



TO: Citizen Review Committee  
FROM: Becky Straus, Legislative Director  
RE: Less-Lethal Force Recommendations  
DATE: May 29, 2012

On behalf of the ACLU of Oregon, I'd like to express my appreciation to the Citizen Review Committee for taking up this issue, for dedicating itself to a thorough investigation of available materials, and for putting forth these recommendations. I provide a few comments below. Please note that we are also in support of the CRC Recommendations that are not addressed below and of comments submitted by Portland Copwatch and Disability Rights Oregon.

### **CRC Recommendation 2012.1**

We support the recommendation to remove “or displays the intent to engage in” from Directive 1051.00 and suggest further revisions to this Directive.

Tasers should only be used in those situations that would mostly likely otherwise escalate and require the use of deadly force. Only through this use are Tasers a true alternative to deadly force as opposed to a method to escalate otherwise less dangerous situations. Because of ongoing and unknown risks of death associated with Taser use, we believe that their allowable use must be limited to this narrow set of circumstances.

Accordingly, we suggest that Directive 1051.00 allow use of Tasers only when used by authorized trained personnel to subdue or control a person whom the officer reasonably believes 1) creates an immediate, credible threat to the physical safety of those present and 2) there is a substantial likelihood that the situation could result in death or physical injury<sup>1</sup> unless prompt action is taken by the officer.

These above suggestions further narrow the CRC Recommendation because they insert objective and limiting criteria – including the words “officer reasonably believes,” “immediate, credible,” and “substantial likelihood” – that allow the policy strike a balance between the need for an officer to use his or her discretion in a developing situation and the public interest in providing strict guidelines for exercise of this judgment.

### **CRC Recommendation 2012.2**

The CRC's recommendation addressing “Number of Taser Cycles” should more closely reflect the New York Police Department model, which is cited and discussed in the CRC's draft recommendations. We recommend that Tasers be set for a standard discharge of five seconds, as

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<sup>1</sup> ORS 161.015(7) provides that “‘Physical injury’ means impairment of physical condition or substantial pain.”

longer duration discharges have been more commonly associated with fatalities. Officers should be required to assess the effectiveness of a first discharge prior to initiating a second and in no instance should the Taser be discharged for more than three five-second rounds against the same person. The policy should state that as soon as it is clear that the Taser use will not be effective against a particular person, the officer must choose an alternative method.

#### **CRC Recommendation 2012.4**

We support the CRC Recommendation for reporting on “laser dot only” use of Tasers and suggest that the Recommendation should also include reporting on any threatened use of Tasers.

All such records and reports, also including records of actual use of the Taser as required by Directive 1051.00, should be publicly available, with no redactions.<sup>2</sup> We believe that all use of force by police officers should be subject to internal reporting requirements so that command personnel—and the public—can better evaluate short-term and long-term trends—as well as to improve training for officers.

#### **Vulnerable Populations and Circumstances**

Directive 1051.00 recognizes that Taser use should be restricted or limited as applied to certain categories of vulnerable populations. The CRC Recommendations do not address this aspect of the current Directive, but we recommend that the Directive be expanded to include persons who are known to have a history of mental health crisis, are clearly experiencing mental or emotional distress, or who are visibly intoxicated by alcohol or drugs.

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<sup>2</sup> Although we recognize that there are privacy concerns for those who have been subjected to CED use, we believe the need for public oversight and accountability will outweigh that privacy interest in most instances.