

San Francisco Police Department Responses to Community Forums

I. Community Safety

De-escalation/Crises Intervention

At all three Human Rights Commission meetings, community members were concerned that de-escalation techniques and Crises Intervention Training would go by the wayside if Conducted Energy Devices (CEDs) were implemented in San Francisco.

The San Francisco Police Department (SFPD) draft policy states the following on page 1:

- 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 CED training are authorized to carry CEDs.¹

The SFPD has been firmly behind this requirement and the language has been included since the first draft policy was presented to stake holders on May 5, 2017.

Officers who have not gone through the training for the new use of force policy and CIT training cannot carry a CED. The SFPD will continue to train all members in CIT and de-escalation tactics.

If the Police Commission allows CEDs, they will be governed under Department General Order 5.01 (Use of Force), which stresses de-escalation as a tactic to be used in all appropriate situations. Officers are still responsible for the force used regardless if it is a personal body weapon, baton, or CED and must always comply with the requirements of DGO 5.01.

CED Injuries and Death Rate

The SFPD recognizes that the loss of life is always tragic and not only affects the Community but also the Police Department. The breadth of research regarding injuries has pointed to a lower rate of injury to

¹ Draft DGO 5.02 Posted on SF Police Commission website

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both subjects and officers when CEDs are used compared with other types of force.² Deaths that cite CEDs as a cause or contributory factor are extremely rare.³

Injuries are extremely rare according to some studies: "...99.75% of criminal suspects shocked by a Taser received no injuries or mild injuries only, such as scrapes and bruises."⁴

Another study found no evidence of cardiac problems:

"1,201 instances of CED use in the field and found no evidence of cardiac problems, even when the probes hit suspects in the chest area. Approximately 15 percent of the cases involved incidents in which an electrical charge likely affected the heart area. The researchers did not find any sudden death events suggestive of cardiac dysrhythmias in this group, or in the group as a whole. They concluded that fatal cardiac incidents are unlikely to occur when CEDs are used to subdue suspects."⁵

According to a survey of literature conduct by the National Institute of Justice under President Barack Obama's administration, CED-use was associated with a reduction of suspect injuries as compared to other physical uses of force:

"Across 12 agencies and more than 25,000 use of force cases, the odds of a suspect being injured decreased by 70 percent when a CED was used. Controlling for other types of force and resistance, the use of CEDs significantly reduced the probability of injuries. In very rare cases, people have died after being pepper sprayed or shocked with a [CED], although no clear evidence exists that the weapons themselves caused the deaths."⁶

² See National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption* at 30, May 2011; President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*. Washing, DC: Officer of Community Oriented Policing Services, at 38, 2015 (citing John M. MacDonald, Robert J. Kaminski, and Michael R. Smith, "The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events," *American Journal of Public Health* 99, no. 12 (2009) 2268–2274, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775771/pdf/2268.pdf>; Bruce Taylor et al., *Comparing Safety Outcomes in Police Use-Of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted Energy Devices and A Matched Comparison Group That Have Not: A Quasi-Experimental Evaluation* (Washington, DC: Police Executive Research Forum, 2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/237965.pdf>; Bruce G. Taylor and Daniel J. Woods, "Injuries to Officers and Suspects in Police Use-of- Force Cases: A Quasi-Experimental Evaluation," *Police Quarterly* 13, no. 3 (2010): 260–289, <http://pqx.sagepub.com/content/13/3/260.full.pdf>.)

³ See, e.g., Jena Neuscheler and Akiva Freidlin, *Report on Electronic Control Weapons Submitted to the City of Berkeley*, at 36-41, Stanford Criminal Justice Center at Stanford Law School, Jun. 2015 (reporting that several studies found a correlation between a reduction in firearm-related incidents, whereas others found no correlation, yet none found an *increase*).

⁴ Safety and Injury Profile of Conducted Electrical Weapons Used By Law Enforcement Officers Against Criminal Suspects, William P. Bozeman, MD, *Annals of Emergency Medicine* (1/09)

⁵ Bozeman, William P., Eric Teacher, and James E. Winslow, "Transcardiac Conducted Electrical Weapon (TASER) Probe Deployments: Incidence and Outcomes," *The Journal of Emergency Medicine* (June 2012)

⁶ National Institute of Justice: US Department of Justice, (2010)

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Additionally, reports of deaths related to CEDs must be placed in the appropriate context. According to Reuters, since 1983 there have been 1005 identified deaths “following encounters with police in which [CEDs] were used”⁷ However, that number is not the amount of people who have died *because of* CEDs. Each incident was identified when CEDs “were used either on their own or, *more often, as part of a larger mosaic of force.*”⁸ Of those 1005 cases, in only 153 did the medical examiner cite the CED “as a cause or contributing factor in the death.”⁹

These deaths must be placed in the proper context. According to the Department of Justice under President Obama “the CED is cited as a causative or contributory factor in very few arrest-related deaths each year. In this context, the relative risk of CED deployments appears to be lower than other use-of-force options.”¹⁰ Thus, as noted above, the breadth of data available to us demonstrates that CED-use is associated with fewer injury and death rates than other force options.

Does not Promote Safety

Community input in this area focused on Officer Involved Shootings as cited in the 2009 University of California, San Francisco study and the Los Angeles Police Department’s 2015 CED reporting.

The UCSF study is an outlier among the broader literature regarding CED-related deaths. As noted above, the breadth of information in this area demonstrates that CED-use is not associated with an increase of in-custody or law enforcement related deaths.¹¹ Additionally, UCSF’s findings did not rely upon autopsy or toxicology findings.¹² Finally, since relatively few agencies shared data with UCSF, the findings were “very likely . . . skewed.”¹³

The LAPD Use of Force numbers also somewhat of an anomaly. The study’s effectiveness numbers are based on the number of trigger pulls and not incidents. If an officer correctly used a CED and pulled the trigger twice to deliver the charge, the effectiveness rate would be 50%. If it took three trigger pulls before the subject complied or was placed in custody the effective rate would be 33%. This is akin to saying that a baton had an effective rate of 33% if the officer swung it three times to subdue a suspect.

Lastly, CEDs have been criticized for putting officer to close a violent or aggressive subject. The below force options show the distance at which they have to be deployed:

CED Ranges:	Optimal 8-15 Ft.	Effective 20+ Ft.
ERIW ¹⁴ :	15-60 Ft.	

⁷ Peter Eisler, Grant Smith, & Jason Szep, “How Reuters Tracked Fatalities and Taser Incidents,” *Reuters*, Aug. 22, 2017, accessed Nov. 1, 2017, <https://www.reuters.com/article/us-usa-taser-methodology/how-reuters-tracked-fatalities-and-taser-incidents-idUSKCN1B21AM>.

⁸ *Id.* (emphasis added).

⁹ *Id.*

¹⁰ *Study of Deaths Following Electro Muscular Disruption* at 3 (citing Mumola CJ. *Arrest-related deaths in the United States, 2003-2005*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. 2007).

¹¹ See footnotes 2, 3.

¹² “Are TASER Devices Really Dangerous?” *Forensic Drug Abuse Advisor*, Mar. 2009 (Vol. 21, Issue 3).

¹³ *Id.*

¹⁴ Two officer minimum – ERIW plus lethal cover officer

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OC/Pepper Spray¹⁵: 6 – 10 Ft.
Baton: 0 – 3 Ft.
Personal Body Weapon: 0 Ft.

Risk Factors

The SFPD recognizes that certain groups of people fall into categories that may be at higher risk of serious injury or death. The draft CED policy addresses these groups. If a subject falls into a high-risk group, an officer must be in a situation where deadly force could be used. In draft DGO. 5.02, CEDs are not prohibited, but require a higher threshold to use against identifiably pregnant persons, the elderly, and people with heart conditions. If the above factors present themselves, officers must be in a deadly force situation.

The SFPD already imposes these limitations on other uses of force. For example, DGO 5.01 (Use of Force) prohibits the use of Extended Range Impact Weapons (ERIW) against the elderly, children, people who appear physically frail, and pregnant persons unless deadly force would be authorized. The SFPD intends to extend these limitations to the use of CEDs.

CEDs are Unreliable

This set of concerns centers around the LAPD study finding that CEDs have a 53% effectiveness rate. As noted above, the LAPD study counted effectiveness rates based upon trigger pulls, not upon incidents. Calculating effectiveness rates as LAPD has artificially increases the official failure rate, while not considering whether the CED was successful in the overall encounter.

A review of other law enforcement agencies, however, shows that CEDs are more effective than the LAPD study suggests. For example, a review of 2016 Toronto Police data demonstrates that their CED deployments had an effectiveness rate of 88.4%:¹⁶

C.E.W. Effectiveness

Effectiveness	#	%
Effective	258	88.4
Not Effective	28	9.6
Not Applicable	6	2.0
Total	292	100

- Effectiveness is measured by the ability of officers to gain control of a subject while utilizing a CED.
- Ineffectiveness was associated with shot placement, poor conduction (e.g., the subject was wearing heavy clothing), or situations where the subject failed to respond to the demonstrated force presence of the CED.

¹⁵ Officer(s)/bystanders can be contaminated also

¹⁶ http://www.tpsb.ca/images/agenda_mar23_public_main2.pdf

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- The “Not Applicable” category refers to unintentional discharges.

Additionally, CED effectiveness rates should not only consider when the device is actually deployed, but should also consider whether it was successful as a deterrent. A review of United Kingdom data illustrates this. In 2016, CEDs were used 10,329 times in the United Kingdom. 51% of those deployments were “red-dotting” (i.e. aiming only). CEDs were merely drawn another 25% of the time. CEDs were fired only 16% of the time. Of these deployments, 83% of the incidents resulted in the suspect surrendering without a discharge.¹⁷

II. Ethics

Unclear Guidelines & Definition of Usage, Force & Accountability

The SFPD recognizes that CED’s are a “*Less Lethal*” option and has never stated that CEDs are “*Non-Lethal*.”

Nomenclature

Regarding usage, the official designation for a CED within the draft policy is “Conducted Energy Device.” Prior draft policies from as late as 2016 use the term CED.¹⁸ The SFPD reviewed and took information from fifteen law enforcement policies. In a review of those policies, eight used “device,” six used “weapon,” and one used “Taser.”¹⁹

During stakeholder meetings, the Los Angeles Police Department (LAPD) effectiveness rates were continually discussed. A review of the LAPD policy shows that the word “device” is used.²⁰

The most important reason to keep the word “device” is consistency. If a person is brought to county jail after being subject to a CED-use, the arresting officers will have to note the use of a CED on the person’s booking card. The San Francisco Sheriff’s Department uses the term CED. This nomenclature will help two deeply intertwined agencies communicate effectively and avoid confusion.

The draft policy is a general outline on how and when the CED can be used. The most important part of teaching officers how to use a CED will come during training. Most terms that are in the draft policy are from Department General Order 5.01 (Use of Force) or other DGOs. It is important to standardize terms so orders do not conflict or confuse officers who are responsible for their implementation.

Accountability

¹⁷ <https://www.gov.uk/government/publications/police-use-of-taser-x26-conducted-energy-devices-statistics-england-and-wales-1-january-to-31-december-2016/police-use-of-taser-x26-conducted-energy-devices-statistics-england-and-wales-1-january-to-31-december-2016#trends-in-taser--x26-use-2011-to-2016>

¹⁸ SFPD Bureau Orders, Version 1 & 2 (05/30/16)

¹⁹ <http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/police-commission-August%2021%2C%202017%20SFPD%20CED%20comparison%20table.pdf>

²⁰ LAPD Use of Force-Tactics Directive; Directive No. 4.4; (December 2015)

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The SFPD Academy staff will train officers to the policy and make sure that the parameters of CED use are clearly articulated and explained.

In Chief Scott's presentation to the Police Commission on June 21, 2017, he stated that "accountability" was one of four pillars that would guide CED use for the SFPD. Chief Scott highlighted the following:

- Consistent with Department General Order 5.01, all CED activations would be recorded on the use of force log currently in use, along with the supervisory use of force evaluation form.
- Current state and local legislation requires the SFPD to collect and report data to the public on incidents involving uses of force on a quarterly basis.
- The technology embedded in the CED will assist the SFPD with the reporting.
- Review data, trends, and changing case law in CED use.
- Initially any activation of a CED will require a notification to commanding officers through our department's Operations Center.
- Quarterly to review all CED activations.
- CED devices have the capability to pair with the Department's body worn cameras increasing transparency and accountability.²¹

Should CEDs be implemented, the SFPD will comply with the Chief's guidelines.

Conflict of Interest

The SFPD has a relationship with Axon through a contract for Body Worn Cameras (BWC) and video storage. The contract went through the San Francisco procurement policies and guidelines. Axon won the contract in an open and transparent process through the Controller's Office of Contract Administration. SFPD does not have any sort of special relationship with Axon that unduly influences its decision-making in any matter.

Research Validity & Reliability

CEDs are the most studied use of force device within law enforcement. Axon has and does sponsor research and studies regarding their products. However, there are a myriad of studies that Axon did not take part in from academic institutions, government agencies, and law enforcement itself.

²¹<http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/Chief%20Scotts%20statement%20regarding%20CEDs.pdf>

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Specifically, the SFPD posted the following studies on the Police Commission CED webpage:

- Conducted Electrical Weapon Use by Law Enforcement: An Evaluation of Safety and Injury; Journal of Trauma; Strote J; Walsh M; Angelidis M; Basta A; Hutson HR, (2010)
- Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects; Annals of Emergency Medicine; (1/09)
- Police Use of Force, Tasers and Other Less-Lethal Weapons; U.S. Department of Justice, Office of Justice Programs, National Institute of Justice; (May 2011)
- Comparing safety outcomes in police use-of-force cases for law enforcement agencies that have deployed Conducted Energy Devices and a matched comparison group that have not: A quasi-experimental evaluation; Police Executive Research Forum (PERF); (2009)
- Final Findings From the Expert Panel on the Safety of Conducted Energy Devices; U.S. Department of Justice, Office of Justice Programs, National Institute of Justice; (October 2011)
- Wake Forest Baptist Study Suggests Tasers Don't Cause Cardiac Complications; Journal of Emergency Medicine; Funded by the National Institute of Justice; (2012)

The SFPD examined other studies not listed including but not limited:

- Council of Canadian Academies and Canadian Academy of Health Sciences. The Health Effects of Conducted Energy Weapons. The Expert Panel on the Medical and Physiological Impacts of conducted Energy Weapons – Full Report. Council of Canadian Academies and Canadian Academy of Health Services (2013)
- Electrical Testing of TASER X2 and TASER X26P Conducted Energy Weapons; Joey R. Bray & Fred Cameron; Royal Military College of Canada; (June 2014)
- Conductive Electrical Devices: A Prospective, Population- Based Study of the Medical Safety of Law Enforcement Use; The Journal of TRAUMA- Injury, Infection, and Critical Care; Alexander L. Eastman, MD, et al.; (June 2008)

CEDs are Torture or Cruel & Unusual

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In 2007, the United Nations Committee Against Torture stated that CEDs “can be a form of torture.”²² CEDs have been adopted by numerous Law Enforcement agencies from around the world including, but not limited to the following:

Argentina	Australia	Brazil
Canada	Czech Republic	Finland
France	Germany	Iceland
Ireland	Kenya	Malaysia
New Zealand	Sweden	United Kingdom
United States		

The above countries disagree that a CED in and of itself is torture. CEDs are a force option like any other. There is nothing inherent about them that makes them “torture” when used in an appropriate, constitutional manner. Any force option can be used in a manner that constitutes “torture”—however, such a use is obviously against SFPD policy and constitutes a criminal act. The SFPD intends to adopt a restrictive and highly monitored CED-policy that will not permit the device to be used in any manner that can be reasonably described as “torture.”

III. Signaling & Communication

CEDs do not Replace Firearms

The SFPD agrees that CEDs will not replace firearms. Situations will arise where a firearm may be the only reasonable force option in a deadly force encounter. CEDs can, however, be an option where deadly force may be justified.

For example, if a subject possesses an edged weapon or a blunt object and presents an immediate threat to a third party or officer, an officer might attempt to use a CED to stop the threat. The option to use an intermediate level of force could mitigate the use of a firearm in this situation.

The above reasoning is clearly contemplated in the DGO 5.01 as it relates to an ERIW deployment. Although an officer armed with an ERIW may use it in a deadly force situation, a lethal cover officer is there to protect the officer or third party if the ERIW has no effect on the subject.

Although whether CED-adoption reduces officer involved shootings continues to be a debated topic, the following studies make reference to deploying a CED during a lethal force encounter:

- “67 (26.7%) of the 249 (of the 580 total) law enforcement officers who used [a CED] at least once in the field stated that they have used the [CED] in a situation where they would have been legally justified in using deadly force (i.e. firearm).”²³

²² <https://www.cbsnews.com/news/un-tasers-are-a-form-of-torture/>

²³ Exploring patterns of TASER [ECD] use by the police: an officer-level analysis, *Journal of Crime and Justice*, Vol. 34, No. 3, November 2011, 190–204.

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- “In addition, use of the [CED] will often prevent the need to use a more serious level of force such as deadly force.”²⁴
- “[CEDs] can reduce the incalculable human costs suffered when officers must use deadly force because a less-lethal option is unavailable.”²⁵

Commissioners Need to Be Involved

The San Francisco Police Commission specifically led DOJ Finding 16 (regarding CEDs). Commissioners have led the CED-stakeholder group, held community meetings, and have dedicated an entire webpage to the documentation, studies and articles related to CEDs. The full Police Commission met on June 21, 2017 to listen to presentations from several subject matter experts and speakers. The Police Commission has encouraged members of the community to provide input and express opinions on CEDs. All submitted materials has been posted on the San Francisco Police Commission website.

CEDs are Disproportionately used Against People of Color

The SFPD is committed to policing in a fair, impartial, and constitutional manner. Department members have been or are going through Implicit Bias Training, Crises Intervention Team Training, and Use of Force Training.

Officers are governed by the DGO 5.01 (Use of Force) and can only use force as outlined in the policy. Officers are trained to examine and assess the threat that a subject presents. Officers are prohibited by law and DGO 5.17 (Policy Prohibiting Biased Policing) from targeting people based on their characteristics. All uses of force are subject to a Supervisory Use of Force Evaluation which is reviewed through the SFPD chain of command.

SFPD members, both sworn and civilian, have or will go through the following classes:

1. **Bias Based Policing: Remaining Fair and Impartial** (2015/2106, AO/CPT²⁶ Cycle, Officers and Sergeants)
2. **Managing Implicit Bias** (Training provided by Department of Human Resources, Lieutenants, Captains, Civilian Managers, and Command Staff, 2016)
3. **Fair and Impartial Policing** (Command Staff, 2016)

²⁴ Maryland Chiefs of Police Association (MCPA), Maryland Sheriffs' Association, Agency Guidelines, For Use of Electronic Control Devices (Dec. 2010).

²⁵ Report of the Maryland Attorney General's Task Force on Electronic Weapons, (Dec. 2009).

²⁶ AO/CPT: Advanced Officer/Continuing Professional Training; All sworn members must complete every two years as mandated by POST/SFPD.

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4. **Principle Policing/Procedural Justice & Implicit Bias Training** (2017/2018 AO/CPT Cycle, Officers and Sergeants)
5. **Creating an Inclusive Environment** (Training provided by the Department of Human Resources-Sergeants, Inspectors, and Civilian Supervisors, 2017/2018)

SFPD will always monitor its uses of force and if inequitable trends are identified it will bring those findings to the Police Commission and take remedial action.

Community Trust

Without the community's help, the SFPD cannot successfully fulfill its mission. We recognize that trust is the bedrock of this partnership. The SFPD has staffed an entire unit under Commander David Lazar in order to engage and discuss issues that both the community and SFPD feel are a priority: to work together to solve or mitigate those areas of mutual concern.

If the Commission approves officers to be equipped with CEDs, SFPD will continually examine and refine training, tactics and policy.

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IV. Financial Allocations

High Financial Cost

At various community meetings and commission meetings the figure of \$20 million has been used. The \$20 million figure has also been linked to a yearly budget item as opposed to one time cost. This estimate is extremely high and has several costs that should not be included.

First, costs are both one time and recurring. Buying a CED is a one-time cost for approximately five years. CEDs can have a warranty of up to five years allowing damaged or defective devices to be returned and replaced by the manufacturer.

Second, personnel may or may not be trained using on-duty compensation or overtime compensation. For example, officers who went through Body Worn Camera training were overwhelmingly trained on-duty. Some of the trainers were compensated with overtime in order to train officers that work either the Swing or Midnight Watches. Currently, SFPD training in CIT and Use of Force does use overtime to allow “backfill” at a station. Officers who are off the street for training, are replaced by officers that are paid overtime. This allows for little or no reduction in service to police districts.

Third, the breadth of research shows that there is a decline in both subject and civilian injuries. If SFPD sees even a conservative decrease in injuries that keep officers from work, it will help off-set some costs of a CED program.

Increase De-escalation, Anti-bias Training & Policy Funding

The SFPD is fully committed to training its officers in de-escalation. To date SFPD has trained hundreds of officers in the following CIT classes:

- Certification CIT Course
- Threat Assessment/Tactical De-escalation Training
- Basic Academy Course Training now includes Threat Assessment/Tactical De-escalation Training
- Use of Force Update

To date SFPD has trained hundreds of officers in the following Bias classes:

- Bias Based Policing: Remaining Fair and Impartial
- Managing Implicit Bias
- Fair and Impartial Policing
- Principle Policing/Procedural Justice & Implicit Bias Training
- Creating an Inclusive Environment

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V. Pro-CED Comments/Suggestions

Possible Prevention of Officer Involved Shootings

As stated in Section III. Signaling and Communication, CEDs will not replace firearms, but they may be used in situations where deadly force would be justified. A CED can help avoid escalation to a firearm in some instances.

Research Based

CEDs are the most studied use of force device throughout law enforcement. Axon has and does conduct or pay for research and studies regarding CEDs. As stated early in section II. Ethics the SFPD Responses, an extraordinary amount of research has been done on the technological, medical, and operational uses of CEDs independent of Axon. Overwhelmingly, CEDs are an effective device in certain situations. SFPD recognizes that the use of CEDs is not risk free.

Police need more Less Lethal Options

The Department of Justice's Office of Community Oriented Policing Services (DOJ-COPS) recommended that the SFPD "strongly consider deploying" CEDs. The SFPD believes that equipping officers with CEDs will be beneficial to public and officer safety.

Supplement Training

The SFPD continues to train its officers in the following: CIT, Use of Force, Implicit Bias, Continuing Professional Training, and will continually update and train as data and trends are examined. Specifically, the SFPD has trained members on Automated External Defibrillators (AEDs) for over decade. The class has been taught at the Academy to both recruits and officers as part of a SFPD and POST curriculum.