

CED Stakeholder Meeting Minutes
Monday, October 2, 2017
1245 3rd Street, Room 1025

Attendees: Commissioner Melara; Commissioner Hing; Commander Pete Walsh – SFPD; Eric Vanderpool – Community member; Marry Harris – community member; Officer Brian Knueker – APOA; Samara Marion – DPA; David Rizk – Bar Association; Jennifer Friedenbach – Coalition on Homelessness; Gregg Adam – POA; Alan Schlosser – ACLU; Sneh Rao – Human Rights Commission – Diana Oliva-Arroche – Mayor’s Office

Item #1: Opening Remarks – Commissioner Melara

Explained the purpose of the meeting is for the Department to explain and present the changes from the previous CED draft policy that are now in the current CED draft policy dated 08/25/17. There will then be a time for discussion and input for changes, but there will be no changes made today.

There will be an opportunity for public comment.

Item #2 Presentation by SFPD regarding changes made to SFPD CED draft policy – Commander Pete Walsh

Commander Walsh explained that the SFPD used the various stakeholder submission to make the following changes:

Commander Walsh started by explaining that SFPD did include the “preamble” from DGO 5.01 as the CED policy, if adopted, would be its own policy, DGO 5.02. Some stakeholders wanted the preamble reiterated in the CED policy of were to stand alone.

Commission Melara asked if all of the versions of the policy are posted on line, and Commander Walsh confirmed that all of the versions are posted.

Commander Walsh addressed a stakeholder suggestion that the CED should only be used in cases when the subject is armed with a weapon. Commander said the SFPD does not want to limit the use to only when subjects are armed.

Commander Walsh said that the SFPD will have internal review of CEDs, but listing the assignment and the duties of the CED coordinate in the DGO is too restrictive operationally for the Department. The Department is already tracking use of force incident of use of force. Any use of CED would be included in the UOF tracking. Samara Marion asked for additional time to discuss this because there are other DGO – Language Liaison and CIT – have coordinators listed and their duties are listed. Commissioner Melara suggested that the Department make note of the items that stakeholders want to discuss, and there will be follow-up conversation. Commander Walsh wanted to address Ms. Marion’s comment by saying this is different because there is a General Order on the overall use of force, and that order governs all use of force. He also mentioned that to have a special carve out for a CED coordinator is not what the

Chief wants to happen. The Department wants the person who reviews force – perhaps at the academy- to review all types of force, not just CEDs

Commander Walsh talked about including the term “unless no lesser force has been or will be ineffective.” The Department felt that this is placing the officer in a position of being looked at with 20/20 hindsight and set the officer up for failure.

Alan Schlosser asked about the red line, blue line and strike outs and what they mean. Sgt. Kilshaw explained that the May 5, 2017 was used as the starting point. Any new language in black is from the original 05/05/17 document. Any language in red or blue type is newly added by the SFPD based on input from the stakeholders or changes that the SFPD made. Strikeouts are language that was removed from the 05/05/17 draft policy.

Commander Walsh explained that the definition of activation was changed to include what an “effective” activation is defined as.

Commander explained definition of CED now includes language that explains the use will cause neuromuscular incapacity. Definition of deployment now includes displaying the arc and displaying the laser sight, consistent with the technology of new CEDs. Definition of drive stun was corrected to be consistent with the current model of CED.

Definitions of medical assessment and medical evaluation were included.

Definition of passive non-compliance was expanded to include examples.

For procedure section:

Commander Walsh explained that prohibition of officers holding a firearm and CED at the same time was added.

Commander Walsh explained that section limiting multiple officers using CED when multiple officers are present was added. Jennifer Friedenbach asked about the language of the cover officer. She asked which kind of weapon the cover officer would be using and could it be another CED. Commander Walsh explained that what the cover officers uses would depend on the type of situation and the resistance of the subject. Jennifer Friedenbach feels this language could be confusing to officers and would like the change to discuss later.

Commander Walsh explained that the order cannot include all vehicles because some Department vehicle do not allow for storage of AEDs: bicycles, motorcycles, Hondas. Footbeats, etc. David Rizk asked if plainclothes officers in unmarked cars will be assigned CEDs. Commander Walsh said the Chief has yet to make that decision.

Commander Walsh explained that the requirement for officers to wear their body worn camera if equipped with a CED and turn it on consistent with requirements in DGO 10.11, Body Worn Cameras, was added to the policy.

Regarding the section on standard cycle and assessment, this was changed to make it clearer. There is also a change to allow officers to use the CED for longer than 3 cycles and 15 seconds in cases where exigent circumstances apply. David Rizk asked if there is another place in the policy that requires an officer use the minimum number of cycles on a subject. Commander Walsh explained there is a requirement for an officer to reassess each time. And there is a maximum of 3 uses unless exigent circumstances are present. Mr Rizk felt that directive is not the same as explicitly requiring the officer to use the minimum number of cycles. Commissioner Melara asked that this item be discussed later. (The specific language of officers using minimum number of cycles to accomplish lawful objective is in the authorized uses section.)

Commander Walsh explained why the section on consideration for re-evaluation for CED use was changed. The Department wasn't officers to re-assess after each use; not only after the first use. Samara Marion asked about the thought process about taking out language of "first application." Commander Walsh explained again that the Department wants officers to re-assess each use of CED, not just the first one.

Commander Walsh explained the changes made to the definitions of the CED modes. Probe mode expanded to explain that both probes are expelled from the cartridge. Drive stun mode expanded to include information that drive stun mode does not incapacitate. Display expanded to include not only pointing but employing the arc and pointing the laser. David Rizk had a question regarding the "countermeasure language" being in the first draft version. Commander said it was in the earlier version. Jennifer Friedenbach mentioned that in Taser manual and warnings states that drive stun mode is for pain compliance but this policy states that drive stun mode should not be used for pain compliance; she is confused. Commander Walsh says that our policy is more restrictive than Taser warnings, and it can be used as a countermeasure. Mr Rizk and Ms. Friedenbach said if you use a Taser to gain compliance it seems like you are using it as pain compliance. Commander Walsh stated the Department believes that using CEDs in drive stun mode in cases where the subject fighting with the officer is appropriate use of the CED mode to gain separation.

Commander Walsh explained target area section expanded to include language that explains the back is preferred target location, and now includes language that probes to sensitive areas are likely to cause serious bodily injury or death. And intentional use of CEDs to sensitive areas only used in exigent circumstances

Commander Walsh explained the changes in the authorized uses section that include removing the "actively resisting the officer" and replacing it with "assaulting the officer or another person; attempting to assault; or verbally or physically displays an intention to assault the officer or another person. The Department also added an exceptional circumstance when an officer could use a CED with a person armed with a firearm if the situation called for it according to policy and training. Samara Marion said she felt that what was being attributed to the DPA and others is not what they recommended; it was explained that the term "imminent" was removed at the DPA's recommendation, and

“actively resisting” was removed at the DPA’s recommendation. Commander Walsh explained the 4 circumstances when officers could use CED. Some stakeholders had concerns with term “assault” which could mean a slight bump or an unwanted kiss to an officer. Commander Walsh said the Department would look at this language and define the term assault.

Commander Walsh explained changes made to section of restrictions on CED use. Discussion on the term appears elderly, appears to be a child, adding vehicles in motion and medical conditions. Samara Marion wanted the term “automobiles” although it may be redundant. Alan Schlosser to change the language to include “including but not limited to.” Sneha Rao asked about why the Department did not put in an exact age vs. appears to be a child. Commander Walsh explained that how people look vs their calendar age is difficult and if the Department would put officers in a difficult spot. Stakeholders were concerned about using CEDs against teenagers (13-17). David Rizk asked a questions about why mental health condition was not included. Commander Walsh explained that officers are not doctors and do not diagnosis and the information has to be more than just observations. The information has to be based on credible information. The Department will look into adding additional mental health conditions to the list. Jennifer Friedenbach asked why the Department did not accept the recommendation that an officer is prohibited from using a CED on a handcuffed prisoner and left it in the restricted section. Commander Walsh stated that even a handcuffed person can cause serious bodily or dead, and the use would have to be in cases where deadly force is justified.

Commander Walsh explained changes to officer requirement section that include adding the requirement to place the subject in a face up of seated position after the use of a CED

Commander Walsh explained the additions to the duty to provide first aid which include allowing the officer to remove the CED probes in an exigent circumstances.

Commander Walsh explained the changes to the section regarding duty to provide medical assessment which include one officer being assigned to monitor the subject until relieved by the emergency and the requirement to call DEM if the subject has difficulty breathing. Commissioner Hing asked about the Department of Public Health’s recommendations and whether they were included. Commander Walsh mentioned that that the SFFD does not have the resources to stage ambulances in the case of every potential CED use.

Commander Walsh explained the difference between medical assessment (paramedics) and medical evaluation (hospital). He also explained that paramedics will go through the training on how to remove CED probes.

Commander Walsh explained that in the duty to provide medical assessment section subjects are allowed to refuse medical evaluation. There have been discussions with the SFFD about them taking a subject who refused medical evaluation because the jail staff has medical personnel.

Commander Walsh explained that the changes in the booking of the subject section are similar to those requirements in use of the old use of the carotid restraint and current use of OC/Pepper spray.

Commander Walsh explained the changes to the documentation requirements section and said that most stakeholder recommendations were included. Samara Marion said that several of the recommendations were not and wanted to point them out: Toxicology report; medical examiner report; descriptive information about subject including at risk population; descriptive information about officer including height, weight, years of service; other force used; length of activation of CED and number of CED cycles; type of crime and incident; clothing; description of failure; terrain and weather conditions; and mode the CED was used; Commander Walsh said the use of force form already tracks some of this information and some of the data should be included in a larger use of force conversation. Samara Marion says this information should be tracked and analyzed for training and wants an opportunity talk about this more and see what is tracked on the form.

Commander Walsh explained that there would be a person assigned to track and analyze the CED use, along with other use of force incidents, and that person would be assigned to the Academy.

Commander Walsh stated that the change to the supervisor responsibility is that photos will not be taken of probe sites if they are in sensitive areas.

Commander Walsh stated that there were not many changes to the training section. He said training will be scenarios-based which how most training is being given.

Samara Marion asked about external oversight by the DPA, and listed the 4 times when DPA would be called in CED use to conduct an investigation: serious injury or death; if the officer deployed CED multiple times or exceed the policy limits; person from high risk population; officer had substantial deviation from policy.

Samara Marion also asked about a quarterly meeting with SFPD, DPA and members of public to review CED use for trends and training. She said that Chief Scott talked about this meeting in his review.

Samara Marion asked about CED coordinator and his/her defined duties and responsibilities, similar to LEP and CIT coordinators.

Samara Marion asked about changing the name to a “weapon” instead of a “device.” Commander Walsh explained that SFPD wants to be consistent with other agencies in SF who use CED.

Public Comment:

Tom Meyer spoke about authorized use and feels that “verbally displays an intention to assault” is too broad and could encompass “Someone should kick your butt” and not what is meant by this section. Also feels that # 2 in the list is superfluous. For the section about medical conditions, it should also include “mental health condition.”

Magick Altman spoke about getting into the minutia of the policy means people start normalizing these weapons and lose track that these are lethal weapons. The public has spoken before about not wanting these weapons. This is a product similar to tobacco. The public wants to work with officer on de-escalation because officers have a difficult job. The public does not want to give officers permission to use more weapons. These weapons are torture. There was a Taser death in Oakland.

Item #3: Discussion with Stakeholders regarding CED Draft Policy dated 08/25/17:

Sneh Roa asked about the rationale for the Department not starting with a pilot program. Commander Walsh explained that Chief Scott wants to be deployed Department wide for all officers who qualify for their use. In addition, there would be a roll out of CEDs similar to the body worn cameras – station by station – that would take a period of time. There would not be 2000 CEDs on the street in one day. David Rizk mentioned that pilot programs allow for re-evaluation and that would not happen here. Commissioner Melara reiterated it is not a pilot program.

David Rizk about Commander Walsh’s statement about data about the newer models of Taser. Commander Walsh said he read in Mission Local, and he understands that there are reports that evaluate the newer models of Tasers. Mr. Rizk asked if Commander Walsh would share the data, and Commander Walsh said he would when the SFPD receives it. Commander Walsh noted that Mr. Leonesio has yet to respond to the Commission questions given to him on numerous occasions, but Mr. Leonesio will answer the SFBAR and speak to other members of the CED working group. Commander Walsh stated that Mr. Leonesio provides numbers and data, but he cannot provide the studies behind the numbers that he gives and yet he criticizes most other studies. Much of what Mr. Leoneiso states is anecdotal. Commander Walsh would like all of that taken into consideration until Mr. Leonesio provides the data.

Eric Vanderpool mentioned that because CEDs will not roll out on a pilot project that is even more of a reason to collect all of the data suggested by the DPA and the review board. There should be an oversight system to ensure transparency, which requires data collection. The Department should not be afraid of the data collection, the CED liaison officer and the review boards.

Jennifer Friedenbach said she signed off on drive stun mode, but she wants drive stun mode banned and mentioned that PERF bans drive stun mode. She thinks the policy is problematic around authorized use. She wants the term bodily harm to be used instead of assault. She thinks CEDs should only be used on people who are armed and brought up the version that former Chief Suhr presented had that limitation. She brought up the Oakland incident and said that even if you have the best policy deaths can occur. This

policy is very confusing and is sending mixed messages about whether this is an intermediate force option or whether this is a lethal force option.

Commander Walsh addressed some of the misconceptions. 1) PERF does not ban drive stun mode. The current version of the drive stun mode now allows to complete the circuit, so to take that option away is not practical. 2) The Reuters' article states 1000 people have died from Tasers. If you read the article, Reuters only received 712 reports on the 1000 deaths. Of those 712, 153 have Taser mentioned, and he quoted from the article that states, "more often than not, as part of a larger mosaic of force, at least 153 of those cases Reuters found the coroner or medical examiner cited Taser as a cause or contributing factor." Commander Walsh went on to state that even in the Reuters' story they only came up with 153 deaths. The Department has never said this device is non-lethal. It has always said it is less lethal, and in fact Mr. Leonesio told him that the term should be less-than-lethal because the device was not designed to be lethal. Commander Walsh reminded everyone that people need to read the articles, not just the headlines, to get behind the numbers.

Jennifer Friedenbach states that it is difficult for medical examiners to make the physiological medical connection because they do not really know how Tasers work. It is similar to big tobacco where they could not make the link between smoking and cancer. Dr. Tseng's study showed that the variable that changed was Tasers and the death rates went up. Commander Walsh stated he disagrees.

Alan Schlosser asked about next steps. Commissioner Melara said the next step is that all of the information goes to the Police Commission for a vote. There is no date set for the vote, but it will likely be some time in November. Alan Schlosser asked Commander Walsh if any of today's comments would be included in a new version. Commander Walsh said the Department will accept some of the suggestions. There will be an updated policy. Eric Vanderpool asked that the Department look at will/shall vs can/should. Commissioner Melara stated that those terms "shall" vs "should" are an ongoing discussion.

Public Comment:

Magick Altman asked for a response from the Commissioners to the public's comments. She does not think that the policy should go to the Police Commission because there has been no agreement at the meeting about what was discussed. The public does not want this to go to a vote. She stated "we will not be happy" if this is taken to a vote until there is an evaluation of the use of force policy that is in force now. There have been no consequences to the officers who have killed people. The public does not want another weapon for the officers. "We will do everything we can to stop this vote."

Item #4: Adjournment