



**Sam Houston State University,
A Member of the Texas State University System
College of Criminal Justice**

PART IV

A QUALITATIVE ANALYSIS OF THE USE OF CONDUCTED ENERGY DEVICES BY THE HOUSTON POLICE DEPARTMENT

SAM HOUSTON STATE UNIVERSITY,
A QUALITATIVE ANALYSIS OF THE USE OF CONDUCTED ENERGY DEVICES
BY THE HOUSTON POLICE DEPARTMENT

TABLE OF CONTENTS

	<u>Page</u>
Summary	111
Background	114
Study Components and Method of Analysis	118
Results of Compliance Review of Houston Police Department Incident Reports	120
Houston Police Department Incident Report Review	132
Houston Police Department Training Academy - CED Training	139
Comments on UH CPP Team Statistical Analysis of the Use of CEDs	143
Recommendations	147

SUMMARY

The study period was from the implementation of the Conducted Energy Device (CED) program, December 4, 2004, through June 30, 2007. Using qualitative analysis and observation, the research group from Sam Houston State University College of Criminal Justice (SHSU CCJ)¹ studied the following issues in relation to the use of CEDs by the Houston Police Department (HPD).

- *When officers deployed a CED, were they responding to a call for service for which they were dispatched, or did the officer self-initiate the call by making a traffic stop, or otherwise encountering the suspect?*
- *What was the nature of the original call for service? In other words, why was the officer there?*
- *When an officer deployed the CED, how many cycles were used?*
- *In what percentage of the cases in which an officer deployed the CED, was it noted that the suspect on whom the CED was deployed appeared to have used alcohol and/or drugs?*
- *What appeared to be the effectiveness of the deployment of the CED in controlling the suspect's behavior? When the device appeared to be ineffective, what was the apparent reason?*
- *Were officers in compliance with HPD policy in the deployment of the CED and the reporting of the incident? If not, were factors present which made the deployment appropriate despite the apparent failure to comply with policy?*
- *Were there cases in which the CED was deployed in which the officer would have been justified in using deadly force?*
- *During the training of cadets on the use of CED, what was observed that might be affecting the manner in which officers deploy the CED?*

Initiation of Call for Service

Fifty-five percent (55%) of the time, in the incidents which resulted in the deployment of a CED, the officer had responded to the scene as a result of being dispatched. In 33% of the cases, the contact with the suspect against whom the CED was eventually deployed, was initiated by the officer. In 12% of the cases, the initial reason for the contact with the suspect was a traffic issue. A majority of the self-initiated contacts were drug related.

¹ The principal investigator from Sam Houston State University was Margo L. Frasier, J.D. Assisting was Jennifer Schulenberg, Ph.D., and Brian Lawton, Ph.D.

Nature of Call for Service

The two most frequent types of calls for service were drug related (15%)² and disturbance related (15%).³ The incidents involving drugs were notable in that, with a few exceptions, they were calls which were self-initiated by an officer.⁴ Assault was the basis for 13% of the calls. In addition to the 13% of the calls which were assault based, 7% of the calls were based on a report of family violence. Criminal trespass was the basis of 6% of the calls. Traffic offenses were the basis for 11% of the calls. Other misdemeanors such as Driving While Intoxicated, Theft, and Criminal Mischief comprised the basis of 13% of the calls. Other felonies comprised the basis of 9% of the calls. Approximately one-third of the felonies were related to automobile theft. Eleven percent of the calls were based on the need for crisis intervention by officers with a person suspected of having a mental health issue.

Number of CED Cycles Used When Deployed

A standard cycle of the CED is five seconds. In 38% of the incidents, the officer only deployed one cycle. In 31% of the incidents, the officer deployed two cycles. In 15% of the incidents, three cycles. In 5% of the incidents, the CED was cycled four times. In 3% of the cases, the CED was cycled five times. In 5% of the cases, the CED was cycled between six and ten times. In 3% of the cases, the CED was cycled over ten times.

Impact of Alcohol and/or Drugs Consumed by Suspects

In 58% of the incidents, officers did not note that the suspect appeared to be under the influence of drugs and/or alcohol. The researcher did not attempt to determine whether the officer, if asked, would have said that drugs and/or alcohol might have been a contributing factor to the behavior which resulted in the need for CED deployment. However, it is highly likely that a significant percentage of these suspects were under the influence of drugs or alcohol given the behavior that was noted by the officer.

In 15% of the incidents, the officers noted in their reports that the suspect appeared to be under the influence of alcohol. In 27% of the incidents, the officers noted in their reports that the suspect appeared to be under the influence of drugs and/or possessing drugs.

² For the purposes of this study, drug related calls include the possession of and/or sale of drugs.

³ For the purposes of this study, disturbance related calls include the crimes normally associated with disorderly conduct and public intoxication.

⁴ The fact that a call was self-initiated by an officer does not mean that citizen complaints were not the basis for officers being in the area.

Effectiveness of CED in Controlling a Suspect

The device was reported as being effective in assisting in controlling the suspect in 77% of the incidents. It should be noted that this does not mean that the device was effective in its initial deployment or effective in controlling the suspect's behavior with only one cycle of the CED. In some cases, the officer deployed the device in probe mode and then resorted to using the CED in the drive stun mode to gain control. In other cases, the officer used multiple cycles in the probe mode to gain control of the suspect.

In 4% of the incidents, the report indicated that the CED was not effective due to the clothing the person was wearing. In 4% of the incidents, the officer missed the suspect with one or more darts. In 2% of the cases, it was reported that the darts hit the suspect, but the suspect pulled out the darts. In 2% of the incidents, it was reported that the CED was defective and did not fire the probes. In an additional 11% of the incidents, the officer indicated that the CED was not effective without attributing the ineffectiveness to any of the reasons previously identified. In the majority of the cases where the officer indicated that the CED was not effective, the officer reported that the suspect appeared to be under the influence of alcohol and/or drugs or experiencing some form of mental health crisis.

HPD CED Policies

HPD CED policies, in general, followed the best practices of the law enforcement profession. Additionally, the majority of the reports indicate that the officer used the CED in compliance with HPD CED policies. Any concerns about the use of CEDs did not appear to be a result of any shortcoming with HPD CED policies. Instead, as detailed later, the concerns appear to be as a result of training and/or implementation of HPD CED policies.

Use of CED Instead of Deadly Force

The results of the study by the University of Houston Center for Public Policy (UH CPP) did not indicate a reduction in the number of officer involved shootings since the introduction of the CED. This was not surprising as the opportunities to use a CED instead of a firearm are very limited. For example, it would be highly unusual for an officer to rely on a CED if the suspect was armed with a firearm.

However, there were incident reports which indicate that officers would have been legally justified in using deadly force and the officers chose, instead, to deploy the CED. It should be noted that just because the officer would have been legally justified in using deadly force, it does not mean that the officer would definitely have chosen this option if not for being CED equipped. However, a review of the reports indicated situations in which other intermediate weapons were unlikely to have been used due to officer safety concerns; thus, if the CED had not been available, the use of deadly force would have been more likely.

HPD Training Academy - CED Training

There were numerous issues involved in the training of cadets on CED use. Many of the issues, which are detailed later in this report, center around the lack of emphasis on the potential danger to a suspect if numerous cycles of a CED are deployed; particularly on a suspect who might be at risk for excited delirium. Additional concerns center around the lack of training in a manner which more accurately reflects the situations described in the actual incident reports of HPD officers. Also, while the cadets went through the motion of deploying the CED, demonstration of true proficiency was not required of the cadets.

BACKGROUND

Introduction

Law enforcement officers perform their duties, day and night, without much notice from the public. The general public gives little thought to how officers go about maintaining order and the challenges officers face in pursuing that goal.

Further, there may be a disconnect between public perception and legal reality. Statutes and court decisions direct officers that they may use the amount of force that is reasonably necessary to control a situation given the facts and circumstances facing the officers.⁵ The public, however, tends to believe that officers should use the absolute *minimum* amount of force necessary to control the situation. The criticism leveled at officers often centers around a perception that officers should attempt the lowest level of force, and, if not successful, progress to the next higher level of force. Only if, each level of force proves unsuccessful should the officer, in the public's opinion, resort to a greater level of force. Meanwhile, officers are trained to use a level of force which is reasonable under the totality of the circumstances. This does not necessarily translate to an officer using the least amount of force justified. In fact, officers are trained to use the level of force that, while reasonable, will control the situation.

These observations were not meant to be critical of the public or law enforcement. They were meant to portray the reality in which use-of-force issues were dealt with by law enforcement, viewed by the public, and portrayed by the media.

There are two circumstances in which the public tends to pay particularly close attention to the use-of-force by law enforcement officers. The first is when a law enforcement officer uses deadly force. When a law enforcement officer uses force that results in a death, the public wants to know "why." Why didn't the officer wound the suspect instead of killing him/her? Why didn't the officer use less than deadly force to resolve the situation?

The second circumstance is when the public, or a segment of the public, perceives that law enforcement officers have used force in a disproportionate or discriminatory manner towards one segment of the community. Once again the public asks questions. Would the situation have been handled differently if the suspect had been of a different race or ethnicity? Was more force used because of who was involved as opposed to what the person did to warrant law enforcement action?

⁵ Texas Penal Code 9.32

When CEDs are considered, both circumstances may come into play. CEDs are viewed by a majority of the general public as an alternative to deadly force.⁶ When an officer has resorted to the use of a firearm resulting in the death of a suspect, often one of the first questions asked was, “Why didn’t the officer use a Taser?”⁷ On the other hand, when a CED was used to control a situation, the public sometimes asked, “Why did the officer have to use a Taser?” HPD’s utilization of CEDs has been called into question by some; particularly concerning the issue of whether certain racial minority groups have had CEDs deployed against them in a disproportionate and/or discriminatory manner. Also, since the introduction of CEDs at HPD, when officers have used deadly force, one of the first questions posed is, “Why a CED was not used instead of deadly force?”

Basics of Conducted Energy Devices

Most of situations confronted by law enforcement officers are controlled simply by the presence of officers. Only 1% of the contacts between law enforcement and the public, nationwide, result in a use-of-force at a level higher than a verbal command and handcuffing.⁸ For circumstances in which physical force is required, law enforcement agencies have long sought tools to assist the officer in controlling the situation.

Traditionally, officers were equipped with a handgun and some type of striking instrument. With the development of chemical munitions for non-military purposes, law enforcement agencies began using tear gas to disperse crowds during protests. During the 1960s, there was an emphasis on the advancement of weapons which would give an officer an alternative to the lethal force option of using a firearm. The modern day results are pepper spray, which causes irritation to the suspect, and the expandable baton. Some officers have found pepper spray to be problematic due to the fact that the situations are limited in which its use is appropriate and the officer often becomes contaminated by the residue of the pepper spray when handling a suspect who has been sprayed. Additionally, there are individuals who appear to be unaffected by pepper spray and others who appear to have an adverse reaction to the spray. Batons, expandable or fixed, are a useful device, but require the officer to be in very close proximity to the suspect in order for the device to be used. Additionally, a suspect struck with a baton will often suffer some level of injury. While rarer than reports of ineffectiveness of pepper spray, there are reports of some individuals being virtually unaffected by being struck with a baton. For many law enforcement agencies, utilization of CEDs is just another step in the development and use of what are commonly referred to as **intermediate weapons**.

⁶ The Annual Houston Area Survey found that 60% of the public thought equipping law enforcement with CEDs made it less likely they would use deadly force. www.houstonareasurvey.org.

⁷ While “Taser” is the name of a particular brand of conducted energy devices, the public has come to refer to CEDs generally as Tasers. In fact, during the training at HPD, officers are instructed to announce “Taser, Taser, Taser” when deploying a CED as the suspect might be confused if the terms “CED” or “conducted energy device” were used instead.

⁸ U.S. Bureau of Justice Statistics (1999). *Contacts between police and the public: Findings from the 1999 National Survey*, Washington D.C.; U.S. Department of Justice.

Approximately thirty-five years ago, NASA scientist Jack Cover developed the TASER, an acronym for a device used by the hero in the 1911 fictional adventure story, “Thomas A. Swift’s Electric Rifle.” The development of this technology went basically unnoticed for the first decade. While some members of the law enforcement community used CEDs during the 1980s and 1990s, the practice was confined primarily to the West Coast. Most likely, the public would have been unaware of these devices prior to 2000 had it not been for the infamous Rodney King incident which brought widespread public attention to the Los Angeles Police Department’s use of a CED. On television screens across America, the public watched as law enforcement officers delivered what appeared, to many, as never ending strikes with batons and jolts with a CED to Rodney King while he was on the ground surrounded by a group of officers. Whether one believed the use-of-force to be appropriate or not, for most of the public, it was the first time they had seen a CED used on a suspect.

In 1999, a CED, known as the TASER was produced and introduced by TASER, International. The TASER administers an electric charge that causes muscular dysfunction and temporarily incapacitates a person; particularly if used in “probe” mode. If a CED is used in the “drive stun” mode,⁹ it is regarded as a compliance tool as it often does not cause incapacitation, but does cause pain and discomfort. If officers use the device in the drive stun mode, they place it against the person’s body and pull the trigger to deliver the shock. The term “drive” refers to the method of delivery as the officer is instructed to place the CED against the suspect’s body and use pressure to maintain contact when the suspect moves away from the CED, whether intentionally or involuntarily. If officers deploy the CED in the probe mode, the trigger is pulled and a cartridge fires two darts. The CED then delivers 50,000 volts of electric current through the filament line which is attached to the darts. In both of these modes, the pulling and releasing of the trigger results in a standard five second cycle. However, if the officer does not release the trigger, the cycle will continue until the trigger is released. If the officer wishes to shorten the five second cycle, the device must be turned off.

The incapacitation of the suspect is due to the electrical charge overriding the central nervous system. The idea is that the suspect simply cannot control his/her neuromuscular system and that the incapacitation is not affected by the suspect’s mental state or use of drugs and/or alcohol. However, the incapacitation ceases as soon as the electrical charge ceases. Thus, at the end of the cycle, the suspect must either voluntarily submit to control or the officer must use the incapacitation period as an opportunity to gain control. Additionally, as will be seen later in the analysis, the CED does not appear to affect some individuals and there are times when one or both probes miss,¹⁰ the probes become dislodged either due to the suspect pulling them out or due to a struggle, or the probes do not penetrate the suspect’s skin.¹¹

⁹ Some agencies refer to it as the “dry stun” mode. HPD uses the term “drive stun” or “drive” so that is the term that will be used herein.

¹⁰ Both probes must make contact in order to complete the cycle so that the voltage is delivered. If only one probe makes contact, the circuit may be completed by placing the CED electrodes against the suspect (Drive Stun Mode). However, this method requires close contact with the suspect.

¹¹ While it is not necessary for the probes to penetrate the suspect skin for the voltage to be delivered, experience shows that the CED is less effective if at least one probe does not penetrate the skin.

HPD's Use of CEDs

A study conducted by the Texas Law Enforcement Management and Administrative Statistics Program of the SHSU CCJ in 2005, found that 54% of the Texas law enforcement agencies who were surveyed were currently utilizing CEDs and an additional 10% were considering the use of CEDs.¹² Notably, the study found that the Texas Department of Public Safety did not equip its troopers with CEDs and did not have plans to do so. Currently, nationwide, over 8,000 law enforcement agencies utilize CEDs in some manner.

A review of newspaper accounts reflect that many Texas law enforcement agencies made the decision to add CEDs to their officers' equipment belts as a result of a particular incident in which an officer used deadly force and the public questioned whether the use of an intermediate weapon, including a CED, would have resulted in a life being spared. Houston was no different. The timing of the acquisition of CEDs in relation to an incident where deadly force was used tends to reinforce the public's perception that CEDs are an alternative to deadly force as opposed to simply being one of the intermediate, or less lethal, weapons available to an officer.

In December, 2004, HPD began issuing CEDs to its officers. By March, 2005, all HPD street officers were being issued a CED upon completion of a training course.¹³ Now, all new cadets are issued a CED during their basic training at the HPD Training Academy (Academy) upon the completion of a CED training course. Presently, with a few exceptions, all Officers have been trained in the use of CEDs and authorized to deploy CEDs. HPD policy requires that officers, who are issued a CED, carry the CED when in uniform.

Questions regarding the use of CEDs arose shortly after their use by HPD began. One issue was whether CEDs were being used disproportionately and/or in a discriminatory manner against certain groups; particularly, African American males. As part of the Fiscal Year 2007 Audit Plan submitted by City Controller, Annise D. Parker, in August, 2006, the City Controller informed the Mayor and City Council that her Audit Division intended to perform an independent assessment of CED use by HPD. In November, 2006, Mayor Bill White also called for an independent analysis into the use of CEDs. In March 2007, the City Controller and Mir-Fox & Rodriguez, P.C. (MFR) assembled a team to conduct a Performance Audit of the use of CEDs. A group from the SHSU CCJ responded to a request for a proposal to assist in the conduct of the audit.

¹² Frasier, M.L. (2005). The use of conducted energy devices (Tasers). *Telemasp Bulletin*, 12 (6), 2.

¹³ Originally, the training program was four hours in length; now it is six hours.

STUDY COMPONENTS AND METHOD OF ANALYSIS

Policy Compliance Review

The review for policy compliance took several steps. First, past, and current policies were reviewed in light of what is considered “best practices” by the law enforcement profession. One of the difficulties encountered was that HPD’s policy on CED use had undergone several changes since its original development and implementation. Some of the initial changes in the policy were the result of HPD hosting a symposium on the use of CEDs in conjunction with the Police Executive Research Forum (PERF) in 2005. Other changes were a reflection of experience. In other words, as CEDs were introduced and used, a decision was made that the policy needed to be changed in some manner. HPD continued to review CED use with the most recent changes taking place in March 2007.

Second, each CED incident report was analyzed in light of the policy in effect at the time to determine whether the officers followed HPD policy. Additionally, particular attention was paid to any incident of non-compliance to determine whether the non-compliance appeared to reflect a problem with the policy, training, and/or implementation of the policy, and/or training.

Report Review

One of the most challenging aspects of any analysis of CED use by HPD was the gathering of the data. As outlined in the report by the UH CPP, there also have been statistical challenges due to the lack of data.

One of the major obstacles was the CED Incident reporting form used by HPD. The incident reports reflected the final charge, if any, against the suspect on whom the CED was deployed. It also reflected any additional charges filed. However, the initial reason for the call for service was not readily available for a majority of the reports. For instance, the report may have reflected that the suspect was arrested for Resisting Arrest, Search, or Transportation. However, our review of the report may have identified that the officer was initially dispatched to a disturbance call due to a reported verbal altercation, and, when the officer attempted to investigate the incident, the suspect became aggressive and physically resisted the officer. Certain incident reports listed Resisting Arrest, Search, or Transportation as the reason for the call, but the actual reason for the officer being at the location in the first place was a disturbance call.

Additionally, there was no easy method to determine the number of cycles for which the CED was deployed; whether the suspect appeared to be under the influence of alcohol or drugs at the time of the deployment; whether the officer initiated the call or was dispatched to the call; and the apparent effectiveness of the CED deployment. While there was a specific report required by policy to be generated by the reviewing supervisor as to the number of cycles deployed, it was not captured electronically in a form that made it electronically retrievable without reviewing the actual report.

The only way that the above information could be reliably obtained for the purposes of this study was to read the actual police incident reports. This task was undertaken by the SHSU CCJ team. Each of the reports related to the 1,284 incidents was read and analyzed so as to obtain the above information in addition to making a determination as to whether the use of the CED was in compliance with the applicable HPD policy.

Training Observation

By the time the audit began, almost all of the current patrol officers of HPD had undergone the initial CED training. The members of the audit team were afforded an opportunity to attend a demonstration of the in service training received by current officers. Members of the team were given the same information officers received in the classroom training and the hands on training. This included deploying a CED in the same manner as officers were trained.

Additionally, a member of the SHSU CCJ team attended the actual CED training received by cadets at HPD. The students and instructors were observed during the classroom and hands on portions of the training. In order to make the observation more beneficial, the same team member who had read and analyzed the CED incident reports was used to perform the observation. Additionally, this observation was purposely delayed until the team member had the opportunity to complete the reading and initial analysis of the reports. During the observation, the team member paid particular attention to whether the CED policy was being followed and whether any concerns noted during the analysis of the reports might be attributable or influenced by the training provided. Due to time restraints, the team member was not able to attend all of the portions of the Basic Academy which dealt with the use of force and/or dealing with individuals with potential mental health problems. However, the team members did have conversations with various members of the Academy staff and reviewed, in written form, the scenarios used during other portions of the training.

RESULTS OF COMPLIANCE REVIEW OF HOUSTON POLICE DEPARTMENT INCIDENT REPORTS

Review of HPD's Policy

HPD's implementation of a CED program was extremely aggressive. While some, if not most, agencies have utilized a test period and phased in the use of CEDs over a period of months or years, HPD trained, equipped, and implemented the use of CEDs to its patrol force in less than six months. This was a particularly difficult task given that 3,600 officers were trained and equipped with CEDs during this period.

Such an approach, undoubtedly, resulted in a CED Policy being written based on the experience of other agencies' use of CEDs as opposed to being tested within the confines of HPD. Not surprisingly, such an approach resulted in there needing to be changes made in the policy shortly after it was implemented.

Additionally, some of the changes in the policy within the first year of CED use were the result of HPD hosting a symposium on the use of CEDs in conjunction with the PERF in 2005. In October, 2005, PERF developed and published National Guidelines for the Use of CEDs. HPD revised its policy in accordance with those guidelines. However, it did not adopt all of them verbatim.

HPD policy, in general, followed the best practices of the law enforcement profession. Any concerns about CED use did not appear to be as a result of any shortcomings in the policy. Instead, as detailed later, any problems that existed, appeared to be the result of issues involving training and/or implementation of the policy.

PERF Recommendations

PERF describes itself as being a "national membership organization of progressive police executives from the largest city, county, and state law enforcement agencies" and as being "dedicated to improving policing and advancing professionalism through research and involvement in public policy debate."¹⁴ When CED usage became prevalent in 2005, PERF assembled a group of law enforcement professionals and researchers to discuss what recommendations, if any, should be made regarding CEDs. The national meeting was held in Houston, Texas, and co-hosted by HPD.

As a result of that meeting, surveys, and additional research, PERF published its guidelines in October, 2005. It should be noted that PERF did not recommend a model policy, but, instead, provided policy and training guidelines for consideration by agencies.

PERF has 52 guidelines regarding CEDs. While the entire list is available through PERF, the following guidelines and corresponding guideline numbers were considered to address the more important issues and be relevant to CED use by HPD.

¹⁴ Police Executive Research Forum website, www.policeforum.org.

Review of HPD Policy and/or Practice:

The guideline number is the actual number assigned by PERF in their guidelines. The comment in italics after the guideline reflects the SHSU CCJ review and analysis of the HPD policy and/or practice.

PERF Guideline No: 1

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

Observation

HPD policy followed the guideline. As noted in the compliance section, there are reports which call into question whether the measuring stick for deployment is active aggression or passive resistance.

PERF Guideline No: 2

No more than one officer should activate a CED against a person at a time.

Observation

HPD policy followed the guideline.

PERF Guideline No: 3

When activating a CED, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of these cycles to the minimum activations necessary to place the suspect in custody.

Observation

HPD policy called for an officer to reevaluate the need for additional cycles after the initial cycle. As noted in the compliance section, given the large percentage of uses which involved more than one cycle, it may be that the language of the policy and resulting training needs to continue to be emphasized.

PERF Guideline No: 4

Training protocols should emphasize that multiple activations and continuous cycling of a CED appear to increase the risk of death or serious injury and should be avoided where practical.

Observation

As will be reflected in the Training Observation section, this did not appear to be sufficiently occurring. In fact, as indicated, the exact opposite message may have been perceived by the cadets.

PERF Guideline No: 5

Training should include recognizing the limitations of CED activation and being prepared to transition to other force options as needed.

Observation

While the language of this guideline was relayed in the training, the “how to” was lacking in the CED specific training. While transition is covered in other sections, it should be mentioned during the CED specific training.

PERF Guideline No: 6

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

Observation

This guideline was reflected in HPD policy. However, as reflected in the Compliance section, there were a significant number of reports in which fleeing, either alone or fleeing accompanied by resistance, such as pulling away or pushing the officer was the justification given for using the CED.

PERF Guideline No: 7

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

Observation

HPD policy followed the guideline.

PERF Guideline No: 8

CEDs should not be used on handcuffed persons unless they are actively resisting or exhibiting aggression, and/or to prevent individuals from harming themselves or others.

Observation

HPD policy followed the guideline.

PERF Guideline No: 16

Following a CED activation, officers should use a restraint technique that does not impair respiration.

Observation

Officers are trained, in general, to use a restraint technique which does not impair respiration. However, during the CED specific training, the issue was not addressed.

PERF Guideline No: 25

CEDs should be maintained in a holster on an officer's weak (support) side to avoid the accidental drawing and/or firing of an officer's sidearm.

Observation

HPD policy followed the guideline.

PERF Guideline No: 28

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

Observation

HPD policy followed the guideline. As reflected in the Compliance section, a large number of the incident reports did not indicate any such warning. If the warning was given, it was not being documented in the incident report. Additionally, the incident reports often did not reflect that a warning is being given prior to subsequent cycles in a large percentage of the cases. However, some reports reflect a warning being given prior to subsequent use and the suspect choosing to comply with the officer's command in order to avoid another cycle.

PERF Guideline No: 29

When applicable, an announcement should be made to other officers on the scene that a CED is going to be activated.

Observation

During training, officers were told to make such an announcement. Generally, reports did not reflect any such announcement being made.¹⁵

PERF Guideline No: 30

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

Observation

HPD policy followed the guideline.

¹⁵ When it is noted that the report does not reflect the warning or announcement being made, it is not intended as a finding that the warning or announcement is not being made, but that it is often not reflected in the incident report.

PERF Guideline No: 31

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

Observation

HPD policy followed the guideline.

PERF Guideline No: 32

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

Observation

HPD policy followed the guideline.

PERF Guideline No: 37

CED activations should be tracked in the Early Intervention System (EIS).

Observation

HPD policy followed the guideline to the extent that officers with multiple uses of CEDs were reviewed. The tracking of those who used multiple cycles of the CED during one incident did not appear to occur.

PERF Guideline No: 40

Departments should not solely rely on training curriculum provided by a CED manufacturer. Agencies should ensure that manufacturers' training does not contradict their use-of-force policies and values. Agencies should ensure that their CED curriculum is integrated into their overall use-of-force system.

Observation

As reflected in the Training Observation section, the training did not appear to follow this guideline.

PERF Guideline No: 50

Officers should be aware that there is a higher risk of sudden death in people under the influence of drugs and/or symptoms associated with excited delirium.

Observation

As reflected in the Training Observation section, the training did not appear to sufficiently stress this issue.

Compliance with Policy

While the incident reports were read and analyzed in light of HPD policy in effect at the time, HPD policy has not changed significantly for the purposes of this portion of the audit. One notable change to the policy was that a CED should not be used on someone who is attempting to ingest drugs orally. Other than this noted change in the policy, compliance testing with HPD policy has been based on the current edition of the policy.

Overall, incident reports indicate that officers were complying with HPD policy on use of CEDs.¹⁶ For uniformity, the PERF guidelines are used once again and the italicized remarks reflect whether SHSU CCJ's review found the use of the CED to be in compliance with HPD policy.

PERF Guideline No: 1

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

Observation

There were sufficient incidents in which CEDs appear to be used against those who were not aggressively resisting so as to raise a question as to what was being used as the measuring stick for deployment by some officers; active aggression or passive resistance. In a number of cases, the suspect was reported as refusing to follow an officer's orders, but it was not clear whether the suspect was physically resisting or simply not doing what the officer was requesting. The determining of what level of resistance was involved was made more difficult by officers' frequent reliance on "boilerplate language" as opposed to actually describing what the suspect did and/or said.¹⁷ Training recommendations will be addressed in the Recommendations section

PERF Guideline No: 2

No more than one officer should activate a CED against a person at a time.

Observation

There were incident reports, although few, which reflect a violation of this policy provision. The failure to follow this guideline may be linked to a failure to follow guideline #29, in that incident reports did not reflect that officers were announcing that they intended to use the CED. There were a few incidents in which the officers consciously decided to deploy their CEDs at the same time. These decisions may have been the result of officers not appreciating the concern as to whether multiple cycles, and, in particular, multiple cycles by two or more officers at the same time, may have a negative health effect on the suspect.

¹⁶ One of the difficulties in conducting any research and/or analysis based on incident reports is that the researcher does not have the capability of independently assessing the accuracy of what is reflected in the reports.

¹⁷ For instance, officers would report that the suspect "aggressively resisted" and/or that the officers "applied reasonable force," but would not describe the behavior and/or words of the suspect.

PERF Guideline No: 3

When activating a CED, law enforcement officers should use it for one standard cycle and stop to evaluate the situation. If subsequent cycles are necessary, agency policy should restrict the number and duration of these cycles to the minimum activations necessary to place the suspect in custody.

Observation

*Approximately 38% of deployments of a CED consisted of one cycle. Another 31% of the deployments were two cycles in duration. Three cycles were used in 15% of the deployments. Four cycles were used in 5% of the deployments, while five cycles account for 3% of the deployments. In 5% of the deployments, between six and ten cycles were used. In 3% of the deployments more than ten cycles were used. It appears that what officers were evaluating was not whether they should use another cycle of the CED, but whether the CED had produced the desired results: the individual complying with their orders. **In the cases in which the CED was cycled more than five times, it often appeared that not only had the device not produced the desired results, but that additional cycles did not change the ultimate outcome.** In these incidents, it was suggested that the officer should be evaluating other options. Part of the problem, as detailed in the Training Observation section, was that some of the films used in the training appeared to send a message that multiple cycles were an acceptable practice, as opposed to emphasizing that it was unknown as to whether multiple cycles posed a health risk for the suspect. Also, what appeared to be an issue was a lack of integrated training as to how an officer should transition from one type of use-of-force to another.*

PERF Guideline No: 4

Training protocols should emphasize that multiple activations and continuous cycling of a CED appear to increase the risk of death or serious injury and should be avoided where practical.

Observation

As noted above, and as reflected in the Training Observation section, this did not appear to be sufficiently occurring. In fact, as indicated, the exact opposite message might be perceived by at least some of the cadets in that some of the films used in the training appeared to send a message that multiple cycles were acceptable as opposed to emphasizing that it was unknown as to whether multiple cycles pose a health risk for the suspect. Also, as indicated above, there appeared to be a lack of integrated training as to how an officer should transition from one type use-of-force to another.

PERF Guideline No: 5

Training should include recognizing the limitations of CED activation and being prepared to transition to other force options as needed.

Observation

As far as transition to other force options, the “how to” appeared to be lacking in the CED specific training as reflected in the Training Observation and Recommendations sections. Given the large number of deployments which result in multiple cycles being used, it may be that officers lack an understanding as to how to reevaluate the situation and determine if a different approach is appropriate, including the use of a different form of force. As noted above, in over 30% of the incidents, three or more cycles were used. In approximately 3% of the deployments, over ten cycles were used.

PERF Guideline No: 6

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

Observation

There were incident reports in which fleeing, either alone or fleeing accompanied by resistance, such as pulling away from the officer or pushing the officer was the justification for using the CED. In a number of cases, particularly self-initiated drug investigations, it appeared that a CED was deployed even though the suspect was never touched by the officer. In those incidents, the incident report indicated that the suspect began to flee either upon seeing the officer or as the officer was approaching the suspect. Some reports indicated that the suspect was reaching into his waistband area or pockets while fleeing.

PERF Guideline No: 7

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

Observation

Very few reports indicated that this policy was violated. When a CED was used on one of these populations, the reports indicated exigent circumstances.

PERF Guideline No: 8

CEDs should not be used on handcuffed persons unless they are actively resisting or exhibiting aggression, and/or to prevent individuals from harming themselves or others.

Observation

There were incidents when CEDs have been deployed on handcuffed individuals. The reports, with very few exceptions, articulated the active resistance or aggression of the suspect.

PERF Guideline No: 16

Following a CED activation, officers should use a restraint technique that does not impair respiration.

Observation

As reflected in the Training Observation section, this did not appear to be occurring in the CED specific training. In other parts of training, this was covered generally. In general, there did not appear to be sufficient emphasis on the potential health risks to the suspect upon which the CED was deployed.

PERF Guideline No: 25

CEDs should be maintained in a holster on an officer's weak (support) side to avoid the accidental drawing and/or firing of an officer's sidearm.

Observation

This policy was followed. In a few reports, it appeared that the officer drew both the CED and sidearm (although the officer did not necessarily have both of them out of their holsters at the same time). HPD does not use the bright yellow CEDs. One of the advantages of the bright yellow CED is that it is a visual reminder to the officer as to whether the officer is holding the CED or a sidearm.

PERF Guideline No: 28

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

Observation

The majority of the reports did not indicate any such warning. If the warning was given, it was not articulated in the incident reports. Additionally, the majority of the incident reports did not indicate that a warning was given prior to additional cycles. However, some reports reflected a warning was given prior to subsequent use and the suspect choosing to comply with the officer's orders in order to avoid another cycle. As more of the public becomes aware of the CED, greater use of a warning may result in compliance with an officer's order without having to resort to deployment. HPD does not track the number of times that an officer displayed the CED or warned that the CED would be used and did not deploy the CED. We had inadequate information to determine if such actions by officers were effective in gaining cooperation without deployment of the CED.

PERF Guideline No: 29

When applicable, an announcement should be made to other officers on the scene that a CED is going to be activated.

Observation

During training, officers were told to make such an announcement. Generally, reports did not reflect any such announcement being made. It was unclear whether the announcement was being made, but not being reflected in the report or not being made. This may be a result of lack of hands on training and practical situational training in CED use. Studies show that telling someone what to do is not as effective in instilling the behavior by having them practice the behavior.

PERF Guideline No: 30

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

Observation

It was very rare that a supervisor did not respond. Under early versions of the policy, it was not clear who was to respond to scenes where officers deployed their CED while working an extra job or off duty job. The policy has been clarified and on duty sergeants now respond.

PERF Guideline No: 31

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

Observation

Sergeants conduct an initial review. One of the problems noted, particularly in early reports, was that the sergeant would simply write "download reflects agreement with report" without either the officer or the sergeant detailing how many times and for how long the CED had been deployed. A download report exists, but it was frequently not incorporated in either the incident report or the sergeant's report. Inclusion of the information in the sergeant's report would be beneficial for determining compliance with policy and tracking of individual officers' CED use.

PERF Guideline No: 32

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

Observation

Generally, it appears that this policy was being followed and that HPD's control over the CED cartridges helped to insure that all uses were documented. During the Scope period, HPD improved their system of internal control by documenting their review of each CED Incident Report by an Executive Assistant Chief. A new policy is still required to insure that each officer has their required two cartridges and is not deploying or losing a cartridge and not reporting it.

PERF Guideline No: 37

CED activations should be tracked in the EIS.

Observation

There were instances in which a particular officer's multiple CED uses were reviewed. It would be beneficial to have those cases independently reviewed. According to the results of the Focus Groups conducted by MFR, when an officer's frequent CED use is questioned, the explanation that the officer makes a lot of arrests or works a particular assignment such as street narcotics is given. As with other uses of force, the more complete analysis is to compare the officer's use of the CED with other officers who have similar levels of arrests or similar assignments. Additionally, the tracking of those who use multiple CED cycles during one incident did not appear to be occurring.

PERF Guideline No: 40

Departments should not solely rely on training curriculum provided by a CED manufacturer. Agencies should ensure that manufacturers' training does not contradict their use-of-force policies and values. Agencies should ensure that their CED curriculum is integrated into their overall use-of-force system.

Observation

As reflected in the Training Observation section, this did not appear to be sufficiently occurring. The officers conducting the training have received training through TASER, International, and appeared to often be simply repeating the training they received.

PERF Guideline No: 50

Officers should be aware that there is a higher risk of sudden death in people under the influence of drugs and/or symptoms associated with excited delirium.

Observation

As reflected in the Training Observation section, this did not appear to be sufficiently occurring. In fact, as noted in that section, officers were told that CEDs have not been found to be responsible for any deaths. Whether that is an accurate statement is not the issue, the issue is whether officers have an appreciation for the potential danger to the suspect who is under the influence of drugs and/or exhibiting symptoms associated with excited delirium.

HOUSTON POLICE DEPARTMENT INCIDENT REPORT REVIEW

Introduction

During the design of the audit, it was determined that several issues should be reviewed by SHSU CPJ. For instance, when a CED was used, had the officer become involved in the incident as a result of being dispatched, having initiated the contact, or as a result of a traffic stop? Additionally, what types of calls were resulting in CED use? When a CED was deployed, how many cycles were being used on suspects? Were the suspects noted to be under the influence of alcohol or drugs at the time of the deployment? When a CED was used, was it effective? If the CED was not effective in controlling the suspect, why was it not effective?

As noted previously, one of the major obstacles to determining compliance with policy and ascertaining any trends is the reporting form used by HPD. In order to obtain the answers to the above questions, each report had to be read and analyzed.

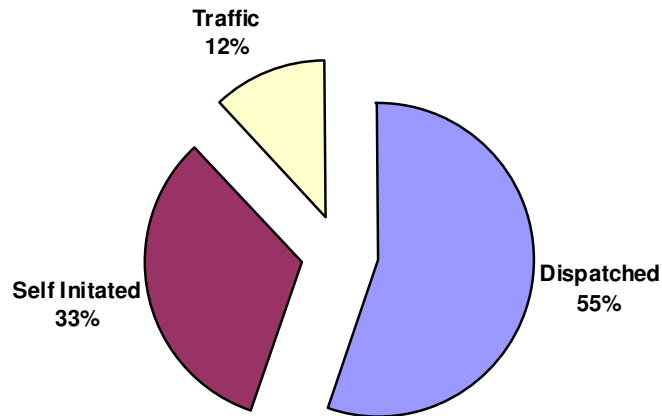
Initiation of Call for Service

Fifty-five percent (55%) of the time, in the incidents which resulted in the CED deployment, the officer responded to the scene as a result of being dispatched. In other words, a member of the public telephoned HPD and reported either a crime or a situation which warranted law enforcement attention.

In 33% of the cases, the contact with the suspect, against whom the CED was eventually deployed, was initiated by the officer. A large percentage of these cases were drug investigations in which HPD was proactively patrolling areas known for drug sales and/or use. Another group which falls into this category was the situation in which an officer noticed someone behaving in a bizarre manner so as to indicate the subject was either under the influence of drugs, alcohol, and/or experiencing a mental health problem.

In 12% of the cases, the initial reason for the contact with the suspect was a traffic issue. It should be noted that in many of these cases, it appeared that the officer also suspected the person to be involved with other criminal activity, particularly drugs.

Table 1 - Summary of Calls for Service and Whether They Were Dispatched, Self-initiated, or as a Result of a Traffic Stop



Nature of Call for Service

As indicated previously, the incident reports were designed so that the nature of the call was captured based on the charges ultimately filed against a suspect, if any. For instance, the charge might reflect that the suspect was charged with Escape. However, it would be extremely unusual for an officer to respond to a call for service for an Escape. After review of the incident report, SHSU CPJ determined that the officer responded to the call for another underlying reason, arrested the person, and the person fled or escaped from the officer.

While some reports reflect the initial basis for the call, many do not. What made it even more challenging was that the only way to definitely determine the nature of the original call was to read the actual, detailed incident report.

The two most frequent types of calls for service were drug related (15%)¹⁸ and disturbance related (15%).¹⁹ The incidents involving drugs were notable in that, with a few exceptions, they were calls which were self-initiated by an officer. Some were, as noted above, the result of a traffic stop where the officer had probable cause to make the traffic stop based on a traffic violation, but the traffic violation appeared to be a pretext to determine whether the occupants in the automobile were involved in illegal activity.²⁰

Assault was the basis for 13% of the calls. This was in addition to the 7% of the calls which were based on a report of family violence. Criminal trespass was the basis of 6% of the calls. Traffic offenses were the basis for 11% of the calls. Other misdemeanors such as Driving While Intoxicated, Theft, and Criminal Mischief comprised the basis for 13% of the calls. Other felonies comprised the basis for 9% of the calls. Approximately one-third of the felonies were related to automobile theft. The incident reports indicated that these suspects often abandoned the stolen vehicle and fled on foot.

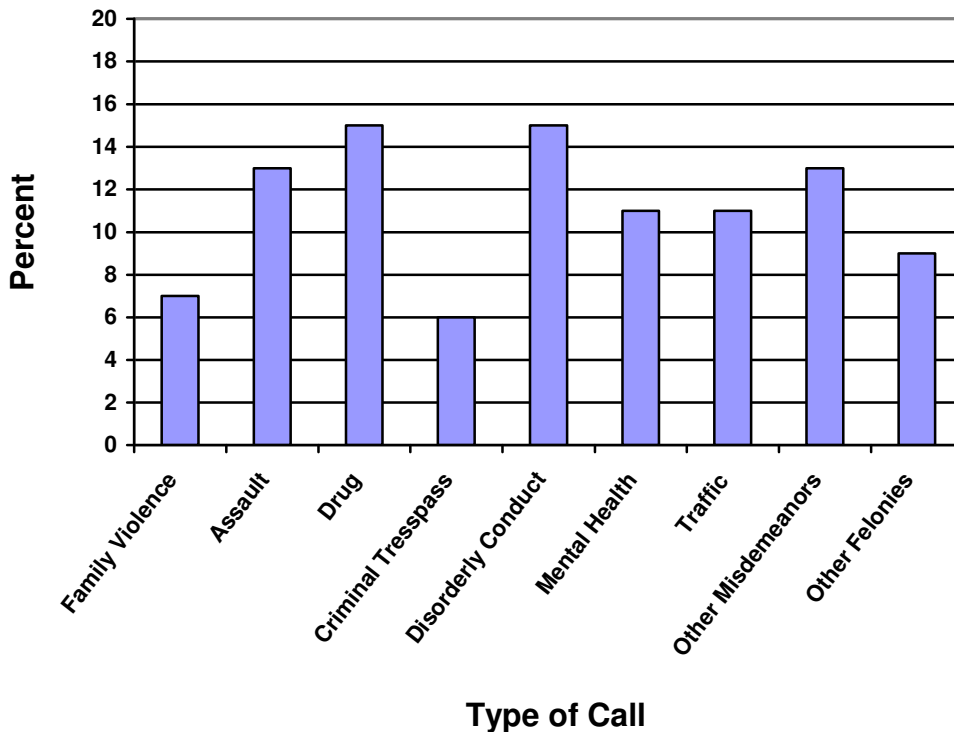
The last category of calls for service was related to mental health issues. While the person involved may have committed a crime, the criminal charge was often not filed so that the person could be committed to receive the necessary mental health care. Eleven percent of the calls were based on the need for crisis intervention by officers with individuals experiencing a mental health issue.

¹⁸ For purposes of this study, drug related calls include possession of drugs and the sale of drugs.

¹⁹ For purposes of this study, disturbance related calls include the crimes normally associated with disorderly conduct and public intoxication.

²⁰ It should be noted that the United States Supreme Court has ruled that pretext traffic stops are not a violation of the Fourth Amendment to the United States Constitution.

Table 2 -Summary of the Original Type of Call for Service Which Resulted in CED Deployment



Number of CED Cycles Used When Deployed

A standard cycle of the CED is five seconds. This occurs when the officer pulls the trigger and releases it. If the officer continues to hold the trigger down, the CED has a continuous cycle lasting as long as the trigger is pulled.

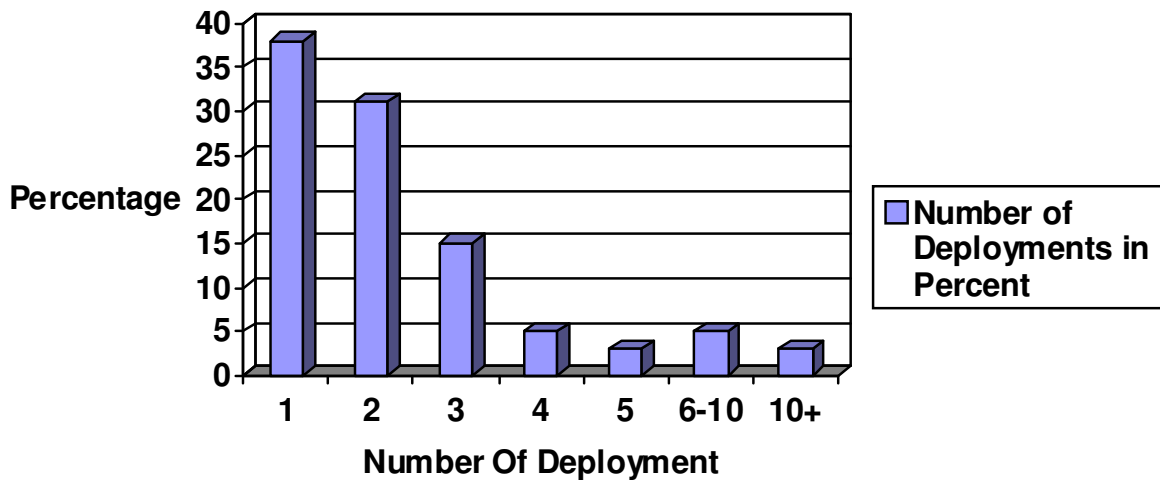
In 38% of the incidents, the officer only deployed one cycle of the CED. In 31% of the incidents, the officer deployed two cycles of the CED. In reviewing the reports, the most common justification for a second cycle was that, while the initial deployment resulted in the person being incapacitated, once the suspect was no longer incapacitated, the suspect did not comply with the cuffing instructions.²¹

²¹ It appears that this usually consisted of the person refusing to put his hands behind his back.

In 15% of the incidents, three cycles of the CED were used. Again, the most common reason was that the individual would not allow himself to be cuffed. In 5% of the incidents, the CED was cycled four times. In 3% of the cases, the CED was cycled five times. In 5% of the cases, the CED was cycled between six and ten times. In 3% of the cases, the CED was cycled over ten times.

In many of the cases in which the CED was cycled in excess of five times (8% of the cases), the report indicated that the CED was not effective in controlling the suspect. This calls into question whether the officer should have continued to use additional cycles or should have reevaluated the situation to determine whether a different approach was required to resolve the situation.

Table 3 -Summary of Number of CED Cycles Deployed



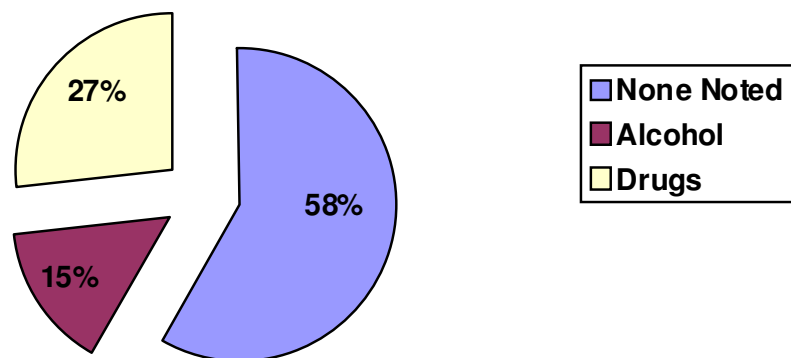
Impact of Alcohol and/or Drugs Consumed by Suspects

In 58% of the incidents, officers did not note that the suspect appeared to be under the influence of drugs and/or alcohol. The researcher did not attempt to determine whether the officer, if asked, would have said that drugs and/or alcohol might have been a contributing factor to the behavior which resulted in the need for the CED deployment. However, it is highly likely that a significant percentage of these suspects were under the influence of drugs and/or alcohol given the behavior that was noted by the officer.

In 15% of the incidents, the reports noted that the suspect appeared to be under the influence of alcohol. In 27% of the incidents, the reports noted that the suspect appeared to be under the influence of drugs and/or possession of drugs.

PERF Guideline #50 states that officers should be aware that there is a higher risk of sudden death in people under the influence of drugs and/or symptoms associated with excited delirium. The reason for the caution is the suspected correlation between drug use, particularly methamphetamine and cocaine, and excited delirium. What is unknown is the additional effect of repeated cycles of the CED on the health of someone who is under the influence of drugs and/or experiencing excited delirium. The majority of the cases in which the CED was cycled more than ten times involved a subject who was described as being “high” on drugs and/or having a mental health issue.

Table 4—Summary of Impact of Alcohol and/or Drugs Consumed by Suspects



Effectiveness of CED in Controlling a Suspect

The CED was reported as being effective in assisting in controlling the suspect in 77% of the incidents. It should be noted that this does not mean that the CED was effective in its initial deployment or effective with only one cycle. In some cases the officer deployed the CED in the probe mode and then resorted to using the CED in the drive stun mode or used multiple cycles in the probe mode to gain control.

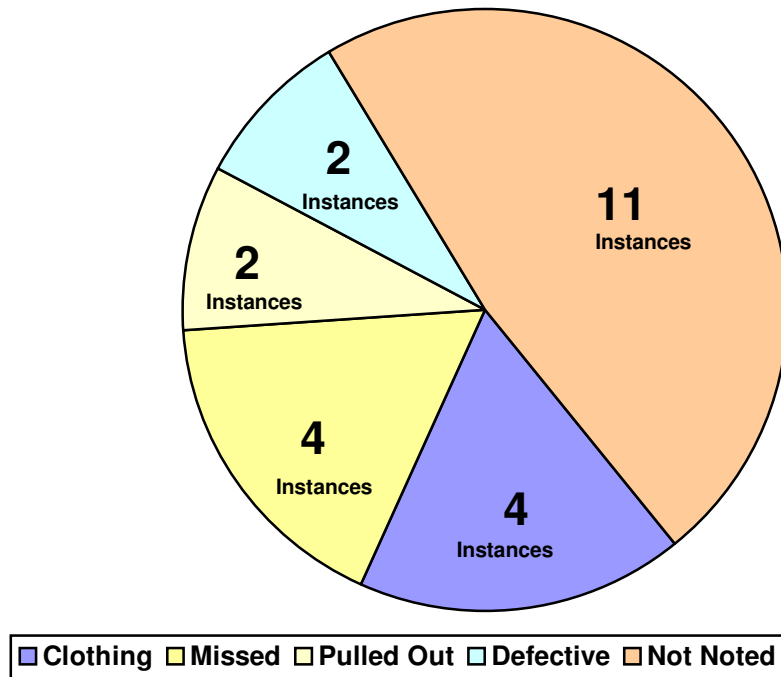
In 4% of the incidents, the incident report indicated that the CED was not effective due to the clothing the person was wearing. By this it was meant that the clothing would not allow the dart to penetrate the skin. In northern states, longer probes are utilized by law enforcement to overcome this problem. Given the low number of incidents in which clothing appears to be an issue, it does not appear the longer probes are warranted.

In 4% of the incidents, the officer missed the suspect with one or more darts. In 2% of the cases, it was reported that the darts hit the suspect, but the suspect pulled out the darts. In 2% of the incidents, it is reported that the CED was defective and would not fire the probes. In an additional 11% of the incidents, the officer indicated that the CED was not effective without attributing the ineffectiveness to any of the reasons previously identified. In the majority of the cases where the officer indicated that the CED was not effective, the officer reported that the subject appeared to be under the influence of alcohol and/or drugs or experiencing some form of mental health crisis.

While the CED was effective in three out of four situations, the quarter of the time it was not effective, highlights the need for officers to have another option in mind to gain control of the situation. It is suspected that the reports of ineffectiveness of the CED in the drive stun mode may be related to training. As is detailed in the Training Observation, emphasis is lacking in the training on how to properly administer a drive stun.

During the Focus Groups, there was a difference of opinion as to the effectiveness of the CED. The officers appeared to be of the opinion that the CED was less likely to work on someone who was high on drugs, intoxicated, or had a mental health issue. The reports appear to support their anecdotal based belief.

Table 5 - Summary of the Reasons Given When the CED Deployment was Not Effective



HOUSTON POLICE DEPARTMENT TRAINING ACADEMY - CED TRAINING

Classroom Instruction

A SHSU CCJ team member attended the CED cadet training on August 29, 2007. The instruction was provided by members of the training staff from the Academy.

At the beginning of the class, the instructor asked for volunteers for the afternoon. The students were obviously aware that what they were volunteering for was to have a CED deployed on them. Students were instructed to place their names in a hat for a drawing for thirteen volunteers. From the beginning, this created a stir of excitement among the students. The discussion continued amongst the students during the breaks and lunch hour (they already knew whose names had been drawn) with students who were not chosen often professing their desire to experience the CED and students whose names had been drawn professing their lack of fear.

During the actual classroom training, instructors highlighted the various provisions of the policy. Some of the notable ones were:

- CED is an intermediate weapon and not a substitute for lethal force. Students were told “do not use a Taser to stop a knife.” This was emphasized several times by the instructor.
- CED is to be used on those who are actively resisting. Actively resisting was explained as “kicking, fighting, etc.”
- CED is not to be used on those who are passively resisting, handcuffed, or known to be mentally ill. Protesters were used as an example of passive resistance.
- CED is not to be used on suspects who are pregnant, elderly, visibly frail, or young children.
- CED is not to be used on someone simply because they are fleeing. The instructor went on to say that if the person had been fighting with the officer right before fleeing then it was okay to deploy the CED.
- CED is not to be used on someone who is only verbally non-compliant.
- Number of cycles is to be kept to a minimum. The instructor expressed that excited delirium is a concern and that the officer should reevaluate after one cycle.
- Warnings are to be given to the suspect and backup officers that a CED is going to be deployed.

Also notable were some of the other comments by instructors. When describing that the device delivers 50,000 volts, the instructor said, “The media always plays this up. It isn’t going to kill anybody.” Students were also told that multiple cycles were appropriate to keep the suspect incapacitated. In contrast, there was only one mention of the danger of excited delirium and little recognition of there having been cases in which the issue of the role the CED had played in the death of a suspect upon whom a CED had been deployed had been raised.

Part of the classroom instruction was spent watching a slide demonstration which appeared to have been distributed by the manufacturer. Most of the information was technical in nature and appeared to contribute little to the cadets' understanding of when CED deployment was appropriate. It appeared to reinforce a message that the CED was extremely reliable. Students were told that the CED had a 94.3% success rate and the instructor indicated that most failures were "failures in use" as opposed to a failure of the CED.

A series of film clips from the manufacturer were shown to the cadets. One of the instructors stated, right before he started showing the film clips, "Watch how a Taser can change attitudes." While this may have been meant as harmless bantering, the film clips tended to reinforce the idea that use of the CED was appropriate when an officer needed to "change the attitude" of the suspect as opposed to being required to overcome the active resistance by the suspect. For instance, one of the clips showed a CED deployed against a man in a jail cell who was being verbally disruptive. The man was in the cell by himself and did not appear to present any danger to the officers. Additionally, the film depicted the CED deployed multiple times with the prisoner being seen hitting his head while the officers did nothing to prevent the potential injury. Another clip showed multiple cycles used without the suspect given the opportunity to comply with the orders that were given.

Almost no emphasis was given to the unknown or potential dangers of the use of the CED. The one discussion of custody deaths was sped through right before lunch. In fact, more time was spent showing and commenting on a film clip of a CED being used on a dog by an officer than the possible dangers of the CED.

There was some discussion regarding the possibility of adding on of cameras to CEDs. The instructor stated there were problems with CED cameras because the cameras do not record any information prior to the CED being turned on by the officer. The cadet's concern was that the activity prior to the activation of the CED camera was not recorded and therefore not available for review to justify the CED deployment.²²

After lunch, cadets were shown a videotape of Chief Hurtt. In the first part of the videotape, the **Chief stated, in essence, that after introduction of CEDs in Phoenix that officer involved shootings went down by one-half and that it was an alternative to deadly force.** During his remarks he made no mention of whether officers should deploy multiple cycles or use the CED on the mentally ill. He did state that the CED should not be used on someone who is only passively resisting such as refusing to get out of a vehicle or passively protesting.

²² The negative reaction to the idea of cameras being placed on the CEDs also was reflected in the Focus Groups conducted by MFR. While some officers in the Focus Groups appeared to be concerned about the cameras being another item on their tool belt that would add weight and might get broken, the main concern seemed to be that camera use would be detrimental to the officer. One of the issues appeared to be that the camera would capture only part of the situation since it would not be activated until the CED was turned on immediately prior to deployment. The other issue was that the microphone on the camera would capture inadvertent, inappropriate language being used by the officers. The issue on the officers' part appears to be more centered on a fear of the images and language being used than the technical reliability of the equipment.

The students were also shown a videotape of Assistant Chief McClelland in which he answered the most frequently asked questions regarding the CED use. He also emphasized that CEDs were not to be used on passive suspects. Additionally, he cautioned officers not to use the CED when a suspect had placed drugs in his mouth.

Another part of the classroom instruction consisted of the students being required to drive stun the classmate on each side of them.²³ This resulted in a lot of jumping in reaction to the stun and yelling. Unfortunately, it may be that it gave a false sense of how to apply a drive stun and the level of pain experienced by a suspect when a drive stun is properly applied.

During the classroom instruction, one student asked, “If the Taser doesn’t work, what should I do then? Shoot him?” The instructor responded by telling the student to make an assessment based on the use-of-force criteria. Unfortunately, that is all that was said and it appeared that an opportunity to discuss what to do in such a situation was missed. Cadets as well as in service officers should be provided with training which more closely resembles actual situations faced by officers and incorporating different levels of use-of-force and how to transition from one to another. During other parts of the training, scenarios were used and it was intended that cadets will have to transition from one use of force to another. However, there were not specific scenarios regarding situations where the CED use was ineffective.

Hands On Instruction

In the afternoon, the students were taken into the gym and the volunteers were instructed to remove their uniform shirts and protective vests so as to only have their undershirts on their upper bodies. Students were then held up over protective pads by two of their fellow students while the CED was deployed into their backs. In all cases, the students demonstrated incapacitation and were lowered to the mats by their classmates. While it is understandable that there are limitations as to what is proper to do in hands on training, the method chosen seemed to ignore some of the realities of deploying a CED in real situations and the consequences. For instance:

- All of the students were standing still at the optimal distance with their backs turned to the instructor. In actual incident reports, often the suspect is fleeing or struggling and does not present an easy target.
- None of the students were running when they were hit by the darts. This may have resulted in the students, perhaps, not appreciating the force at which a running suspect would fall to the ground in the case of sudden incapacitation.
- None of the students were given orders during the cycle so that they and their fellow students could appreciate the inability of the suspect to comply with orders during the cycle and, perhaps, to even comprehend orders given during the cycle.
- None of the students were subjected to multiple cycles.
- There was no training, during this section, on how to go about cuffing the suspect once the CED resulted in incapacitation. Specifically, there was no mention of the PERF recommendation that a restraint technique be used that does not restrict respiration.
- There was no training, during this section, on how to transition from CED use to another type of use-of-force if the CED proved ineffective.

²³ As noted previously, a “drive stun” or “dry stun” is when the CED is deployed on a person without the use of the probes.

After the demonstration on the cadets, all of the cadets were given two cartridges. The first cartridge was to be deployed into a standing silhouette target. The student was instructed to then discard that cartridge, load a second cartridge, and deploy the second cartridge at a silhouette in a prone position. The student was to then discard the second cartridge and drive stun a dummy. The students were then divided into two lines and quickly put through this portion of the training.

Several problems were noted during the hands on training. First, a true demonstration of proficiency was not required. Students were required to go through the steps, but they were not required to perform them correctly. For instance, approximately ten percent of the students missed the first silhouette with one or both of the darts. More disturbing, clearly 40% of the students did not perform the drive stun correctly. The most common error in the drive stun was that the cadet placed the CED against the dummy but did not pull the dummy towards them to overcome any resistance. Second, although it was explained to the cadets that in order to have the darts hit a prone target that they would have to cant the weapon, it was not explained when it would be appropriate to deploy the CED against someone who was in a prone position.

It should be noted that the observer was only present in the training for the one day. It should also be noted that the Academy staff appears to be under pressure to get a large number of students through training in a very short period of time which does not necessarily lend itself to stopping each student when the task was performed incorrectly and correcting their technique. Additionally, the cartridges are expensive which limit the ability to have the students deploy multiple cartridges. That being said, it may be that cadets are leaving the Academy with some mixed messages.

- They were told that the CED is only to be used on persons who are actively resisting, but they are shown a film clip in which the CED was used on a suspect whose provocation was limited to verbal. In addition, they were told that CEDs “change attitudes.”
- They were told that the CED was not alternative to deadly force and should not be relied on if the suspect had a knife, but they were shown a videotape in which Chief Hurtt talked about the reduction in officer involved shootings in Phoenix after the introduction of the CED.
- Little mention and almost no emphasis were put on the potential danger of the CED to the suspect. In fact, cadets were told CEDs have never killed anyone and only passing mention was made of excited delirium and individuals under the influence of drugs.
- The hands on training during which cadets were subjected to having the CED deployed was not in a realistic atmosphere with no time taken to explain how it was not reflective of real life situations.
- The students were not required to demonstrate proficiency with the CED; only go through the steps.

COMMENTS ON UH CCP TEAM STATISTICAL ANALYSIS OF THE USE OF CEDS

Introduction

Often the results of studies and/or audits are viewed in terms of the numbers that result from them. The comments on the results of the statistical analysis were an attempt to answer the “whys”. Why was it that if the CED is effective in bringing a suspect under control that there had not been a significant reduction in the number of injuries to officers? Since CEDs were viewed by a majority of the public as an alternative to the use of deadly force by officers, why hadn’t the number of officer involved shootings gone down? Were there circumstances where officers were deploying a CED to control a suspect where they would have been legally justified in using deadly force? If there were disparities in the way officers deployed CEDs, what might be at the root of the decisions being made by officers?

Injury Data Comments

While the CED tends to be effective in temporarily incapacitating the suspect, in order to take the suspect into custody, the officer is still required to “put hands on.” By this it is meant that, even if the CED was effective at stopping an aggressive action or a fleeing suspect, the officer still must physically engage the suspect to handcuff the suspect and transport the suspect to jail. A great number of the incident reports indicated that the suspect began to again resist once the initial cycle was finished.

The results of the study by UH CPP did not indicate a reduction in injuries which resulted in workers’ compensation claims since the introduction of the CED that could be attributed to the use of CEDs at this time. There was inadequate data to determine whether there was a reduction in minor injuries to officers which would not result in a claim being filed.

Additionally, the data was not available as to injuries to suspects. While there are dangers to the suspect as a result of the CED, there are also dangers of injury to the suspect when other types of force are used. Deadly force is the most obvious extreme example, but the use of a baton is probably more appropriate for analysis of reduction of injuries to suspects. While in most cases it appears that the effects of the CED deployment dissipate shortly after the cycle is over, the effects of being struck by a baton, particularly with enough force to knock the suspect to the ground, continue after the use of the baton has ceased.

Substitution Data Comments

The results of the study by the UH CPP did not indicate a reduction in the number of officer involved shootings since the introduction of the CED. This is not surprising as the opportunities to use a CED instead of a firearm are very limited. For example, no one would expect an officer to rely on a CED to stop a suspect who was armed with a firearm. For one, the officer must be a maximum of 21’ from the suspect in order to successfully deploy the CED.²⁴ At such a distance, the officer would definitely be within range of a firearm.

²⁴ The wires on the CED are 21’ long. Additionally, the optimal distance is 7’ to 15’.

As far as knives or other items which might cause serious bodily harm or death²⁵ to an officer, the range of the CED also presents a challenge. Studies have shown that a suspect can cover 21' (the maximum distance from which a CED can be deployed) in the time it takes an officer to perceive the need to react, draw a weapon, and fire. That is why it was emphasized in the training that a CED is not the proper weapon to use if the suspect has a knife unless the officer has cover and there are at least two officers on the scene. In that situation, one of the officers deploys the CED while the other officer stands ready to use a firearm if the CED is not effective and the suspect's actions warrant the use of the firearm.

That being said, there were incident reports which indicated that officers would have been legally justified in using deadly force and officers chose, instead, to deploy the CED. What was not clear from most of the reports was whether another officer was present who had drawn a firearm and was prepared to use it if the danger to the officer deploying the CED escalated. The following are examples of when it appeared that the situation might escalate, or had escalated to the point where an officer would have been justified in using deadly force, but chose to use the CED instead. It should be noted that just because the officer would have been legally justified in using deadly force, it does not mean that the officer would definitely have chosen this option. However, a review of the reports indicated situations in which other intermediate weapons were unlikely to have been used due to officer safety concerns; thus, if the CED had not been available, the use of deadly force would have been more likely. Some examples of these types of incidents are:

- 2005-Suspect who was wanted on six felony warrants fled on foot. While running he was yelling that he was going to kill the officers and was reaching into his pocket. The officer deployed the CED which knocked the suspect to the ground and he was secured.
- 2005-Assault suspect charged after the complainant was attacked with a machete. The officer deployed the CED twice and the suspect was secured.
- 2005-Mental health suspect had knives taped to both hands. Subject told officers he wanted the officers to shoot him. Officer deployed CED which caused the subject to go to ground where officers were able to disarm and secure the subject.
- 2005-Aggravated robbery suspect fled after robbing a restaurant with a gun. Officer deployed CED to knock suspect to ground and to keep him incapacitated until backup officers arrived.
- 2005-Juvenile suspect who was reported to have knives refused to remove hands from pocket and told officers she had a gun. Officer deployed CED one time and suspect was secured.
- 2006-Criminal trespass suspect fled on foot. When caught, he pulled out a knife. The officer deployed the CED one time and was able to disarm him.
- 2006-Mental health subject was yelling at the officers and waving a pipe and a tire iron at the officers. The first officer deployed the CED, but missed. The sergeant deployed the CED and the subject was subsequently secured.

²⁵ Under both the Texas Penal Code and United States Supreme Court cases, the criteria that must be met before an officer may legally use deadly force is that the suspect's actions pose a significant risk of serious bodily injury or death to the officer or others.

- 2006-Suspect dropped a gun during a chase. When caught, he looked towards the gun and appeared to be getting ready to reach for it. Officer deployed a CED one time and the suspect was secured.
- 2007-Assault suspect who was intoxicated came at officers with a 15” pipe in each hand telling the officers they would have to kill him to stop him. Officer deployed CED one time and the suspect was secured.

Incidence Data Comments

The results of the incidence analysis indicate that African American suspects are more likely to have a CED deployed on them. This is particularly true when the officer deploying the CED is a Anglo male. As reflected in the UH CPP report, more analysis of the reason for this disparity is appropriate.

One possible hypothesis is the phenomenon coined by sociologist Jerome Skolnick as “symbolic assailants.”²⁶ The idea is that the use-of-force, particularly excessive use-of-force, is an outcome of the informal subculture of law enforcement. According to the theory, the subculture is a function of the danger to which officers are exposed and the authority they are given to use force. This phenomenon may be heightened when the persons that law enforcement encounters are seen as “defiant, threatening, disrespectful, and disorderly individuals, many of whom possess the low socioeconomic and minority status attributes of the marginalized.”²⁷

Correspondingly, studies indicate that minorities, particularly African Americans, perceive law enforcement more negatively than Anglos. Some studies have shown that minorities fear law enforcement.

Often the reports reflect that the suspect, when confronted by officers, remarks that the officers have somehow singled the suspect out unfairly. This response appears to often be taken by the officer as a further warning sign of impending aggression by the suspect. It may be that one explanation for the disparity noted of Anglo male officers deploying CEDs disproportionately on African Americans is that these officers perceive these suspects as “symbolic assailants” who present a threat to their safety and the suspects perceive the Anglo male officers as being more likely to treat them unfairly. Just as the Anglo male officers may react to the African American suspect differently, the African American suspects may be reacting to the Anglo male officer differently than they react to female officers of all races or African American male officers. Further analysis of reports with an emphasis on this possibility is recommended.

²⁶ Skolnick, J. (1994). *Justice without trial: Law enforcement in a democratic society* (3rd ed.). New York: Macmillan.

²⁷ Micucci, A.J., & Gomme, I.M. (2005). American police and subcultural support for the use of excessive force. *Journal of Criminal Justice*, 33, 487-500.

Another important issue, assuming no disproportionate or discriminatory effect, is what the officer should do instead of deploying the CED. Assuming the officer is legally justified in detaining the suspect and the suspect is not yielding to verbal commands, the officer is placed in a position of escalating the level of force to one where the officer goes “hands on” with the suspect. With physical contact comes the risk of injury to both the officer and the suspect. This is particularly true when the subject is under the influence of drugs and/or alcohol or experiencing a mental health crisis. It may be that the CED is the most effective way to get the person under control. Perhaps the emphasis should be on what officers should do once the person is under control so as to lessen the likelihood of further injury to the suspect.

One particular type of incident noted was that the CED was used because the suspect had fled the officer on foot when the officer attempted to detain the suspect due to a suspicion of drug activity. The report often described the suspect as reaching into his pocket, groin area, or waistband while running. In a number of these cases, the suspect discarded some thing as he fled. In Texas, Resisting Arrest, Search, or Transportation is a Class A misdemeanor.²⁸ Evading Arrest is a Class B misdemeanor.²⁹ Possession of cocaine or methamphetamine is a felony.³⁰ It can be assumed that a majority of the suspects hope to elude capture by the officer. It also appears, at the very least, that the suspects may be fleeing in hopes of being able to discard their drugs before they are captured. If the suspect is successful in discarding the drugs and they are not retrieved by the officer, the most serious charge the suspect will face as a result of fleeing is a misdemeanor. If the suspect does not flee and is in possession of drugs such as cocaine or methamphetamine, they will face felony charges.

²⁸ A Class A misdemeanor is punishable by confinement in jail for up to one year.

²⁹ A Class B misdemeanor is punishable by confinement in jail for up to 180 days.

³⁰ Whether the possession will be a state jail felony (punishable by confined in a state jail for up to two years) or a higher level of felony punishable by confinement in the Institutional Division of the Texas Department of Criminal Justice depends on the drug involved and the amount of the drug possessed.

RECOMMENDATIONS

Policy

HPD's policy on the use of CEDs is well written and in line with the best practices of the law enforcement profession. The problems with its implementation may be the result of training and supervision issues as opposed to the wording of the policy. However, it is recommended that HPD consider altering the policy so as to:

- Require the CED download information to be incorporated into the initial report so that it can easily be obtained and reviewed. This should be in an electronic format. The current system does not allow for this recommendation to be implemented; it is suggested that this option be explored when designing the new system.
- Stress in training that officers should limit the number of cycles deployed in light of the potential danger to the suspect of multiple cycles and the apparent ineffectiveness of multiple cycles. The review of the reports indicated that the CED was seldom successful on a subject when it was used more than five cycles. It is recommended that there be an automatic detailed analysis of any incident in which the CED is used in excess of five cycles to determine compliance with policy.
- HPD GOs require medical screening at the jail of any subject against whom a CED is deployed. This practice should be emphasized as, while the available research which has been conducted on the physical effects of being shocked by a CED has not definitely concluded that deploying a CED on a person under the influence of alcohol and/or drugs has an adverse effect, the majority of the studies suggest that it is desirable to have the subject checked out by medical personnel.
- Require immediate medical screening and transportation to a medical facility of the subject if a CED is deployed and the subject appears to be experiencing excited delirium. While the research which has been done on the physical effects of being shocked by a CED has not definitely concluded that deploying a CED on a person suffering excited delirium has an adverse effect, a majority of the studies, which has addressed the issue, strongly suggest that this particular group is the one most likely to be adversely effected. Given the sudden onset of the effects of excited delirium, it is suggested that a subject should be transported to the hospital immediately for medical care.
- Clarify when it is appropriate to use a CED on a subject who is fleeing from an officer. This should require active aggression on the part of the subject, separate and apart from fleeing in itself. The HPD GOs set out the policy clearly, but the focus groups indicated there may be a lack of understanding in the implementation on the part of some officers.
- Provide for tracking of CED deployment and the number of cycles used in the HPD EIS.
- Continue to prohibit use of the CED by multiple officers at the same time. The HPD GOs set out the policy clearly; however, it should be emphasized in roll call training.

Training

While it is recognized that the Academy has been called upon to train a large number of new cadets and to provide in services training to the entire force, it is recommended that the CED training continued to be reviewed. One of the tools that HPD has used that appeared to be particularly effective was the use of training bulletins and roll call training to emphasize certain aspects of the GOs. It is recommended that the training be reviewed to:

- Determine whether additional scenarios should be included in the Field Problems Program or Simulations which specifically involves the use of CEDs under situations in which the CED appears to be less effective.
- Continue to emphasize when a suspect's behavior is actively aggressive so as to warrant CED use. The calls for service/incident reports reflect a lack of understanding by a small number of officers of the difference between passively resisting and aggressively resisting and the alternatives available to overcome the resistance.
- Continue to emphasize when it is appropriate to use a CED on a fleeing subject. Part of the training should be to demonstrate, or, at least, explain the risk to the subject of sustaining injury due to falling after being suddenly incapacitated. Also, training should emphasize the difficulty of actually hitting a fleeing subject with both darts.
- Demonstrate how a subject has difficulty in complying with orders given by an officer while being subjected to a CED deployment. For instance, have the volunteers who are subjected to a CED deployment, attempt to comply with common orders such as placing their hands behind their backs.
- Emphasize how to use the initial incapacitation period as an opportunity to gain control of the subject. For instance, demonstrate how to assume the proper position for handcuffing the subject.
- Continue to emphasize the risk to subjects of being placed in a position which impairs respiration after deployment of the CED. During the initial CED training, instructors should demonstrate handcuffing the subject in a manner which does not impair respiration and have cadets demonstrate proficiency. While it is understood that this is emphasized later in the cadet training, consideration should be given to demonstrating it during the initial training.
- Continue to emphasize how to accurately report the circumstances which warrant CED use including describing the actions of the suspect and any warnings given to the suspect.
- Consider providing additional training which closely resembles actual situations faced by officers in the use of CEDs and incorporates different levels of use-of-force and how to transition from one type of use-of-force to another. For instance, add specific scenarios in which the excited delirium may be present and/or the CED is ineffective in controlling the suspect's behavior. It is recommended that the actual calls for service/incident reports and/or complaints be used as the basis for designing the scenarios.
- Continue to emphasize the signs of excited delirium and the proper steps to be taken to lessen the likelihood of serious injury if a CED is used. The training should continue to emphasize the potential danger to a suspect if the suspect is experiencing excited delirium and the need for immediate medical treatment.

- Continue to train on the various roles of officers during a call for service/incident where the CED is deployed. It is suggested that this be part of the scenario based training and that the various roles be given a designation so that officers are able to interchange the roles in the field. The current training films should be reviewed with an emphasis towards moving towards consistency in the message being delivered by HPD policy and training. It is recommended that the time currently being used to explain the workings and history of the CED would better be utilized to address some of the concerns noted in this report.

Reports

The reports are generally well written, but there are areas of deficiency. There were concerns expressed during the Focus Groups related to reporting requirements surrounding CED use. It is recommended that the report form and process be revised so as to:

- Continue to emphasize that the report should reflect the behavior that warranted the deployment of the CED.
- Provide a drop down menu where appropriate. For example the menu could include a place to indicate whether a verbal warning was given before the initial and subsequent CED use and whether the subject voluntarily complied.
- Once the system allows, require the CED download information (a history of spark testing and deployments since the last download) be incorporated into the initial call for service/incident report.