

USE OF ELECTRONIC CONTROL DEVICES

Commented [sfpd1]: Policy item #1

The San Francisco Police Department's highest priority is safeguarding the life, dignity and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible. This Department General Order builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law. 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 unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision making when using force options.

For purposes of this order, the term "officer" means all ranks of sworn personnel.

I. POLICY

The purpose of this policy is to establish guidelines for proper deployment and activation of Electronic Control Devices (ECD) and the supervisory response which shall be taken thereafter.

- A. **LESS-LETHAL ALTERNATIVES.** It is the policy of the San Francisco Police Department (SFPD) to equip officers with less-lethal alternatives, such as an ECD, to resolve encounters with subjects who are violently resisting, assaultive, or exhibiting any action that may result in serious bodily injury or death of another person, themselves or the member.
- B. **TRAINING.** Only officers who have successfully completed the Department's Use of Force policy update and the Crisis Intervention Team (CIT) Field Tactics training and all other required Department-approved ECD training are authorized to carry ECDs.
- C. **REPORTING AND REVIEW.** The SFPD will thoroughly investigate and document all facts and information when a member of the SFPD activates an ECD, intentionally or unintentionally. (See DGO 5.01, *Use of Force*)
- D. **USE OF FORCE POLICY.** The activation of an ECD by a member in the performance of his/her duties is considered a use of force, and shall be consistent with the policies and training adopted by the SFPD. (See DGO 5.01, *Use of Force*).

DGO 5.02

01/23/18

- E. DE-ESCALATION. The use of an ECD is not intended to replace tactics or training that can be utilized to calm or control a person, or to de-escalate a situation and avoid the use of force. (See DGO 5.01, *Use of Force*)
- F. RE-EVALUATION. When activating the ECD, the member shall use it for one standard five-second cycle, and re-evaluate the effectiveness to determine whether the subject can be restrained without additional ECD activations. Each subsequent five-second cycle requires a separate, articulable justification.

II. DEFINITIONS

- A. 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.
- B. ASSAULTIVE. Aggressive or combative; assaulting or battering the officer or another person, verbally or physically displays an intention to assault the officer or another person.
- C. COMPLIANT. Subject offers no resistance.
- D. CONFETTI TAGS. Minute coded tags specific to the activated ECD cartridge.
- E. DEPLOYMENT. Removal of the ECD from the holster and pointing it at a subject, displaying the arc, or displaying the laser sight.
- F. DISPLAYING THE ARC. A compliance function of the ECD. Displaying the electrical current to a subject without making contact.
- G. DRIVE STUN. Activating the ECD by placing the electrodes upon the skin/clothing of the subject.
- H. ELECTRONIC CONTROL DEVICE (ECD). A weapon designed primarily to discharge electrical impulses into a subject that will cause NMI and override the subject's voluntary motor responses.
- I. LIFE THREATENING. Any action likely to result in serious bodily injury or death to the officer or another person.
- J. MEDICAL ASSESSMENT. Examination of a subject by emergency medical personnel.
- K. MEDICAL EVALUATION. Examination of a subject by a physician at a medical facility.
- L. PASSIVE NON-COMPLIANCE. Does not respond to verbal commands but also offer no physical form of resistance (e.g., failing to respond to an officer's commands and remaining fixed or stationary when an officer attempts to physically control the subject's movement).
- M. SPARK TEST. This test assists an officer in determining the functionality and the battery life of the ECD.

Commented [sfpd2]: Policy item #2

III. PROCEDURES

A. ISSUANCE AND CARRYING ECDS.

1. Officers shall only use Department-issued ECDs and cartridges.
2. Officers who have been issued the ECD shall wear the device in a Department-approved holster and carry the ECD in a weak-side holster on the side opposite their duty weapon.
3. An Officer shall not hold a firearm and an ECD at the same time.
4. When multiple officers are present and an ECD will be used, only one officer shall activate the device on a subject. If the ECD malfunctions or if both probes do not make contact with the subject, an additional officer may activate an ECD if compliance from the subject has not been achieved. Officers shall coordinate which officer will activate the ECD and which officer(s) will act as the cover officer(s).
5. The Department will ensure that Automated External Defibrillators (AED) are readily available in Department police vehicles in all police districts. Upon ECD activation, officers without access to an AED shall contact the Department of Emergency Management (DEM) and request a unit equipped with an AED respond to the scene.
6. Officers equipped with an ECD shall wear their Department-issued body worn cameras (BWC) and activate the BWC consistent with Department General Order 10.11, Body Worn Cameras.

B. INSPECTION. Officers carrying the ECD shall perform an inspection of the ECD at the beginning of every shift and:

1. Perform a daily spark test on the ECD at the officer's station or unit before leaving the facility;
2. Ensure the ECD 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 ECD;
4. Officers shall be responsible for ensuring that their issued ECD is properly maintained and in good working order. If an officer discovers that the ECD 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 ECD as soon as practical;

DGO 5.02

01/23/18

5. Officers shall not alter the ECD from the original factory specifications and markings; and
6. 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).

C. WARNINGS

1. When reasonable, unless it would otherwise endanger the safety of the officer or others, prior to each activation of the ECD, the officer shall loudly announce that the ECD is going to be activated.
2. The purpose of the warning is to:
 - a. Provide the individual with a reasonable opportunity to voluntarily comply, and
 - b. Provide other officers and other bystanders with a warning that the ECD may be activated.

D. STANDARD CYCLE AND ASSESSMENT. The initial use of the ECD is a standard five-second cycle, after which the officer shall evaluate the need to apply a subsequent five-second cycle while offering the subject a reasonable opportunity to comply. Exposure to multiple cycles of the ECD for longer than a total of 15 seconds (3 five-second cycles) may increase the risk of serious bodily injury or death. Unless exigent circumstances apply, officers shall use another force option or tactics once the subject has been exposed to three standard cycles. Officers must be able to articulate in the incident report the facts and circumstances that justified each cycle of the ECD.

In an attempt to minimize the number of ECD activations needed for a person's compliance, officers shall, when feasible, verbally direct the subject to comply with the officer's commands. Such verbal commands may include, "drop the weapon," "put your hands behind your back," etc. Multiple applications of the ECD cannot be justified solely on the grounds that a person failed to comply with a command, absent the circumstances listed in Section III. H. 1 - 4.

E. CONSIDERATIONS FOR RE-EVALUATION. If an ECD appears to be ineffective in gaining control of a subject, the officer shall evaluate the situation and consider certain factors before additional applications of the ECD:

1. Whether the probes are making proper contact;
2. Whether the individual has the ability and has been given a reasonable opportunity to comply;
3. Whether verbal commands, other options or tactics may be more effective; or
4. Whether it is reasonable to believe that the need to control the individual outweighs the potentially increased risk posed by multiple applications.

F. ECD MODES. The following are the three operational modes of the ECD:

1. Probe Mode. Probe mode occurs when the ECD is activated and both probes are expelled from the cartridge and penetrate the skin/clothing of the subject.

Commented [sfpd3]: Policy item #3

2. **Drive Stun Mode.** Drive Stun mode alone is not designed to cause incapacitation. Drive stun mode is intended to supplement the probe mode in order to complete the incapacitation circuit. Officers can also use drive stun mode on a subject described in Section III. H. 1 – 4, below.
 3. Deployment Mode. Achieved either by pointing an ECD, employing the arc display, or pointing the laser at the subject. Deploying the ECD may be all that is necessary to de-escalate a volatile situation. A subject may become compliant once faced with the realization that an ECD may be used on him or her. However, officers shall not deploy the ECD in circumstances where activation would not be justified (e.g., where the subject is exhibiting compliance or passive non-compliance.)
- G. **TARGET AREAS.** Officers shall, when feasible, make reasonable efforts to target lower center mass or if available, the back, which is the preferred target area. Officers shall not intentionally target sensitive areas, including the head, face, neck, chest or groin. The use of an ECD to these areas has a likelihood of causing serious bodily injury or death, and the intentional use of an ECD to these areas shall only be used in exigent circumstances.

It is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the ECD probes to a precise target area. As in all cases of ECD exposure, officers shall monitor the condition of the subject if one or more probes strikes the head, face, neck, chest or groin until the subject is examined by emergency medical personnel.

- H. **AUTHORIZED USE OF THE ECD.** Officers shall determine the reasonableness of ECD use 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. Officers shall use the minimum ECD cycles necessary to accomplish a lawful objective.

An officer may activate the ECD 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 or battering the officer or another person, or verbally or physically displaying an intention to assault the officer or another person; or
3. **Violently resisting an officer's attempt to lawfully detain or arrest a subject; or**
4. Exhibiting actions likely to result in serious bodily injury or death to the public, him/herself or the officer.

Commented [sfpd4]: Policy item #4

In rare circumstances, officers may decide to activate an ECD on a subject armed with a firearm. Officers should consider cover, concealment, terrain, lethal cover, and tactical positioning when determining whether to activate the ECD in these circumstances.

DGO 5.02

01/23/18

- I. **SPECIAL CONSIDERATIONS.** Officers shall be aware of the possible heightened risk of an adverse reaction from ECD use on certain subjects. Officers are not prohibited from using an ECD on these subjects, but use is limited to those exceptional circumstances where the potential benefit of using the device reasonably outweighs the risks and concerns.

Commented [sfpd5]: Policy item #5

1. Special considerations shall be made when using an ECD on the following subjects:
 - a. if the subject is obviously pregnant;
 - b. if the subject appears elderly;
 - c. if the subject is visibly frail;
 - d. if the subject appears to be a child;
 - e. if the subject is in physical control of a vehicle in motion, including but not limited to motorcycles, bicycles, scooters and skateboards;
 - f. if the subject is in danger of falling from an elevated height;
 - g. when the officer has credible information that the subject suffers from a serious medical or psychiatric condition (e.g., heart condition, Alzheimer's disease)
 - h. if the subject has recently been exposed to a flammable chemical agent or is otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based OC spray. Department-issued OC spray is not flammable.
2. Officers shall not use ECDs on handcuffed or restrained persons unless the subject's behavior causes immediate risk to the officers and lesser means have been tried and failed or would be ineffective.

J. **PROHIBITED USE.** Officers are prohibited from using the ECD:

1. to prevent a subject from destroying evidence, such as placing evidence in his/her mouth;
2. to intimidate by reckless display;
3. if the suspect is fleeing and does not pose an immediate threat of physical harm to the public or officers. Flight will never be the sole reason for applying an ECD on a subject;
4. on a subject who is compliant or who displays only passive non-compliance;
5. as a prod or escort device;
6. solely as a pain compliance technique;
7. to rouse unconscious, impaired or intoxicated subjects; or
8. if the ECD is or has been submerged in water or other liquid

K. **OFFICER REQUIREMENTS AFTER ACTIVATIONS.** As soon as feasible following an ECD activation, officers shall:

1. contact DEM and request emergency medical personnel respond to the scene of the ECD activation;
2. contact DEM and request a unit equipped with an AED respond to the scene if one is not present.
3. place the subject in a face up (supine) or seated position to assist breathing and avoid placing the subject in a face down position for extended periods of time;
4. notify a supervisor of all ECD activations, including all unintentional activations;

5. collect confetti tags and book into evidence; and
6. collect expended cartridge(s), probes, and wires, and book into an evidence envelope, using a sharps container for the probes. The cartridge serial number shall be listed on the evidence envelope. Officers shall mark the evidence envelope "Biohazard" if the probes penetrated the subject's skin.

Officers shall document the reasons for any deviation from this evidence collection protocol in the incident report.

- L. **DUTY TO RENDER FIRST AID.** Officers shall render first aid when a subject is injured or claims to be injured 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.

Absent exigent circumstances, only emergency medical personnel should remove ECD probes from a person's body. If exigent circumstances require an officer to remove the ECD probes, removal shall be done consistent with Department training. Officers shall treat used ECD probes as biohazard sharp objects, such as a used hypodermic needle, and shall use universal precautions when handling used ECD probes.

M. **DUTY TO PROVIDE MEDICAL ASSESSMENT.**

1. Officers shall request emergency medical personnel respond to the scene for a medical assessment and removal of ECD probes from a person's body.
2. At least one officer shall be assigned to continually monitor the subject's physical condition until emergency medical personnel arrive.
3. Officers shall immediately notify DEM of any observed breathing difficulties or any other physical or mental state changes.
4. Officers shall advise emergency medical personnel that an ECD was used on the subject and advise emergency medical personnel if the subject loses consciousness, appears to exhibit signs of a serious medical condition, sustains a secondary injury (e.g., as the result of a fall), and/or is shocked in sensitive areas (e.g., head, face, neck, chest, and groin).
5. Officers shall, when feasible, give the approximate time of the ECD activation, the total number of ECD activations, and the approximate combined duration of time the ECD was activated on the subject to emergency medical personnel.

If a subject refuses medical assessment, 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.

- N. **DUTY TO PROVIDE MEDICAL EVALUATION.** All subjects who have been struck by ECD probes or who have been subjected to the electric discharge of the device shall be transported by

DGO 5.02

01/23/18

emergency medical personnel for evaluation at a local medical facility as soon as practical and prior to any additional law enforcement actions being taken with the subject. If emergency medical personnel do not transport the subject or if the subject refuses medical assessment, officers shall transport the subject to a local medical facility.

If a subject refuses medical evaluation, the refusal shall be directed to the medical facility staff 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 medical facility staff 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 ECD.

O. BOOKING OF SUSPECT. When a subject has been exposed to ECD probes or has been subjected to the electric discharge of the device, officers shall:

1. Ensure the subject is medically evaluated prior to booking him or her into the county jail.
Subjects shall not be booked at a district station, and
2. Note the use of the ECD on the field arrest card.

Nothing in this section prohibits an officer from taking a subject who has been exposed to ECD probes or has been subjected to the electric discharge of the device to a police facility for investigatory purposes. However, the subject shall be medically evaluated prior to bringing him or her to the police facility.

P. DOCUMENTATION REQUIREMENTS. Officers shall document all ECD deployments and activations, including all unintentional activations, 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 each use of the ECD, including any weapon displayed by the subject;
3. Subject's known or suspected drug use, intoxication, other medical problems or behavioral crisis at the time of deployment or activation;
4. De-escalation techniques used by the officer(s);
5. Whether a verbal or other warning was given or the reason it was not given;
6. Whether the officer used other force options;
7. The type and brand of ECD and cartridge serial number;
8. Whether any deployment deterred a subject and gained compliance;
9. The number of ECD activations;
10. The approximate distance at which the ECD was used;
11. Location of any probe impact;
12. Whether there was a clothing disconnect;
13. Description of where missed probes went;
14. Whether the subject sustained any injuries

15. Information about the medical care provided to the subject;
16. Whether any officers sustained any injuries;
17. Identification of all officers deploying or activating ECDs;
18. Identification of all witnesses, when feasible; and
19. All supervisory notifications required by DGO 5.01, Use of Force.

Officers assigned to the Police Academy Physical Training and Defensive Tactics staff shall review all incident reports involving ECD use to identify trends, tactics and the need for training updates.

Commented [sfpd6]: Policy item #6

Q. SUPERVISOR RESPONSIBILITIES. When an ECD has been activated, a supervisor shall follow the protocol outlined in DGO 5.01, Section VII, Section B. 2. In addition, supervisors shall:

1. Confirm that a unit equipped with an AED is on scene or is responding;
2. Confirm that any probes that have pierced the subject's skin are removed by medical personnel;
3. Ensure that photographs of probe sites are taken unless the probe sites are on the breast, genitalia, or buttocks;
4. Ensure that the subject is medically evaluated prior to being booked into any facility;
5. Ensure that the ECD's memory record has been uploaded; and
6. Provide replacement ECD cartridges to the officer, as necessary.

R. SUPERIOR OFFICER'S RESPONSIBILITIES. When a superior officer is notified of an ECD activation that results in serious bodily injury requiring admittance to a medical facility, the supervisor shall notify the Department of Police Accountability (DPA).

Commented [sfpd7]: Policy item #7

When a superior officer is notified of an in-custody death involving the activation of an ECD, the superior officer shall ensure the Department's Operations Center notifies the DPA.

S. RISK MANAGEMENT NOTIFICATIONS. The Commanding Officer of the Risk Management Office or designee shall notify the DPA within seven (7) business days of any ECD activation involving the circumstances listed in section III. I. 1. a-h.

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

U. TRAINING. Proficiency training for officers who have been issued ECDs shall occur annually. A reassessment of an officer's knowledge or practical skill may be required at any time if deemed appropriate by the Department-approved ECD instructors. All training and proficiency for ECDs will be documented in the officer's training file.

Any officer who has not carried the ECD as a part of his or her assignment for a period of one year or more shall be recertified by a Department-approved ECD instructor before carrying or using the device.

DGO 5.02
01/23/18

Commissioned Officers have the option to carry an ECD. Officers who supervise or conduct Use of Force evaluations involving ECDs shall receive the Department-approved ECD training regardless of whether they carry an ECD.

The Commanding Officer of the Training Division is responsible for ensuring that all officers who carry ECDs receive initial and annual proficiency training. ECD activation on an officer during training shall not be mandatory for certification.

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

1. A review of this Department General Order;
2. A review of DGO 5.01, *Use of Force*;
3. A review of DGO 5.21, *Crisis Intervention Team (CIT) Response to Person in Crisis Calls for Service*;
4. Performing weak-hand draws or cross-draws to reduce the possibility of unintentionally drawing, pointing and firing a firearm;
5. Target area considerations, to include techniques or options to reduce the unintentional application of probes near the head, face, neck, chest and groin;
6. Handcuffing a subject during the application of the ECD and transitioning to other force options;
7. Scenario-based training;
8. CIT updates;
9. De-escalation techniques; and
10. Restraint techniques that do not impair respiration following the application of the ECD.

References

- DGO 5.01, Use of Force
DGO 5.21, Crisis Intervention Team (CIT) Response to Person in Crisis Calls for Service
DGO 10.11, Body Worn Cameras

Explainer of key policy issues

The purpose of this document is to provide Police Commissioners with high level talking points of those issues raised at the working group meetings where no consensus was made.

The views provided below were noted from comments made at the working group meetings, or provided to the Commission office in writing.

Each item corresponds with that part of the policy, section and page references are provided.

Item #1 – Use of the term Weapon vs Device: (Throughout the policy starting pg. 1)

Views provided by the DPA /COH/BASF/ACLU:

- Preferred term = weapon
- PERF, IACP and Axon (formerly Taser) use the term “Weapon”
- Weapon conveys more gravity/a stronger sense of seriousness to officers and the public

Views provided by the SFPD:

- Preferred term = device
- SF Sheriff’s Department, UCSF PD and Bart PD all use the term “Device”
- City Attorney’s advice is to use the term “Device” for consistency with other law enforcement agencies operating within the City
- Officers already have a sense of the gravity and consequence in using anything provided them as a tool. There is no confusion to officers that ECDs are weapons, in the same way officers are aware, through training and policies, that batons, OC spray, firearms, etc. are weapons without having the word “weapon” attached to the item

Item #2 – Definition of the term ASSAULTIVE: (Section II, B. pg. 2)

ACLU:

- “Battering” is not a legal term
- The definition of assaultive can mean mere touching
- Recommends deletion of the definition of ASSAULTIVE

DPA:

- Concurs with ACLU

BASF:

- Recommends this policy not use definitions or terms listed in DGO 5.01 as this is a different weapon

SFPD:

- For consistency and to avoid confusion requests using terminology already used in DGO 5.01 (Use of Force), therefore reinstating the two terms and subsequent definitions:

Explainer of key policy issues

- ACTIVE RESISTANCE – Physically evasive movements to defeat an officer’s attempt at control including bracing, tensing, running away, verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody; and
- ASSAULTIVE – Aggressive or combative; attempting to assault the officer or another person; verbally or physically displays an intention to assault the officer or another person
- California Penal code defines assaultive as “an unlawful attempt...to commit a violent injury on the person of another.”

Item #3 – Drive Stun Mode: (Section III. F. 2. pg. 5)

COH:

- Requests that Drive Stun Mode be prohibited

BASF:

- Pain compliance language in this section is confusing

DPA:

- Requests that Drive Stun Mode be limited to completing a circuit or when deadly force would be permitted

SFPD:

- Requests Drive Stun Mode remain in the policy
- Department re-wrote the language in this paragraph to be more clear and succinct.
 - Drive stun mode can be used to complete the incapacitation circuit.
 - Drive stun mode can be used on subjects described in Section III. H. 1 – 4.
- Use of ECD solely for pain compliance (in any mode) is now listed as a Prohibited Use – Section III. J. 6.
- Drive Stun Mode is effective in minimizing use of force when subduing a subject

Item #4 – Authorized Use of the ECD: (Section III, H. 1-4, pg. 5)

ACLU:

- Recommends only one circumstance for Authorized Uses: Officers are authorized to use ECDs when a subject is causing immediate physical injury to the officer or another person, or is threatening to cause immediate physical injury to the officer or another person under circumstances which cause the officer to reasonably believe that the subject has the intent and the capability of carrying out that threat.

COH:

- Requests that the policy use the standard “risk of bodily harm”

DPA:

Explainer of key policy issues

- Recommends only one all-inclusive circumstance for Authorized Use: The subject is causing bodily harm or the officer is satisfied, on reasonable grounds, that the subject's behavior will immediately cause bodily harm.
- Recommends adding; "Even if the above threshold is met, officers are prohibited from deploying an [ECD] 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."

SFPD:

- Minor change to one of the four Authorized Uses to mirror DGO 5.01
- Suggested edits for Authorized Use follows language from DGO 5.01: An officer may activate the ECD 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 or battering the officer or another person, or verbally or physically displaying an intention to assault the officer or another person; or
 - 3) Actively resisting the officer in a manner that threatens the safety of the officer or another person; or
 - 4) Exhibiting actions likely to result in serious bodily injury or death to the public, him/herself or the officer.
- The above four circumstances will be further covered in training along with definitions and legal terms
- Believes this policy should reflect and restate guidance and directions provided in the DGO 5.01 to mitigate confusion
- Concern using term "bodily harm" as it is not defined in the California Penal Code
- The argument requiring officers to reassess deployment of force is already taken up in DGO 5.01
- SFPD believes the stakeholder recommendation of officers meeting two thresholds prior to using an ECD is inconsistent with DGO 5.01 as the department does not require officers to use a force continuum.

Item #5 –“Special Considerations” (officers not required to have deadly force situations to use the device but the potential benefits of the ECD must outweigh the risk of its use) vs. “Restrictions on ECD Use” (lists circumstances when officers can use ECDs only when deadly force is authorized): (Section III. I. opening paragraph, pg. 6)

COH/BASF:

- Requests that use of ECDs on the subjects listed in this section only be in cases when deadly force is authorized.

DPA:

- Requests that use of ECDs on the subjects listed in this section only be in cases of threat of great bodily harm or death

SFPD:

Explainer of key policy issues

- Using ECD on subjects listed in this section only in cases when deadly force is authorized is contrary to what the Department is trying to accomplish; give the officers a less lethal force option
- Deadly force is a higher level of force and usually requires the use of a firearm, the Department wants to avoid escalating the situation to deadly force
- During his testimony and in written critique, Mr. Michael Leonesio underscored the confusion caused among officers by the term ‘deadly force’ when an ECD can only be deployed during those types of incidents. For example, if a person listed under Special Considerations is threatening suicide, deadly force cannot be used per DGO 5.01. However, an ECD could potentially prevent serious bodily injury or death of this person

Item #6 – Appointment of ECD Coordinator to Oversee the ECD Program vs. Police Academy/IT Division/Auditing Unit/Risk Management Division staff reviewing all ECD uses: (Section III. P. closing paragraph, pg. 9)

DPA:

- Recommends the Chief appoint an ECD Coordinator
- Requests policy contain language regarding the ECD Coordinator, outlining description of duties and responsibilities
- One person to be assigned as primary point of contact
- Department has other appointed coordinators to oversee program, i.e., LEP, CIT, and the roles are explicitly delineated in those General Orders

SFPD:

- Requests that the policy be separate from an internal document (Bureau Order, Unit Order, etc.) delineating the operational duties of the members assigned to oversee the ECD program
- Asserts that many people will be designated to oversee the ECD Program across different Divisions (use of force, data collection, data analysis, policy, equipment). However, there will be one contact person to obtain ECD information and this falls under the purview of administrative and management duties, not for the policy

Item #7 – Superior Officers Responsibilities: (Section III.R, pg. 9)

DPA:

- Requests revision and additional language in this section to include the following; “immediate notification [to the DPA] if there is serious bodily injury or death”

SFPD:

- Department re-wrote language in this section in response to some stakeholders’ recommendations to read; “When a superior officer is notified of an ECD activation that results in serious bodily injury requiring admittance to a medical facility, the superior officer shall notify the Department of Police Accountably (DPA).” Additionally, “When

Explainer of key policy issues

a superior officer is notified of an in-custody death involving the activation of an ECD, the superior officer shall ensure that the Department's Operations Center notifies DPA.”

DRAFT

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 an injury other than that caused by routine probe removal or amounting to superficial injuries.¹

Any in-custody death that occurs after a member's effective ECD activation will be reviewed by the ECD Review Board and not reviewed under DGO 8.12, In-Custody Deaths.

If the effective use of an ECD takes place during an officer involved shooting, the incident will be reviewed pursuant to DGO 8.11, Investigation of Officer Involved Shootings and Discharges.

Commented [SFPD1]: Appendix item #1

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.

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

¹ Abrasions, hematomas, contusions - examples

Incapacitation (NMI) or when the fixed electrodes in drive stun mode come into 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 Department ECD subject matter expert, Advisory

Commented [SFPD2]: Appendix item #2

Each member can appoint a designee who may participate in the Review Board's proceedings in his or her absence. Voting members shall identify Department subject matter experts, as necessary, to attend and participate in the ECD Review Board's proceedings.

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 shall meet and review every incident involving an effective ECD activation that results in an injury other than that caused by routine probe removal or superficial injuries. The ECD Review Board will also review ECD data as outlined in DGO 5.02, Section III. P. 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 from the perspective of 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 shall include:

San Francisco Police Department
Conducted Energy Device
Appendix A

DGO 5.02
02/22/18

- a. Whether the force used was consistent with DGO 5.01, *Use of Force*, III.B.2. a-m. DGO 5.01 factors include:
 - The severity of the alleged crime at issue;
 - Whether the suspect posed an immediate threat to the safety of the officers or others;
 - Whether the suspect was actively resisting arrest or attempting to evade arrest by flight;
 - Whether the use of force was proportional to the threat;
 - The availability of other feasible, less intrusive force options;
 - The officer's tactical conduct and decisions preceding the use of force;
 - Whether the officer had reason to believe that the subject was mentally ill; had a physical, developmental or cognitive disability; was emotionally disturbed or was under the influence of alcohol or drugs at the time of the incident resulting in the activation of the ECD;
 - Whether there was an opportunity to warn about the use of force prior to activation of the ECD , and if so, was such a warning given;
 - Whether the officer made any assessment of the subject's ability to cease resistance and/or comply with the officer's commands;
 - Specialized knowledge, skills, or abilities of subjects; the subject's prior contact with law enforcement;
 - Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards at the time of the incident; and
 - Whether the subject's escape posed a future safety risk.
- b. Evaluation of supervisory response.
- c. Evaluation of equipment used during the ECD activation (i.e. review of ECD data uploaded from the actual device – event log, pulse log, and engineering log).
- d. Whether the Use of Force investigation was complete.

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

Commented [SFPD3]: See item #3

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 shall also review through a random, blind sampling, ten percent of all non-injury ECD effective activation incidents that occurred during the quarter before the ECD Review Board meets.

San Francisco Police Department
Conducted Energy Device
Appendix A

DGO 5.02
02/22/18

6. The ECD Review Board shall forward its findings, including ECD summaries, and recommendations quarterly to the Chief of Police for review and concurrence. The Chief of Police can concur, reject or modify the findings and recommendations of the ECD Review Board. Upon review of the Chief of Police, the Department shall provide a copy of the report to the Police Commission and shall 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 that the law makes confidential.

7. Duties of the ECD Review Board Chair include 1) referring policy, training, and equipment issues to the appropriate Department personnel for follow-up; 2) maintaining a record of all recommendations and their status; and 3) monitoring the implementation of accepted recommendations.

Commented [SFPD4]: Item #4

IV. TERMINATION OF ECD REVIEW BOARD

The ECD Review Board is an interim measure to ensure that all effective ECD activations that result in an injury as defined by this order 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 Serious Incident Review Board.

The purpose of this document is to provide Police Commissioners with high level talking points of those issues raised at the working group meetings where no consensus was made.

The views provided below were noted from comments made at the working group meetings, or provided to the Commission office in writing.

Each item corresponds with that part of the policy, section and page references are provided.

Item #1 – Reviewing ECD activations that occur during an Officer-Involved Shooting would follow DGO 8.11 (Investigation of Officer Involved Shooting): (Policy section, third paragraph, pg. 1)

Views provided by the DPA/COH:

- Requests additional language to the last sentence of the first paragraph to read; “and will include an analysis of the effective [ECD] activation” given that the board in DGO 8.11 reviews “cases in which a member discharges a firearm,” and an ECD is not a firearm
- Both agencies recommend explicitly stating that the review will include analysis and recommendations on an ECD activation that takes place during an officer-involved shooting

Views provided by the SFPD:

- Believes additional language is redundant because all aspects of an officer involved shooting are reviewed pursuant to DGO 8.11/DGO 3.10 (Firearm Discharge Review Board)
- Language in DGO 3.10 states that the board will “discuss the circumstances surrounding the shooting event and the response of the officer(s).” The review includes analysis of whether “the actions of the officer in response to the circumstances leading to the discharge of his/her firearm were appropriate and consistent with department policy.” This would include the analysis of any force used (including an ECD) and actions that preceded the OIS.
- Additionally, the ECD Appendix should not direct what evaluation takes place in other Department General Orders.

Item #2 – Composition of the ECD Review Board: (Section III. A.1. pg. 2) As drafted, the ECD board would include one member of the Police Commission.

DPA/COH

- Given the constraints for community inclusion both agencies call for a second Commissioner to be included to compensate for civilian oversight (two in total)
- Concern that the ECD Review Board is too heavily weighted with law enforcement officials

SFPD:

- Chief continues to work with the City Attorney's Office to develop a process to allow a member of the public to take part in the ECD Review Board.
- If the suggestion of a second Police Commissioner is in lieu of a member of the public sitting on the ECD Review Board, the SFPD opposes that recommendation.

Item #3 – Expanding Review Boards written analysis: (Section III. B. 3, pg. 3)

DPA:

- Requests a fifth point after "Whether the use of force investigation was complete" to read; "e) written analysis to include recommendations regarding policies, training, equipment, tactics, and supervision."

SFPD:

- Believes additional point would be redundant as the requirement of written analysis of equipment, tactics and supervision is already included in numbers one, two and three of this section
- Additionally, the purpose of the ECD Review Board is to continually review training, policies and procedures, as stated in paragraph four of the Policy section

Item #4 –Paragraph related to SF Administrative Code 96A: (deleted section under "Duties of the ECD Review Board," pg. 4)

DPA:

- Requests reinstating this paragraph and expanding the summaries in the 96A Report to be more detailed, similar to the SF Sheriff's Department 96A report and the LAPD Commission's report on Categorical Uses of Force

SFPD:

- This ECD Appendix deals with the ECD Review Board, and not all uses of force, which is what SF Admin Code 96A covers. ECD uses, once implemented, will be included in the SFPD's 96A report.
- The SFPD believes the ECD Review Board Appendix is not the appropriate document to define the format and content of the 96A report.
- Changing the format of the SFPD's 96A Report should be a separate discussion
- The Department is working with the Board of Supervisor's Office to determine any impact on the format of the 96A Report based on Assembly Bill 953, which goes in effect on July 1, 2018
- The provision in the deleted paragraph requiring the ECD Review Board's report be presented to the Police Commission on a quarterly basis is redundant, as that requirement is already stated in paragraph #5 on Duties of ECD Review Board
- The Department has included the DPA's suggestion that the ECD Review Board report include the summaries of each ECD incident in paragraph #5 under 'Duties of ECD Review Board'