

## 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:

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- 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:

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- 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:

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- 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

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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.”

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