the intervention will cause. The combined physiological effects of an agitated mental state and the discharge of a PESW in such a situation may then cause a severe reaction (e.g. in terms of heart rate, blood acidity, respiratory reactions) which in the end may lead to the death of the person – a consequence that often will be described as “excited delirium”. In such situations, the use of the PESW must be considered as a contributory factor to the lethal outcome of the situation even though it might be impossible to single out a concrete cause of death in the case.

Amnesty International, ‘Less than lethal’? – The use of stun weapons in US law enforcement (Index: AMR 51/010/2008), p. 27, quoting from Oakland County, Michigan, Office of the Medical Examiner, Autopsy Protocol case no: 07-2897:

“In the other cases, the Taser shocks were found to be a contributory factor, increasing stress levels caused by drug intoxication or excited delirium, heart disease or struggle with police. In the case of Steven Spears, for example, cause of death was given as ‘cocaine induced excited delirium and its complications’ with ‘physical restraint that included multiple applications of the electro-muscular disruption devices and handcuffing contributory’.”

Therefore, only in an exceptional situation involving a great risk that someone will be seriously harmed can it be permissible to consider using a PESW in a mental health institution. Any use of a PESW must be subject to particularly thorough scrutiny to evaluate whether it was justified or not, or may have constituted cruel, inhuman or degrading treatment, or even amounted to torture.

It follows logically, that refusal to take medication in itself is no justification for calling on the police to intervene, and even less for the use of a PESW.³⁶ The issue of non-consensual medical treatment raises complex issues of medical ethics and human rights beyond the scope of this paper.³⁷ But even in the rare cases where compulsory medication might be considered by health professionals as being justified, along with a necessity to overcome resistance by the individual concerned, any such measures should be taken by specially trained health professionals, not by the police and not by means of a PESW.

36 See the above mentioned [page 18] strong criticism of the CPT on the highly problematic practice in the Netherlands, where police are regularly called to assist personnel in mental health institutions to control unruly patients: “The CPT recommends that the Dutch authorities put an end to the practice of involving police officers or private security guards in managing agitated patients in psychiatric establishments.” Council of Europe, Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 May 2016, CPT/Inf (2017) 1, <https://rm.coe.int/16806ebb7c>. para 138.

37 On the question of non-consensual treatment, see also Report to the Human Rights Council, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/35/21, 2017, para. 63: “Informed consent is a core element of the right to health, both as a freedom and an integral safeguard to its enjoyment (...). The right to provide consent to treatment and hospitalization includes the right to refuse treatment.”; and UN Doc. A/64/272, 2009, para. 18: “Guaranteeing informed consent is a fundamental feature of respecting an individual’s autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services.”

Australia: New South Wales Police Force, Use of Conducted Electrical Weapons (Taser), Major Events & Incidents Group, 1 July 2016, 8.2 Taser Use Restrictions:³⁸

“A Taser **should not** be used in any mode:

(...)

x. against a mental health patient solely to make them comply or submit to medication or treatment [...].”

While intervention inside mental health institutions can and should be strictly regulated and limited to evident and urgent law enforcement issues, law enforcement officials may also have to deal with people with mental health problems as a first responder in an unexpected situation outside such an institution. The first consideration needs to be an assessment of how frequent such situations are in reality, and which law enforcement units are most likely to be involved, to determine if there is an actual operational benefit of the introduction of the PESW for such scenarios and for those units most likely to face them.

In any case, however, bearing in mind the above-mentioned risks when dealing with a person undergoing a mental health crisis, it must be mandatory that the introduction of PESWs to be used in such a situation should never come in isolation. Instead, measures must be put in place to avoid so far as possible the need to discharge a PESW in such situations. This should include training of law enforcement officials on how to deal with mentally agitated persons, particular caution with regard to issues of medication and drugs, creation of other ways of response including crisis intervention protocols and the involvement of trained medical health staff. Again, given that the risk to the life of a person undergoing a mental health crisis is particularly high, PESWs must remain an exceptional response and only be considered if there is a threat to life that cannot be controlled otherwise.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Electrical discharge weapons, *CPT/Inf(2010)28-part*, 2010:³⁹

“79. [...] The use of EDW [= electrical discharge weapons] on people who are delirious or intoxicated is another sensitive issue; persons in this state of mind may well not understand the significance of an advance warning that the weapon will be used and could instead become ever more agitated in such a situation. Deaths during arrest have been attributed to these medical conditions, in particular when EDW have been deployed. Therefore, particular caution is warranted and the use of EDW should be avoided in such a case and, in general, in situations where EDW might increase the risk of death or injury.”

38 https://www.police.nsw.gov.au/__data/assets/pdf_file/0010/583705/taser-use-public-information.pdf.

39 <https://rm.coe.int/16806cce1c>.

UK Home Office, Elish Angiolini, Report of the Independent Review of Deaths and Serious Incidents in Police Custody, January 2017 (published October 2017), p. 9:⁴⁰

“National policing policy, practice and training must reflect the now widely evident position that the use of force and restraint against anyone in mental health crisis or suffering from some form of drug or substance induced psychosis poses a life-threatening risk. **The restraint of anyone suffering a mental health crisis should be identified in national policy and training as a high-risk strategy giving rise to a medical emergency.**” [emphasis added]

Canada: Braidwood Commission on Conducted Energy Weapon Use, Restoring Public Confidence – Restricting the Use of Conducted Energy Weapons in British Columbia, 2009, p. 251-252:⁴¹

Recommendations for first responders:

- **“Education, training, and recognition** – it may not be particularly helpful to attempt to determine whether the subject’s delirious state is due to cocaine or methamphetamine ingestion, psychosis, extreme psychosis as a result of untreated schizophrenia, or severe bipolar. Rather, it is important that a first responder recognize that a delirious patient can have autonomic changes such as sweat, disorganization, disorientation, and defensive aggression. They should recognize that patients are frightened and may not be capable of following basic instructions, and they should receive training on how to talk to patients and calm them down.
- **Use containment whenever possible** – this means keeping the subject in a prescribed area (but not physically restraining them) in order to buy time to bring in familiar support.
- **Medical/paramedic backup** – this should be brought in as soon as possible if it appears that a subject is in a delirious state.
- **Restraints and conducted energy weapons** – first responders should be aware of the medical risks associated with physically restraining a delirious subject, or deploying a conducted energy weapon against them. In the case of an otherwise healthy individual, they likely have profound exhaustion and electrolyte changes before delirium kicks in. At that stage, any additional insult (e.g., struggling or fighting) can lead to the body just giving out, resulting in cardiac arrest and death.
- **Monitor basic vital signs** – monitor the heart rate, breathing rate, and level of consciousness.
- **Severe agitated delirious state** – if medical/paramedic backup is present, then sedation, oxygen, IV fluids, and a low-stimuli environment should be considered. Cooling measures are particularly helpful for young males whose delirium is caused by cocaine or crystal methamphetamine or other drug-induced agitated state.”

2.4.2 Operational gap counter-terrorism?

Police agencies might seek to justify the introduction of the PESW with a view to deal with specific situations, e.g. to deal with terrorism threats. This must be met with scepticism due to the very nature of the threats involved in acts of terrorism:

In most cases the threat will be far too imminent and will require a much firmer response: A person who is about to kill others by whatever means, possibly with a firearm or an explosive device, while even accepting to be killed themselves, will need to be stopped in the most certain way. A weapon that in its incapacitating dart-firing mode can have a failure rate up to 30% seems to be inappropriate in that regard. Of course, there might be circumstances in which a PESW, when available, can be an option to deal with such a situation. However, this would rather be a secondary, coincidental effect

40 <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>.

41 <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/braidwoodphase1report.pdf>.

of PESW deployment – and still with a relatively high chance of failure. Thus, overall, the operational relevance of PESWs for responding to terrorist threats is too small and seeking to counter threats of such a serious nature with this weapon can therefore not be a valid reason for its introduction.

2.4.3 Operational gap in crowd control / public order?

PESWs should not be a tactical option to deal with assemblies and they should never be used for the purpose of dispersing a crowd. They should only be used in the most extreme situations to stop an individual presenting an imminent and serious threat of death or serious injury. If such a threat is presented in situations of generalized disorder, the chances of effectively hitting the target with the two darts in an effective way is even lower than the usual 70% success rate in one-to-one stand-off scenarios. Furthermore, if an already angry crowd witnesses a member of their group collapsing under the effect of a PESW it might become even more angry, which leads to further escalation of the situation, instead of bringing it under control. It is therefore unlikely that PESWs can actually help to control difficult public order situations and therefore they do not fill an existing operational gap.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Electrical discharge weapons, *CPT/Inf(2010)28-part*, 2010:⁴²

“73. Having regard to the limits of its mandate, the CPT has been reluctant to adopt a firm position vis-à-vis the use of electrical discharge weapons in the context of operations for the maintenance or restoration of public order (e.g. control of demonstrations). That said, in the light of the principles set out in paragraph 70 above, the resort to EDW during such operations can be considered inappropriate unless there is a real and immediate threat to life or risk of serious injury. The law enforcement officials involved will (or should) have at their disposal other means of protection and action that are specifically adapted to the task in hand.”

Síndic de Greuges de Catalunya, el defensor de les persones [Ombudsman of Catalonia, Spain], *Las pistolas eléctricas como dotación policial en Catalunya: elementos para el debate*; March 2016, p. 37:⁴³

“The use and the defined protocol must be subject to the principles of necessity and proportionality, according to which [PESW] may only be used in extreme and well-defined situations of a real and imminent threat to the physical integrity or the lives of citizens and police officials. In any case, they may never be used simply to obtain compliance for an order or to carry out an arrest; nor shall they be used in the context of demonstrations or situations of public disorder, except when there is a real and imminent threat to the lives or the physical integrity of persons.”[translation by Amnesty International]

42 <https://rm.coe.int/16806cce1c>.

43 Original text: “El uso y el protocolo definido deben estar supeditados a los principios de necesidad y de proporcionalidad, según los cuales sólo pueden ser usadas en situaciones extremas y bien definidas, cuando exista una amenaza real e inminente para la integridad física o la vida de los ciudadanos y de los agentes de policía. En ningún caso deben usarse solo para cumplir una orden o efectuar una detención; tampoco en el contexto de manifestaciones o situaciones de desorden público, salvo que impliquen riesgos reales e inminentes para la vida o la integridad física de personas.”, http://www.sindic.cat/site/unitFiles/4038/Informe%20sobre%20us%20pistoles%20el%C3%A8ctriques_cast_ok.pdf.

Australia: New South Wales Police Force, Use of Conducted Electrical Weapons (Taser), 1 July 2016, 8.2 Taser Use Restrictions:⁴⁴

“A Taser **should not** be used in any mode:

...

viii. as a crowd control measure, such as for crowd dispersal at a demonstration or industrial dispute”

2.4.4 Operational gap in custody settings?

In custody situations (e.g. in police cells or prisons), it is very unlikely that a situation meets the threshold of presenting a threat to life or of serious injury and requires immediate action. More often than not, simply closing a door and waiting for the person to calm down will be a feasible option. Furthermore, in practice, in custody settings there is a particularly high risk of PESWs being used against people who merely refuse to comply with an order, without presenting any danger to anybody.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on Belgium, CPT/Inf(2010) 24, para. 41:⁴⁵

“For its part, the CPT wishes to point out now that the use of CED in penitentiary establishments, with a view to submitting to an order an inmate who does not constitute a serious and immediate threat to physical integrity or life, either for others, or for himself, would be unacceptable.”

[translation by Amnesty International]

IPCC [Independent Police Complaints Commission for England and Wales] review of Taser complaints and incidents 2004-2013, 2014, p. 4:⁴⁶

“The IPCC has particular concerns about the use of Taser on people who are in police custody and has carried out investigations that have looked at this. The IPCC believes that this is only justifiable in exceptional circumstances, taking into consideration the controlled nature of the custody environment. It is also important to note that use of Taser in a custody environment involves not only the Taser officer but also the wider team working in the custody environment. Accordingly, guidance and training for police officers equipped with Taser must refer to the use of Taser in custody scenarios and this should be part of training for police officers working in the custody environment.”

Therefore, it must be made clear that, as a rule, PESWs should not be used against persons in custody. In the exceptional case that PESWs are available to officers in custodial settings, particularly rigorous supervision, control and reporting mechanisms must be in place to prevent any misuse of the weapon.

44 https://www.police.nsw.gov.au/_data/assets/pdf_file/0010/583705/taser-use-public-information.pdf.

45 Original text: « Pour sa part, le CPT souhaite dès à présent souligner que l'utilisation de PIE dans des établissements pénitentiaires, en vue de soumettre à des injonctions un détenu qui ne constituerait une menace sérieuse et immédiate à l'intégrité physique ou à la vie, ni pour autrui, ni pour lui-même, serait inacceptable. », <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680693e4e>

46 <http://www.crae.org.uk/media/69592/IPCC-2014-Review-of-Taser-Complains-and-incidents-2004-13.pdf>.

3.

Introduction of PESWs – an important pre-condition: a human rights compliant legal framework and police regulations regarding the use of force and firearms

3.1 Review of the existing framework

PESWs are only one among many different options that can be resorted to when it is justified to use force. Given the huge impact the power to use force and firearms can have with regard to life, as well as physical and mental integrity, this power must have a solid and human rights compliant basis in law and be translated accordingly into operational regulations, policies and instructions that in turn must be human rights compliant.⁴⁷ In many countries, such as for instance in the USA, where PESWs are deployed and used most extensively, legislation and policing regulations governing the use of force and firearms are largely insufficient or in violation or contradiction of international human rights law and standards.⁴⁸ This situation results frequently in the excessive use of force, including the use of lethal force, resulting in death and serious injury.

While PESWs can indeed be considered a useful option to reduce the need to resort to the use of a firearm, their introduction cannot free authorities from developing an overall legal and operational framework on the use of force and firearms that complies with international law and standards. In the absence of such a framework it is likely that PESWs will be used excessively and in violation of human rights, as has been the case with the use of firearms. In fact, many of the cases of excessive use of PESWs in the USA⁴⁹ present the same patterns as those cases in which firearms were resorted to in an unlawful manner (no attempt to de-escalate or to use other means, use against unarmed persons simply because of their passive non-compliance, no attempt to minimize harm and damage, not taking a safe distance, not considering the option of temporary retreat etc.).

USA: Police Executive Research Forum (PERF), 2011 Electronic Control Weapon Guidelines:⁵⁰

p.11: “ECWs are just one of a number of tools that police have available to do their jobs, and they should be considered one part of an agency’s overall use-of-force policy.”

p. 12: “Agencies should not consider ECWs in isolation. Because ECWs and other force techniques and weapons have their own advantages and disadvantages, agencies should adopt a use-of-force policy that integrates ECWs with all other available force options to ensure officers contemplate all possibilities when considering any use of force. The comprehensive use-of-force policy should recognize that ECWs – as ‘less-lethal’ and not ‘nonlethal’ – weapons – have the potential to result in a fatal outcome.”

47 Amnesty International – The Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms By Law Enforcement Officials*, 2015, https://www.amnesty.nl/content/uploads/2017/07/guidelines_use_of_force_eng.pdf?x16294, Section B, Introduction.

48 See for instance the report on legislation governing the use of lethal force in the United States: Amnesty International, *Deadly force: Police use of lethal force in the United States*, 2015, [policehumanrightsresources.org/wp-content/uploads/2018/11/aiusa_deadlyforcereportjune2015.pdf](https://www.policehumanrightsresources.org/wp-content/uploads/2018/11/aiusa_deadlyforcereportjune2015.pdf).

49 Amnesty International, *‘Less than Lethal?’ – the Use of Stun Weapons in US Law Enforcement (AMR 51/010/2008)* <https://www.amnesty.org/download/Documents/52000/amr510102008en.pdf>, Reuters, *Shock Tactics: Inside the Taser, the weapon that transformed policing*, 2017, <https://www.reuters.com/investigates/special-report/usa-taser-911/>

50 See: Fn. 8.

In this regard, the claim that PESW can save or “have saved thousands of lives”⁵¹ – in particular in countries where law enforcement officials frequently resort to the use of lethal force – presents the wrong starting point: Where the use of firearms is allowed in situations and in a way that violates human rights and thus leads to a large number of killings that are unlawful under international human rights law, the solution cannot be simply the introduction of another weapon that may be less dangerous, i.e. less lethal than a firearm. Such a situation must – in the first place – be addressed through the development of human rights compliant legislation and regulations governing the use of force and firearms, addressing the wide range of situations law enforcement officials might have to deal with and the various options at their disposal to respond to them. The introduction of new weapons, including PESWs, cannot and should not simply serve to compensate non-existing or inappropriate regulations for the use of force and firearms. They should not be introduced unless this legal and operational framework is adequate, in order to ensure that its use in practice will not become as problematic as the use of firearms.⁵²

It follows from the above considerations that, whenever the introduction or wider deployment of PESWs is contemplated by a law enforcement agency, a first step must be a comprehensive re-assessment and – if needed – the revision of existing legislation and regulations regarding the use of force and firearms, to ascertain they appropriately deal with the working reality of law enforcement officials and ensure that force and firearms are only resorted to in full respect of human rights, in particular of the principles of necessity and proportionality. The introduction of PESWs must fit into this regulatory framework, it cannot compensate for an inappropriate or inadequate regulatory framework. Amnesty International recommends State authorities use our [Use-of-Force-Guidelines](#) as a benchmark for this re-assessment and revision.

3.2 Requirements for policy instructions governing the use of PESWs

There must be an operational framework with a thoroughly developed policy and clear instructions regarding the use of PESWs, that – while leaving the indispensable space for a degree of discretion – provide sufficient certainty for law enforcement officials as to what is expected from them. Operational instructions that are too vague and broad present an institutional failure on two grounds:

- A failure in the duty to take all precautions to prevent unnecessary harm;
- Leaving law enforcement officials in an unacceptable limbo in which they must make justifiable decisions on the use of PESW without having a clear reference to guide them.

3.2.1 Defined threshold, prohibitions and precautions

It is crucial that policies and instructions on the use of PESWs:⁵³

- Provide for a clear explanation of the reasons for making the weapon available and the operational gap it is intended to fill.
- Establish a clear threshold for the use of a PESW, i.e. to be used only in order to avoid the use of a firearm, thus requiring a threshold which should be close to the threshold that should be applied to the use of firearms, i.e. situations involving a threat to life or of serious injury.

51 E.g. see: Cision PR Newswire, *Axon Reports Record Revenues over \$90 Million in Third Quarter 2017*, 2017, <https://www.prnewswire.com/news-releases/axon-reports-record-revenues-over-90-million-in-third-quarter-2017-300551219.html>.

52 A problematic example of an inappropriate process in this regard is the running of a pilot test by the Dutch police to introduce projectile electro-shock weapons into day-to-day policing with an earlier decision, the introduction of an extendible baton, still waiting to be fully implemented and properly evaluated on its effectiveness in law enforcement practice: Amnesty International – The Netherlands, *A failed experiment: The Taser-pilot of the Dutch police*, 2018, p. 23, http://policehumanrightsresources.org/wp-content/uploads/2018/07/A-Failed-Experiment_The-Taser-pilot-of-the-Dutch-Police.pdf.

53 Instructions, such as the “Geweldsinstructie” issued by the Ministry of Security and Justice for the Dutch police, that limit themselves to merely describing the potential objectives for the use of a PESW, without establishing any threshold of danger, precautions to be taken and / or prohibitions for certain situations or ways of using, are clearly insufficient in this regard, see: Amnesty International – The Netherlands, *A failed experiment: The Taser-pilot of the Dutch police*, 2018, p. 19, http://policehumanrightsresources.org/wp-content/uploads/2018/07/A-Failed-Experiment_The-Taser-pilot-of-the-Dutch-Police.pdf.

- Place emphasis on the stages prior to the use of a PESW, i.e. de-escalation and negotiation, considering tactical withdrawal as well as any other non-violent tactical options.⁵⁴ They should also oblige law enforcement officials to issue a warning prior to the use of the PESW, unless this would be pointless or would expose the officer or anybody else to an increased risk of death or serious injury.
- Define what is considered “use of a PESW”, which should include the activation, use of the arc switch (something that is usually accompanied by a characteristic noise to illustrate that current can be discharged) as well as pointing with the red laser-dot at a person (“dotting”). Many police agencies highlight the effectiveness of PESWs in achieving compliance at the warning stage, be it as a result of a simple verbal warning, or through using the arc switch (with the involved characteristic noise) or pointing the red laser-dot at a person.⁵⁵ However, the risk remains that a law enforcement official who has activated the weapon and / or is already dotting the weapon at a person will then have to discharge it, if the person does not cease to be a threat. Therefore, just as many police agencies have established in their regulations on the use of firearms that pointing the weapon at a person is considered “use of a firearm”,⁵⁶ activation, arcing or dotting of a person must be considered “use of a PESW” and should only take place if the situation would also justify the actual discharge of the weapon.

United Kingdom: Westyorkshire Police, Policies: Taser – extended operational use, 2014 (amended 2017), Chapter 5: Use⁵⁷

“Officers must complete a taser evaluation form (FA4) every time taser is used. [...] An FA4 is required for all use of taser i.e. drawing, arcing, aiming, red dotting, drive stun and firing.”

- **Provide clear prohibitions** in which situations a PESW may not be used, including:
 - In the presence of flammable goods;
 - When the person has been subject to a chemical irritant (e.g. pepper-sprayed, tear gas). Chemical irritants might contain flammable components and the discharge of a PESW can cause serious burns; furthermore, chemical irritants sprays can have an impact on a person’s ability to breathe, which can exacerbate the risk of a PESW causing serious respiratory problems;
 - When a person offers only passive resistance;
 - When the person has already been brought under control;
 - Their use as a means of punishment;
 - On areas that should be avoided (head, neck, spinal cord, groin area or close to the heart).

USA: Police Executive Research Forum (PERF), 2011 Electronic Control Weapon Guidelines, p. 20:⁵⁸

“ECW should be used only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer’s judgment, is likely to result in injuries to themselves or others. ECWs should not be used against a passive subject. ... Fleeing should not be the sole justification for using an ECW against a subject.”

54 IPCC (Independent Police Complaints Commission), *IPCC review of Taser complaints and incidents 2004-2013*, 2014, <http://www.crae.org.uk/media/69592/IPCC-2014-Review-of-Taser-Complains-and-incidents-2004-13.pdf>, p.23.

55 Rhineland-Palatinate, Germany, see: Rheinland-Pfalz Polizeipräsidentium Tier, *Landesarbeitsgruppe „DEIG“ Ausbildung und Einsatz der Polizei Rheinland-Pfalz mit Distanz-Elektroimpulsgeräten – Abschlussbericht*, 2016, <https://www.landtag.rlp.de/landtag/vorlagen/1165-V-17.pdf>, p.9 “Alleine die Androhung von DEIG geht regelmäßig mit einer hohen präventiven Wirkung einher.” [Translation: “Already the warning to use a DEID regularly has a highly preventive effect.”].

56 Amnesty International – The Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms By Law Enforcement Officials*, 2015, https://www.amnesty.nl/content/uploads/2017/07/guidelines_use_of_force_eng.pdf?x16294, section 5.1.1.

57 https://www.westyorkshire.police.uk/sites/default/files/files/policies/taser_-_extended_operational_use_-_editeddd.pdf.

58 See: Fn. 8.

- Situations requiring **particular caution** need to be mentioned, for example:
 - When a person is behaving in an erratic manner or otherwise shows sign of a highly agitated mental state.
 - When a person is at an elevated situation, with a risk of life-threatening injuries if they fall.
- Instructions must clearly distinguish between dart-firing and drive-stun-mode. The difference should be clearly explained, and the latter must be disabled or prohibited.
- The handling of the weapon must be clearly explained as well as any precautions to be taken when considering the use of the PESW (including the risks of a possible failure).
- The PESW made available for use by the police should have an automatic cut-off point after a few seconds (ideally not more than five seconds) and instructions should clearly caution officers with regard to the risks involved in multiple and prolonged discharges.

Australia: New South Wales Police Force, Use of Conducted Electrical Weapons (Taser), 2016, Guiding principles, p. 16, No. 11:⁵⁹

“The use of multiple cycles should only be considered in exceptional circumstances and after reassessment of the situation which caused the initial use of the Taser. Notwithstanding this, after 3 cycles police must reconsider the effectiveness of the Taser as the most appropriate tactical option and must consider alternative tactical options.”

p. 24 – Warning in bold: “Officers should be aware that multiple or prolonged use of Taser may increase the risk of serious injury and/or death.”

- In any case, each single discharge needs to be justified on its own in view of its necessity and proportionality in the circumstances, therefore requiring an ongoing assessment of the situation before another discharge is made. Law enforcement agencies should only use devices that record each single use of the weapon (incl. activation, arcing, laser pointing and each single discharge).
- Law enforcement officials should be warned of possible risks if a PESW is used inappropriately (such as aiming at the head), as well as unwarranted effects that may occur in particular circumstances (for instance epileptic seizures when used against persons with a pre-condition, cardiac arrest if used against persons under the effects of certain drugs or medication, or ignition if inflammable goods are around).
- Medical attention should be obligatory after the weapon has been discharged against a person.
- Only trained and certified law enforcement officials should be allowed to use the weapon.

Australia: New South Wales Police Force, Use of Conducted Electrical Weapons (Taser), 2016, p. 18:⁶⁰

“Only authorised officers who have attained the required standard of proficiency through the approved weapons and Tactics, Policy and Review (WTPR) training course are authorised to carry and use the Taser operationally.”

- In order to avoid the growing risk of a “function creep”, or slippery slope towards increasing inappropriate or unlawful use, instructions must include a warning on the possible disciplinary and penal sanctions. In addition, a particularly rigorous reporting obligation should be established for any use of such equipment as well as any unintended harm caused.

⁵⁹ https://www.police.nsw.gov.au/__data/assets/pdf_file/0010/583705/taser-use-public-information.pdf.

⁶⁰ Ibid

3.2.2 Preventing function creep

A generalized distribution of the weapon for use in day-to-day policing is likely to lead to the weapon becoming a standard tool, that will be used in circumstances that are not related to the initial justification for its introduction. Given that PESWs should only be deployed to meet a clearly defined operational gap, a decision to whom to distribute this weapon should align with this identified gap, i.e. only those units and departments likely to confront regularly the relevant situations should be provided with this weapon.

European Committee for the Prevention of Torture, Report on Belgium, CPT/Inf (2010) 24, para. 35:⁶¹

“It is important to emphasize that the CPT does not, as a matter of principle, exclude that in very specific circumstances, police services resort to the use of so-called incapacitating weapons. Indeed, public authorities who provide their police services with such weapons give them the means to respond in a more graduated manner to the threats they are facing, and, in certain cases, these weapons allow not to have to resort to the use of means of last resort, i.e. firearms. Nevertheless, in view of the inherent risks their use presents – leaving aside potential abuses – the rules of engagement must be strictly framed in the legislation and detailed in specific regulations, and the personnel supposed to use them being selected with care and being correctly trained. Such a deployment approach implies, in the view of the CPT, that such weapons should not be provided to all police officials.” [translation by Amnesty International]

The aforementioned “clinical” nature of the PESW, the ease with which a PESW can be discharged, and the apparent ease with which a difficult situation can be resolved if the PESW effectively incapacitates a person, present a particular risk of excessive use.

When the distribution of PESWs is normalised and it is treated as a weapon of routine policing, with little emphasis as to the serious risks involved and the high threshold to be met before considering its use, it is very likely that the decision to use it will be taken more and more readily. There is a psychological risk that over time it will become the preferred tool for resolving confrontational situations, simply because it is so easy to use. This very human tendency has already been confirmed by the Independent Police Complaints Commission for England and Wales (IPCC):

IPCC [Independent Police Complaints Commission for England and Wales] review of Taser complaints and incidents 2004-2013, 2014, p. 26:⁶²

“In the meantime, it is clear that the use of Taser has widened considerably – not only in terms of the number of police officers using it, but also in terms of its use in circumstances where it would not have been used in the past. Given the need always to avoid ‘mission-creep’ – the use of equipment because it is available, rather than because it is necessary – we believe that there are some clear areas in which action by the police service is needed.”

61 Original text: “Il convient tout d’abord de signaler que le CPT n’exclut pas, par principe, que dans des circonstances très précises, les services de police aient recours à des armes dites « à neutralisation momentanée ». En effet, les autorités publiques, en mettant à disposition des services de police de telles armes, leur donnent les moyens de répondre d’une manière encore plus graduée aux menaces auxquelles elles sont confrontées et, dans certains cas, ces armes permettent de ne pas avoir à utiliser les moyens ultimes que sont les armes à feu. Néanmoins, en raison même des risques inhérents que présente leur utilisation – sans parler du potentiel d’abus – leurs critères d’engagement devraient être strictement encadrés par la loi et détaillés dans des circulaires spécifiques, le personnel qui est amené à les utiliser sélectionné avec soin et correctement formé. Une telle philosophie d’emploi implique également, aux yeux du CPT, que de telles armes ne devraient pas être à disposition de tous les fonctionnaires de police.” <https://rm.coe.int/1680693e4e>.

62 IPCC (Independent Police Complaints Commission), *IPCC review of Taser complaints and incidents 2004-2013*, 2014, <http://www.crae.org.uk/media/69592/IPCC-2014-Review-of-Taser-Complains-and-incident-2004-13.pdf>.

The more the police leadership continues to emphasize that it is a non-dangerous weapon and less dangerous than the baton or other techniques, the more likely it is that the slippery slope will materialize.⁶³ In fact, the large majority of cases in which death and injury occurred, for instance in the USA, are situations in which PESWs have been discharged repeatedly and for a prolonged period – and this mainly in an abusive manner.⁶⁴ Another concern in this regard is the use of PESWs on children⁶⁵ and on persons with mental health problems, as well as in a disproportionate manner on certain ethnic minorities or people of colour.⁶⁶

It is the responsibility of law enforcement agencies to prevent its members from going down this slippery slope.

The most effective way of preventing this is to limit the distribution of this weapon to special units who are tasked to deal with high-risk situations that are more likely to meet the threshold of risk in which it might be appropriate to resort to the PESW. Law enforcement officials should also be constantly reminded of the risks involved in the use of PESW to cause death and serious injury, without downplaying these serious risks because of the (relatively) low numbers.

Only a particularly stringent system of reporting, supervision and control, combined with an immediate meaningful response in cases of unlawful or otherwise inappropriate use might allow for the prevention of PESW over-use. The obligatory and immediate response once a law enforcement official resorts to using a PESW in a situation in which it is not justified to do so must be to withdraw that officer's permission to carry the weapon (as well as disciplinary or criminal investigations and sanctions where appropriate).

In summary, instructions should:

- Explicitly spell out when and how (and when and how not) PESWs may be used, and set out clear prohibitions and cautions;
- Clarify that PESWs are potentially very dangerous weapons not to be used as a weapon of convenience and therefore limit the deployment to (specialized) departments or units only; there should be no generalized distribution for use in ordinary day-to-day-policing;
- Only weapons with an automatic cut-off point should be introduced and officers must be cautioned in view of the risks involved in repeated or prolonged discharge.

63 In this regard it must be considered reckless by a law enforcement agency to emphasize the supposedly harmless nature of PESWs, e.g.: Regierungsrat Zürich, *Auszug aus dem Protokoll des Regierungsrates des Kantons Zürich*, Sitzung vom 11. Dezember 2003 (KR-Nr. 228/2003), p.2: "Wie beim Einsatz jedes Zwangsmittels kann auch beim Taser ein Gesundheitsrisiko nicht vollständig ausgeschlossen werden. Nach eingehender Prüfung kam die SPTK jedoch zum Schluss, dass der Taser in den Händen von ausgebildeten polizeilichen Spezialeinheiten ein taugliches Einsatzmittel darstellt, das im Verhältnis zum Einsatz einer Schusswaffe als milder einzustufen ist. **Im Gegensatz zum Schusswaffeneinsatz führt der Einsatz eines Tasers zu keinen körperlichen Verletzungen.**" [emphasis added]. "As with the use of any means of force, a health risk cannot be completely ruled out for the Taser either. After detailed examination, however, the SPTK came to the conclusion that the Taser, in the hands of trained police special units, is a suitable piece of equipment which can be classified as less extreme than the use of a firearm. **Contrary to the use of firearms, the use of a Taser does not cause any physical injuries**". [translation by Amnesty International, emphasis added].

Similar statements were made in Germany where conclusions on a very short test phase led to a total denial of the risks involved in the use of PESWs. This is reckless as it "conditions" officers to resort (too) easily to the use of PESWs given the allegedly harmless nature of the device, see: Rheinland-Pfalz Polizeipräsidentium Trier, *Landesarbeitsgruppe "DEIG" Ausbildung und Einsatz der Polizei Rheinland-Pfalz mit Distanz-Elektroimpulsgeräten – Abschlussbericht*, 2016, <https://www.landtag.rlp.de/landtag/vorlagen/1165-V-17.pdf>, p.32-36.

64 Amnesty International, *'Less than Lethal?' – the Use of Stun Weapons in US Law Enforcement* (AMR 51/010/2008) <https://www.amnesty.org/download/Documents/52000/amr510102008en.pdf>. p.37; Reuters, *Shock Tactics: Inside the Taser, the weapon that transformed policing*, 2017, <https://www.amnesty.org/en/documents/AMR51/010/2008/en/>.

65 Ibid.

66 Concerns have been voiced for instance in the UK, that people of colour are more likely to have a PESW used against them, than white people: BBC News (D. Shaw), *Black people 'three times more likely' to be Tasered*, 13 October 2015, <https://www.bbc.com/news/uk-34511532>.

3.3 Training requirements

3.3.1 Trainers

Trainers must be police trainers who are certified in providing training not only on the PESW, but also on the overall policies on the use of force and their implementation in practice. While the company producing the PESW to be deployed may be involved in the design of the training programme, particularly with regards to the technical aspects of the use of the weapon, it is fundamental to have competent police trainers who are able to convey to law enforcement officials how PESWs are placed within the overall policy on the use of force and how this should impact on their use.

Switzerland, Report of the Federal Council on electric-shock weapons:⁶⁷

“Capacity building of instructors includes – in addition to the topics of the basic training – the following elements:

Types of lessons, lessons structure, didactics and methodology, practical exercises, in-depth technical and medical knowledge, pedagogic skills, handling and use of the weapon, medical risks, risks in connection to the effects of electrical current, tactical and technical risks, behavior after deployment, restraint techniques after use of an incapacitating weapon, state of science on incapacitating weapons.” [translation by Amnesty International]

Trainers must themselves be aware of the risks involved in the use of a PESW in order to fully inform police officers during training about these risks and how they might be mitigated.⁶⁸ Furthermore, trainers also need to keep up with any lessons learned from the deployment and use of PESWs in the policing practice of the agency, e.g. regarding particular difficult situations or emerging risks to be included in a training, or other problems that need to be addressed during a training. Therefore, trainers should also be regularly recertified:

Australia: New South Wales Police Force (NSWPF), Use of Conducted Electrical Weapons (Taser), 2016:⁶⁹

p. 9: “Taser instructor: Members of the NSWPF who have fulfilled all of the requirements prescribed in the NSWPF Taser instructors Course, including 16 hours of instruction and the successful completion of a written examination with a minimum pass mark of 80%. This certification will remain current for 2 years and re-certification will become part of NSWPF Weapons and Defensive Tactics re-accreditation as managed by the Weapons and Tactics, Policy and Review Unit, Education and Training Command.”

p. 16: “All qualified Taser Instructors must be re-certified at least every two years in accordance with the re-certification requirements in order to continue with their Taser instructional duties.”

67 Bundesrat Schweiz (Swiss Federal Council), *Bericht des Bundesrates: Evaluation der Destabilisierungsgeräte*, 2011, <https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/archiv/zwangsanwendung/ber-br-d.pdf>, p.12: Zusätzlich zu den Themen der Grundausbildung umfasst die Instruktorrenausbildung Folgendes: – Lektionstypen; – Lektionsaufbau; – Didaktik und Methodik; – praktische Übungen; – vertiefte technische und medizinische Kenntnisse; – pädagogische Kompetenzen; – Manipulation und Verwendung der Waffe; – medizinische Risiken; – Risiken im Zusammenhang mit den Wirkungen von elektrischem Strom; – taktische und technische Risiken; – Verhalten nach dem Einsatz; – Fixierungstechnik nach dem Einsatz eines Destabilisierungsgeräts; – aktueller Forschungsstand zu Destabilisierungsgeräten.”

68 This was, for instance, a deficiency identified in the interim evaluation of the pilot project in The Netherlands: O. Adang (redactie), S. Orbons, B. Mali, K. Vermeulen, *Tussenrapportage pilot stroomstootwapen* [interim report], September 2017, https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z16292&did=2017D34095, p. 33: In preparation of the pilot project, trainers supposed to train participants in the pilot project received only one training and this was a 2-day training delivered by the company Axon/Taser. However, neither information about certain groups at risk nor other types of health risks involved in the use of the weapon were mentioned during the training of trainers.

69 https://www.police.nsw.gov.au/_data/assets/pdf_file/0010/583705/taser-use-public-information.pdf.

3.3.2 Content of training

The content of training on the use of PESWs must be comprehensive. Training that primarily focuses on the technical use of the weapon based on instructions from the manufacturer is insufficient.⁷⁰ Training must provide clear information about the health risks involved in the use of this weapon. Downplaying these risks must be avoided.

Overall, training should go far beyond the teaching of the technical use of the weapon and must include the following elements:

- Practical scenario-based training⁷¹ covering the decision-making process to decide between the different options available to a law enforcement official, including negotiation and mediation, temporary withdrawal as well as the use of other techniques (shield techniques, pepper spray, empty hand techniques). It is crucial to be proficient in other use-of-force techniques in order not to have the PESW as the only weapon available.⁷²
- Proficiency and certified skills in all these other options must be a pre-condition before a law enforcement official is given a PESW.
- Situations in which the PESW should not be used, as well as how to recognize such situations (e.g. identifying when a situation presents a mental health emergency, requiring a different, non-policing intervention, or any signs of other health issues involved).
- The need to be aware of situations of increased risk: when a person can fall if they are standing on an elevated point, the danger of ignition when flammable goods are around or when pepper spray has been used.
- Raising awareness on the possible ineffectiveness and the risks involved (including for the officer).
- Explicit prohibition of drive-stun mode.
- Emphasis on the absolute prohibition of cruel, inhuman or degrading treatment and torture and the prohibition of the use of the PESW as a means of punishment.
- First aid.
- How to remove the darts.

70 This was a problem identified for instance, in a review of the deployment and use of PESWs, the Ombudsman in Catalonia, Spain where it was found out that only 25 out of 31 local police forces who have PESWs at their disposal have received specific training at all, and that 24 of them have received training either from the Taser company itself or from other private companies providing training for security personnel, see: Sindic de Greuges de Catalunya, el defensor de les persones, *Las pistolas eléctricas como dotación policial en Cataluña: elementos para el debate*, March 2016, http://www.sindic.cat/site/unitFiles/4038/Informe%20sobre%20us%20pistoles%20el%C3%A8ctriques_cast_ok.pdf, p. 30.

71 Criticism on the provided 2-day training that did give enough time and room for scenario-based exercises was for instance voiced both by trainers and law enforcement officials during the pilot-project on the introduction of PESWs into day-to-day policing in The Netherlands. As a result, a third day was included in order to address more practical scenarios for the use of PESWs, see: The Netherlands the Interim report on the electric-shock weapon pilot: O. Adang (redactie), S. Orbons, B. Mali, K. Vermeulen, *Tussenrapportage pilot stroomstootwapen* [interim report], September 2017, https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z16292&did=2017D34095, p. 31.

72 This is similar to the concept clearly expressed that law enforcement officials should not be equipped with firearms if they do not meet the proficiency requirements for less lethal weapons and techniques in order to prevent that the only option for them would be the use of lethal force (see for instance: United States: Georgia Association of Chiefs of Police, *Sample Law Enforcement Operations Manual*, 2014, <https://gachiefs.com/index.php/sample-policy-manual/>, Chapter 11 (Use of Force), S.O.P 11-2 Less-Lethal Weapons, p.12: "III. TRAINING [...] D. Officers who fail to attend the required refresher training or who are **unable to demonstrate proficiency** in the use of any less lethal weapon will not be allowed to carry it until such time as they attend remedial training and are able to demonstrate proficiency.[...] ATTENTION CEO: **Any officer who fails to maintain proficiency in intermediate weapons will be removed from duty until proficiency is demonstrated.** (You do not want deadly force as the only option available.)" [emphasis added].

USA: Police Executive Research Forum (PERF), 2011 Electronic Control Weapon Guidelines:⁷³

p. 17: “Agencies should develop policies and training curricula for ECWs that are integrated with the agency’s overall use-of-force policy.”

p. 18: “Agencies should use scenario- and judgment-based training, that recognizes the limitations of ECW application and the need for personnel to be prepared to transition to other force options as needed. ...Agencies should not rely solely on training curriculum provided by an ECW manufacturer. [...] ECW recertification should occur at least annually. [...] Training protocols should emphasize that multiple applications or continuous cycling of an ECW resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death and should be avoided.”

An assessment should take place at the end of the training. It should go beyond theoretical examination and should assess the practical skills (including decision-making) of law enforcement officials and whether they have developed the capacity to use the weapon appropriately and in line with the institutional policy. Only certified officers should be allowed to carry and use the weapon. In addition, there must be periodic retraining with re-certification. Re-training and re-certification should be mandatory, with officers who fail to re-certify before the expiry of their original certification having their authorisation to carry and use the weapon automatically revoked. Re-training can also be required if a new model of the weapon is introduced.

United Kingdom, College of Policing – authorized police practice, Armed policing: Conducted energy devices (Taser), Training:⁷⁴

“The minimum contact time for initial training is 18 hours. There will follow a minimum 6 hours per annum of refresher training. Annual refresher packages are strictly controlled to ensure that users and commanders receive the relevant updates and training. Officers can be authorised for no longer than 12 months from the date of their last period of CED training.”

73 See: Fn. 8.

74 <https://www.app.college.police.uk/app-content/armed-policing/conducted-energy-devices-taser/#training>.

4.

Accountability, evaluation and review

Accountability and reporting standards for the use of PESWs should be as rigid as for firearms. Each single use must be reported (including cases of a simple warning) and be reviewed as to its justification.

In Northern Ireland, all occasions in which a CED is discharged – be it dart-firing and direct contact mode – should be referred to PONI [Police Ombudsman for Northern Ireland] for independent investigation.⁷⁵

The only PESWs that can be deployed should be those which record every use (number and length of discharges, and in which mode). Retrieving the data from the PESW must be obligatory in order to assess how the weapon was used (how many discharges and for how long).

Australia: New South Wales Police Force, Use of Conducted Electrical Weapons (Taser), 2016, p. 31, 17.1.⁷⁶

“Taser Users: Taser users will ensure safe custody of the subject and take appropriate action to remove probes, notify their supervisor, contact the ambulance and render first-aid and other assistance as required. Upon return to the Police Station/Unit officer must report the use of the Taser. A COPS [Computerised Operational Police System] event must be created for any incident involving the use of a Taser and ‘Use of Force’ field must be properly completed. The Taser must be downloaded prior to the end of the shift.”

Reporting forms should include the following points:

- If alternatives to the use of force were considered, tried or not (and why/why not), what were the outcomes;
- A precise and accurate description of the risk the police official or anybody else was facing;
- Whether retreat/temporary suspension of the intervention was an option or not (and why/why not);
- Each individual discharge must be explained and justified;
- The appearance of the affected person (whether there were factors that would give reason to consider this person to be a member of one of the groups particularly vulnerable to the risks a PESW can present).

75 College of Policing, Armed policing – Conducted energy devices (Taser), Post incident referral, <https://www.app.college.police.uk/app-content/armed-policing/conducted-energy-devices-taser/#use-of-force-reporting>.

76 https://www.police.nsw.gov.au/_data/assets/pdf_file/0010/583705/taser-use-public-information.pdf.

It should go without saying that any death occurring in the course of a police operation must be thoroughly investigated by an independent body. This investigation must include an autopsy in order to determine the cause of death. This is particularly relevant in the case of the use of PESWs: given that it is not possible to carry out testing of PESWs in certain situations or on certain persons (e.g. those who are under the influence of alcohol or drugs, or who have certain mental or other health conditions), it is particularly important to try to identify the cause of death and the potential role of the discharge of a PESW as a determinative or contributory factor.

Reporting and control measures should allow for the evaluation of the competence of the person authorised to carry and use the PESW, with remedial measures to be taken in cases where the use of the weapon was found to be in breach of existing procedures or otherwise inappropriate.

Australia: New South Wales Police Force, Use of Conducted Electrical Weapons (Taser), 2016, p. 14-15:⁷⁷

“Any action or inaction demonstrated by a Taser user that falls outside of these procedures or their intent, will be viewed as a breach of the procedures and may be the subject of remedial training or management action or dealt with as a complaint. This includes breaching the *Criterion to Draw and Cover* (Section 7), the *Criteria to Discharge a Taser* (Section 8) and actions that may constitute a *Hazardous practice*. [...] An accidental discharge is a *Hazardous Practice* and a breach of these procedures will result in the suspension from operational use of the Taser for the user who caused the discharge to occur. [...] In all instances where a Taser User has been suspended from using a Taser, a remediation notice will be prepared by a Taser qualified Operational Safety Instructor and remedial training program developed and implemented as soon as possible.”

The decision of a law enforcement agency to deploy a weapon must serve to improve the police response to different situations, while minimizing harm and injury to all persons involved. It should be mandatory to regularly re-assess whether these objectives are actually achieved in daily policing practice. From the outset, a periodic review process should be established with this in mind.

Unfortunately, law enforcement agencies tend to pay little attention to the question of whether it would have been possible to resolve the situation in which a weapon was discharged without the use of the PESW, and whether the way it was used was in compliance with instructions and the requirement of necessity and proportionality. In particular, the use in drive-stun mode is rarely questioned. Too often evaluations only seek to answer two questions: Was anybody killed or seriously injured? Was the situation solved? – without actually evaluating whether the use was justified in the circumstances. As a result, conclusions on the alleged harmless nature of PESWs are drawn very quickly after very few instances of their use.⁷⁸

The periodic evaluation should look at the following elements:

- Did the weapon actually fill the operational gap it was supposed to fill? i.e. are the critical situations that were considered being dealt with in a better way than before or not? How often did these situations occur? In comparison: how often was the weapon used in other situations that had nothing to do with the reason for its introduction (i.e. the operational gap to be filled)?

⁷⁷ See: Fn. 76.

⁷⁸ See for instance: Germany, Landtag Rhineland-Palatinate, *Abschlussbericht zum Pilotprojekt der Landesregierung über die Einführung des Distanzelektroimpulsgeräts für den Streifendienst bei der Polizeiinspektion Trier* (DRS 17/6054), 25 April 2018, <https://www.landtag.rlp.de/landtag/drucksachen/6054-17.pdf>, p. 34, concluding from merely 6 discharges in dart-firing mode and 4 discharges in drive-stun-mode that PESWs pose only minimal risks of injury or consequences [„sehr geringe Verletzungsrisiken und Verletzungsfolgen“].

- Did any problems of inappropriate use, misuse or even abuse come up? Individual cases or a more general pattern, revealing a risk of “function creep”? Can these problems be addressed (e.g. through improved training, better instructions, stronger scrutiny and supervision)? Or are these problems so serious that they warrant a more principled decision (e.g. to withdraw the weapon from certain units or from the agency as a whole)? This latter option must be considered when the evaluation reveals that the problematic instances of misuse or abuse have reached a level that outweighs the actual operational benefits.

Furthermore, the evaluation should enable the identification of any problematic patterns, such as discriminatory practices (e.g. disproportionate use against specific ethnic or other minority groups) or high risk use against persons particularly vulnerable to suffer from adverse effects (e.g. because of mental or other health problems, the use of certain medications, drugs or alcohol).

Civil society should be involved in the review – in particular, to raise concerns about patterns of abuse as well as possible discriminatory practices.

IPCC [Independent Police Complaints Commission for England and Wales] review of Taser complaints and incidents 2004-2013, 2014, p. 26:⁷⁹

“It is also important that Taser use is monitored locally by police forces themselves. This will enable police forces to review their training and policies in light of any learning, trends or issues; make appropriate decisions about the number of police officers who are equipped with Tasers; and contribute to national learning and debate about the use of Taser. It should also look expressly at concerns in some communities that they are subject to proportionately more discharges than others.”

USA: Police Executive Research Forum (PERF), 2011 Electronic Control Weapon Guidelines, p. 15:⁸⁰

“Because ECWs are a relatively new weapon for most law enforcement officers, it is important for law enforcement agencies to continue to monitor and track how ECWs are used and maintain this comprehensive information to monitor agency-wide trends over time. ... Furthermore, to evaluate ECWs as one element of a use-of-force strategy, law enforcement agencies ideally should gather such information for all force options. [...]

To maintain good community engagement and support for law enforcement, agencies should involve community officials, leaders, and residents ... in the development of policy and accountability systems.”

Such reviews should enable conclusions to be drawn in the following areas:

- Whether standard procedures and instructions for use are appropriate or need to be revised (including a review of the potential scenarios in which PESWs may / may not be used);
- Whether the training provided is appropriate and sufficient or needs improvement;
- Whether there is a need to enhance supervision and corrective measures;
- Whether the problems identified are so serious that the weapon should be withdrawn from individual officers, from specific units or from the agency as a whole.

⁷⁹ <http://www.crae.org.uk/media/69592/IPCC-2014-Review-of-Taser-Complaints-and-Incidents-2004-13.pdf>.

⁸⁰ See: Fn. 8.

Law enforcement agencies must ensure full accountability for any use of a PESW through rigorous reporting and control mechanisms including an assessment of the justification of each single use. Only PESWs that record every single use should be deployed.

Law enforcement agencies should regularly re-evaluate whether effective operational benefits have been achieved, and balance any benefits against any unwarranted risks and the possibility of function creep.

5.

Summary of key recommendations

- PESWs have the potential to cause serious injury or even death.
- Law enforcement agencies should only introduce PESWs based on a clearly defined operational need for situations that would also allow for the use of lethal force and with a view to avoid the need to resort to a firearm. They are not a tool of convenience.
- When a person undergoes a mental health crisis, it is not a law enforcement issue but a medical emergency that should be dealt with by competent medical staff. Therefore, as a rule and except in situations of particular urgency such as hostage situations, law enforcement officials should not intervene in mental health institutions. This is especially so in the case of interventions with PESWs.
- When dealing with mentally agitated persons outside such institutions, law enforcement officials should be properly instructed and trained as first responders. PESWs should then only be considered as one possible option as a matter of last resort among a range of measures that need to be in place to respond to such situations.
- PESWs should be used neither as a tool for handling public order situations nor in detention settings.
- PESWs should not be used in cases where chemical irritants have already been used (such as pepper spray or tear gas).
- PESWs should not be introduced for ordinary day-to-day policing, but only for units likely to be required to deal with threats of death or serious injury that would also justify the use of a firearm.
- Policy instructions should reflect the operational purpose for which PESWs have been introduced.
- Drive-stun mode must be prohibited, and where possible disabled on the device.
- Training must be on the concrete model actually to be used in practice; it must be comprehensive, scenario-based, and include the potential risks involved in the use of a PESW.
- Strict reporting and accountability measures must be established in order to prevent an increasing (unlawful) use of the weapon over time as a tool of convenience (“function creep”).