



# TOWN OF FAIRFAX

## STAFF REPORT

### January 16, 2019

**TO:** Mayor and Town Council

**FROM:** Christopher Morin, Chief of Police

**SUBJECT:** Receive report regarding the deployment of Conducted Energy Devices (aka "Tasers") by the Police Department, with quarterly updates to the Council for the initial 12-month period

---

#### RECOMMENDATION

Receive report regarding the deployment of Conducted Energy Devices (aka "Tasers") by the Police Department, with quarterly updates to the Council for the initial 12-month period.

#### DISCUSSION

The Fairfax Police Department is the only police agency in Marin County that does not issue Conducted Energy Devices (CED's) to its Police Officers. CED's electrically stun and temporarily disable people, causing involuntary muscle contractions. This makes people easier to arrest or subdue. CED's use compressed nitrogen to fire two barbed probes at suspects. CED's are a modern policing tool that, if available, provide sworn officers another level of force that is less than lethal. We believe it is sound public policy for the Department to deploy CED's.

The Fairfax Police Department has low instances of "Use of Force" incidents. Over the past 18-year period, there has been a dramatic decrease in force incidents (see attached statistics). In 2018 there were no use of force incidents. Ongoing and enhanced training such as weaponless defense, crisis intervention, de-escalation techniques, and stricter supervisory oversight have all contributed to this decline of force incidents.

The significant decrease in use of force incidents should not be seen as a lack of need for CED's. Any one instance can escalate to a dangerous situation requiring the use of a higher level of force which does include deadly force. Having CED's as an option and available tool can reduce an officer's need to resort to deadly force, which obviously is the "last" resort. It can prevent serious injury to officers or non-compliant violators while at the same time protecting the public at large.

The data from three Marin police agencies (San Rafael, Marin County Sheriff and Sausalito) revealed that CED use in Marin is low compared to total use of force incidents. (See attached charts). This information reinforces our belief that the presence of CED's *will not* cause officers to escalate to that level of force instead of using other options such as: verbal persuasion, physical prowess, pepper spray, baton or less lethal shotgun (loaded with a bean-bag round).

The Town's insurance JPA supports a CED program as an additional tool for officers coupled with sound Department policies and appropriate training. In their experience, the presence and/or use of CED's can lead to fewer liability claims from the public and reduced injuries to officers. The Fairfax Police Officers Association has been requesting for many years that we implement a CED program, citing safety concerns for their members and the public at large.

We believe our robust training and de-escalation techniques have had a positive and direct effect on the overall lowering of use of force incidents in Fairfax. The Department will also be adopting the current "model" Lexipol policy on CED use. In general, Lexipol policies are viewed as "best practice" policies for public safety. One key policy is that any CED display (unholstering) or actual use is investigated and reviewed for proper procedure by a supervisor at the scene and then by the Police Chief. With a sound policy in place, proper training, and strict oversight/review by supervisors, we are confident this program will be properly managed.

CED's will be acquired through AXON Corporation (formerly Taser International) which is the same company that provides our Body Worn Cameras. The CED's work in conjunction with the body worn cameras via blue tooth, automatically activating the body worn camera as soon as the CED is removed from the holster.

Based on current use of force statistics in Fairfax and examples of low usage by other police agencies in Marin County, we believe the use of CED's will be very low. Written status reports will be provided to Council on a quarterly basis for the initial 12-month period. At end of the reporting period, the Council could evaluate whether to continue this reporting requirement.

### **FISCAL IMPACT**

The FY-18-19 Police Department budget can absorb the purchase of the 11 CED's (less than \$15,000) through department salary savings. The bundling of the CED's with Body Worn Cameras is anticipated to cost between \$2,000 - \$4,000 per year for the program.

### **ATTACHMENTS**

- A. Lexipol Model Policy on Conducted Energy Device
- B. Fairfax Police use of force incidents/arrest statistics
- C. Other Police agency statistics on use of force and CED use

## Conducted Energy Device

### 389.1 PURPOSE AND SCOPE

This policy provides guidelines for the issuance and use of [EMDT device]s.

### 389.2 POLICY

The [EMDT TM device] is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to officers and suspects.

### 389.3 ISSUANCE AND CARRYING [EMDT DEVICE]S

Only members who have successfully completed department-approved training may be issued and carry the [EMDT device].

[EMDT device]s are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department's inventory.

Officers shall only use the [EMDT device] and cartridges that have been issued by the Department. Uniformed officers who have been issued the [EMDT device] shall wear the device in an approved holster on their person. Non-uniformed officers may secure the [EMDT device] in the driver's compartment of their vehicle.

Members carrying the [EMDT device] should perform a spark test on the unit prior to every shift.

When carried while in uniform officers shall carry the [EMDT device] in a weak-side holster on the side opposite the duty weapon.

- (a) All [EMDT device]s shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- (b) Whenever practicable, officers should carry two or more cartridges on their person when carrying the [EMDT device].
- (c) Officers shall be responsible for ensuring that their issued [EMDT device] is properly maintained and in good working order.
- (d) Officers should not hold both a firearm and the [EMDT device] at the same time.

### 389.4 VERBAL AND VISUAL WARNINGS

A verbal warning of the intended use of the [EMDT device] should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that the [EMDT device] may be deployed.

# Fairfax Police Department

Fairfax PD Policy Manual

## *Conducted Energy Device*

---

If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the [EMDT device]. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the [EMDT device] in the related report.

### **389.5 USE OF THE [EMDT DEVICE]**

The [EMDT device] has limitations and restrictions requiring consideration before its use. The [EMDT device] should only be used when its operator can safely approach the subject within the operational range of the device. Although the [EMDT device] is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

#### **389.5.1 APPLICATION OF THE [EMDT DEVICE]**

The [EMDT device] may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:

- (a) The subject is violent or is physically resisting.
- (b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the [EMDT device] to apprehend an individual.

#### **389.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS**

The use of the [EMDT device] on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- (a) Individuals who are known to be pregnant.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals with obviously low body mass.
- (d) Individuals who are handcuffed or otherwise restrained.

# Fairfax Police Department

## Fairfax PD Policy Manual

### Conducted Energy Device

---

- (e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.
- (f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

Because the application of the [EMDT device] in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance, the use of the drive-stun mode generally should be limited to supplementing the probe-mode to complete the circuit, or as a distraction technique to gain separation between officers and the subject, thereby giving officers time and distance to consider other force options or actions.

The [EMDT device] shall not be used to psychologically torment, elicit statements or to punish any individual.

#### 389.5.3 TARGETING CONSIDERATIONS

Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the [EMDT device] probes to a precise target area, officers should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

#### 389.5.4 MULTIPLE APPLICATIONS OF THE [EMDT DEVICE]

Officers should apply the [EMDT device] for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Multiple applications of the [EMDT device] against a single individual are generally not recommended and should be avoided unless the officer reasonably believes that the need to control the individual outweighs the potentially increased risk posed by multiple applications.

If the first application of the [EMDT device] appears to be ineffective in gaining control of an individual, the officer should consider certain factors before additional applications of the [EMDT device], including:

- (a) Whether the probes are making proper contact.
- (b) Whether the individual has the ability and has been given a reasonable opportunity to comply.
- (c) Whether verbal commands, other options or tactics may be more effective.

Officers should generally not intentionally apply more than one [EMDT device] at a time against a single subject.

#### 389.5.5 ACTIONS FOLLOWING DEPLOYMENTS

Officers shall notify a supervisor of all [EMDT device] discharges. Confetti tags should be collected and the expended cartridge, along with both probes and wire, should be submitted into evidence.

# Fairfax Police Department

## Fairfax PD Policy Manual

### *Conducted Energy Device*

---

The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

#### 389.5.6 DANGEROUS ANIMALS

The [EMDT device] may be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

#### 389.5.7 TASER® CAM™

The TASER CAM is activated any time the safety is in the off position. The safety should be in the safe position unless the officer intends to use the device. Because the TASER CAM memory is limited, the video and audio data should be downloaded frequently and retained as required by the department records retention schedule.

#### 389.5.8 OFF-DUTY CONSIDERATIONS

Officers are not authorized to carry department [EMDT device]s while off-duty.

Officers shall ensure that [EMDT device]s are secured while in their homes, vehicles or any other area under their control, in a manner that will keep the device inaccessible to others.

### **389.6 DOCUMENTATION**

Officers shall document all [EMDT device] discharges in the related arrest/crime report and the [EMDT device] report form. Notification shall also be made to a supervisor in compliance with the Use of Force Policy. Unintentional discharges, pointing the device at a person, laser activation and arcing the device will also be documented on the report form.

#### 389.6.1 [EMDT DEVICE] FORM

Items that shall be included in the [EMDT device] report form are:

- (a) The type and brand of [EMDT device] and cartridge and cartridge serial number.
- (b) Date, time and location of the incident.
- (c) Whether any display, laser or arc deterred a subject and gained compliance.
- (d) The number of [EMDT device] activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications.
- (e) The range at which the [EMDT device] was used.
- (f) The type of mode used (probe or drive-stun).
- (g) Location of any probe impact.
- (h) Location of contact in drive-stun mode.
- (i) Description of where missed probes went.
- (j) Whether medical care was provided to the subject.

# Fairfax Police Department

## Fairfax PD Policy Manual

### Conducted Energy Device

---

- (k) Whether the subject sustained any injuries.
- (l) Whether any officers sustained any injuries.

The Training Manager should periodically analyze the report forms to identify trends, including deterrence and effectiveness. The Training Manager should also conduct audits of data downloads and reconcile [EMDT device] report forms with recorded activations. [EMDT device] information and statistics, with identifying information removed, should periodically be made available to the public.

#### 389.6.2 REPORTS

The officer should include the following in the arrest/crime report:

- (a) Identification of all personnel firing [EMDT device]s
- (b) Identification of all witnesses
- (c) Medical care provided to the subject
- (d) Observations of the subject's physical and physiological actions
- (e) Any known or suspected drug use, intoxication or other medical problems

#### 389.7 MEDICAL TREATMENT

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel should remove [EMDT device] probes from a person's body. Used [EMDT device] probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by [EMDT device] probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The [EMDT device] probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related

# Fairfax Police Department

Fairfax PD Policy Manual

## *Conducted Energy Device*

---

reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the [EMDT device].

### **389.8 SUPERVISOR RESPONSIBILITIES**

When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the [EMDT device] may be used. A supervisor should respond to all incidents where the [EMDT device] was activated.

A supervisor should review each incident where a person has been exposed to an activation of the [EMDT device]. The device's onboard memory should be downloaded through the data port by a supervisor or Rangemaster and saved with the related arrest/crime report. Photographs of probe sites should be taken and witnesses interviewed.

### **389.9 TRAINING**

Personnel who are authorized to carry the [EMDT device] shall be permitted to do so only after successfully completing the initial department-approved training. Any personnel who have not carried the [EMDT device] as a part of their assignment for a period of six months or more shall be recertified by a department-approved [EMDT device] instructor prior to again carrying or using the device.

Proficiency training for personnel who have been issued [EMDT device]s should occur every year. A reassessment of an officer's knowledge and/or practical skill may be required at any time if deemed appropriate by the Training Manager. All training and proficiency for [EMDT device]s will be documented in the officer's training file.

Command staff, supervisors and investigators should receive [EMDT device] training as appropriate for the investigations they conduct and review.

Officers who do not carry [EMDT device]s should receive training that is sufficient to familiarize them with the device and with working with officers who use the device.

The Training Manager is responsible for ensuring that all members who carry [EMDT device]s have received initial and annual proficiency training. Periodic audits should be used for verification.

Application of [EMDT device]s during training could result in injury to personnel and should not be mandatory for certification.

The Training Manager should ensure that all training includes:

- (a) A review of this policy.
- (b) A review of the Use of Force Policy.
- (c) Performing weak-hand draws or cross-draws to reduce the possibility of unintentionally drawing and firing a firearm.



# Fairfax Police Department

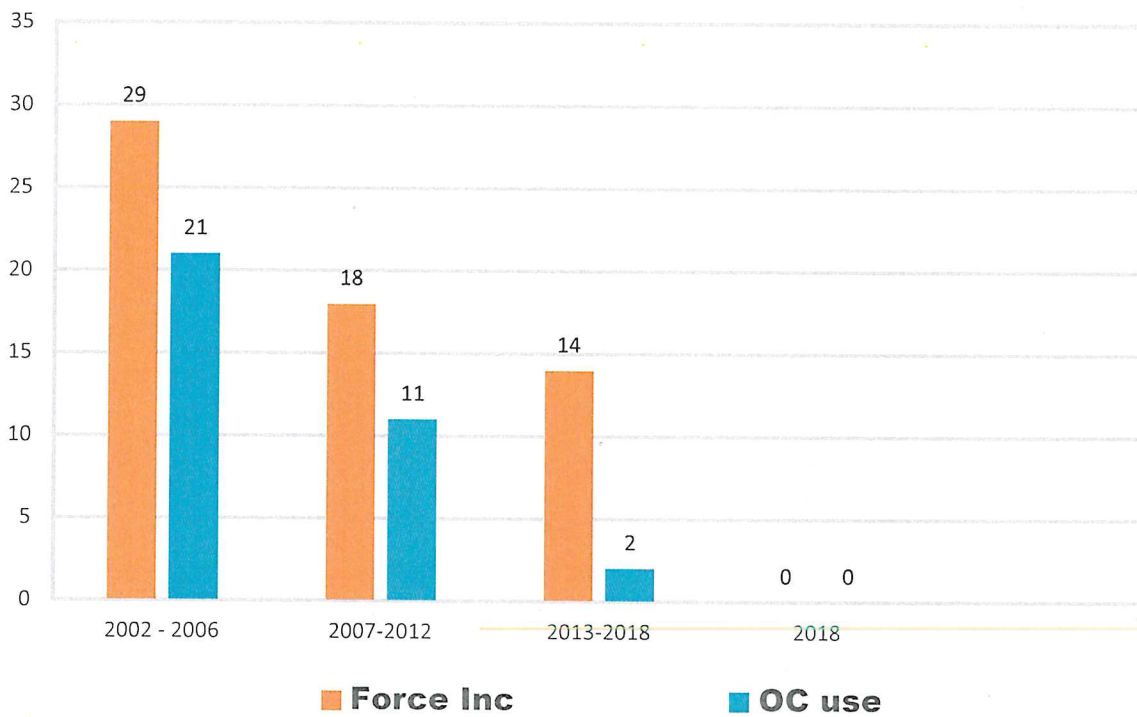
Fairfax PD Policy Manual

## *Conducted Energy Device*

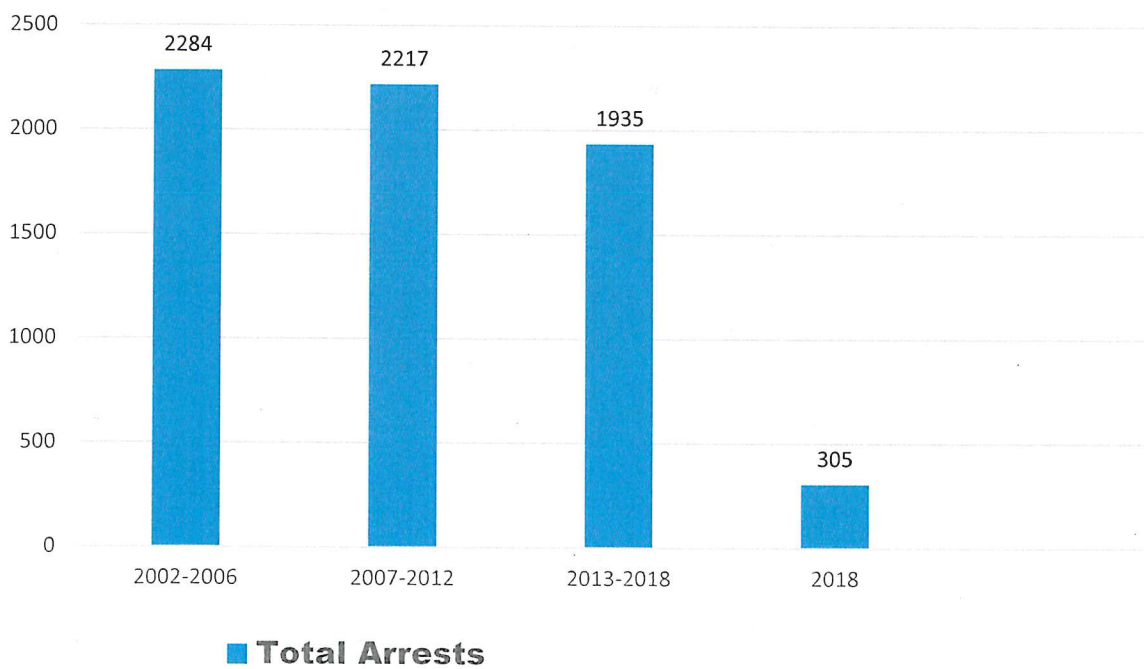
---

- (d) Target area considerations, to include techniques or options to reduce the unintentional application of probes near the head, neck, chest and groin.
- (e) Handcuffing a subject during the application of the [EMDT device] and transitioning to other force options.
- (f) De-escalation techniques.
- (g) Restraint techniques that do not impair respiration following the application of the [EMDT device].

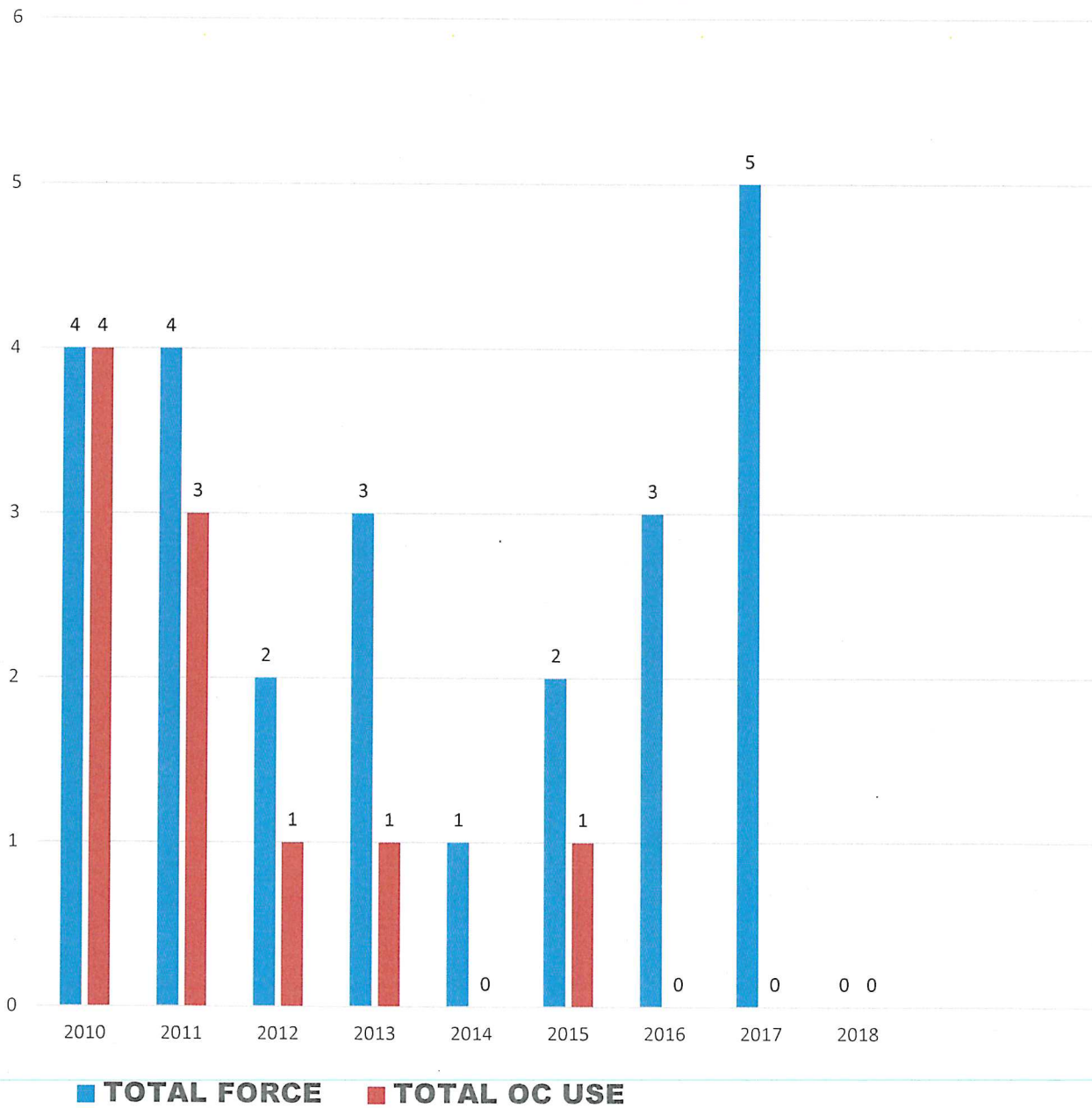
### FAIRFAX POLICE TOTAL USE OF FORCE INCIDENTS 16 year trend



### FAIRFAX POLICE TOTAL ARRESTS 16 year trend



## FAIRFAX POLICE TOTAL USE OF FORCE / PEPPER SPRAY 2010 - 2018



### TOTAL FAIRFAX POLICE ARRESTS FOR THESE SAME YEARS

**2010 - 369**

**2011 - 451**

**2012 - 364**

**2013 - 408**

**2014 - 287**

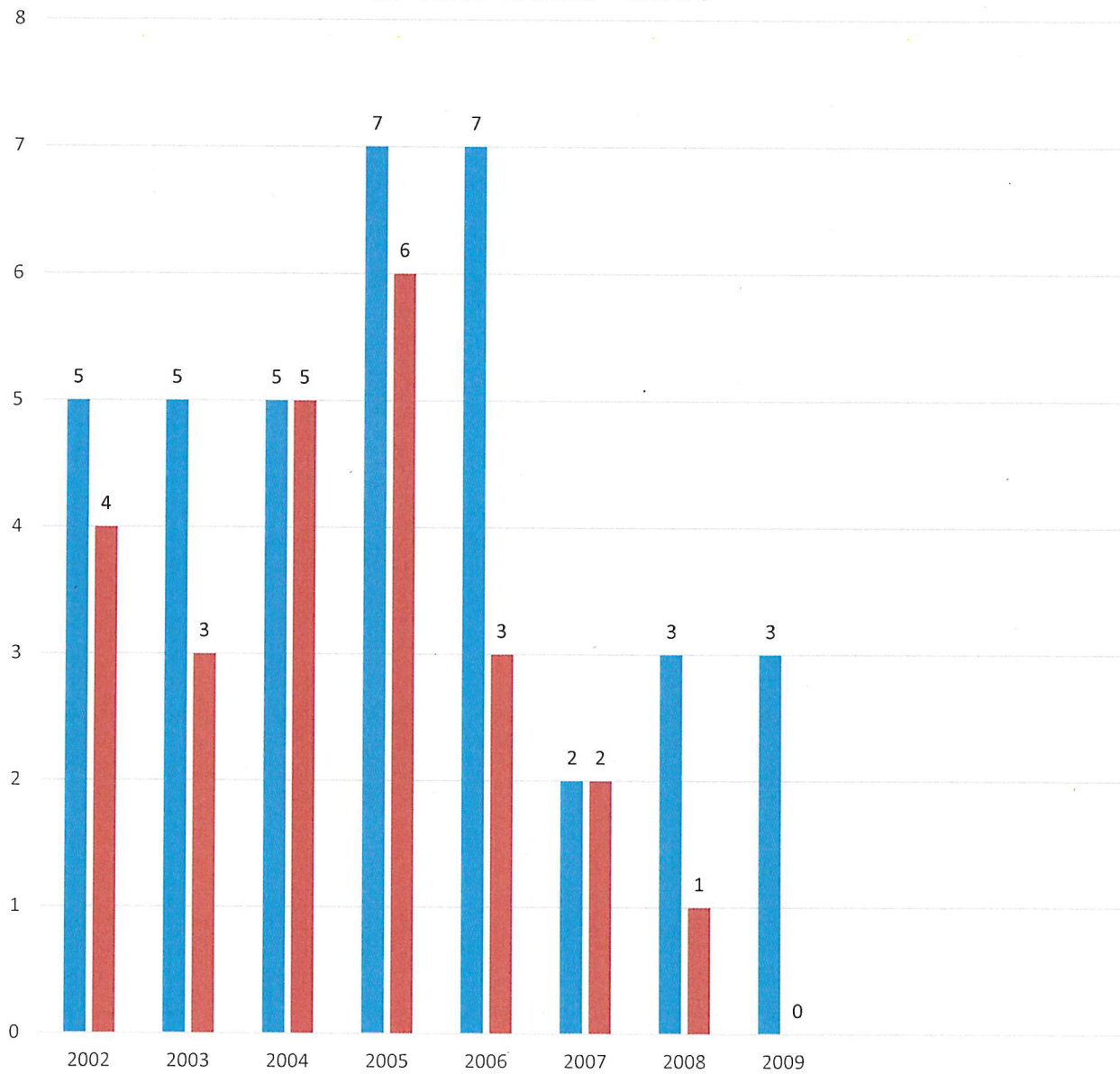
**2015 - 412**

**2016 - 270**

**2017 - 254**

**2018 - 305**

## FAIRFAX POLICE TOTAL USE OF FORCE / PEPPER SPRAY 2002 - 2009



■ **TOTAL FORCE**    ■ **TOTAL OC USE**

**2002 - 416**  
**2003 - 528**  
**2004 - 500**  
**2005 - 426**

**2006 - 414**  
**2007 - 409**  
**2008 - 318**  
**2009 - 306**

**FAIRFAX USE OF FORCE BY YEAR**

2019 2018 2017 2016 2015 2014 2013 2012 2011 2010 2009 2008 2007 2006 2005 2004 2003 2002

**TOTAL USE OF FORCE INCIDENTS** 0 5 3 2 1 3 2 4 4 3 3 2 7 7 5 5 5

**FORCE TYPE**

Physical Restraint on Actively Resisting Subject			5	3	1	1	2	1	1		3	2		4	1		2	1
Less Lethal Shotgun																		
Death as Result of Use of Force																		
Batton/Asp												1		1	1			1
Carotid Restraint																		
OC					1		1	1	3	4		1	2	3	6	5	3	4
Other																		

**SUBJECT INJURED**

Complaint of Pain																		
Yes (scrapes or cuts)			5	3	1	1	2	1	2	1	3	3	1	2	1		2	1
Yes minor																		
Yes Major																		

**HOSPITAL CLEARANCE / MEDICAL TREATMENT**

Yes Admitted																		
Yes ER Only																		
Paramedic/Fire					1		1	1	2	3	4	5	6	7	8	9	10	11
Jail Medical Staff																		

**OFFICER INJURED**

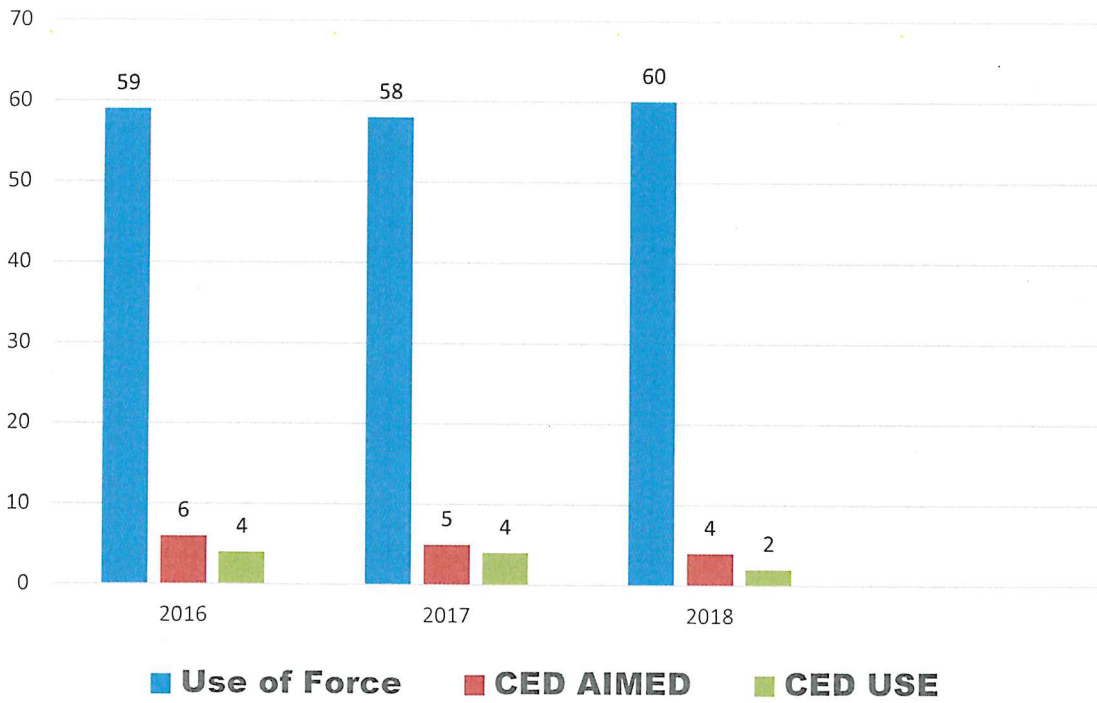
Complaint of Pain or Minor scrapes			2	1		2		2	1									
Yes Admitted																		
Yes ER only												1	1					
No																		

**SUBJECT IN CUSTODY**

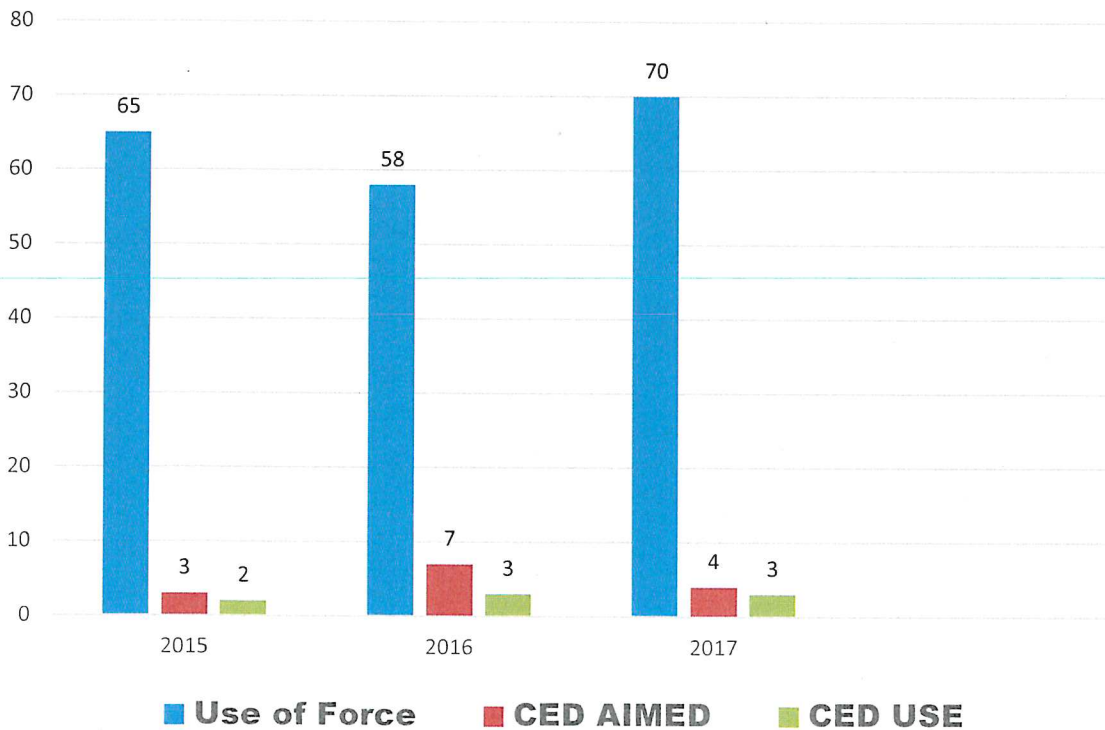
Yes			5	3	2	1	3	2	4	4	4	3	2	7	7	5	5	5
No																		

Note: As of 2017, DOJ requires documentation when a subject or Officer is admitted to hospital for medical treatment. As the end of 2017 there were no such cases.  
 Note: OC exposure with no other injury is not listed as being "injured" during use of force  
 Note: OC exposure treatment listed as Paramedic/Fire but could have been Emergency Room in place of Fire. Data not kept on that topic prior to 2015

**SAN RAFAEL POLICE USE OF FORCE VS CED USE  
3 YEAR TREND**



**MARIN SHERIFF USE OF FORCE VS CED USE  
3 YEAR TREND**



### SAUSALITO POLICE USE OF FORCE VS CED USE 3 YEAR TREND

