

DEPARTMENT OF POLICE ACCOUNTABILITY

CITY AND COUNTY OF SAN FRANCISCO



Paul Henderson
Interim Executive Director

October 5, 2017

Re: Department of Police Accountability's Suggested Revisions to the San Francisco Police Department's Proposed Taser Policy

Dear San Francisco Police Commissioner President L. Julius M. Turman:

Below are the Department of Police Accountability's suggested revisions to the San Francisco Police Department's proposed taser policy.

1. PROPOSED TASER POLICY SHOULD INCLUDE DPA INVESTIGATIONS OF TASER INCIDENTS INVOLVING SERIOUS INJURY OR DEATH OR OTHER SPECIAL CIRCUMSTANCES.

In 2016, San Franciscan residents demonstrated their overwhelming support of increased civilian oversight of the San Francisco Police Department by voting for Propositions G and H which expanded the Department of Police Accountability's roles and powers.¹ Consistent with the public's support of increased civilian oversight of SFPD, the DPA suggests that SFPD's proposed taser policy include DPA's independent investigation of taser incidents involving serious injury or death or other special circumstances as enumerated below:

EXTERNAL INVESTIGATIONS: SFPD shall immediately notify the Department of Police Accountability to conduct an investigation in the following circumstances:

1. A subject is seriously injured or dies after an ECW² deployment

¹ Proposition G requires the DPA to independently investigate all officer-involved shootings involving the San Francisco Police Department. Proposition H requires that every two years, the DPA conduct a performance audit of SFPD's use of force and misconduct cases.

² As explained more fully in section 8, the Department of Police Accountability recommends that consistent with the taser manufacturer Taser International (now Axon), the Police Executive Research Forum (PERF), the International Association of Chiefs of Police (IACP), and several law enforcement agencies, tasers be identified as a weapon instead of a device. The DPA uses the term Electronic Controlled Weapon (ECW) or taser throughout this letter.

2. An officer deploys an ECW multiple times or for a duration exceeding the policy standards
3. The ECW was used in a high-risk situation (e.g. elevated area, in water)
4. The ECW was used against a person from a heightened-risk population.
5. The ECW use indicates a substantial deviation from training or policy

(The DPA first recommended this provision in DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017; Section III (O), page 14.)

2. PROPOSED TASER POLICY SHOULD INCLUDE QUARTERLY TASER REVIEW BOARD AS PREVIOUSLY SUGGESTED BY BOTH THE DPA AND CHIEF SCOTT.

Consistent with the public's support of increased civilian oversight of SFPD, the DPA previously suggested that the Department's proposed taser policy include a taser review board, comprised of representatives from SFPD, the DPA, Police Commission and the public, who meet and review taser incidents on a quarterly basis. (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (R)). Similar to the DPA, San Francisco Police Chief William Scott has proposed a quarterly panel to review all CED activations. (See Chief Scott's Written Statement Regarding Controlled Electronic Devices for the San Francisco Police Department.³). Chief Scott's suggested panel representatives are identical to DPA's except that the DPA also suggests that a Chief-appointed ECW coordinator also attend.⁴ Chief Scott proposes that the panel not only review individual taser incidents but also identify trends to improve SFPD training and policy.⁵ Combining the Chief's and DPA's proposals, the DPA suggests the following provisions to establish a quarterly taser review board:

ECW REVIEW BOARD. On a quarterly basis, the ECW Review Board will meet and review every incident involving ECW deployment and also review use of force and taser data to identify trends and propose policy and training recommendations.

1. The ECW Review Board will include the Police Chief's designee, the Deputy Chief in charge of Risk Management, the Officer-in-charge of the Police Academy, the ECW Coordinator, a Police Commissioner, the Department of Police Accountability's Executive Director or designee, and a community member(s).

³Chief Scott's written statement is available at <http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/Chief%20Scotts%20statement%20regarding%20CEDs.pdf>.

⁴Chief Scott stated that "[p]anel members will include members from the command staff, the commanding officer of the Risk Management Division, the commanding officer of the Training Division, a representative from the Police Commission, a representative from the Department of Police Accountability, and a community member."

⁵Chief Scott stated that "[t]he panel will not only analyze individual CED uses but it will identify trends that can help us improve our training and policy."

2. The ECW Board shall analyze the incident involving ECW deployments to include the circumstances and performance of Department members during and proximate to the event, including force options and tactics and decision making, the member's compliance with Department policy or procedure, the justification for the original encounter, detention or arrest, and policy and training recommendations arising from the incident. The panel will also review use of force and taser data to identify trends and propose policy and training recommendations.

3. PROPOSED TASER POLICY SHOULD INCLUDE A CHIEF-APPOINTED ECW COORDINATOR TO OVERSEE THE TASER PROGRAM INCLUDING CURRICULUM DEVELOPMENT, TRAINING, WEAPON TESTING, INCIDENT REVIEW, DATA COLLECTION, ANALYSIS, REPORTING, AND SUBJECT MATTER EXPERTISE FOR THE TASER REVIEW BOARD.

The DPA recommends that the Chief appoint a sworn officer as an ECW coordinator to oversee the taser program and that the role and responsibilities of the taser coordinator be delineated in SFPD's proposed policy. Currently, SFPD has Chief-appointed coordinators who oversee the Department's Crisis Intervention Team program and SFPD's Language Services. The roles and responsibilities of the CIT coordinator and the Language Liaison officer are explicitly delineated in the Department General Orders Department General Order 5.21 (Crisis Intervention Team (CIT) Response to Person In Crisis Calls For Service)⁶ and Department

⁶ DGO 5.21 states in pertinent part:

IV. CIT ADMINISTRATION

- A. The Chief of Police shall designate a member of the Department, at the rank of lieutenant, to serve as the CIT coordinator. The CIT coordinator's responsibilities include but are not limited to:
1. Implement and evaluate the CIT program.
 2. Develop and/or coordinate CIT (introductory, advanced, and in-service) related training.
 3. Supervise the CIT administrator.
 4. Collaborate with and provide the District Station CIT Liaison Officers with CIT roll call training, information on emerging issues, and provide briefings on recent CIT related incidents.
 5. Attend CIT Mental Health Working Group meetings and maintain partnerships with mental health providers, mental health consumers, and mental health advocates and engage in community outreach.
 6. Collaborate with other agencies (DEM, DPH, etc.) to identify and recommend best practices for inter-agency responses to person in crisis calls.
 7. Establish CIT screening criteria.
 8. Coordinate, review and analyze CIT data.
 9. Coordinate/Update the CIT website.
 10. Provide reports and recommendations, in consultation with the Mental Health Working Group, to the Chief of Police, the Command Staff, and the Police Commission on the Departments response to person in crisis incidents on a quarterly basis.

General Order 5.20 (Language Access Services for Limited English Proficient (LEP) Individuals)⁷, respectively. Delineation in a Department General Order of these coordinators'

11. The CIT coordinator will meet with stakeholders, subject matter experts and the CIT Mental Health Working Group to identify best practices for interacting with persons in crisis incidents and make recommendations to the Chief and the Command Staff.
 12. The Department shall make reasonable efforts to ensure a minimum of 20-25% of the Patrol Divisions are CIT trained.
- B. A CIT Administrator shall be assigned to assist the CIT Coordinator with the administrative tasks of the CIT program, such as, training and scheduling, data collection, webpage management, program evaluations, incident debriefings and report review and any other duties as designated by the CIT coordinator.

⁷ DGO 5.20 states in pertinent part:

O. RECORDING AND TRACKING OF LANGUAGE ACCESS EFFORTS: The Deputy Chief of the Administration Bureau will be responsible for, and will direct as necessary, divisions within the Bureau to address translation and interpreter services, develop training, respond to language access concerns/suggestions by staff and the public, review Department progress and coordinate budgetary, procurement and contracting matters related to language access.

1. Language Access Liaison Officer

- a. The Department shall designate a Language Access Liaison officer. This officer shall prepare quarterly (or more frequently as needed), a written report on LEP matters, through the chain of command, to the Chief of Police.
- b. The Language Access Liaison officer's duties include but are not limited to:
 1. Monitoring compliance with the General Order;
 2. Coordinating language access training at the Academy;
 3. Coordinating interpreter training for qualified bilingual members and employees;
 4. Coordinating telephonic and third party interpreter services as required by this order;
 5. Working with the Department of Emergency Management to establish a system that immediately identifies LEP calls and promptly dispatches language assistance, preferably with a bilingual officer speaking the needed language;
 6. Coordinating as needed meetings with the Office of Citizen Complaints and community groups to discuss and resolve language access complaints;
 7. Overseeing the LEP data collection as detailed below; (this will require implementation of RMS); and
 8. Preparing a biannual report for the Police Commission addressing the Department's language access efforts.

2. Each year, the Department shall collect the information required by San Francisco Administrative Code sec. 91.9(b)(1-14). In addition, the Department shall collect LEP data as to all calls for service, contacts and investigations that require an incident report.

3. In a yearly report to the Police Commission, the Department shall provide data concerning 1) the number of calls for service, contacts and investigations involving LEP persons where an incident report was required; 2) the manner in which interpretation services were provided; 3) any complaints concerning language access which have been forwarded by the Office of Citizens

roles, including their responsibilities concerning data collection, analysis and reporting fosters accountability to both the public and the Police Commission. Having reviewed Oakland Police Department's ECW's Coordinator's duties and responsibilities⁸, the DPA suggests that SFPD's proposed taser policy includes the following provisions to establish a Chief-appointed ECW coordinator:

ECW COORDINATOR

1. The Chief shall appoint an ECW Coordinator who is the Department's lead subject matter expert in the use of the ECW and is responsible for managing the Department's ECW Program.
2. Members reporting ECW deployments or activations shall provide a copy of the Use of Force Report to the ECW Coordinator for data collection, analysis and training purposes;
3. The ECW Coordinator's responsibilities include 1) ECW training; 2) issuing, monitoring, maintaining and testing ECW equipment; 3) ECW data collection and analysis; 4) reviewing all ECW deployments; 5) providing subject matter expertise for ECW Review Board.
4. ECW Coordinator's Training Responsibilities: The ECW Coordinator is responsible for:
 - Developing the Department's ECW Training Program curriculum
 - Approving certified ECW instructors as Department instructors
 - Providing training in the use of the ECW and any related Departmental policies to the members of the Department
 - Facilitating scenario-based training where the use of the ECW is considered
 - Training specified supervisors on the procedures for downloading information from the ECW
 - Providing updated training and re-certification on an annual basis
 - Providing training to outside agencies (e.g. dispatcher at Department of Emergency Management)
5. ECW's Coordinator's Record Keeping Duties: The ECW Coordinator is responsible for data management associated with the ECW program. Data management includes the following duties:
 - updating and maintaining all training records

Complaints; and 4) the Department's resolution to any language access complaints. This report shall be a public document that is posted on the Police Department and Police Commission's website and provided to the Office of Citizen Complaints in advance of its presentation to the Police Commission.

⁸ See Oakland Police Department's Training Bulletin, Use of an Electronic Control Weapon (ECW), Index Number III-H.1 (Exhibit A).

- recording serial numbers of all issued air cartridges
- recording serial numbers of all issued ECWs
- recording serial numbers of privately owned ECWs
- downloading ECS following an activation when a subject has been struck by a probe or received electrical stimulation
- computer data entry for deployments
- recording the total number of ECW discharges by each member

The ECW Coordinator may designate Department ECW instructors or sergeants to download ECWs to facilitate investigations and reporting requirements.

6. ECW's Coordinator's Review of ECW Deployments

- The ECW Coordinator shall review every ECW activation, including evaluating the reasonableness of the officer's actions, assessing trends within the department, determining whether officers are using ECWs at different rates or in different manners than similarly situated peers, analyzing whether ECWs are being used in a disproportionate manner against certain populations or high risk groups, and recommending training and policy changes to enhance public and officer safety.
- The ECW Coordinator shall be notified and respond to any ECW activation that results in serious bodily injury or death or the ECW activation precedes an officer-involved shooting.
- For any ECW activation that results in serious bodily injury or death, the ECW Coordinator shall review the incident and provide a written analysis about whether the officer's deployment of the ECW was reasonable, including the officer's tactics and decision-make that preceded the deployment of the taser, and any training or policy recommendations.

7. ECW Coordinator's Equipment and Testing Responsibilities

- The ECW Coordinator is responsible for issuing and maintaining the Department's ECWs and cartridges
- The ECW Coordinator's weapon maintenance duties include 1) weapon inventory and assignment; 2) ancillary equipment inventory and issue; output testing and measurement; software updates; functional testing; periodic and incidental data download
- The ECW Coordinator is responsible for conducting quarterly inspection, maintenance, and independent testing of the ECWs to ensure that they are operating within the manufacturer's recommended parameters.

4. SFPD'S CURRENT STANDARD FOR TASER USE IS TOO BROAD BECAUSE IT PERMITS TASER USE FOR MINIMAL CONDUCT SUCH AS AN ATTEMPTED TOUCHING OF AN OFFICER OR ANOTHER.

SFPD's four proposed standards for when officer may activate their tasers include 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 immediate threat to the safety of the public, him/herself or officers; or
- (2) assaulting the officer or another person; attempting to assault the officer or another person; or verbally or physically displays an intention to assault the officer or another person or
- (3) violently resisting an officer's attempt to lawfully detain or arrest subject; or
- (4) exhibiting actions likely to result in serious bodily injury or death to public, officer or self. (See SFPD's Taser Policy, (III)(H), 8/25/17).

Although the term "assault" may conjure the image of a physical attack, the legal definition of an assault is a willful act, coupled with the present ability, to apply physical force to another. (See for e.g. Caljic Criminal 9.00 Assault Defined.) At common law as assault was defined as an attempted battery. Because an assault involves an attempt to apply any degree of force, an assault can include an attempt to tap the shoulder of an officer or another individual or an attempt to touch the arm of an officer or another individual.

In addition to assault being too broad a term, the proposed term "attempting to assault the officer or another person" is equally problematic. Because an assault is itself an attempt to commit a crime, there is no crime of an attempted assault. (See *In re James* (1973) 9 Cal.3rd 517.)

While the Department's introduction to the standard include some of the important factors to determine the appropriateness of using the taser, significant ones have not been included. SFPD's current policy states that "the reasonableness of taser use is based upon the totality of the circumstances, including but not limited to, the subject's level of resistance, the subject's apparent age and size; and the feasibility of lesser force options." (See SFPD Proposed Taser Policy (III)(H), 08/25/17, page 5.) Noticeably absent from SFPD's proposed standard is the severity of the crime at issue and whether the individual is in mental health crisis. The Ninth Circuit has emphasized the importance of these factors: "The problems posed by, and thus the tactics to be employed against, an unarmed, emotionally distraught individual who is creating a disturbance or resisting arrest are ordinarily different from those involved in law enforcement efforts to subdue an armed and dangerous criminal who has recently committed a serious offense." *Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 829 (9th Cir. 2010)(quoting *Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83. "[T]he use of force that may be justified by" the government's interest in seizing a mentally ill person,

therefore, “differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community.” *Id.*

The Fourth Circuit in *Armstrong v. Pinehurst* (4th Cir.2016) 812 F/3d 892 similarly emphasized the decedent’s mental illness and that he had committed no crime in ruling that the officers had used excessive force by tasing him. The 4th Circuit stated, “where, during the course of seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a taser in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force. While qualified immunity shields the officers in this case from liability, law enforcement officers should now be on notice that such taser use violates the Fourth Amendment.” (*Armstrong* at p.910).

SFPD’s proposed standard for tasers permits officers to use of an intermediate weapon that causes a high degree of pain and foreseeable risk of physical injury for conduct such as an attempt to touch or pat an officer or another individual. SFPD’s proposed standard would permit officers to use considerably more force than the threat posed.

The DPA suggests that the standard for taser use be condensed into one standard that incorporates an immediate threat of bodily harm to the officer or others.

The DPA suggests the following standard for taser deployment:

The subject is causing bodily harm or the officer is satisfied, on reasonable grounds, that the subject’s behavior will immediately cause bodily harm.

Even if the above-threshold is met, officers are prohibited from deploying a taser unless 1) no lesser force option has been, or will be, effective in eliminating the risk of bodily harm; and 2) de-escalation and/or crisis intervention techniques have not been or will not be effective in eliminating the risk of bodily harm.

This standard is based upon the Braidwood Commission’s recommendations after lengthy evidentiary hearings followed by two comprehensive reports on the death of Robert Dziekanski who died within minutes after being tasered at the Vancouver International Airport in October 2007. For consistency with both SFPD Use of Force policy and *Graham v. Connor* (1989) 490 U.S. 386, the DPA has used the term “immediate threat” instead of “imminent threat” that the Braidwood Commission used. (See “Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons” Braidwood Commission of Inquiry on Conducted Energy Weapon Use (B.C), June 2009, pages 297-310, Attachment B.⁹)

⁹The Braidwood Report is available at <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/braidwoodphase1report.pdf>.

5. THE PROPOSED POLICY SHOULD KEEP THE DEPARTMENT'S PREVIOUS PROVISION THAT LIMITED TASER DEPLOYMENT TO THREE CYCLES OR 15 SECONDS UNLESS DEADLY FORCE WOULD BE PERMITTED.

The Department's proposed policy requires officers to justify each 5 second cycle of taser use which is a sound requirement. The other essential component includes prohibiting more than three cycles or 15 second because of the increased risks of death or serious bodily injury for continued, prolonged or cumulative use. The Department's current proposal has eliminated this restriction. (SFPD's Proposed Taser Policy (III)(D)).

DPA suggests that the following provision remain in the Department's proposed policy which currently appear with strike-throughs:

Officers shall use the minimum number of cycles necessary to place the person into custody, and in any event, unless lethal force is justified, shall not employ more than three cycles or 15 total seconds of a CED against a subject during a single incident.

6. THE PROPOSED POLICY SHOULD LIMIT STUN MODE USE TO COMPLETING A CIRCUIT OR WHEN DEADLY FORCE WOULD BE PERMITTED.

The DPA previously suggested that the taser in drive stun mode should be used for the limited purpose of completing the incapacitation circuit. SFPD is currently proposing to permit drive stun mode as a "countermeasure to gain separation between officers and the subject so that officers can consider other force options." (See proposed DGO 5.02 (III)(F)(2)). The DPA recommends that the proposed policy should continue to limit the use of the taser in stun mode, especially in light of *Armstrong v. Pinehurst*, discussed below.

The 4th Circuit in *Armstrong v. Pinehurst* (4th Cir.2016) 812 F.3d 892 directly addressed police use of the taser in stun-gun mode, including the Police Executive Research Forum (PERF), the Department of Justice's and Taser International's own warnings about police reliance on the stun-gun mode.

Mr. Armstrong suffered from both bipolar and schizophrenia, had not taken his medication for five days and was poking holes in his skin to let out the air. After he voluntarily accompanied his sister to the hospital where an evaluation for an involuntary commitment order was initiated, he became frightened and walked away. Three officers and two security guards attempted to remove him from a stop sign post he had wrapped himself around. An officer tasered him in drive stun mode five separate times over the period of approximately two minutes. The tasing actually increased Mr. Armstrong's resistance. The five officers removed Mr. Armstrong, laid him face down on the ground. He stopped breathing and died.

The *Armstrong* court first noted that several other courts had reviewed taser cases and emphasized the severe pain they inflicted. The 4th Circuit then addressed the police use of stun-gun mode against Mr. Armstrong:

These observations about the severe pain inflicted by tasers apply when police officers utilize best practices. The taser use at issue in this case, however, contravenes current industry and manufacturer recommendations. Since at least 2011, the Police Executive Research Forum (“PERF”) and the Department of Justice’s Office of Community Oriented Policing Services (“COPS”) have cautioned that using drive stun mode “to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation.” PERF & COPS, 2011 Electronic Control Weapon Guidelines, at 14 (March 2011) (emphasis omitted). The organizations, therefore, recommend that police departments “carefully consider policy and training regarding when and how personnel use the drive stun mode[] and . . . discourage its use as a pain compliance tactic.” Id. In 2013, moreover, Taser International, the manufacturer of the taser Appellees used in this case, warned, “Drive-stun use may not be effective on emotionally disturbed persons or others who may not respond to pain due to a mind-body disconnect.” Cheryl W. Thompson & Mark Berman, Stun guns: ‘There was just too much use,’ Wash. Post, Nov. 27, 2015, at A1. Taser users, the warning goes on, should “[a]void using repeated drive-stuns on such individuals if compliance is not achieved.” Id. Even the company that manufactures tasers, in other words, now warns against the precise type of taser use inflicted on Armstrong. (See *Armstrong*, 810 F.3d 892, 902-903, emphasis added, Attachment C.)

In light of warnings from the *Raymond* Court, PERF, DOJ’s COPS, and Taser International itself, other than using the stun mode for completing the circuit, it is a dangerous, ineffective mode that often increases resistance instead of compliance. If the Department were to ignore these warnings, than the DPA suggests that at a minimum, stun mode should be limited to those situations where deadly force would be permitted.

7. PROPOSED TASER POLICY SHOULD INCLUDE DPA’S SUGGESTED DATA COLLECTION TO ENABLE COMPREHENSIVE ANALYSIS OF THE WEAPON’S USE, EFFECTIVENESS, AND TRENDS AND TO FOSTER POLICY AND TRAINING RECOMMENDATIONS.

The DPA suggested twelve factors for taser data collection in its July 7, 2017 suggested revisions to SFPD’s proposed taser policy. As explained below, data concerning these twelve factors would enable a more robust analysis of the weapon’s use, effectiveness and trends and would assist in policy and training recommendations. The DPA suggests that information not immediately available to the officer writing the incident report or the supervisor completing the Use of Force form such as the weapon’s operability, toxicology results and medical evaluation (identified below as Nos.8, 10 & 11 below) shall be provided to the ECW coordinator as soon as such information is available. The DPA suggests that the following factors be included:

- 1. Identifying and descriptive information of the suspect including weight, height, age, membership in an at-risk population, race, ethnicity, gender.** (See DPA’s Suggested Revisions to SFPD’s Taser Policy submitted on July 7, 2017, Section III (O)(3).)

This specificity is necessary to determine rates of use, injury, death, and effectiveness on specific populations and compliance with SFPD policies and procedures. The current Use of Force Supervisor form does not currently collect data at at-risk populations that Taser International has identified in its warnings. (See e.g. Taser International's "Taser Handheld CEW Warnings, Instructions, and Information: Law Enforcement (May 19, 2017), pages 1-6.)

- 2. Identifying and descriptive information of officer(s) deploying the ECW.** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(5)).

This specificity is necessary to analyze rates of use, injury, death and effectiveness according to officer demographics, such as years of service, type of assignment, height, age, gender, ethnicity, race etc. (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O) (5).)

- 3. Whether officers also displayed their firearm or an Extended Range Impact Weapon when the ECW was displayed.** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O) (12).)

To evaluate the effectiveness of force options in any incident, including whether less-lethal or lethal coverage was provided at the same time the ECW was displayed, its necessary to include data about the various weapons that were used simultaneously to obtain compliance.

- 4. The duration of each ECW cycle, the duration between cycles, and the duration that the subject was actually shocked.** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O) (14).)

Such specificity is necessary to determine the cumulative length of ECW exposure to evaluate the rate of use, injury, death, effectiveness, and compliance with SFPD policy and procedures.

- 5. The type of crime/incident the subject was involved in.** (See DPA's Suggested Revisions to SFPD's Taser Police submitted on July 7, 2017, Section III (O)(16).)

The type of crime/incident is essential to evaluating issues of appropriate force, proportionality and threat assessment.

- 6. The type of clothing the subject wore.** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(17).)

The subject's clothing (or lack thereof) is relevant to the effectiveness of taser deployment; additionally, the lack thereof (i.e. individual found naked and directing traffic) can be indicative of a mental health crisis call. Currently, the Supervisor's Use of Force form does not includes a subject's mental health condition.

7. **Description of ECW failure (weapon failure, subject refused to comply, distance too great etc.)** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(20).)

Specificity as to the causes of the weapon's failure are essential to evaluate weapon effectiveness, incident analysis, training and policy issues.

8. **Test results for the weapon's operability and electrical output.** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(25).)

The test results for the weapon's operability and electrical output are essential to evaluate the effectiveness of the weapon, incident analysis, and training and policy issues.

9. **Terrain and weather conditions during ECW use.** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(26).)

Factors such as wind and the angle at which the taser is deployed (uphill vs. downhill) impact weapon effectiveness and thus, data concerning terrain and weather conditions are relevant to weapon effectiveness, incident analysis, and training and policy issues.

10. **The type of mode used (display only, red-dot compliance, incapacitation, pain compliance, or combination thereof).** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(27).)

Because a taser can be used in several modes, the specificity about the manner in which the weapon is used is essential to evaluate the weapon's effectiveness (in its various modes, incident analysis, and training and policy issues).

11. **The toxicology test results** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(28).)

The toxicology test results are relevant to the incident analysis, weapon effectiveness, and impact on high-risk populations.

12. **The results of any medical evaluation conducted.** (See DPA's Suggested Revisions to SFPD's Taser Policy submitted on July 7, 2017, Section III (O)(29).)

Medical evaluation is relevant to determining officer and suspect injuries, weapon effectiveness, incident analysis and proportionality.

8. THE PROPOSED POLICY SHOULD CALL TASERS “WEAPONS” INSTEAD OF “DEVICES” AND INCLUDE THAT TASERS MAY CAUSE OR CONTRIBUTE TO DEATH AND SERIOUS BODILY INJURY.

Throughout the discussions on tasers, the DPA has suggested that tasers be called weapons instead of devices to more accurately describe their role and the risks associated with. Several organizations including the Police Executive Research Forum, the International Association of Chiefs of Police and the manufacturer itself use the term “weapon” and not “device.”


In 2010, the Police Executive Research Forum announced that it would no longer use the term “Conducted Energy Devices (CED)” and instead would use the term “Electronic Control Weapons.” Concerning its switch to “Electronic Control Weapons” with the release of its new guidelines, PERF explained that ECW is a “term already used by some organizations, in order to reflect the growing awareness that these tools are not harmless and that they are in fact weapons.” (See PERF Newsletter “Subject to Debate,” August 2010, page one; also PERF’s 2011 Electronic Controlled Weapons Guidelines, page 3.) Similar to PERF, the International Association of Chiefs of Police (IACP) uses the term Electronic Control Weapons throughout its 2010 model ECW policy. Law enforcement agencies that call tasers “weapons” include Oakland Police Department (Electronic Control Weapon), Seattle Police Department (Conducted Electrical Weapon), Memphis Police Department (Conducted Electronic Weapon) and Bart Police.

Between 2008 and 2013, Taser International stopped calling their taser a “device” and began calling it a weapon. (See Taser International’s April 28, 2008 Product Warnings: Law Enforcement for Electronic Control Device (ECD); Taser International’s March 1, 2013 Taser Handheld Conducted Electrical Weapons (CEW) Warnings, Instructions, and Information: Law Enforcement.)

The DPA suggests that the seriousness of a taser should be conveyed to both the officers and the public by accurately describing it as a weapon. Taser International’s warnings include that CEWs may cause death or serious injury. Officers need to be made aware that in certain circumstances and with certain populations, there is a risk that taser use may cause or contribute to death or serious injury.

In conclusion, I look forward to discussing these revisions with you and the Police Department at your earliest convenience.

Sincerely,


Paul Henderson
Executive Interim Director

cc: Police Commissioners Sonia E. Melara and Bill Ong Hing
Attachments A-C