

# WINDERMERE POLICE DEPARTMENT

## GENERAL ORDER



Effective Date: October 4, 2022	<input type="checkbox"/> Rescinds <input checked="" type="checkbox"/> Amends 8.4 (March 5, 2015)	Number: 8.4
SUBJECT: Electronic Control Device		Print Date: 10/04/22
Distribution: All Personnel	Review Month: October	

This order consists of the following:

1. Purpose
2. Policy
3. Definitions
4. Procedures

### 1. Purpose

The purpose of this policy is to provide officers with guidance and direction on the use of electronic control devices.

### 2. Policy

It is the policy of the agency that personnel performing official duties shall comply with applicable law, and specifically Fourth Amendment standards, by using a level of force that is objectively reasonable in light of the surrounding facts and circumstances. ECD's have been proven effective and are authorized for use in appropriate circumstances by trained personnel.

### 3. Definitions

- A. Electronic Control Device (ECD) - A device designed to disrupt a subject's sensory nervous and motor nervous systems by means of deploying battery powered electrical energy sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses.

- B. A.F.I.D. (Anti Felon Identification Device) – Confetti like pieces of paper that are expelled from the cartridge when fired. Each “aphid” contains an alphanumeric identifier unique to the specific cartridge used.
- C. Active Physical Resistance - A subject makes physically evasive movements to defeat an officer’s attempt at control. This may be in the form of bracing or tensing, attempts to push/pull away or not allowing the officer to get close to him/her.
- D. Aggressive Physical Resistance – A subject makes overt, hostile, attacking movements which may cause injury, but are not likely to cause death or great bodily harm to the officer or others.
- E. Passive Physical Resistance – A subject physically refuses to comply or respond to an officer’s command. He/she does not make any attempt to physically defeat the actions of the officer but forces the officer to employ physical maneuvers, or use a chemical agent to establish control.
- F. Securing Under Power – A technique used to secure a subject during the activation cycle, as instructed through training.
- G. Training ECD Instructors - Authorized agency members who have received advanced ECD training and are certified by the manufacturer of the agency-issued ECD. They are authorized to inspect, conduct minor repairs, download an ECD, and can teach agency ECD user courses.

#### 4. **Procedures**

- A. Authorized Users
  - 1. Only those who have satisfactorily completed the agency’s approved training course shall be authorized to carry an ECD. Agency members will be given annual retraining on the use of an ECD.
  - 2. Officers shall not carry their personally owned ECD.
- B. Device Readiness
  - 1. The device shall be carried in an approved holster on the non-dominant side of the officer’s body. Special exemptions for carry may be made for specialized uniforms with approval from the Chief of Police.

2. The device shall be carried fully armed with the safety on in preparation for immediate use when authorized.
3. Officers approved to use the device shall be issued a minimum of one spare cartridge as a backup in case of cartridge failure or the need for reapplication as covered in training.
4. Officers shall conduct a pre-operation test (spark test) of the ECD prior to the start of each shift. If an officer believes the ECD is not operating properly, the officer shall promptly contact an ECD Instructor to determine the direction needed to correct the issue.
  - a. An officer who is assigned to a specialized unit and who does not carry an ECD while performing the normal duties of his or her job is only required to perform the pre-operation test when the ECD is carried during an operational assignment.
  - b. An officer will be required to attend remedial training on the use of the ECD if the officer has two accidental discharges of an ECD cartridge while performing spark tests within a six month period.

C. Deployment

1. ECD may be used when the subject presents *Active Physical Resistance* or higher resistance. Officers are prohibited from using the ECD on a handcuffed or otherwise secured subjects except when exigent circumstances exist (e.g. the subject was properly secured with his/her hands behind the back, but manages to move his/her hands to the front of his/her body and uses *Active Physical Resistance* against the officer, the handcuffed subject kicks the officer and/or refuses to allow him/her to get close to them, etc.).
2. The justifications for using the ECD are the same officer/subject factors that exist in any other force decision. The initial activation of the ECD, as well as each additional activation, must be objectively reasonable under the standards set forth in *Graham v. Conner*.
  - a. The ECD may be deployed in the case of a sudden attack or when a subject is actively resisting.

1. ECD deployment may increase the risk of death or serious loss of control of any mode of transportation, conveyance or machinery.
  2. Officers are prohibited from deploying an ECD in the following situations unless officers can articulate exigent circumstances which make the deployment objectively reasonable:
    - a. On young children in elementary schools;
    - b. On young children;
    - c. On the elderly;
    - d. On females reasonably believed to be pregnant;
    - e. On individuals with apparent physical disabilities impairing their mobility;
    - f. When the subject's fall may cause substantial injury or death (e.g., an elevated location such as a rooftop or building ledge, climbing over a high fence or wall);
    - g. Individuals in water; and,
    - h. Individuals in physical control of a motor vehicle in motion (i.e., vehicles, motorcycles, scooters, boats, bicycles).
  3. If an officer deploys an ECD in any of the circumstances listed in (a-h) above, the officer must clearly document the exigent circumstances which made the deployment objectively reasonable.
- b. A subject's flight should not be the sole justification for ECD deployment. Additional factors must be considered.
1. Additional factors that must be considered when making use of force decisions include:
    - a. Subject Factors
      1. Seriousness of crime committed by subject

2. Size, age, and weight of subject
  3. Apparent physical ability of subject
  4. Number of subjects present who are involved, or who may become involved
  5. Weapons possessed by or available to the subject
  6. Known history of violence by subject
  7. Presence of innocent or potential victims in the area
  8. Whether the subject can be recaptured at a later time
  9. Whether evidence is likely to be destroyed
  10. Indicators of attack exhibited by the subject such as but not limited to; verbalization of a hostile/aggressive intent, hostile/aggressive posturing, muscular tensing of the body, etc.
- b. Officer Factors
1. Size, physical ability, and defensive tactics expertise of the officers
  2. Number of officers present or available
  3. Immediate reaction in the case of sudden attack
  4. Weapons or restraint devices available to the officer to effectuate the arrest without ECD deployment
  5. Legal requirements
  6. Agency policy
  7. Environment

- c. The above listed subject and officer factors are not all inclusive. Any and all determining factors must be properly articulated by the officer(s) employing physical force.
3. The ECD should not be intentionally aimed at a person's head, neck or groin. The primary target shall be the subject's back, when practical. If the primary target is not available, the secondary target area is front, lower, center mass. Frontal applications of ECD's have been found to be more effective when the probes are targeted at the lower torso engaging the balancing muscles of the pelvic or thigh region. (Diagram of preferred ECD areas in blue is referenced at the end of this directive.)
4. Officers are prohibited from using the ECD in a punitive or reckless manner. Some examples include:
  - a. Using or threatening to use the ECD during an interrogation
  - b. Using the ECD to awaken a person
  - c. Using the ECD as a "Prod"
5. The ECD shall not be used for extracting evidence or contraband.
6. The ECD should not be used in any environment where potentially flammable, volatile, or explosive material (gasoline, natural gas, propane, flammable chemical sprays, etc.) are present.
7. In preparation of deployment, the ECD shall be pointed in a safe direction, taken off safe, and then aimed. Absent exigent circumstances:
  - a. A verbal warning shall be given unless doing so would place an individual at risk;
  - b. Only one officer at a time shall deploy an ECD against a subject; and,
  - c. If present, a second officer shall provide cover.
8. Using the ECD in "drive stun" mode involves pressing the unit against an appropriate area, with or without the cartridge, based on training. Using the ECD in "drive stun" mode only achieves pain compliance and does not achieve Neuromuscular Incapacitation (NMI). Therefore, the ECD may be

used in a “drive stun” mode only as a secondary option, unless the officer clearly articulates a “drive stun” may be an acceptable primary option include, but are not limited to:

- a. Fighting with a suspect
- b. Situations where the probes are likely to impact innocent bystanders or other officers if the cartridge is used
- c. Situations where an officer may not be able to achieve an effective probe-spread, etc.

9. Each activation of the ECD is considered an additional use of force. To minimize the number of standard five second cycles necessary to restrain a subject, officers shall attempt to secure the subject under power as soon as practical. Officers will continually assess the objective reasonableness of using the ECD, as well as the subject’s compliance and breathing ability, before applying additional cycles of the ECD.
10. Officers should apply restraint techniques consistent with training and handcuff a subject under power as soon as practical. The technique of securing a prisoner’s hands to his/her feet behind his/her back is prohibited, except in exigent circumstances. When this technique is used, officers shall document the exigent circumstances in the *Response to Resistance* form. All subjects should be closely monitored for signs or complaints of distress.
11. A person in custody who displays evidence of, or complains of, an injury or illness will receive appropriate medical attention as soon as possible. Officers will be guided by EMS or other competent medical authority.
12. The ECD shall be pointed at the ground in a safe direction with the safety on during administrative handling procedures.
13. No changes, alterations, modifications or substitutions shall be made to the ECD. All repairs to an ECD shall be completed by an authorized vendor.
14. Uniform patrol officers issued an ECD shall carry the ECD when engaged in any uniform assignment.

D. Apparent Medical Emergencies

Through training officers are instructed to look for behavioral indicators that may be associated with medical, mental and/or physiological emergencies. When officers are presented with subjects exhibiting these indicators prompt medical treatment in a hospital emergency department may be needed. Due to the extreme state of mental and physiological excitement, deployment of an ECD may be needed to gain control of a subject to reduce a prolonged physical confrontation. In this scenario the officer shall request emergency medical services (EMS) prior to deployment if circumstances permit. Once control of the subject is achieved, expeditious transport to a hospital emergency department shall be provided by EMS.

- E. Nothing in this order shall prevent an officer from utilizing any readily available object or empty hand technique as a weapon in circumstances or situations where the actions of a subject constitute *Deadly Force Resistance* that could result in great bodily injury, permanent disability, permanent disfigurement or death to the officer or others.
- F. The ECD should not be used in situations where officers may need immediate deadly force (building searches, felony stops, and armed encounters). Officers should keep in mind the limitations as well as the capabilities of their issued ECD.
- G. After an officer uses an ECD, the officer should:
  - 1. Handcuff the subject to minimize the threat of injury to either the officer or the subject.
  - 2. Remove the ECD probes at the earliest opportunity. The ECD probes shall be removed in accordance with agency approved training. ECD probes that have struck the face, groin, female breasts, or male nipple area must be removed by properly trained medical personnel. When probes are located in these areas the officer shall request EMS for transport to a hospital emergency department.
  - 3. Confirm the ECD evidence is handled in accordance with Evidentiary Property. The following shall be collected and packaged separately as evidence:
    - a. Cartridges and at least one AFID, if possible.
    - b. Probes and wires; ECD probes that have struck a person's body shall be considered a biological hazard and packaged appropriately.

4. Officers will not collect the ECD evidence when a Critical Incident has occurred with the use of an ECD. Supervisors will be responsible for contacting the on-call subcontracted agency.
5. Request emergency medical services to provide medical treatment and transport if the subject shows signs of injury, complains of a medical emergency, or requests medical treatment after the deployment.
6. Document all injuries in the incident report.
7. Photograph all significant injuries and impact points, if possible. Photographic evidence shall be handled consistent with agency policy.

#### H. Reporting and Accountability

1. Supervisors shall be provided additional training on reporting and accountability measures.
2. For all ECD deployments, officers shall complete the *Response to Resistance* form. Officers shall notify their supervisor as soon as possible after each intentional or unintentional discharge, with the exception of function pre-operation spark tests conducted at the beginning of a shift and training exercises. A supervisor is only required to respond to unintentional discharges involving an officer/suspect confrontation or when an officer or third party is contacted by the ECD. For all other unintentional discharges, the officer's supervisor is not required to respond, but shall confirm the officer completes the *Response to Resistance* form and notifies the chain of command as soon as practical. Supervisors shall document in his/her monthly stats when a *Response to Resistance* form has been completed.
3. When an officer draws the ECD from its holster, in the course of his/her official duty, and by its mere presence achieves compliance from a subject, a *Subject Compliance Report* is required. Note: A *Subject Compliance Report* is not considered a *Response to Resistance* form. Supervisors shall document in his/her monthly stats when a *Subject Compliance Report* has been completed.
4. In use of force situations involving an officer/suspect confrontation, a supervisor shall respond to the scene of every discharge and conduct a review of the deployment to confirm compliance with agency policy. If the supervisor is unable to respond to the scene, the supervisor shall

document the reason that made it impractical to respond. The supervisory review should include:

- a. Speaking with the involved officer
  - b. Speaking with the suspect consistent with training
  - c. Documenting the presence of any witnesses and their verbal statements, and documenting whether witnesses were willing to provide written statements
  - d. Confirming that photographs are taken of significant injuries and impact points, if possible
  - e. Confirming ECD evidence (cartridges, probes and wires, and AFIDs) is collected for Critical ECD Incidents involving the ECD, the on call subcontracted CSI will be contacted
  - f. Confirming that a recording from an OBRS is collected and placed into evidence and the recording depicts the use of force incident
  - g. Reviewing the information and the ECD data once obtained
- I. Professional Services shall review all ECD cases in which:
1. The subject dies or suffers serious bodily injury after deployment of the ECD
  2. The subject is exposed to prolonged or excessive cycling of the ECD without sufficient documentation to establish the objective reasonableness of each activation
  3. The ECD appears to have been used in a punitive or abusive manner
  4. There appears to be a material deviation from the ECD policy. If Professional Services determines that the officer's actions were objectively reasonable, no further investigation is required. However, Professional Services shall notify the Chief of Police when the records fail to establish the objective reasonableness of the officer's actions. The Chief of Police shall determine who shall conduct any further investigation.
- J. Critical Incidents

Supervisors shall notify the chain of command of any critical incident to include, but not limited to:

1. An ECD was used on a subject who officers reasonably believe is suffering from a serious/critical medical, mental and/or physiological health condition (indicators of possible heart attack, stroke, signs of paranoia, excited delirium, etc.).
2. The subject sustains serious physical injuries; or,
3. The subject dies.

K. Downloading Data

The data port on the ECD stores the date, time, duration of each activation, battery life of the ECD, and helps improve the accuracy of incident documentation and helps determine whether the device is functioning properly.

1. Within three business days, excluding holidays and weekends, following an ECD deployment, an officer shall contact the ECD Instructor and make arrangements for downloading the ECD data. The ECD Instructor will download the information from the data port and forward it to the chain of command for review. This download shall be attached to the *Response to Resistance* form.
2. At a minimum, each officer's ECD data will be downloaded during their annual inventory.
3. Only personnel assigned to Professional Services or an ECD Trainer may download the information from the data port.
4. Supervisors or managers may request a download at any time. Any officer issued such an order will immediately respond to this request.
5. ECD Trainer shall prepare an annual memorandum on the product reliability, recommended training needs and/or policy modifications related to the uses of force.
6. The ECD Trainer shall download data from an ECD prior to any factory repairs/maintenance.

L. Random Audits

Performing random audits of data downloaded from an officer's ECD and comparing it with the *Response to Resistance* form improves accountability.

1. Professional Services and the ECD Trainer is authorized to conduct random audits of ECD data information.
2. Audits shall review activations to ensure they are consistent with:
  - a. Daily spark tests
  - b. Any activations lasting longer than ten seconds
  - c. Three or more activations with minimal time between the activations
3. Professional Services and the ECD Trainer shall confirm the activations are consistent with agency policy and recommend or take appropriate action if any deficiencies are identified.



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Chief David A. Ogden