



U.S. DEPARTMENT OF JUSTICE
OFFICE OF COMMUNITY ORIENTED POLICING SERVICES
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COPS

MEMORANDUM

TO: Suzy Loftus, President, San Francisco Police Commission
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CC: Gregory Suhr, Chief, San Francisco Police Department
Toney Chaplin, Deputy Chief, San Francisco Police Department

THROUGH: Noble Wray, Chief of Police Practices and Accountability Initiative, Office of Community Oriented Policing Services, U.S. Department of Justice

FROM: Nazmia E.A. Comrie, Collaborative Reform Specialist (detail), Office of Community Oriented Policing Services, U.S. Department of Justice

SUBJECT: Review of San Francisco Proposed Use of Force Policies

DATE: May 4, 2016

This memorandum serves to summarize the U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office) review and comments on the San Francisco, California Police Department (SFPD) use of force policies as part of the Collaborative Reform Initiative for Technical Assistance (CRI-TA).

Introduction

The COPS Office announced CRI-TA with SFPD on Monday, February 1st. Following the press conference, the COPS Office met with San Francisco Police Commissioner President Suzy Loftus. During that meeting and in follow up e-mails starting on February 12th, the COPS Office agreed to review the use of force policies. The COPS Office received four policies with

corresponding comments on Monday, March 21st. The policies include: *5.01 Use of Force*, *5.01.1 Use of Force Reporting*, *5.02 Use of Firearms and Lethal Force*, and *Special Operations CED Bureau Order*.

The COPS Office received comments on the proposed policies from external subject matter experts, San Francisco core assessment team members, and internal staff.

Summary of Review

The following summarize the COPS Office review and comments on the San Francisco use of force policies.

Although the CRI-TA assessment will cover the policies and procedures regarding use of force, this review only assesses the recently developed Use of Force policies, and not the *SFPD Manual of Policy and Procedure* or the current *Use of Force* policies. That will come as part of the overall assessment.

Overall Comments

The COPS Office commends the San Francisco Police Commission and the SFPD for developing, reviewing, and finalizing the use of force policies with community and stakeholder input. This process not only allows the community to have a voice, but also provides a stronger, more comprehensive policy. Furthermore, the process provides accountability and transparency regarding policy development. This is in line with Recommendations 1.3 and 1.4 of the *Final Report of the President's Task Force on 21st Century Policing* (Task Force Report).¹

The COPS Office suggests that the Police Commission consider combining the three separate use of force policies. The philosophical, legal, and organizational concerns are interlaced between all three policies and it could be streamlined if they were condensed into one policy. The COPS Office reasons that training and holding personnel accountable will be easier with one policy and will provide less opportunity for conflict. This combination will also reduce redundancies and duplication in the language.

The language for the policies needs to be simplified and clarified so that a rank-and-file officer can understand the general guidance and principles. If the policy cannot be understood by an officer reading or referencing them, then the policy has not fulfilled the intended purpose. The language needs to be strong and clear rather than minimizing the guidance with qualifiers.

To this point, whether these policies remain as three separate policies or one combined policy, there should be a section at the beginning with a definition of terms. Unless the definitions are included elsewhere and referenced, they need to be included at the beginning of the policies. The policies are intended to provide guidance to the rank-and-file and the terminology should be clearly stated without requiring an officer to assume the meaning. Although it is beneficial to receive feedback from many groups and individuals, it is crucial to refine the feedback and ensure that the policy reads well and is clear to the reader.

¹ http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf

Additionally, the Police Commission should provide a description of levels of force and the list of authorized impact weapons. If these two descriptions are listed elsewhere, then this should be referenced in the policy.

Furthermore, the Police Commission should consider adding information and guidance related to training, investigation, forensics, and especially the role of the supervisor. By suggesting that the supervisor can evaluate the need to respond allows for a failure of supervision. It is a national best practice that a supervisor should be called to an incident involving any use of deadly force or a critical incident. Transformation and reform requires that the first line supervisors be empowered to help change behavior, and therefore, they should be required to be on scene when a critical incident occurs.

As stated in the Task Force Report Action Item 1.5.4, it is vital that “use of physical control equipment and techniques against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others – can undermine public trust and should be used as a last resort.”²

The COPS Office strongly recommends that the Police Commission review the Task Force Report, Recommendation 2.2 and its accompanying Action Items, 2.2.1 to 2.2.6 for consideration in the revised use of force policies.³ The Police Commission should consider the following action items:

- “...emphasize de-escalation and alternatives to arrest or summons in situations where appropriate” (Action Item 2.2.1, page 20)
- “...mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths” (Action Item 2.2.2, page 21)
- “...collect, maintain, and report data to the Federal Government on all officer-involved shootings, whether fatal or nonfatal, as well as any in-custody deaths” (Action Item 2.2.4, page 21)
- “clearly state what types of information will be released, when, and in what situation, to maintain transparency” (Action Item 2.2.5, page 22)
- “establish a Serious Incident Review Board comprising sworn staff and community members to review cases involving officer-involved shootings and other serious incidents that have the potential to damage community trust or confidence in the agency...” (Action Item 2.2.6, page 22)

As related to conductive energy devices (CED), the Task Force report states that “studies of CEDs have shown them to be effective at reducing both officer and civilian injuries...but new technologies should be subject to the appropriate use of force continuum restrictions” (page 38). Additionally, the COPS Office and Police Executive Research Forum, released guidelines in 2011 around electronic control weapons.⁴ The COPS Office encourages the Police Commission to consider all 52 guidelines as the CED policy is crafted.

² http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, pages 15-16

³ http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, pages 20-22

⁴ <http://ric-zai-inc.com/Publications/cops-p202-pub.pdf>

Finally, whether the policies stay as separate documents or are combined, there should be as much cross-referencing as is needed to ensure that adequate information is provided in each policy. For example, references to vehicle pursuits, training, or handcuffing should be cross-referenced to the appropriate SFPD policy.

Individual Policy Comments

The COPS Office is providing comments for each policy in a redline version. The comments and feedback are from the reviewers and are suggestions for improvement and clarity, rather than mandated changes. As stated previously, this memo and the accompanying documents are a preliminary review of the proposed policies and procedures without the full knowledge of the SFPD operations and practices; the CRI-TA assessment includes an objective to assess the use of force policies and procedures.

USE OF FIREARMS AND LETHAL FORCE

The San Francisco Police Department's highest priority is safeguarding the sanctity of all human life. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to using appropriate situational communication skills and sound de-escalation tactics principles before resorting to the use of force, whenever feasible. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unreasonable force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

The purpose of the policy is not to restrict officers from using reasonable force to protect themselves or others but to provide general guidelines that may assist the Department in achieving its highest priority.

This order establishes policies and reporting procedures regarding the use of firearms and lethal force. Officers' use of firearms and any other lethal force shall be in accordance with DGO 5.01, Use of Force, and this General Order.

I. POLICY

A. GENERAL. The Department is committed to the sanctity and preservation of all human life, human rights, and human dignity. It is the policy of this Department to use lethal force only when no other reasonable options are available to protect the safety of the public and the safety of police officers. Lethal force is any use of force designed to and likely to cause death or serious physical injury, including but not limited to the discharge of a firearm, the use of impact weapons, other techniques or equipment likely to cause serious bodily injury or death, under some circumstances (see DGO 5.01, Use of Force), and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving).

B. ALTERNATIVES TO LETHAL FORCE. When safe and feasible under the totality of circumstances known to the officer, officers shall consider other force options before discharging a firearm or using other lethal force. Further, officers are reminded to consider apply the principles outlined in DGO 5.01, I.A. Sanctity of Human Life, I.B. Establish Communications, I.C. De-escalation, I.D. Proportionality, and I.E. Duty to Intervene, to decisions about the use of lethal force.

C. SUBJECTS ARMED WITH WEAPONS OTHER THAN FIREARMS. When encountering a subject who is armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle, or other object, officers shall follow DGO 5.01, II.F. Subject Armed with a Weapon – Notification and

Commented [DOJ COPS1]: Why is most of this policy part of the overall use of force policy? Having two policies make it more confusing since the legal and philosophical force issues are woven through both policies. For example, Lexipol's Use of Force policy includes SFPD's three separate policies (Use of Force, Use of Firearms and Reporting) in one policy. This helps with future changes and training because you would only need to meet with stakeholders over one policy.

Commented [DOJ COPS2]: This order should be combined with the others, it needs definition and it needs to be structured to follow the progression.

Also, more direction and structure is needed regarding the investigation of these incidents.

Commented [SFPD3]: See corresponding comment #1

Commented [SFPD4]: See corresponding comment #2

Commented [sfpd5]: See corresponding comment #3

Commented [sfpd6]: See corresponding comment #4

Commented [SFPD7]: See corresponding comment #5

Commented [DOJ COPS8]: Should consider a single document, with definition and structured to use and reporting of force

Commented [sfpd9]: See corresponding comment #6

Commented [SFPD10]: See corresponding comment #7

Commented [DOJ COPS11]: Yes, a bit of a two-tiered response for field personnel is being created, but why is that a bad thing? There is plenty of leeway and discretion provided that more than adequately addresses officer safety considerations. The whole point here is to get cops to slow things down whenever possible if the weapons involved are other than firearms so that alternative strategies can be utilized.

Commented [sfpd12]: See corresponding comment #8

Command. Where officers can safely mitigate the immediacy of threat, and there are no exigent circumstances, officers ~~should~~ shall isolate and contain the subject, call for additional resources and engage in appropriate de-escalation techniques and tactical repositioning without time constraints. It is far more important to manage the situation and use ~~take as much time to help as needed to~~ resolve the incident in keeping with the Department's highest priority of safeguarding all human life. ~~Except where circumstances make it reasonable for an officer to take action including the use of lethal force to protect human life or prevent serious bodily injury, immediately~~ immediately action, including immediately disarming the subject and taking the subject into custody, is a lower priority than preserving the sanctity of human life. Officers who act to de-escalate an incident, which can proceed accordingly and delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

Commented [sfpd13]: See corresponding comment #9

Commented [DOJ COPS14]: As long as the safety of the community and officers isn't being degraded.

Commented [SFPD15]: See corresponding comment #10

Commented [DOJ COPS16]: Clarify

Commented [DOJ COPS17]: "Shall" is appropriate here because there is already plenty of leeway given based on the first part of the sentence.

D. HANDLING, DRAWING AND POINTING FIREARMS.

1. **HANDLING FIREARMS.** An officer shall handle and manipulate a firearm in accordance with Department-approved firearms training. An officer shall not manually cock the hammer of the Department-issued handgun to defeat the first shot double-action feature.
2. **AUTHORIZED USES.** An officer may draw, exhibit or point a firearm in the line of duty when the officer has reasonable cause to believe it may be necessary for the safety of others or for his or her own safety. When an officer determines that the threat is over, the officer shall holster his or her firearm or shoulder the weapon in the port arms position pointed or slung in a manner consistent with Department-approved ~~Department approved~~ firearms training. If an officer points a firearm at a person, the primary officer shall, if feasible, advise the subject the reason why the officer(s) pointed the firearm.
3. **DRAWING OTHERWISE PROHIBITED.** Except for maintenance, safekeeping, inspection by a superior officer, Department-approved training, or as otherwise authorized by this order, an officer shall not draw a Department-issued firearm.
4. **REPORTING.** When an officer intentionally points any firearm at a person, it shall be considered a reportable use of force. Such use of force must be reasonable under the objective facts and circumstances.

Commented [DOJ COPS18]: Define?

Commented [DOJ COPS19]: It probably should be specified that this expectation would only apply well after the fact, not at any time during when the officer might be in actual or perceived danger.

Commented [S20]: See corresponding comment #11

E. DISCHARGE OF FIREARMS OR OTHER USE OF LETHAL FORCE.

1. **PERMISSIBLE CIRCUMSTANCES.** Except as limited by Sections D.4 and D.5., an officer may discharge a firearm or use other lethal force in any of the following circumstances:
 - a. In self-defense when the officer has reasonable cause to believe that he or she is in imminent danger of death or serious bodily injury; or

- b. In defense of another person when the officer has reasonable cause to believe that the person is in imminent danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use lethal force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an imminent danger of death or serious bodily injury to the officer or any other person; or
- c. To apprehend a person when both of the following circumstances exist:
 - i. The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of lethal force; AND
 - ii. The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or
- d. To kill an animal posing an imminent threat. To kill an animal that is so badly injured that humanity requires its removal from further suffering where other alternatives are impractical and the owner, if present, gives permission; or
- e. To signal for help for an urgent purpose when no other reasonable means can be used.

The above circumstances (D.1 a-e) apply to each and every discharge of a firearm or application of lethal force.

Where lethal force is reasonable, Officers should constantly reassess the situation, as feasible, to determine whether the subject continues to pose an active threat.

- 2. **VERBAL WARNING.** If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before discharging a firearm or using other lethal force.
- 3. **REASONABLE CARE FOR THE PUBLIC.** To the extent feasible, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or officers.
- 4. **PROHIBITED CIRCUMSTANCE.** Officers shall not discharge their firearm:
 - a. As a warning; or
 - b. At a person who presents a danger only to him or herself.
- 5. **MOVING VEHICLES.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an imminent threat of death or serious bodily injury to the public or an officer by means other than the vehicle. Officers shall not discharge a firearm from his or her moving vehicle.
- 6. **REPORTING.**
 - a. **DISCHARGE OF FIREARMS.** Except for firearm discharges at an approved range or during lawful recreational activity, an officer who discharges a firearm, either on or off duty, shall report the discharge as required under DGO 8.11,

Commented [DOJ COPS21]: When you are trying to establish a culture that moderates the use of deadly force all applications of the use of deadly force are examined. Police officer's should be prohibited from shooting animals as a form of euthanasia – that's for others.

Commented [DOJ COPS22]: This is a risk issue and not consistent with national best practice

Commented [DOJ COPS23]: This seems confusing because an officer can't fire warning shots, but can fire to signal for help?

Commented [DOJ COPS24]: There should be more clarifying language here. Maybe add "At a person who is only presenting a danger to his or herself and is not acting aggressively or demonstrating assaultive behavior towards others."

Commented [sfpd25]: See corresponding comment #12

Commented [S26]: See corresponding comment #13

Commented [DOJ COPS27]: May be worth considering allowing this under severely limited circumstances when other options are unavailable and the life of the officer or a member of the public is at immediate risk.

Investigation of Officer Involved Shootings and Discharges. This includes an intentional or unintentional discharge, either within or outside the City and County of San Francisco.

- b. **OTHER LETHAL FORCE.** An officer who applies other force that results in death shall report the force to the officer's supervisor, and it shall be investigated as required under DGO 8.12, In Custody Deaths. An officer who applies other lethal force that results in serious bodily injury shall report the force to the officer's supervisor. The supervisor shall, regardless whether possible misconduct occurred, immediately report the force to their superior officer and their commanding officer, who shall determine which unit shall be responsible for further investigation. An officer who applies other lethal force that does not result in serious bodily injury shall report the force as provided in DGO 5.01.1, Reporting and Evaluating Use of Force.

- II. **EXCEPTIONAL CIRCUMSTANCES.** If exceptional circumstances occur, an officer's use of force shall be reasonably necessary to protect others or him/herself. The officer shall articulate the reasons for employing such use of force.

References

- DGO 5.01, Use of Force
- DGO 5.05, Response and Pursuit Driving
- DGO 8.11, Investigation of Officer Involved Shootings And Discharges
- DGO 8.12, In Custody Deaths

Commented [DOJ COPS28]: Defined?

Commented [DOJ COPS29]: Unclear – does the policy provide for a death investigation protocol?

Commented [DOJ COPS30]: This should be an established policy and practice. What other notifications required?

Commented [DOJ COPS31]: As with the other policy, is there a need for this section given the specific direction provided elsewhere in this policy.

Commented [sfpd32]: See corresponding comment #14

Commented [SFPD33]: See corresponding comment #10

DRAFT

BUREAU ORDER

UNIT
INDEX
NUMBER

DRAFT

DATE
ISSUED

03/21/16

SUBJECT:

Conducted Energy Devices

ISSUED
TO:

Special Operations Bureau

ISSUED
BY:

Commented [sfpd1]: See corresponding comment #1

The San Francisco Police Department's highest priority is safeguarding the sanctity of all human life. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to using communication and de-escalation principles before resorting to the use of force, whenever feasible. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unreasonable force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

Commented [DOJ COP52]: See language suggested for this section on the other attached policies.

Commented [sfpd3]: See corresponding comment #2

This order establishes policies and reporting procedures regarding the issuance and use of Conducted Energy Devices (CED), and the supervisory responses required after the use of a CED. Officers' use of CEDs shall be in accordance with DGO 5.01, Use of Force, and DGO 5.01.1, Use of Force Reporting.

I. POLICY

Commented [sfpd4]: See corresponding comment #3

- A. **GENERAL.** The Department is committed to the sanctity and preservation of all human life, human rights, and human dignity. It is the policy of this Department to only use CEDs to protect the public and officers from serious injury or death by a subject armed with a weapon other than a firearm. The CED is not recommended for use on a subject armed with a firearm.
- B. **PRIOR TO THE USE OF A CED.** When safe and practical under the totality of circumstances, officers shall consider other available options before using a CED. Further, officers are reminded to consider the principles outlined in DGO 5.01, I.A. Sanctity of Human Life, I.B. Establish Communication, I.C. De-escalation, I.D. Proportionality, and I.E. Duty to Intervene, to decisions about the use of lethal force.

Commented [DOJ COP55]: What of active assailants? Only for weapons leaves only the option of shooting such an assailant if the officer loses control or is enduring great bodily harm

Commented [DOJ COP56]: Might even want stronger language, such as, "A CED should not be used on a subject armed with a firearm."

Commented [DOJ COP57]: Is the CED being defined as lethal force?

II. DEFINITIONS

- A. **ACTIVATION.** Depressing the trigger of the CED causing an arc or the firing of probes.
- B. **CONDUCTED ENERGY DEVICE.** Any Department-issued device that fires darts, i.e., electrodes that are attached by wire to the main body of the device held by an officer, and that through these electrodes emits an electrical charge or current intended to temporarily disable a person. CEDs are not normally considered to be a lethal weapon but the risk of adverse effects, including death, can be higher for some subjects. See III. F.1. and H.
- C. **DEPLOYMENT.** Removal of the CED from the holster and pointing it at a subject.

Commented [DOJ COP58]: Not limited to Department issued - defining the device generally

Commented [sfpd9]: See corresponding comment #4

Commented [DOJ COP510]: Suggest listing the adverse effects and refer the officer to sections III E, F.1, and h

Unit Order, continued:

- D. DISPLAYING THE ARC.** Displaying the electrical current to a subject by first removing the cartridge and then depressing the trigger of the CED.

III. PROCEDURES

- A. ISSUANCE AND CARRYING CEDS.** Only officers assigned to the Tactical Company or the Specialist Team are authorized to carry Department-issued CEDs after having successfully completing the Department's Crisis Intervention Team (CIT) training and all other required Department-approved CED training. Officers shall only use Department-issued CEDs and cartridges.

Officers who have been issued the CED shall wear the device in a Department-approved holster and carry the CED in a weak-side holster on the side opposite their duty weapon to reduce the chances of accidentally drawing and/or firing their firearm.

Officers no longer assigned to the Tactical Company or the Specialist Team are not authorized to carry the CED and shall immediately surrender the CED to the Commanding Officer of the Tactical Company upon re-assignment.

- B. INSPECTION.** Officers carrying the CED shall perform an inspection of the CED at the beginning of every shift and:
1. Perform a daily spark test on the CED;
 2. Ensure the CED is clearly and distinctly marked to differentiate it from the duty weapon and any other device;
 3. Whenever practical, officers should carry two or more cartridges on their person when carrying the CED;
 4. Officers shall be responsible for ensuring that their issued CED is properly maintained and in good working order. If an officer discovers that the CED is damaged or inoperable, the officer shall cease its use and promptly notify his/her supervisor and document the specific damage or inoperability issue in a memorandum. The supervisor shall facilitate a replacement CED as soon as practical;
 5. Officers shall not alter the CED from the original factory specifications and markings;
 6. Officers shall not hold both a firearm and a CED at the same time;
 7. Due to the flammable contents in some chemical agent containers, officers shall only carry Department-issued Oleoresin Capsicum (OC) which is non-flammable (water based and will not ignite); and
 8. Officers carrying the CED shall have an Automated External Defibrillator (AED) readily available when carrying the CED. [The AED may be secured in the officer's Department vehicle or other secure location that would be reasonably accessible to the officer while performing his or her duties.]

- C. VERBAL AND VISUAL WARNINGS.** Officers shall provide a verbal warning prior to activating the CED, if feasible, to:

1. Announce a warning to the subject and other officers of the intent to activate the CED if the subject does not comply with an officer's command; and

Commented [sfpd11]: See corresponding comment #5

Commented [DOJ COPS12]: Will this ensure sufficient coverage on all watches to address the need that deploying CEDs is meant to handle?

Commented [DOJ COPS13]: It is recommended to simply state that only authorized and trained officers as determined by the department are approved to carry Tasers. You don't want to be in a position of changing a policy each time you want to expand the authority to carry Tasers. You can still have community and internal discussion of the issue without grounding this leadership prerogative in policy.

Commented [DOJ COPS14]: Not sure how this is part of inspection?

Commented [DOJ COPS15]: Are there enough to support the deployment of the CEDs? If not, why not issue to a supervisor

Commented [sfpd16]: See corresponding comment #6

Unit Order, continued:

2. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community, the officer, or permit the subject to undermine the use of the CED.

If, after a verbal warning, a subject is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and practical under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the CED. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The officer activating the CED shall document that a verbal or other warning was given, or the reason a warning was not given, in the incident report or written statement.

- D. AUTHORIZED USE OF THE CED.** An officer may activate the CED when a subject is:
1. Armed with a weapon other than a firearm, such as an edged weapon or blunt object, and the subject poses an imminent threat to the safety of the public or officers,
 2. Aggressive or violent and poses an imminent threat of injury to the safety of the public or officers.

- E. SPECIAL CONSIDERATIONS.** The activation of the CED on certain subjects should generally be avoided unless the totality of the circumstances indicates that other available force options would be ineffective or would present a greater danger to the public, the subject or the officer, and the officer reasonably believes that the need to subdue the subject outweighs the risk of using the device.

Subjects who may be under the influence of drugs/alcohol or exhibiting symptoms of altered mental state (e.g., nudity, profuse sweating, irrational behavior, extraordinary strength beyond physical characteristics or impervious to pain) may be more susceptible to collateral problems. Officers shall closely monitor these subjects following the application of the CED until they can be examined by emergency medical personnel.

- F. PROHIBITED USE.** Officers are prohibited from using the CED:
1. Unless the subject is armed with a firearm, on the following subjects:
 - a. On a subject who is only a danger to him/herself;
 - b. Female who is known or appears to be pregnant;
 - c. Visibly frail;
 - d. Children (who appear under 14 years of age);
 - e. Subjects whose position or activity may result in collateral injury (e.g., falls from height; operating an automobile, motorcycle or bicycle);
 - f. On a fleeing subject;
 - g. On a subject who is passively resisting;
 - h. Subjects who have recently been sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based OC spray. Department-issued OC spray is not flammable.
 3. To prevent a subject from destroying evidence, such as placing evidence in his/her mouth;

Commented [DOJ COPS17]: Isn't this a reportable use of force? It should be

Commented [DOJ COPS18]: What about active resistance to an arrest?

Commented [DOJ COPS19]: Seems to be a broad category – is it defined in training or force matrix? Active assailant vs. 'aggressive' – can be quite a distinction

Commented [DOJ COPS20]: Euphemism – what specifically are they attempting to address?

Commented [DOJ COPS21]: What, if any, evidence supports the notion that homeless individuals may be more susceptible to an adverse reaction if a CED is used on them?

Commented [SFPD22]: See corresponding comment #7

Commented [DOJ COPS23]: Pretty subjective

Commented [DOJ COPS24]: What if they are a danger to the community? It would be better stated that use of a CED for mere flight only, without other considerations is prohibited. This may be too restrictive.

Commented [DOJ COPS25]: Missing #2?

Unit Order, continued:

4. To psychologically torment, punish or inflict undue pain on a subject;
5. For interrogation purposes or to elicit statements;
6. As a prod or escort device;
7. To rouse unconscious, impaired or intoxicated subjects;
8. In the drive stun mode – activating the CED with the cartridge removed and placing the electrodes upon the skin or clothing of the subject; and)
9. Subjects who are handcuffed or otherwise restrained.

G. TARGET AREAS. Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety does not permit the officer to limit the application of the CED probes to a precise target area, officers shall monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by emergency medical personnel.

H. SUBSEQUENT APPLICATIONS OF THE CED. Officers should apply the CED for only one standard cycle. Thereafter, officers shall evaluate the situation before applying any subsequent cycle. Every application of the CED is a separate use of force, and officers must be able to articulate the reason for each use of the CED.

If the first application of the CED appears to be ineffective in gaining control of a subject, before a subsequent application of the CED is applied, the officer should consider additional factors, including but not limited to whether:

1. The probes are making proper contact;
2. The subject has the ability and has been given a reasonable opportunity to comply; or
3. Verbal commands, other options may be more effective.

No more than one officer shall activate a CED against a single subject at the same time.

I. OFFICER REQUIREMENTS AFTER DEPLOYMENTS/ACTIVATIONS. Officers shall contact the Department of Emergency Management (DEM) and request emergency medical personnel to respond to the scene of a CED application.

Officers shall notify a supervisor of all CED deployments and activations, including all unintentional discharges; pointing the device at a person; laser activation; and arcing the device, in compliance with DGO 5.01, Use of Force.

Confetti tags should be collected and the expended cartridge, along with both probes and wire, should be submitted into evidence. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

J. DUTY TO RENDER FIRST AID. Officers shall render first aid when a subject is injured or claims injury caused by an officer's use of force unless first aid is declined, the scene is unsafe, or emergency medical personnel are available to render first aid. Officers shall continue to render first aid and monitor the subject until relieved by emergency medical personnel.

Commented [DOJ COPS26]: #4 and #5 are crimes and it seems odd to list them. There are other criminal acts that officer could commit with the CED. Generally speaking this type of policy statements are included in other portions of the department's manual.

Commented [sfpd27]: See corresponding comment #8

Commented [DOJ COPS28]: Why is this? Drive stun is an appropriate and reasonable way to utilize a CED under many circumstances.

Drive stun mode has been proven to be effective defense or compliance method for officers engaged in hand-to-hand combat – especially when the suspect pulls out the Taser darts.

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Commented [DOJ COPS29]: The policy may want to limit the total number of cycles an individual can be Tased. For example, many jurisdictions limit total use to 3 cycles after which some other method must be utilized to restrain a combative/dangerous individual.

Commented [DOJ COPS30]: Limit on number of uses?

Commented [DOJ COPS31]: ...and it appears reasonable that another subsequent application would be successful.

Commented [DOJ COPS32]: This is very clear here – why isn't it so in the other use of force policies?

Commented [DOJ COPS33]: Electronic download, saving of dispatch tape, etc?

Commented [DOJ COPS34]: This is a better rendition of the concept than in the other 2 policies and should be used there as well.

Unit Order, continued:

Only appropriate emergency medical personnel should remove CED probes from a person's body. Officers shall treat used CED probes as biohazard sharp objects, such as a used hypodermic needle, and shall use universal precautions when handling used CED probes.

K. DUTY TO PROVIDE MEDICAL ASSESSMENT. Officers shall arrange for a medical assessment and removal of CED probes from a person's body by emergency medical personnel.

L. DUTY TO PROVIDE MEDICAL EVALUATION. All subjects who have been struck by CED probes or who have been subjected to the electric discharge of the device shall be transported by emergency medical personnel for evaluation at a local medical facility as soon as practical.

If a subject refuses medical evaluation, the refusal shall be directed to the on-scene emergency medical personnel and not to the officer. Officers shall document a subject's refusal in the incident report by listing the name and identification number of the emergency medical personnel who obtained the refusal from the subject. The officer shall inform any person providing medical care and the personnel receiving custody of the subject that he or she has been subjected to the application of the CED.

M. BOOKING OF SUSPECT. Anyone subject to criminal charges who has been struck by CED probes or who has been subjected to the electric discharge of the device shall not be detained at a district station holding facility. Officers shall immediately book the arrested subject into the county jail upon release from the medical facility. Officers shall note the use of the CED on the field arrest card on any subject who has been struck by CED probes or who has been subjected to the electric discharge of the device.

N. DOCUMENTATION REQUIREMENTS. Officers shall document all CED deployments and activations, including all unintentional discharges; pointing the device at a person; laser activation; and arcing the device, in an incident report, supplemental incident report or a written statement. Officers shall include the following information in the incident report or written statement:

1. Date, time and location of the incident;
2. The subject's actions necessitating the use of the CED, including the weapon displayed by the subject;
3. Subject's known or suspected drug use, intoxication and other medical problems;
4. De-escalation techniques used by the officer(s);
5. Whether the officer used other force options;
6. The type and brand of CED and cartridge serial number;
7. Whether any display, laser or arc deterred a subject and gained compliance;
8. The number of CED activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications;
9. The distance at which the CED was used;
10. Location of any probe impact;
11. Description of where missed probes went;

Commented [DOJ COPS35]: The COPS Office doesn't know what model ECD SFPD is using but most modern devices have internal memories that should be downloaded as evidence. These memories document the number and length of cycles, date/time, ect. This is important evidence to obtain.

Sample language would be:

"The device's onboard memory shall be downloaded through the data port by a supervisor and saved with the related arrest/crime report."

Commented [sfpd36]: See corresponding comment #9

Commented [DOJ COPS37]: Department should also establish a separate Taser report and an executive level employee (Assistant Chief, etc) should read the submitted Taser reports daily. In addition, a monthly Taser use report should be prepared)

Commented [DOJ COPS38]: Inconsistent with the other policy -- no 'plain language'

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Unit Order, continued:

12. Information about the medical care provided the subject;
13. Whether the subject sustained any injuries;
14. Whether any officers sustained any injuries;
15. Identification of all officers firing CEDs;
16. Identification of all witnesses; and
17. All supervisory notifications required by DGO 5.01, Use of Force.

Commanding Officer of the Tactical Company shall route a copy of all incident reports involving the use of a CED to the Commanding Officer of the Training Division.

Officers at the Police Academy Physical Techniques and Defensive Tactics staff shall analyze all incident reports involving CED use, upon receipt, to identify trends, including deterrence and effectiveness. CED information and statistics, with identifying information removed, shall be made available to the public.

O. SUPERVISOR RESPONSIBILITIES. Supervisors shall respond to calls when they reasonably believe there is a likelihood the CED may be used.

A supervisor shall respond to all incidents where the CED was activated, including negligent or unintentional activations. Upon arrival at the scene, the supervisor shall:

1. Conduct a supervisory evaluation regarding the CED application as required by DGO 5.01.1;
2. Notify a superior officer to initiate an immediate evaluation by the Internal Affairs Division – Admin consistent with the response to an Officer-Involved Discharge;
3. Confirm that any probes that have pierced the subject's skin are removed by medical personnel;
4. Ensure that photographs of probe sites are taken;
5. Ensure that all evidence is photographed, collected and properly booked;
6. Ensure that the subject is medically evaluated prior to being booked into any facility;
7. Ensure that the CED's memory record has been uploaded;
8. Review all incident reports and written statements;
9. Provide replacement CED cartridges to the officer, as necessary;
10. Complete and submit the Supervisory Use of Force Evaluation Form; and
11. Enter the incident into the Use of Force Log and attach one copy of the incident report.

P. OFF-DUTY CONSIDERATIONS. Officers are not authorized to carry or use Department-issued CEDs while off-duty. Officers shall ensure that CEDs are secured in a manner that will keep the device inaccessible to others.

Q. TRAINING. Officers authorized to carry the CED shall be permitted to do so only after successfully completing Crisis Intervention Team (CIT) training and Department-approved CED training. Any officer who has not carried the CED as a part of his or her assignment for a period of six months or more shall be recertified by a Department-approved CED instructor before carrying or using the device.

Proficiency training for officers who have been issued CEDs shall occur bi-annually. A reassessment of an officer's knowledge or practical skill may be required at any time if

Commented [DOJ COPS39]: Does this review by Police Academy and Defensive Tactics staff occur in all other uses of force? This was not included in the other policies.

Commented [DOJ COPS40]: When, how often, what format?

Commented [DOJ COPS41]: How is this supposed to be determined?

Commented [DOJ COPS42]: Is this required by any other jurisdiction?

Commented [DOJ COPS43]: This was not made clear in the other sections on use of force

Commented [DOJ COPS44]: Who is responsible for securing and how?

Commented [DOJ COPS45]: This is a big training commitment. Many agencies do it with annual fire arms qualifications – more efficient

Unit Order, continued:

deemed appropriate by the Department-approved CED instructor. All training and proficiency for CEDs will be documented in the officer's training file.

Command staff, supervisors and investigators should receive CED training for the investigations they supervise, conduct, and review.

Officers who do not carry CEDs should receive training that is sufficient to familiarize themselves with the device and with the tactics of deployment and activation of the CEDs.

The Commanding Officer of the Training Division is responsible for ensuring that all officers who carry CEDs have received initial and bi-annual proficiency training.

Application of CEDs during training could result in injury to personnel and should not be mandatory for certification.

The Commanding Officer of the Training Division shall ensure that all training includes:

1. A review of this Special Operations Bureau Order;
2. A review of DGO 5.01, DGO 5.01.1, DGO 5.02;
3. Performing weak-hand draws or cross-draws to reduce the possibility of unintentionally drawing, pointing and firing a firearm;
4. Target area considerations, to include techniques or options to reduce the unintentional application of probes near the head, neck, chest and groin;
5. Handcuffing a subject during the application of the CED and transitioning to other force options;
6. Scenario-based training;
7. CIT updates;
8. De-escalation techniques; and
9. Restraint techniques that do not impair respiration following the application of the CED.

IV. EXCEPTIONAL CIRCUMSTANCES. If exceptional circumstances occur, an officer's use of force shall be reasonably necessary to protect others or him/herself. The officer shall articulate the reasons for employing such use of force.

Commented [DOJ COPS46]: Why is this section here or what advice is intended. An officer's use of force always should be reasonable to protect himself or others and not limited to exceptional circumstances.

Commented [SFPD47]: See corresponding comment #10

USE OF FORCE REPORTING

The purpose of this order is to set forth Departmental policy and procedures for reporting, evaluating, reviewing, and managing use of force incidents involving Department members.

I. POLICY

- A. REPORTABLE USES OF FORCE.** Officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers shall also report any use of force involving physical strikes or contact, the use of personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, conducted energy devices, and firearms. Additionally, officers shall report the intentional pointing of conducted energy devices and firearms at a subject.
- B. NOTIFICATION OF USE OF FORCE.** An officer shall notify his/her supervisor immediately or as soon as practical of any reportable use of force. A supervisor shall be notified if an officer receives an ~~and~~ allegations of excessive force.
- C. EVALUATION OF USE OF FORCE.** A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force as set forth in DGO. 5.01, Use of Force, and DGO 5.02, Use of Firearms and Lethal Force.
- D. EXCESSIVE USE OF FORCE.** Every allegation of excessive force shall be subject to the reporting and investigative requirements of this General Order and applicable disciplinary policies.

Commented [DOJ COPS1]: Should be reported even absent injury complaint – risk management. Also, the use of body weapons seems to be an odd term

Commented [DOJ COPS2]: In the current climate, the COPS Office would suggest reporting all uses of force that exceed un-resisted handcuffing.

Commented [DOJ COPS3]: Why is this here? Any use of force is notified, so why delineate excessive allegations? It is covered below in D

Commented [DOJ COPS4]: ... And subject to the procedures in their personnel misconduct investigative policy?

II. PROCEDURES

- A. OFFICER'S RESPONSIBILITY.** Any reportable use of force shall be documented in detail in an incident report. Descriptions shall be in plain language and shall be as specific as possible.
 - 1. When the officer using force is preparing the incident report, the officer shall include the following information:
 - a. The subject's action necessitating the use of force, including the threat presented by the subject;
 - b. Efforts to de-escalate prior to the use of force;
 - c. Any warning given and if not, why not;
 - d. The type of force used;
 - e. Injury sustained by the subject as set forth in DGO 5.01.II.E, Use of Force;

Commented [DOJ COPS5]: Is this general narrative? There should be a specific form or template for reporting use of force rather than open narrative

Commented [DOJ COPS6]: What exactly does this mean? There are certain technical aspects to using force that sometimes need to be described using technical terms in order to be as accurate and specific as possible.

- f. Injury sustained by the officer(s);
- g. Information regarding medical assessment or evaluation, including whether the subject refused;
- h. The supervisor's name, rank, star number and the time notified.

Commented [DOJ COPS7]: Include third party as officer, suspect, or third party could form the basis of a reportable use of force, e.g., officer uses force to stop or prevent imminent harm to a third party.

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Commented [DOJ COPS8]: Supervisors should respond

- 2. In the event that the officer using force is not the officer preparing the incident report, the officer using the force shall:
 - a. Ensure that he/she is clearly identified in the incident report; and
 - b. Prepare a supplemental report or a statement form with the above information.

Commented [DOJ COPS9]: The policy should include a statement that if multiple officers are involved in a use of force that all officers are required to submit a report describing their actions during the incident.

In the event that an officer cannot document his/her use of force due to exceptional circumstances, such as incapacitation, another officer shall document this use of force in an incident report, supplemental incident report or statement form at the direction of a supervisor. The officer using force shall document the use as soon as reasonably possible.

Commented [DOJ COPS10]: This is confusing. Witness officers should be completing their own documentation. The officer(s) using the force should write their own reports and complete the appropriate forms at whatever point they are reasonably able to do so.

B. SUPERVISOR'S RESPONSIBILITY. When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears reasonable and within the provisions of this order. The supervisor shall:

Commented [sfpd11]: See corresponding comment #1

- 1. Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior officer's senior direct supervisor;
- 2. Observe the scene is secured and injured subjects or officers;
- 3. Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. Uncertain situations or the number of witnesses may preclude identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;
- 4. Ensure photographs of injuries are taken and all other evidence is booked;
- 5. Remain available to review the officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in II.A above;
- 6. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
- 7. Complete and submit the Supervisory Use of Force Evaluation form, providing pertinent information and a preliminary determination indicating whether the force used appears reasonable, by the end of watch;
- 8. Complete the Use of Force Log (SFPD 128) and attach one copy of the incident report by the end of watch.

Commented [DOJ COPS12]: Why? Shouldn't this responsibility fall to the supervisor most directly involved, or the involved officer's specific supervisor? There may also be cases where the less tenured supervisor is the most knowledgeable about a particular force option or set of circumstances.

Commented [DOJ COPS13]: What does this mean? What is an "uncertain situation"?

Commented [DOJ COPS14]: Should use a use of force report

Commented [DOJ COPS15]: If not approved, then what?

Commented [DOJ COPS16]: Are these treated the same? What are the procedures for death/bodily harm?

Commented [DOJ COPS17]: Notification should be made anytime serious bodily injury or deadly force is used. It is recommended to include a separate section for procedures that involves serious bodily injury or death. For example, shouldn't a specialized force investigations team, the DA, civil liability team, PIO, etc. be notified when a deadly force situation occurs? Maybe this is covered in another policy but it should be in policy.

When a supervisor has determined that a member's use of force is unreasonable or that an officer has applied force that results in serious bodily injury or death, the supervisor shall notify his/her superior officer.

Commented [DOJ COPS18]: Consider empowering the first line supervisor to initiate complaints regarding the use of force following established protocols.

C. **SUPERIOR OFFICER'S RESPONSIBILITY.** When a superior officer is notified of unreasonable force or force that results in serious bodily injury or death, the superior officer shall:

1. Respond to the scene and assume command, as practical;
2. Notify commanding officer and ensure all other notifications are made consistent with DGO 1.06, Duties of Superior Officers;
3. Make the required notification to the Office of Citizen Complaints if a citizen complaint is made;
4. Determine which unit(s) will be responsible for the on-going investigation(s);
5. Prepare a report containing preliminary findings, conclusions and/or recommendations, as if appropriate.

Commented [DOJ COPS19]: Why are these linked? One is a necessary action the other is misconduct. Linking them associates all force with misconduct.

Commented [DOJ COPS 20]: Does SFPD notify the DA when an unreasonable use of force incident occurs? This should occur to allow DA investigators to be present from the beginning.

Commented [DOJ COPS21]: If force is perceived to be unreasonable a complaint should be initiated regardless of whether the citizen makes a complaint.

Commented [DOJ COPS22]: How is this determined? Established policy? Who investigates such incidents. What are the protocols and where defined?

Commented [DOJ COPS23]: What is required? Who is responsible? What notifications?

III. OTHER REQUIREMENTS.

A. **USE OF FORCE LOG.** The following units shall maintain a Use of Force Log:

1. District Stations
2. Airport Bureau
3. Department Operations Center

B. **RECORDING PROCEDURES.** Supervisors shall document a reportable use of force for all officers – including those officers assigned to specialized units – in the Use of Force Log at the District Station where the use of force occurred, except as noted below:

1. Any use of force occurring outside the city limits, except at the San Francisco International Airport, shall be recorded in the Department Operations Center's Use of Force Log.
2. Any use of force occurring at the San Francisco International Airport shall be recorded in the Airport Bureau's Use of Force Log.

C. **DOCUMENT ROUTING.**

1. Commanding officers shall forward the original completed Supervisor's Use of Force Evaluation Form(s) to the Commanding Officer of Risk Management and one copy to the Commanding Officer of the Training Division and another to the officer's Bureau Deputy Chief.
2. On the 1st and 15th of each month, commanding officers shall sign the Use of Force Log and send it, along with one copy of the incident report, to their respective Bureau Deputy Chief and one copy of the Use of Force Log with copies of the incident reports to the Commanding Officer of the Training Division.

Commented [DOJ COPS24]: Does SFPD have an internal database with use of force information that can be accessed throughout the organization by executive leadership?

Commented [DOJ COPS25]: Once a week? What about electronic entry into a database or other such holder?

Commented [DOJ COPS26]: Who has responsibility for monitoring repeat uses of force? Anomalies in force incidents?

Commented [DOJ COPS27]: Is this an assessment? How is this information gathered and used? Does it direct interventions?

Commented [DOJ COPS28]: Quarterly reports are too infrequent. The Chief should have use of force data available to him in real-time and be informed on use of force trends.

D. **TRAINING DIVISION RESPONSIBILITIES.** The Commanding Officer of the Training Division will maintain controls that assure all Use of Force Logs and Supervisor Evaluations are received, and shall perform a non-punitive review to ascertain the number, types, proper application and effectiveness of uses of force. The information developed shall be used to identify training needs. The Commanding Officer of the Training Division shall report quarterly/monthly to the Chief of Police on

the use of force by Department members that in a format that includes comprehensive use of force statistics consistent with current federal, state and local laws on use of force reporting.

Commented [DOJ COPS29]: Minimum reporting standards?

The Commanding Officer of the Training Division will provide yearly a written Use of Force report to the Police Commission, which will also be posted to the Department's website.

Commented [DOJ COPS30]: What seems to be missing in this policy is the responsibilities of some type of use of force investigative team

DRAFT