

Recommendation 16.1

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Please find our response to Recommendation 16.1:

Our office has completed its review of the materials related to Recommendation 16.1 that have been submitted to us as part of the collaborative reform process. This package focused on the San Francisco Police Department (SFPD) working with stakeholders and community members to make an informed decision about whether to authorize use of electronic control weapons (e.g., tasers). After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 16.1.: Working with all key stakeholders and community members, the SFPD and the Police Commission should make an informed decision based on expectations, sentiment, and information from top experts in the country.

Response to 16.1: At the time recommendation 16 was issued, San Francisco Police Department officers were not authorized to use electronic control weapons (ECWs). In 2017, SFPD began facilitating a stakeholder working group regarding ECWs. The stakeholder group consisted of eighteen members, including the Bar Association of San Francisco, the Coalition on Homelessness, the ACLU, the Department of Police Accountability, and SFPD Officers for Justice. The stakeholder working group met nine times. SFPD also participated in public meetings facilitated by the Human Rights Commission and received information from Police Commission Community Input Sessions. SFPD and the stakeholder group reviewed fourteen ECW studies, including studies by Amnesty International, the U.S. Department of Justice, and Stanford University, as well as numerous articles, reports, and other documents. These studies and documents were submitted to the Police Commission for public posting.

On March 14, 2018, SFPD published Department General Order (DGO) 5.02, "Use of Electronic Control Weapon." The policy limited authority to carry ECWs to officers that completed Crisis Intervention Team training, as well as other trainings. The policy specifies instances when ECWs may be used (e.g., subject is causing physical injury to another or is violently resisting an officer) and when ECWs may not be used (e.g., if a suspect is fleeing and does not pose a threat, or if a subject is compliant).

Based upon all of the above, the California Department of Justice finds that the SFPD is in substantial compliance with this recommendation. It should be noted, that the compliance measures themselves do not require approval of the content of the underlying DGO 5.02, and that neither the California Department of Justice nor Hillard Heintze undertook a comprehensive review of that policy. However, after conducting a limited review of this DGO, Cal DOJ has identified the four below areas within DGO 5.02 that SFPD may wish to review. Please note that this list is not exhaustive, and that as police practices surrounding the use of ECWs evolves, there may be additional policies and practices the SFPD may wish to consider in this regard before implementing this policy. Those areas we believe merit additional review follow:

1. Cal DOJ recommends addressing the gap between DGO 5.02 parts H and J. Part H lists instances when an officer "may activate the ECW" and Part J lists scenarios when ECW use is prohibited. There are potential scenarios that fall outside of expressly permitted and prohibited use where it may be unclear if an officer is permitted to use an ECW. Cal DOJ recommends adding the word "only" to Part H to read that an officer "may activate the ECW **only** when a subject is [. . .]" to clarify the policy.

Additionally, Cal DOJ recommends adding the words "immediate" and "imminently" in part H(1) and H(2) to read that an officer may use an ECW when a subject is "causing immediate physical injury to a person or threatening to cause **immediate** physical injury when there is a reasonable belief that the subject has the intent and capability of **imminently** carrying out the threat."

2. While SFPD prohibits officers from using ECWs on handcuffed persons, that information is not found in the "Prohibited Use" section. Cal DOJ recommends adding the prohibition in that section for ease of reference.
3. Cal DOJ recommends clarifying the language regarding vulnerable populations in Part I. For vulnerable populations, the current version of DGO 5.02 provides that officers are to limit ECW use to "circumstances where the potential benefit of using the device reasonably outweighs the risks and concerns" because of "heightened risk of adverse reaction." These risks and benefits are vague and provide officers with broad discretion as to whether to use an ECW on the noted vulnerable populations. Cal DOJ recommends first prohibiting the use of the ECW on pregnant women, elderly, visibly frail, and young children except under very limited circumstances that should be narrowly defined to achieve the stated goal. The policy should contain an explanation regarding the heightened risk of death or serious bodily injury to be weighed against any exigency, other control techniques, and force options. As an example, the [Medford Police Department](#) lists a few practical considerations for officers to consider before using an ECW on vulnerable populations (see page 3).
4. Cal DOJ recommends adding language discouraging the "drive stun" use of ECWs, which primarily serves as a pain-compliance tactic. The [US DOJ COPS office](#) recommends that "[t]he drive stun mode should be used only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option." (see pages 14 and 19).

Please let us know if you have any questions or would like to discuss these further. Thank you.

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Finding # 16 :

Currently, SFPD officers are not authorized to carry electronic control weapons (ECW, i.e., Tasers).

These tools are less-lethal weapons that are meant to help control persons who are acting aggressively.⁴⁶ Many police agencies use these tools and report that they have helped reduce injury to officers and community members and lead to fewer officer-involved shootings. Promising practices suggest that the use of ECWs can result in less use of force.

Recommendation # 16.1

Working with all stakeholders and community members, the SFPD and the Police Commission should make an informed decision based on expectations, sentiment, and information from top experts in the country.

Response Date: 05/02/2019

Executive Summary:

Commander Walsh of the Chief of Staff Office initiated an ECW internal working group. This group, in conjunction with the Police Commission Office facilitated a Stakeholder working group. Police Commissioner Sonia Malera convened this Stakeholder group and led this group for this recommendation. The Stakeholder group met numerous times.

The Stakeholder group discussed, analyzed and reviewed numerous documents and voluminous amounts of material, individually and as within the working group, in order to express input on the following topics:

- Department Policy for ECWs
- Review of weapon use
- Outside Agency Policies and best practices
- Documented Electronic Controlled Weapon Studies
- All submitted literature and opinion articles by Stakeholder participants and members of the public

The Department participated in Police Commission "Community Input Sessions" as well as a meeting with the "Alive and Free" Leadership Studies students. These large public meetings facilitated by the Human Rights Commission. The Human Rights Commission then collected the information from the Community Input Sessions and forwarded that to the Police Commission and Police Department.



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All input received from the Human Rights Commission was organized and then sent to the Police Commission for posting on the website.

The Stakeholder group consisted of the following **members**:

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|--|---|
| SFBAR Bar Association of SF | https://www.sfbar.org/ |
| COH Coalition on Homelessness | http://www.cohsf.org/ |
| CPAB Captain Police Advisory Board Community members | https://www.hanc-sf.org/16-home/-sp-234/379-community-police-advisory-board-cpab |
| ACLU American Civil Liberties Union | https://action.aclu.org/ |
| Morgan Lewis/ Blue Ribbon Panel | https://www.morganlewis.com/news/morgan-lewis-team-served-on-panel-investigating-san-francisco-police-bias |
| DPH Department of Public Health | https://www.sfdph.org/dph/default.asp |
| DPA Department of Police Accountability | https://sfgov.org/dpa/ |
| SFPD San Francisco Police Department | https://www.sanfranciscopolice.org/ |
| SFPD Police Officer Association | https://sfpoa.org/ |
| Mayor's Office | https://sfmayor.org/ |
| SFPD/ Officers for Justice | http://officersforjustice.org/about-us.html |
| SFPD / Latin Police Officer Association | |
| SFPD / Asian Peace Officers Association | http://www.sfapoa.org/ |
| SFPD / Pride Alliance | Facebook.com/sfpopride |
| Police Commissioners | https://sfgov.org/policecommission/ |
| SF HRC Human Rights Commission | https://sf-hrc.org/ |
| Eric Vanderpool | |
| Mental Health Association of SF | |

Reference

<https://sfgov.org/policecommission/electronic-controlled-weapons>

Police Commission ECW Stakeholder Meeting Minutes:

See attachment #1

- [Minutes from 042117 CED stakeholder meeting](#)
- [Minutes from 050517 CED stakeholder meeting](#)
- [Minutes from 052217 CED stakeholder meeting](#)
- [Minutes from 060117 CED stakeholder meeting](#)
- [Minutes from 061317 CED stakeholder meeting](#)
- [Minutes from 071717 CED stakeholder meeting](#)
- [Minutes from 100217 CED stakeholder meeting](#)
- [Minutes from 112817 ECD stakeholder meeting](#)
- [Minutes from 012418 ECD stakeholder meeting](#)

Reference

<https://sfgov.org/policecommission/electronic-controlled-weapons>



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Compliance Measures:

1) Compliance Measure 1

Work with stakeholders and community to gather expectations, sentiment, and information on ECWs.

"Gather expectations and sentiment"-

The Department internal working group, the Police Commission Office, Police Commissioners Malera and Hing, worked with the Human Rights Commission to participate in various "Community Input Sessions", in addition to attending the Stakeholder working group meetings.

- San Francisco City College
- Bill Graham Civic Auditorium
- Alive and Free Leadership Studies Group

Command Staff members participated in the process as well as sworn members who have had prior experience at outside agencies with the use or training of ECWs.

Executive Director _____, as well as Leadership Academy Director _____ facilitated the on-site meeting within the classroom setting which consisted of youth from ages of 14-24. The group was assisted by members of the Human Rights Commission with group think and open discussion activities.

See attachment #2

- Notes from HRC regarding 091217 and 091917 Community Input Sessions

Reference <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/Notes%20from%20Human%20Rights%20Commission%20regarding%20091217%20and%20091917%20Community%20Input%20Sessions.pdf>

See attachment #3

- Alive and Free – formerly Omega Boys Club
- Board of Directors

Reference

<https://styaliveandfree.org/>
<https://styaliveandfree.org/programs/youth/>



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"Gather information on ECWs" -

The Police Department along with numerous Stakeholder group members submitted research documentation and materials to the Police Commission Office for public posting. This was done in an expeditious manner in order that the Stakeholder groups' information was available to the public for viewing.

See

Screen shot - documents posted on San Francisco Police Commission Website

Electronic Controlled Weapon Studies

- Amnesty International Study
- Bozeman Safety Injury Profile Report
- Braidwood Commission on Conducted Energy Weapon Use
- Braidwood Study Summary
- CEW Use in Law Enforcement
- NIJ study article
- NIJ Taser Report
- PERF Taser Injury Outcomes
- US DOJ NIJ Findings from Expert Panel on Safety of Taser
- Wake Forest Baptist Medical Study article
- 2015 Stanford Study
- State of Connecticut ECW Analysis & Findings, June 2016
- U.S. Department of Justice, Office of Justice Projects – National Criminal Justice Research Service(NCJRS) Report "Study of Death Following Electro Muscular Disruption" (2011)
- Report of the Maryland Attorney General's Task Force on Electronic Weapons

Other Documents Submitted to the Working Group

- 2016 Bar Association of San Francisco Report
- May 5, 2017 Review of Evidence report
- May 2017 articles about CEDs and deaths
- May 18, 2017 review of CED process in SFPD from 2010
- May 18, 2017 list of suggested articles and reports
- May 25, 2017 SFPD's CED comparison table
- May 26, 2017 DPA's list of suggested materials
- June 1, 2017 Dr. Tseng's PowerPoint presentation to CED working group
- June 7, 2017 SFPD CED comparison table
- LAPD Use of Force 2016 yearend review
- The Intercept article: A shot to the Heart
- Baltimore Sun article: Shocking Force
- LA Times article on effectiveness of Tasers
- May 2017 Product Warnings
- Response to articles submitted by BASF
- June 12 email from Richmond PD Sgt. Joseph Vigil answering stakeholder questions
- Blue Ribbon Panel_Letter of June 21 2017
- Dr. Tseng's 062117 presentation to the Commission
- John Burton's 062117 presentation to the Commission



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- ✓ Matt Master's 062117 presentation to the Commission
- ✓ July 3, 2017 email from Richmond PD Sgt. Joesph Vigil answering stakeholder questions
- ✓ July 5, 2017 Mike Brave's responses to Commission's follow-up questions
- ✓ August 8, 2017 Mike Brave's response to Commissions' follow-up questions
- ✓ August 21, 2017 SFPD CED comparison table
- "Serious Injuries From Tasers are Extremely Rare"
- Taser® Conducted Energy Weapons: Physiology, Pathology and Law (Article by James E. Brewer and Mark W. Kroll, M.D.)
- "A Profile of Injuries Sustained by Law Enforcement Officers: A Critical Review"
- Taser dart-to-heart distance that causes ventricular fibrillation in pigs (Read final sentence in Abstract)
- "Can TASER Electronic Control Devices Cause Cardiac Arrest?"
- Journal of Emergency Medical Services – Article 'Excited Delirium Strikes Without Warning'
- Report of the American Medical Association Council on Science and Public Health on Use of Tasers ® by Law Enforcement Agencies
- American College of Emergency Physicians – Periodical, Annals of Emergency Medicine – Article "Physiological Effects of Conducted Electrical Weapons on Humans"
- Excited Delirium Syndrome: Causes, Symptoms, Treatment (on the website is a linked YouTube video discussing ED which is very interesting – <https://youtu.be/k8eyWHf1y50>)
- Great generalized PowerPoint presentation out of Montgomery County in Maryland, discussing Excited Delirium response by EMS and Law Enforcement members. As mentioned in my document, whenever possible, officers should pre-stage and approach a subject suffering from ED together. However, that isn't always possible, so to the extent it isn't officers should have the authority to seize the person for subsequent on-sight evaluation by en-route medical personnel.
- White Paper Report on Excited Delirium Syndrome (ACEP Excited Delirium Task Force)
- Blue Line (Canadian National Law Enforcement Magazine) March, 2012 issue "Excited Delirium Syndrome: New Study on ExDS Shows Police Can Train For This"
- American College of Emergency Physicians - Report "Cardiovascular Risk and the TASER: A Review of the Recent Literature"
- "The Impact of TASERS on Police Use-of-Force Decisions: Findings from a Randomized Field-Training Experiment (Abstract)
- Special Report: As Taser warns of more risks, cities bear a burden in court
- Special Report: A 911 plea for help, a Taser shot and the toll of stun guns
- Breathe, Ronald, Breathe: The court case curbing Taser use
- Special Report: How Taser inserts itself into investigations involving its weapons
- U.S. police, cities have faced at least 435 wrongful death suits involving Tasers
- Taser by the numbers: An overview of lawsuits involving Tasers and key company data
- How Reuters tracked fatalities and Taser incidents
- Taser forges network of scientists, ties with police to defend stun gun
- Taser's defense tactics include lawsuits against coroners and experts
- Across the U.S., high-profile deaths lead to stun-gun case settlements
- ✓ 2017 Bar Association of San Francisco Report
- ✓ 2017 Coalition on Homelessness letter regarding CEDs
- ✓ Officer Oerlemans' responses to stakeholder questions
- ✓ Follow-up questions from stakeholders to Mike Leonesio
- ✓ Mike Leonesio's responses to CED Stakeholder questions October 16, 2017
- ✓ Mike Leonesio's responses to Mr. Brave's responses to stakeholder questions
- ✓ SFPD Responses to Leonesio's Answers to Stakeholder Follow-up Questions
- ✓ SFPD Responses HRC report

Reference <https://sfgov.org/policecommission/electronic-controlled-weapons>



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2) Compliance Measure 2

Policy decision for ECWs.

The SFPD Internal working group

Following collaborative efforts by the Stakeholder group, a draft General Order and Appendix was presented to the Police Commission, who voted affirmatively to move it to a meet and confer process.

See attachment #4

Police Commission March 14, 2018

- Agenda
- Minutes
- Supporting Documents

See attachment #5

- Early version draft Policy 05/05/17
- Final draft Policy 03/14/18
- Final draft Appendix 03/14/18

Reference

<https://sfgov.org/policecommission/meeting/police-commission-march-14-2018-minutes-0>

See attachment #6

Additional Documentation:

- Collaborative Reform Initiative Status Report
Recommendation 16.1