

Report on Electronic Controlled Weapons (ECW) (commonly known as Taser™)

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Use of Force Subcommittee
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SOURCES

Police Executive Research Forum (PERF) Electronic Control Weapon Guidelines, 2011 (“Guidelines”)

PERF Use-of-Force Policy and Practice Review of the Fairfax County Police Department-FINAL

REPORT, June 2015 (PERF UOF)

Fairfax County Police Department (FCPD) General Order 540.1: Use of Force dated 1-1-13 (“GO”)

Fairfax County Police Department Standard Operating Procedure (SOP) #6-025: Conducted Energy Weapons, 6/1/ 15 (“SOP”)

COMMENTS

I had planned to provide a fairly detailed explanation of the technology behind the weapon because of its dramatic effects and, in some cases, lethality. However, that appears unnecessary because of the presentation by responsible FCPD officials and since I believe that the findings of the released *PERF UOF* do not indicate major problems with ECWs in FCPD. For that reason, I will give a brief summary and address the specific recommendations regarding ECW’s made in the *PERF UOF*.

ECW, also known as Conducted Energy Weapons, most commonly known by the trade name Taser which is the manufacturer, are known to most of us to inflict large charges of electronic shock. Whether true in fact or not, concern has arisen in some minds (including mine) that the technique is relied on too heavily by some police officers when lesser methods of subduing person may be available. Furthermore, this concern has been heightened by public news stories of persons who have even died as a result of the use of ECW.

The TASER delivers power output of the device reported to be below the threshold of ventricular fibrillation.¹ In one study, however, (unique because it was not industry sponsored and because it used human subjects) conducted on 32 volunteer officers from the San Diego, CA Sheriff’s Department, a 5 second exposure of a TASER X-26 to healthy law enforcement personnel either at rest or following vigorous exercise does not result in clinically significant changes of markers physiological stress.² This latter study was done after the studies identified on pages 30-31 of the *Guidelines*.

¹ “The Effect of Taser on Cardiac, Repertory, and Metabolic Physiology in Human Subjects”, Gary V. Vilke, et al., 2011, www.ncjrs.gov/pdffiles1/nij/grants/236947.pdf, pg.18, citing TASER International, TASER® promotional literature, (<http://www.TASER.com>) accessed 9/30/06

² *Ibid.* There are several limitations to the study: subjects were generally healthy and free from chronic disease duration of the TASER activation did not exceed a single five second activation, whereas individuals in the field

The weapon, aptly referred to, causes a neuro muscular interruption. The current FCPD SOP 6-025 even uses the term neuromuscular incapacitation which, even though not in the name of the weapon itself, is an important notation. The *PERF UOF* argues for the term ECW. Another local jurisdiction, I am told, uses the term “Electro Muscular Disruption” which is perhaps more truly indicative of what the device/weapon really does. Furthermore, while not included in the formal recommendations, *REF UOF* does mention in Recommendation#6³, in referring to de-escalation strategies, the avoidance of overreliance on weapons such as ECWs.

OBSERVATIONS

The PERF UOF

The *PERF UOF* notes that the PERF review did not uncover serious issues with Electronic Control Weapons (such as Taser).⁴ Furthermore, the *PERF UOF* notes that the number of incidents involving both pointing of weapons and use of ECWs declined 59% and 35%, respectively, from 2008 through 2013. PERF did make a number of recommendations (Recommendations #24-42) which I will address below.

Recommendation #24: Adopt the term “Electronic Control Weapons” in departmental policies

I concur with the PERF rationale. I worked for 30 years for a government agency whose middle name was bureau(acracy). My experience has been that bureaucracies, both public and private, often make much out of an otherwise meaningless name change. However, in this case, the change is appropriate. At the very least, the term would then be consistent with the predominant nomenclature in use in law enforcement. But, like much of the proposed changes, the significance of the change lies not so much in the name change but in the inculcation of the meaning in the individual officers.

Recommendation #25: Consolidate Policy on ECWs

From reading of the GO and applicable SOP, especially from a background in law enforcement and from representing police officers in other jurisdictions in use of force cases, I believe that not only would the policy be more concise but also the impact of regarding the ECW as a near lethal force would be easier to grasp by the individual officer. Furthermore, I believe that the quality of training and of the clarity of the policy as it pertains to the use of the weapon would be enhanced with a policy which details factors now presumably related to officers in training and the actions to be taken after the use of the weapon including, but not necessarily limited to, specific instructions that the serial number of the ECW be identified in the officer’s UOF report and that any available memory and/or photographs/film be downloaded and preserved as evidence preferably by the supervisor.

often receive multiple shocks; and subjects were also not under the influence of illicit stimulant drugs, or in a state of agitated delirium.

³PERF *Use-of-Force Policy and Practice Review of the Fairfax County Police Department-FINAL REPORT*(PERF UOF), June 2015, p.7

⁴ *Ibid.*, p.39

While not necessarily confined to ECWs, I note that in the presentation of 6/1/15, the Chief of Patrol who has been designated to review the General Orders, when questioned as to the date a certain provision became part of the GO, stated that the date on the GO (in this case 1-1-13) was not necessarily indicative of the date the provision became part of the GO, I suggest that FCPD, as part of its review of GO's, establish a system that tracks when both GO's and SOPs are issued and indicate revision dates to make clear when some text becomes part of a GO or SOP. Without such a tracking of revision dates, it will be unclear when such became policy and therefore, among other things, it would be difficult to establish when officers became responsible for such policy; this in turn would make enforcement of the policy difficult.

Recommendation #26: Use brightly colored ECWs

I am in doubt on this. The rationale that a bright color will reduce the risk of escalation seems to me to rest on the presumption that the subject will know what the device is which is open to question. I also do not understand the premise that a secondary unit might mistake it as a weapon. I would think that a "secondary unit" would assume that a fellow officer would be armed. Support of this recommendation I leave subject to objections by the FCPD as to the validity of the PERF rationale, any objections as to possible compromise of safety due to the bright colors, and the cost of implementation.

Recommendation #27: Clarify that ECWs should not be used against passive subjects

Absent some cogent argument against this recommendation by FCPD, I would concur with this recommendation. I also concur that such should be written into the proposed revised GO on UOF. However, I offer two caveats concerning the wording to be used. First, the limitation should be written in the words "should not" rather than "shall not". The former wording leaves open the possibility, albeit slight and unlikely, that an officer might be required (and able to articulate an objective basis) to use an ECW against a passive person. The second caveat is that the wording suggested in the *PERF UOF* (see page 55) creates a potential conflict with the suggested wording of Recommendation #29.

Recommendation #28: Clarify risk of ECWs to visibly frail persons

I concur. Generally, this is a good idea subject to objections from FCPD. I can see a problem of course for the officer on the beat when the "frail person" turns out not to be so frail. It is the judgment call but at least the instruction will cause the officer to consider this before using the ECW.

Recommendation #29: Implement additional ECW restrictions.

This recommendation proposes three changes. The first provides suggested wording in the GO that would state that flight should not be the sole justification for deploying an ECW. This appears to me to be in conflict in part with the suggested wording in #27 allowing the use of ECW against subjects who are "actively resisting". I realize that the question turns on the facts of the specific situation but it seems to me that flight is a form of active resistance. The wording of any provision regarding this question should be clear as to its intent.

The second suggestion, which prohibits use of ECWs on handcuffed persons, I believe, provides sufficient latitude for exceptions in what would be dire circumstances. The recommendation is appropriate.

The third suggestion would prohibit use of an ECW against subjects in physical control of a vehicle. Absent some sound objection to this from FCPD, I concur that it should be adopted.

At the top of page 56, the *PERF UOF* also advocates merging the relevant language into the GO and eliminating the SOP. I realize that GO's are public record (as does *PERF* presumably) while SOPs are not. I concur with his recommendation. In a context similar to my remarks under Recommendation #25, providing a unified document would provide a measure of transparency for the public but, more importantly, would provide a single comprehensive (and hopefully easy to understand) repository of what the individual officer needs to know about UOF including ECWs and what to do when force is used and a reporting requirement is triggered (and, no, no pun intended).

Recommendation #30: Replace the term “non deadly” with “less lethal” force to describe ECWs

While I cannot here support my claim with specific numbers, it is my understanding that other police agencies are following this trend. Furthermore, I cannot forget my own concern (well founded in fact or not) that ECWs were being relied upon to an unnecessary extent and apparently I am not alone. The weapon delivers 50,000 volts of electricity. Perhaps more importantly, there are enough studies including those mentioned in the *Guidelines* (as well as a recent local and highly publicized incident not within the portfolio of this Commission) that indicate that ECWs can be lethal. This recommendation should be adopted into not only training materials but into the GO as well.

Recommendation #31: Clarify in-service training schedules

PERF UOF wants to change the wording of the training requirement to read “calendar year” rather than the current “12 months”. This does have merit but I would defer to FCPD to determine if the recommendation is logistically feasible and without significant budget implications.

Recommendation #32: Certify officers in ECW use.

Since the training is already mandatory, this may be a semantic change. Subject to any possible necessary clarification of who is “certifying”, in the continued interest of clarity, I believe the recommendation should be adopted.

Recommendation #33: Tighten policy to acknowledge risks regarding repeated use of ECWs

While the Vilke report identified in footnote #1 has shown repeated applications of 5 second bursts over a period of time did not produce damaging effects, the limitations of that study were noted and did not involve the repeated applications of the type that might occur with an officer in an excited/exigent situation nor did the study involve the use of extended 15 second applications. The specificity and clarification of the language suggested by *PERF UOF* should be adopted.

Recommendation #34: Clarify that risks of ECWs and OC are not equal

This recommendation is sound and should be adopted.

Recommendation #35: Warn subjects before ECW use

This recommendation should be implemented into the GO as long as the instructions are in the context of the words “should” and “where feasible”.

Recommendation #36: Advise other personnel of imminent ECW use

This recommendation should be implemented into the GO as long as the instructions are in the context of the words “should” and “where feasible”.

Recommendation #37: Expand policy against ECWs for pain compliance

I note that the current SOP contains language that, while admittedly appearing to allow pain compliance, contains language sets forth conditions where that technique may be used. My concern is that the use of the condition “...or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option” will create an ambiguity that could cause an undue hesitation which might result in injury to officers in an exigent circumstance or, conversely, grounds for an officer to be held in violation of Department policy because he/she did not understand the condition precedent. Is not pain compliance used to accomplish the goal of gaining separation between officers and/or preventing the necessity of considering another force option? I would recommend adoption subject to any sound objections from FCPD.

Recommendation #38: Strengthen policy on officer protection

Aside from my own experience, as the spouse of a nurse of decades of experience at all levels of nursing, I fully understand the significance of this recommendation. My concern, however, is the use of the word “shall”. What happens if the officer does not have gloves? He or she then **MUST NOT** expose themselves to the stated risk. But what if the subject is bleeding profusely? “Shall” means that the officer **MUST** have the gloves and shall not remove the probes without them. I defer to FCPD on this one.

Recommendation #39: Notify EMS of potential ECW use

This should be adopted on a “when possible” basis and incorporated into the new GO.

Recommendation #40: Require medical evaluation following ECW exposure

I certainly concur that a subject on whom an ECW has been used and who exhibits symptoms of medical distress should be taken for medical evaluation. However, the term “medical evaluation” needs to be defined. Does it mean evaluation by a physician? Does it mean mandatory transport to a hospital emergency room? If EMS personnel are present, do the EMS personnel make the decision? I believe that question has to be answered in any subsequent GO or SOP. Any subject exposed to multiple sequential applications of the weapon should be evaluated. In the absence of clear medical evidence that one 5 second application causes physiological stress, I would defer to FCPD on whether such a single exposure should require “medical evaluation”.

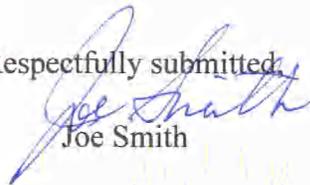
Recommendation #41: Provide sufficient training time for officers to explore ECW use in depth

I strongly concur with this recommendation and believe that it is one of the more important recommendations because it is an opportunity for direct application (as opposed to through the understanding of a GO) to the officer on "the beat". I assume that the implementation of this may have measurable if not significant budget implications but it should be accommodated. Such training must go beyond the technical aspects of the manufacturer's literature with the involvement of credentialed professional medical personnel other than EMS. The particularly attractive portion of this recommendation is the idea, in paragraph two, that trainers should focus on the decision making process even though, if my understanding of FCPD training is correct, this is in effect already done to a certain extent.

Recommendation #42: Train Officers to provide detailed information in all ECW reports

I strongly concur with this recommendation. The implementation of this recommendation, together with a clearer and more comprehensive GO will aid not only the officers but the department as an agency in tracking usage of ECWs specifically and use of force generally. It should help officers think and articulate (through training on writing such reports) because the training, in conjunction with Recommendation #41, will presumably "walk" them through various scenarios. If officers are trained because they have to be more detailed, they will hopefully be able to recognize real situations as they unfold; they will also use less jargon and more understandable language, not just in ECW reports but hopefully in their general incident reports. Such articulation can only help pursuit of investigations, prosecutions, and efficient administration. Included in this increased detail is the specific information regarding the weapon used and any information retrievable from it. The requirement for such detailed reporting will make officers realize that an ECW is an alternative to deadly force but is still near deadly. Such a requirement inures to the benefit of the individual officers, the Department, and the public at large.

Respectfully submitted,



Joe Smith