



DPA

San Francisco Department of Police Accountability

Paul David Henderson
Interim Executive Director

March 14, 2018

Hon. L. Julius M. Turman, President
Members, San Francisco Police Commission

Re: Department of Police Accountability Suggested Revisions to SFPD's Proposed Taser and Taser Review Board Policies

Dear President Turman and Commissioners:

The Department of Police Accountability suggests that SFPD's proposed taser and taser review board policies be enhanced in the following manner:

- Replace the overly broad term "assaultive" with a standard for taser use that requires an individual to pose an immediate threat of physical injury to an officer or another.
- Require de-escalation, crisis intervention techniques and lesser force options when feasible before resorting to taser use.
- Require SFPD's 40-hour of Crisis Intervention Training as a prerequisite for taser use.
- Limit taser use against high risk populations to circumstances when deadly force would be permitted.
- Prohibit the use of stun gun mode as a pain compliance technique and only to complete the probe circuit.
- Appoint a taser coordinator to oversee the program and delineate in writing the coordinator's responsibilities in the taser policy.
- Consistent with the Department of Justice, Police Executive Research Forum, and the manufacturer itself, call taser a weapon.
- Require the Taser Review Board to provide detailed reporting to the Police Commission and the public consistent with Los Angeles Commission's Reports on Categorical Use of Force.

The DPA has provided suggested language on these topics in attached Exhibits A-C.

1. Suggested Standard For Taser Use

The DPA suggests three changes to the Police Department's standards for taser use: a) replace the term "assaultive" with a standard that requires an individual to pose an immediate threat of physical injury to an officer or another; b) require de-escalation, crisis intervention techniques and lesser force options when feasible before resorting to taser use; and c) include the "severity of the crime" as a factor in determining whether taser use is appropriate.

The term “assaultive” is problematic because it involves an attempt to apply any degree of force¹, without requiring a threat of physical injury. By definition, a tap on the shoulder or a pat on the arm is an assault. As noted during the Braidwood Commission on Conducted Energy Weapon Use, “that type of behavior is not egregious enough to warrant deployment of a weapon that is designed to inflict intense pain and to totally incapacitate the subject.”²

Under SFPD’s current policy, taser use is prohibited “if a suspect is fleeing and does not pose an immediate threat of physical harm to the public or officer.” (See DGO 5.02 (III)(J)(3). Restated affirmatively, SFPD’s taser use for a fleeing suspect is appropriate if the individual poses an immediate threat of physical harm to the public or officer. This is the very standard suggested by the DPA. (See also Maryland Attorney General’s Task Force on Electronic Weapons that recommended taser use only when an individual poses an imminent threat of physical injury to themselves or others³.)

Equally important is an explicit requirement that officers use de-escalation, crisis intervention techniques and lesser force options when feasible before resorting to taser use. The severity of the crime (i.e. a jaywalking ticket versus a robbery) is also an essential factor when determining the reasonableness of taser use, and thus should be explicitly stated.

2. 40-hour of Crisis Intervention Team Training as a Prerequisite for Taser Use

The 40-hour Crisis Intervention Team Training provides officers an in depth understanding of mental illness, disabilities, substance abuse, and behavior health crisis calls and through scenario-based training, enables officers to acquire and practice skills in de-escalation and other tactical training that can reduce officers’ use of force. Eight hundred SFPD officers are already CIT certified. By requiring CIT certification as a prerequisite to taser use, officers will be better trained to respond to crisis calls which in turn will address significant community concerns that tasers will be used instead of de-escalation tactics.

3. Limit Taser Use Against High Risk Populations To Circumstances When Deadly Force Would Be Permitted.

The Department’s August 25, 2017 taser drafts limited the use of tasers against the enumerated high risk populations except where deadly force would be permitted. SFPD’s earlier proposed standard is consistent with the Maryland Attorney General’s Task Force on Electronic Weapons’ recommendation that taser use should only be used against the enumerated high-risk populations and in enumerated high-risk circumstances when deadly force is otherwise legally permitted. (See Maryland Attorney General Report, page 4.) This restriction is consistent with Taser International’s warnings that taser use against the enumerated high risk populations in SFPD’s proposed policy could increase the risk of death or serious injury.

¹ Criminal assault is defined as a willful act, coupled with the present ability, to apply physical force to another. (See for e.g. CALJIC, Criminal 9.00 Assault Defined.)

²<https://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/Braidwood%20Commission%20on%20Conducted%20Energy%20Weapon%20Use.pdf> (page 303).

³ See <https://www.nccpsafety.org/resources/library/report-of-the-maryland-attorney-generals-task-force-on-electronic-weapons>

4. Prohibit The Use Of Stun Gun Mode As A Pain Compliance Technique And Only To Complete The Probe Circuit.

The Police Executive Research Forum ("PERF") and the Department of Justice's Office of Community Oriented Policing Services ("COPS") caution that using drive stun mode "to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation."⁴ The organizations, therefore, recommend that police departments "carefully consider policy and training regarding when and how personnel use the drive stun mode and ... discourage its use as a pain compliance tactic." *Id.* Taser International, warns, "Drive-stun use may not be effective on emotionally disturbed persons or others who may not respond to pain due to a mind-body disconnect." In *Armstrong v. Pinehurst* (4th Cir.2016) 810 F.3d 892, 902-903 the court found that the repeat tasing in drive stun mode of an individual suffering from bipolar and schizophrenia who had walked away from a hospital during an involuntary commitment procedure actually increased Mr. Armstrong's resistance. He stopped breathing and died. The *Armstrong* court noted that [e]ven the company that manufactures tasers, in other words, now warns against the precise type of taser use inflicted on Armstrong." (See *Armstrong, supra*, 810 F.3d 892, 902-903, emphasis added.)

5. Appoint A Taser Coordinator To Oversee The Program And Delineate The Coordinator's Responsibilities In The Taser Policy.

Based largely on Oakland Police Department's taser program, the DPA has delineated the taser coordinator's role and responsibilities in Exhibit C.

6. Adopt The Attached Template For Reporting To Taser Review Board's Findings And Recommendations To The Police Commission.

The DPA provides its suggestions concerning the Taser Review Board in Exhibit B.

7. Call Taser A Weapon Instead Of A Device.

Several organizations including the Department of Justice, the Police Executive Research Forum, the International Association of Chiefs of Police and the manufacturer itself use the term "weapon." Moreover, PERF explained in its new guidelines that the switch from "Conducted Energy Devices" to "Electronic Control Weapon" occurred because ECW was a "term already used by some organizations, in order to reflect the growing awareness that these tools are not harmless and that they are in fact weapons."

Thank you for the opportunity to discuss these recommendations.

Sincerely,



Paul David Henderson
Interim Executive Director

Attachments A-C

⁴ PERF & COPS, 2011 Electronic Control Weapon Guidelines, at 14 (March 2011) (emphasis omitted).

EXHIBIT A

USE OF ELECTRONIC CONTROL DEVICES **WEAPON**

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, **subject to appropriate training and physical training in application of** **use of force**, 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 40 hours of Crisis Intervention** **Team training** and Department's **20-hour** 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*).

DPA Suggested Revisions in Green

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, displaying an intention to assault the officer or another person.~~

Commented [sfpd2]: Policy Item #2

- 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 lasersight.
- 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.

DPA Suggested Revisions in Green

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 coverofficer(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. ~~An officer who does not have access to an AED and reasonably believes he or she is likely to use a taser, shall, when feasible, 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;

DPA Suggested Revisions in Green

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 shall not use drive stun mode as a pain compliance technique.

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 severity of the crime at issue, 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. When feasible, officers shall use de-escalation, crisis intervention techniques, or lesser force options before using a laser.

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 harassing the officer or another person, or verbally or physically threatening an officer or another person, or posing an immediate threat of physical harm to the officer or another person.

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.

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.

Commented [sfpd4]: Policy item #4

AGO 5.02
01/23/18

Commented [sfpd5]: Policy item #5

- I. **SPECIAL CONSIDERATIONS.** Officers shall be aware of the possible heightened risk of an adverse reaction from ECD use on certain subjects. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
2. Special considerations shall be made when using an ECD on the following subjects:
- if the subject is obviously pregnant;
 - if the subject appears elderly;
 - if the subject is visibly frail;
 - if the subject appears to be a child [REDACTED];
 - if the subject is in physical control of a vehicle in motion, including but not limited to motorcycles, bicycles, scooters and skateboards;
 - if the subject is in danger of falling from an elevated height;
 - when the officer has credible information that the subject suffers from a serious medical or psychiatric condition (e.g., heart condition, Alzheimer's disease, [REDACTED]);
 - 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.
3. 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:
- to prevent a subject from destroying evidence, such as placing evidence in his/her mouth;
 - to intimidate by reckless display;
 - 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;
 - on a subject who is compliant or who displays only passive non-compliance;
 - as a prod or escort device;
 - solely as a pain compliance technique;
 - to rouse unconscious, impaired or intoxicated subjects; or
 - 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:
- contact DEM and request emergency medical personnel respond to the scene of the ECD activation;
 - contact DEM and request a unit equipped with an AED respond to the scene if one is not present.
 - 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;
 - 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

DKO 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

ECW Coordinator's role and responsibilities including 1) ECW training; 2) issuing, monitoring, maintaining and testing ECW equipment; 3) ECW data collection and analysis; 4) reviewing all ECW deployments; 5) providing subject matter expertise for ECW Review Board

- 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).
- 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.

Commented [sfpd7]: Policy item #7

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

EXHIBIT B

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 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 be 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 ~~and will include an analysis of the taser activation.~~

Commented [MS(1): Appendix Item #1
DPA suggests adding "will include an analysis of the taser activation" because DGO 8.11 and DGO 3.10 (Firearm Discharge Review Board) address investigation and review of officer-involved shootings involving firearms and not taser activations. Thus, the suggested language is necessary to ensure that the Firearm Discharge Review Board will analyze and make findings concerning any taser activation that takes place during an officer involved shooting.

The purpose of this review process is to ensure that the department is continually reviewing its training, policy and procedures, and emerging practices 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 Incapacitation (NMI) or

¹ Abrasions, hematomas, contusions-examples

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 [MS(3): Appendix item #2.
DPA suggests increasing Police Commission representation to two members to provide more civilian representation during the review of Inster incidents.

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:

DPA Suggested Revisions In Green

a. Whether the force used, including the ECD activation, was consistent with SFPD's Use of Force policy (DGO 5.01). 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 has 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 the 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 could pose a future safety risk.

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

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.

With the goal of continual improvement, identify and make recommendations concerning the Department's policies, training, equipment, tactics and supervision.

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

f.—

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.

Commented [MS(5): DPA suggests that the ECD Board duties, including its role of identifying and making recommendations concerning policies, training, equipment, tactics and supervision be explicitly stated in this section. Thus, DPA suggests the following: "e. With the goal of continual improvement, identify and make recommendations concerning the Department's policies, training, equipment, tactics and supervision." Department of Justice Recommendations 11 found that the current Firearm Discharge Review Board was limited in scope and recommended written evaluation of policy, training and tactical consideration of discharge incidents, specifically identifying whether the incident was influenced by a failure of policy, training, or tactics. Seattle Police Department's Force Review Board conducts an analysis of incidents including 1) whether the investigation is thorough and complete; 2) whether the force was consistent or inconsistent with SPD policy, training, and core principles; 3) whether, with the goal of continual improvement, there are considerations that need to be addressed regarding among other concerns: de-escalation, supervision, equipment, tactics, training, policy, Department best practices; 4) review each use-of-force packet to determine whether the chain of command has appropriately identified and taken actions to correct any deficiencies in the way the incident was handled; 5) confirmation that uniform standards are applied in Use-of-Force practices; 6) identification of instances, trends, or patterns of deficiencies regarding policy, training, equipment, or tactics; and 7) monitoring all aspects of the Department's Use-of-Force practices with the goal of continual improvement. (See Seattle Police Department 8.500-POL-4 Use of Force-FORCE REVIEW BOARD.) Seattle Police Department's Force Review Board uses a template to report its findings concerning the above-mentioned areas of analysis.

DPA Suggested Revisions In Green

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.

6. The ECD Review Board shall forward its findings ~~including ECD Discharge~~, 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. ~~The Review Board report will address findings and recommendations concerning tactics and decision making, de-escalation, use of force, supervision, and the investigation, using an agreed upon template.~~

~~The Department will prepare a quarterly report containing a comprehensive ECD activations including ECD summaries per SF Administrative Code 96A.~~

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.

IV. TERMINATION OF ECD REVIEW BOARD

The ECD Review Board is an interim measure to ensure that all effective ECD uses 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.

Commented [MS(6)]: DPA suggests this provision to address the topics of the Review Board's report.

Commented [MS(7)]: Appendix Item #4 SFPD's previous ECD Review Board drafts addressed two different quarterly reports: 1) San Francisco City Ordinance Chapter 96A Use of Force reports; and 2) ECD Review Board report.

Concerning the Chapter 96A Use of Force reporting, SFPD agreed upon provision, "The Department shall prepare a quarterly report containing comprehensive data on ECD activations including ECD summaries per SF Administrative Code 96A, along with policy and training recommendations." DPA had suggested and SFPD agreed to provide ECD summaries similar to SF Sheriff's 96A summaries.

The Board of Supervisor's amendments to 96A (File No. 180188) does not impact the Use of Force reporting provisions of 96A.

EXHIBIT C

DPA's Suggested Provisions for the Taser (ECW) Coordinator

ECW Coordinator:

1. The Chief shall appoint an ECW Coordinator who is the Department's lead subject matter expert in the use of the ECW and is responsible for managing the Department's ECW Program.
2. Members reporting ECW deployments or activations shall provide a copy of the Use of Force Report to the ECW Coordinator for data collection, analysis and training purposes.
3. The ECW Coordinator's responsibilities include 1) ECW training; 2) issuing, monitoring, maintaining and testing ECW equipment; 3) ECW data collection and analysis; 4) reviewing all ECW deployments; 5) providing subject matter expertise for ECW Review Board.
4. ECW Coordinator's Training Responsibilities: The ECW Coordinator is responsible for:
 - a. Developing the Department's ECW Training Program curriculum
 - b. Approving certified ECW instructors as Department instructors
 - c. Providing training in the use of the ECW and any related Departmental policies to the members of the Department
 - d. Facilitating scenario-based training where the use of the ECW is considered
 - e. Training specified supervisors on the procedures for downloading information from the ECW
 - f. Providing updated training and re-certification on an annual basis
 - g. Providing training to outside agencies (e.g. Department of Emergency Management)
5. ECW's Coordinator's Record Keeping Duties: The ECW Coordinator is responsible for data management associated with the ECW program. Data management includes the following duties:
 - a. updating and maintaining all training records
 - b. recording serial numbers of all issued air cartridges
 - c. recording serial numbers of all issued ECWs
 - d. recording serial numbers of privately owned ECWs
 - e. downloading ECS following an activation when a subject has been struck by a probe or received electrical stimulation
 - f. computer data entry for deployments
 - g. recording the total number of ECW discharges by each member
6. ECW's Coordinator's Review of ECW Deployments

- a. The ECW Coordinator shall review every ECW activation, including evaluating the reasonableness of the officer's actions, including officer's tactics and decision-making and de-escalation efforts that preceded the use of force, assessing trends within the department, determining whether officers are using ECWs at different rates or in different manners than similarly situated peers, analyzing whether ECWs are being used in a disproportionate manner against certain populations or high risk groups, and recommending training and policy changes to enhance public and officer safety.
- b. The ECW Coordinator shall be notified and respond to any ECW activation that results in serious bodily injury or death or the ECW activation precedes an officer-involved shooting.
- c. For any ECW activation that results in serious bodily injury or death, the ECW Coordinator shall review the incident and provide a written analysis about whether the officer's deployment of the ECW was reasonable, including the officer's tactics and decision-make that preceded the deployment of the taser, and any training or policy recommendations.

7. ECW Coordinator's Equipment and Testing Responsibilities

- a. The ECW Coordinator is responsible for issuing and maintaining the Department's ECWs and cartridges
- b. The ECW Coordinator's weapon maintenance duties include 1) weapon inventory and assignment; 2) ancillary equipment inventory and issue; output testing and measurement; software updates; functional testing; periodic and incidental data download
- c. The ECW Coordinator is responsible for conducting quarterly inspection, maintenance, and independent testing of the ECWs to ensure that they are operating within the manufacturer's recommended parameters.