

Kilshaw, Rachael (POL)

From: Eric Vanderpool <esvanderpool@gmail.com>
Sent: Friday, January 19, 2018 7:34 AM
To: Kilshaw, Rachael (POL)
Cc: Adwan, Rania (HRD)
Subject: Re: Draft Appendix of ECD review Board
Attachments: SFPD draft ECD Appendix dated 112217 with E Vanderpool comments.docx

Sgt. Kilshaw and Ms. Adwan.

Please find attached a copy of the ECD Appendix regarding the ECD Review Board, which includes my comments.

Thanks much. Have a great weekend.

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On Fri, Jan 12, 2018 at 1:24 PM, Kilshaw, Rachael (POL) <rachael.kilshaw@sfgov.org> wrote:

Good Afternoon All:

The Department submitted the attached document describing the ECD Review Board, the oversight portion on the use of ECDs. This document will be reviewed by the Police Commission on the same night as the Commission considers an ECD policy. Each item (policy and appendix) will be discussed as separate agenda items.

As members of the ECD working group, Commissioner Melara is asking for your comments regarding the draft document. Please provide your responses to the Commission Office no later than **Friday, January 19, 2018 at 12:00 pm**. The attached is a WORD version to assist you with inserting your remarks.

Please contact me should you have any questions.

Rachael

Sergeant Rachael Kilshaw

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ELECTRONIC CONTROL DEVICE REVIEW BOARD

This order outlines the functions and responsibilities of the Electronic Control Device (ECD) Review Board and delineates the procedures for reviewing, investigating, and reporting to the Police Commission, cases in which members activate an ECD.

I. POLICY

It is the policy of the San Francisco Police Department to review every instance in which a member's activation of an ECD results in a serious injury.

The purpose of this review process is to ensure that the department is continually reviewing its training, policy and procedures in light of circumstances that lead to a member's activation of an ECD consistent with DGO 5.02, Electronic Control Devices.

The San Francisco Police Department recognizes the public's interest in learning about the Department's use of ECDs. It is the policy of the San Francisco Police Department to provide as much information as possible through this public reporting process while complying with applicable local, civil, and criminal laws and preserving the integrity of ongoing investigations.

Commented [ESV1]: Why is review limited to those instances in which a serious injury results. Each and every ECD use should be reviewed and data about that use should be made public. In the event only those activations that result in serious injury are reviewed, the term "serious injury" should be defined.

Commented [ESV2]: This Review Board and its duties, as currently set forth, appear to provide very little information to the public. More information must be made public than is currently called for.

II. DEFINITIONS

ACTIVATION. Depressing the trigger of the ECD causing the firing of probes or placing the ECD on a subject in the drive stun mode. An effective activation occurs when the subject is exposed to both ECD probes resulting in Neuromuscular Incapacitation (NMI) or when the fixed electrodes in drive stun mode are in direct contact with the subject's skin or clothing.

III. PROCEDURES

A. COMPOSITION OF ECD REVIEW BOARD

1. The ECD Review Board shall be composed of:

- Member of the Police Commission, Advisory
- Deputy Chief of the Administration Bureau (Chair)

- Deputy Chief of the Airport Bureau
- Deputy Chief of the Field Operations Bureau
- Deputy Chief of the Professional Standards and Principled Policing Bureau
- Deputy Chief of the Special Operations Bureau
- Commanding Officer of the Training Division, Advisory
- Commanding Officer of Risk Management, Advisory
- Director of the Department of Police Accountability (DPA), Advisory
- Designated ECD subject matter expert, Advisory

Commented [ESV3]: Why is this position included here?

Commented [ESV4]: Why is this position only an advisory member? If this Review Board is to review training, policy and procedures, isn't it incumbent upon the Commanding Officer of the Training Division to be an active member?

Commented [ESV5]: Who will determine who this ECD subject matter expert is. And how can one be assured that this expert is unbiased? As we all know, very few ECD experts are such. Perhaps there should be a pro-ECD expert and a con-ECD expert.

Each member can appoint a designee who may participate in the Review Board's proceedings in his or her absence.

2. The Police Commission President shall appoint the member of the Police Commission who will serve a one-year term.

B. DUTIES OF THE ECD REVIEW BOARD.

1. On a quarterly basis, the ECD Review Board will meet and review every incident involving ECD activation that result in serious injury or death and also review ECD data to identify trends and propose policy and training recommendations.
2. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.
3. The ECD Review Board's written analysis of ECD activations will include¹:
 - a. The severity of the crime at issue;
 - b. Whether the suspect posed an immediate threat to the safety of the officers or others;
 - c. Whether the suspect was actively resisting arrest or attempting to evade arrest by flight;
 - d. Whether the use of force was proportional to the threat;
 - e. The availability of other feasible, less intrusive force options;
 - f. The officer's tactical conduct and decisions preceding the use of force;
 - g. Whether the officer has reason to believe that the subject was mentally ill, had a physical, developmental or cognitive disability, was emotionally disturbed or is under the influence of alcohol or drugs at the time of the incident;
 - h. Whether there was an opportunity to warn about the use of force prior to force being used, and if so, was such a warning given;
 - i. Whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands;

Commented [ESV6]: Why only those in which serious injury or death occurs? The Review Board should review all activations.

Commented [ESV7]: This is vague. How can we be assured that sufficient data and the correct data is reviewed?

Commented [ESV8]: If the purpose of this Review Board is to review data, identify trends and propose policy and training recommendations, why isn't it proper to use 20/20 hindsight in addition to a "reasonableness at the scene" perspective to accomplish that goal? This Review Board does not determine whether the use of an ECD was within policy, right?

Commented [ESV9]: Isn't it important to know what the officer's underlying intent or motivation was in using the ECD the way s/he did?

¹ DGO 5.01, III.B.2.

- j. Specialized knowledge, skills, or abilities of subjects;
- k. Prior contact;
- l. Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards; and
- m. Whether the subject's escape could pose a future safety risk.

Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

- 4. ECD activations that are under active criminal, Internal Affairs or DPA investigation(s) will be reviewed after the conclusion of the investigation, including cases under appeal.
- 5. The ECD Review Board will forward its findings and recommendations quarterly to the Chief of Police for review and concurrence.
- 6. The Department will prepare a quarterly report containing comprehensive data on ECD activations per SF Administrative Code 96A, along with policy and training recommendations. On a quarterly basis, the Department will provide the report to the Police Commission and will post the report on the Department's website.

This report shall be a public record. No report that is made public shall disclose any information deemed confidential by law.

Commented [ESV10]: Why should the review of ECD activations need to wait until after the conclusion of these other investigations? If the purpose of this Review Board is to review data, identify trends and propose policy and training recommendations, there should be no reason why this review has to wait.

Commented [ESV11]: Can the Chief of Police only concur? What if s/he doesn't concur? What then?

Commented [ESV12]: The data required to be disclosed under SF Administrative Code 96A is limited. Because implementation of ECDs in SF is new and was a controversial decision, the SFPD should release as much data as allowed under law in order to facilitate a robust discussion on ECD use by the SFPD.

IV. TERMINATION OF ECD REVIEW BOARD

The creation of this ECD Review Board is an interim measure to ensure that all ECD uses that result in serious injury receive prompt review. The ECD's Review Board authority and responsibilities shall expire by operation of law upon the Police Commission's adoption of a comprehensive policy establishing a review board.

Commented [ESV13]: Why do we need an interim measure? Why shouldn't this be the comprehensive policy? What differences are anticipated between this policy and a "comprehensive policy"?