

PS COMMITTEE #1
April 28, 2016

MEMORANDUM

April 26, 2016

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst *SJF*

SUBJECT: **Briefing: Use of Tasers by Montgomery County Police**

Today the Committee will be briefed on the Police Department's use of Tasers. Those expected to brief the Committee include:

Chief J. Thomas Manger, Montgomery County Police Department (MCPD)
Assistant Chief Luther Reynolds, MCPD
Assistant Chief Russ Hamill, MCPD
Captain Mark Plazinski, Public Safety Training Academy, MCPD
Captain Michael Wahl, Policy and Planning Division, MCPD

Background

The *Baltimore Sun*, in a March 19 article, released the results of its investigation in the use of Tasers by police departments in Maryland (©1-21). The article reported that Montgomery County Police were involved with four of the 11 fatal Taser incidents in Maryland since 2009. In three of the four incidents, officers exceeded the recommended 15-second safety limit. Montgomery County ranked third in the State for the use of Tasers.

Some issues that were highlighted in the article include:

- Whether drive-stun or dart is used;
- Repeated or prolonged use of the Taser;
- Whether a police department's policy reflects Taser and PERF recommendations;
- Excited Delirium; and
- Area of use on the subject's body.

MCPD Taser Use Guidelines

Training: All MCPD police officers who choose to carry an Electronic Control Device (ECD) must attend a 40-hour Crisis Intervention Training (CIT) course. The training focuses on dealing with those with mental illness as well as de-escalation strategies for people in this type of distress. Once the Police Officer completes the CIT course, the officer is eligible to carry an ECD. Carrying an ECD is optional, and if the officer chooses to carry one, the officer must then attend a 10-hour Basic ECD User Course. The officer is then issued an ECD. Officers who carry ECDs must attend a “refresher” course annually. This course is typically three to five hours, depending on how much material is covered. A supervisor or manager may also request that a police officer attend remedial training for ECD use, if warranted. MCPD advises that there have not been any instances of remedial ECD training to date.

MCPD also advises that since 2001, MCPD has continuously updated its Taser Operator Training Program to reflect best practices such as the PERF Electronic Control Weapons (ECW) Guidelines and Taser Safety and Informational Bulletins issued by the ECD’s manufacturer (Taser International). All of this information and material was integrated into lessons plans that was conveyed to officers as part of the ECD initial training program, as well as required refresher training.

Policy: The County as a whole has several policies in place that are relevant to Taser use. MCPD has a Use of Force Policy (©24-34) that outlines when force may be used to make an arrest, an investigatory stop/detention or other seizure, or in the performance of their lawful duties. Force may only be used to protect themselves or others from personal attack, physical resistance, harm, or death. Factors to be considered at the time include:

- The severity of the crime at issue;
- Whether the subject poses an imminent threat to the safety of the officers or others; and
- Whether the subject is actively resisting arrest, or the subject is attempting to evade arrest by flight.

The Use of Force policy also specifies appropriate ECD use and in part, describes the use of ECDs:

“An ECD is a less-lethal weapon and as such is to be used to help control persons who are actively resisting or acting aggressively. An ECD is not an all-purpose weapon that takes the place of de-escalation techniques and other options. Officers are reminded that an ECD, as a less-lethal weapon, has some potential to result in a fatal outcome even when used in accordance with policy and training. Each application of an ECD must be independently justified, and risks should be weighed against other force options.”

Prohibited uses of ECD under the Use of Force policy include:

- In a punitive or malicious manner;

- In drive stun mode as a prod or escort device;
- To rouse unconscious, impaired, or intoxicated individuals;
- On those who passively resist;
- On handcuffed subjects, unless the subject poses an imminent threat to the officer, the subject, or others, and other techniques have been or would likely be ineffective;
- To experiment on a person or allow a person to experience the ECD;
- In a known flammable or explosive environment unless the officer's only other option would be deadly force; and
- Not intentionally be aimed at the eye, face, head, throat, neck, or groin unless such use occurs when deadly force is authorized. The ECD must not be intentionally discharged in the chest area near the heart.

The Use of Force Policy also includes language that strongly discourages ECD use under certain conditions, because there is an increased risk of harm. If an officer still uses the ECD when these risk factors are present, the officer must specifically articulate the circumstances justifying ECD use (©28).

MCPD continues to work on a revised Use of Force Policy since the middle of last year. The revision reflects Police Executive Research Forum (PERF) recommendations, best practices, lessons learned, and additional guidance on use of force options, including Taser use.

The Montgomery County Fire and Rescue Service (MCFRS) issued Fire Chief's General Order Number 13-17 in December 2013 on "Excited Delirium" (©38-39). This order, in part, indicates that Police Officers "will be trained to call for more back-up and to request FRS Advanced Life Saving (ALS) resources to stage. This may result in more POL-ALS dispatches..."

MCPD has also issued Training Bulletin #16-01 (January 22, 2016, attached at ©35-37), which provides updated legal information on a recent U.S. Court of Appeals for the 4th Circuit case (*Armstrong v. Village of Pinehurst*), where police officers used a Taser in drive stun mode against a non-compliant, non-threatening subject who was suffering from mental illness. The bulletin advises that law enforcement officers are on notice that the Taser use in this type of situation violates the Fourth Amendment. It states that MCPD "Function Code 131 prohibits the use of Tasers on subjects who are passively resistant. Passive resistance is defined as the refusal by an unarmed person to comply with an officer's verbal command or physical control techniques in such a way that the subject does not use physical or verbal aggression toward the officer or others, and does not present an immediate threat to the safety of officers or others."

MCPD Taser Use

Over the past three years, MCPD has used Tasers 270 times. The following chart illustrates use:

Year	No. of Reported ECD Deployments Based on Use of Force Reports	ECD Cartridge	ECD Drive-Stun
2013	148	127	21
2014	63	50	13
2015	59	49	10

County Executive Review

The County Executive has asked police to review the Department’s use of Tasers in the four deaths that have occurred in the County since 2009. MCPD began the review with a Use of Force Review Team Meeting on March 22, 2016. This review, along with an outside review by a consultant specializing in police use of force, is scheduled to be completed around June 1, 2016.

Prior to this review that is specific to Taser-related incidents, MCPD began a comprehensive assessment of its use of force police in the fall of 2015. A group of police, legal, tactical, and training experts completed a comprehensive assessment of the current Use of Force policy and have prepared a revised draft policy that is undergoing final review. After that, it will be shared with the Fraternal Order of Police (FOP) for review and comment.

Discussion Issues

1. Taser use has decreased significantly over the past three years. Can the Department explain why?
2. What are alternative methods that may be used if Taser use is not appropriate?
3. What is the benefit of using an ECD in drive stun, which apparently causes pain rather than muscular incapacitation?
4. What is the process for a Police Officer to report Taser use? Does the unit itself provide an indication of the number of times used, and/or duration of use?
5. What happens when it is determined a Police Officer used a Taser inappropriately?
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This Packet Contains the Following Attachments:

“Police in Maryland didn’t follow Taser Safety Recommendations in hundreds of incidents,” Baltimore Sun (March 19, 2016)	© 1-21
“Leggett asks for review of Taser Use by Montgomery County Police,” Washington Post (March 24, 2016)	22-23
MCPD Use of Force Police (March 10, 2014)	24-34
MCPD Training Bulletin #16-01 (January 22, 2016)	35-37
MCFRS Fire Chief’s General Order Number 13-17 (December 23, 2013)	38-39
MCPD Responses to Council Staff Questions	40-41

News / Maryland / Sun Investigates

Shocking force: Police in Maryland didn't follow Taser safety recommendations in hundreds of incidents



The first-ever data analysis of all Taser incidents in Maryland over a three-year period reveals that police agencies across the state have predominantly used the devices against suspects who posed no immediate threat. In hundreds of cases, police didn't follow widely accepted safety recommendations, The Baltimore Sun found.

By **Mark Puente and Doug Donovan** · Contact Reporters

The Baltimore Sun

MARCH 19, 2016, 3:07 PM

As two Montgomery County police officers slowly closed in with Tasers pointed, Anthony Howard retreated up a small step and backed himself against the front door of a townhome on a quiet cul-de-sac in the Washington suburb of Gaithersburg.

Minutes earlier, the 51-year-old man had asked an officer: "Are you gonna kill me?"

High on cocaine, Howard started the standoff by dancing barefoot on an SUV roof, barking and muttering gibberish on the late afternoon of April 19, 2013. Two dozen neighbors gawking at the bizarre spectacle laughed when Howard jumped off the Ford SUV to avoid an officer's stream of pepper spray, (1)

and they taunted police, urging them to use their stun guns.

Police said in a report on the incident that Howard had thrown "boulders" and charged at officers. But a 17-minute video taken by a resident and obtained by The Baltimore Sun shows that when officers approached Howard for the last time, he was standing still, holding a child's scooter. Officers fired two Tasers, shooting electrified darts connected by long wires into Howard's body.

After he dropped the scooter and keeled over onto a flower bed, police continued to pump electricity into Howard; he kicked wildly on his back with four officers standing over him. Police fired their Tasers at Howard nine times for a total of 37 seconds — far above the recommended limit of 15 seconds. He stopped breathing and died shortly afterward.

The repeated stunning that Howard received from the Montgomery County police is part of a troubling pattern across Maryland, a six-month investigation by The Baltimore Sun has found.

The first-ever data analysis of all Taser incidents in Maryland reveals that police agencies across the state have predominantly used the devices against suspects who posed no immediate threat. In hundreds of cases over a three-year period, police didn't follow widely accepted safety recommendations.

Legal and policing experts worry that misuse is rampant across the nation as an increasing number of departments outfit more officers with stun guns; a Taser is used by law enforcement 904 times a day on average. The experts warn that too often officers are turning to Tasers before exhausting other means of dealing with disorderly people, actions that courts are beginning to brand as unconstitutional excessive force.

And while the Taser has been hailed as a less-lethal way to handle difficult situations, police and even the manufacturer say if the weapon isn't used right, it can lead to death.

More than 400 people have died nationwide since 2009 in encounters in which police used electronic-control weapons such as Tasers, a Sun analysis shows. California tops the list with more than 60 deaths. Maryland ranks in the top 15 with 11 deaths, including five who died after being hit by Tasers for longer than what is now recommended.

The Sun's analysis of Taser use in Maryland found:

- Nearly 60 percent of those hit by Tasers in Maryland were described by police as "non-compliant and non-threatening," according to data from 2012 when the state began collecting data through 2014.
- In one out of every 10 incidents, police discharged the weapon for longer than 15 seconds — a duration that exceeds recommendations from Taser International, the U.S. Department of Justice and policing

experts. The data downloaded directly from the devices often shows more activations than officers document in police reports.

- Officers fired the weapons at the chest in 119 incidents in 2014 — even though Taser has warned since 2009 that doing so could cause cardiac arrest. Data from earlier years only shows when police struck the "front torso," which includes the chest. That happened hundreds of times.
- According to police reports and other accounts, three people died after being repeatedly hit by a Taser in "drive-stun" mode, when the hand-held device is pushed directly onto the body, and two died after being hit with multiple Tasers at the same time. Both practices are discouraged by Taser and policing experts. In another death, a coroner determined a man was in handcuffs and face-down on the ground when an officer hit him with a Taser.
- Taser policies from 15 Maryland police departments with the most stun gun use vary widely. Some don't incorporate the warnings Taser has issued over the years or safety recommendations from national policing experts. Harford County's Taser policy is 53 words and stresses each use must be reported — except when used during training or on animals.
- In four Taser-related deaths, the state medical examiner's office found that "excited" or "agitated" delirium was a contributing factor. Some police agencies have enlisted consultants to train officers how to spot the condition and to call medics before deploying Tasers when they do. Symptoms are behaviors police often encounter, including incoherent speech and shouting, agitation and distress.

The Baltimore Sun created a database of every Taser use by police from 2012 to 2014 with information obtained through the Maryland Public Information Act. The Sun also interviewed law enforcement officials, people who were stunned with the weapons, and family members of people who died after being hit by a Taser since 2009; and reviewed use-of-force policies across the state, autopsies, court records and police reports.

Although the Maryland Governor's Office of Crime Control & Prevention collects data on every Taser incident, the agency's online annual reports only summarize the aggregate information. Data from 2015 is not yet available.

Anthony Howard's sister, Robbin, said that she and her family have been asking questions about his death but have gotten few answers. The family abandoned legal action against Montgomery County after police declined to turn over any videos they had obtained from neighbors who recorded the incident on their mobile devices. Two bystanders told The Sun that when police returned their devices, their videos had been erased.

"These officers have to be held accountable. They're very Taser-happy," Robbin said while watching the

17-minute video of her brother's death for the first time in her Clarksburg home last month with her father, two brothers and Anthony Howard's son.

Police and Taser officials point out that the weapon has been used successfully thousands of times to aid during arrests and protected officers, suspects and bystanders.

Police say they need a safer alternative to lethal use of force against unarmed suspects — 80 percent of those shot by Tasers were not carrying weapons — as officers frequently face dangerous situations amid intense scrutiny of their actions.

Takoma Park Police Chief Alan Goldberg, a master Taser instructor who spoke on behalf of the Maryland Sheriffs' Association and the Chiefs of Police Association, declined to comment on any specific incident but said exceptions exist if officers need to exceed the number of recommended activations.

"That's your only means other than shooting someone," he said.

Goldberg said officers come under stress during confrontations and do not realize how long they activate the trigger. He also said the weapons can be overused when officers first add them to an arsenal. He called it the "new-toy syndrome" that eventually lessens when officers learn what the Taser can and cannot do.

"Everybody wants to see the effect of the tool when they're on the street," Goldberg said. "They rely on it. You don't have to get your hands dirty."

The number of Maryland police departments using Tasers has grown to more than 75, and they are buying more. Baltimore City recently added 1,000 Tasers to its arsenal.

In 2011 the Maryland General Assembly authorized the collection of Taser data. A task force convened by former Attorney General Douglas Gansler had recommended two years earlier that the information be collected to better understand how Tasers are being used.

The task force also recommended the establishment of a statewide Taser policy, an action that failed to pass when police leaders across the state balked at a mandate. Such legislation hasn't been considered since then, even though policing experts warn that Maryland's hodgepodge of policies, each written by an individual department, imperils the public and exposes police officers to greater liability.

Only two states — Connecticut and Vermont — have statewide policies governing stun guns.

Chuck Wexler, executive director of the Police Executive Research Forum, which issued best practices for stun guns in 2011 under a contract with the U.S. Department of Justice, said police agencies need to

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adopt those national standards. He said the challenge is daunting, given that thousands of police agencies across the country use the weapons, but that doing so could reduce the number of deaths.

"This is a problem in the country," Wexler said. "Getting them all to know about these standards is a challenge. It's important because our guidelines are based on research and studying how people were dying."

Police use of force, especially in confrontations with black men, has become the focus of national debate. The General Assembly is considering a number of bills aimed at reform in the wake of last year's riots after Freddie Gray's death from injuries suffered in Baltimore police custody.

That debate has not touched on the use of Tasers, which were predominantly deployed against African-Americans in Maryland. Out of nearly 3,000 Taser uses over three years, 64 percent of those hit by the stun guns were black men.

Gansler said it's time for the legislature to revisit Tasers, now that the state has several years of data, and as residents are at risk of injury, police face legal liability and taxpayer money is spent to defend against lawsuits. He said Maryland needs a statewide policy.

"The state should absolutely revisit it," Gansler said in an interview in his Washington office. "Tasers have been used by a lot more law enforcement officers and law enforcement departments. We should have uniformity and consistency throughout the state."

Taser safety bulletins

In 1993, brothers Tom and Rick Smith formed AIR TASER Inc. in Arizona. The firm became Taser International in 1998 and started marketing the weapons to law enforcement. The company dominates the market, and Tasers are the only stun guns used by police in Maryland.

With technological advances and evolving medical research, Taser frequently issues safety bulletins to police departments around the country. For more than a decade, Taser has warned that officers should minimize the number and duration of "exposures" to what's necessary to achieve their objectives.

Taser spokesman Steve Tuttle said in an email response to questions that while the weapon is "not risk free," more than 500 medical and safety studies have established the "general safety" of the device.

A March 2013 bulletin says use of the weapon "involves risks that a person may get hurt or die due to the effects." The bulletin tells users that following the instructions and warnings "will reduce the likelihood" of death or serious injury.

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A Taser fires two electrified darts up to 25 feet to cause neuromuscular incapacitation. The Taser can be activated multiple times, typically in five-second intervals. The weapon can also be used in drive-stun mode, which causes pain.

The Police Executive Research Forum found in 2011 that drive-stunning may only exacerbate a situation by enraging the suspect. Unless officers have no other choice because the dart mode doesn't work or they need to create a safe distance to protect themselves, the forum concluded the drive-stun mode "is of questionable value."

A few years later, Taser said in a bulletin that "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."

Tuttle emphasized that no published medical or scientific literature shows that using a Taser in drive-stun mode "can kill a human or contribute to sudden death."

Maryland police officers used the drive-stun method in 14 percent of all incidents over the three years, and both darts and drive-stun mode were used in another 10 percent.

In one of the drive-stun cases, Montgomery County police Officer Susanna Stanley was dispatched on Oct. 10, 2012, to check on a suspicious black man standing in front of an apartment door in a Silver Spring complex. Stanley said in an incident report that she had trouble getting the 65-year-old to cooperate.

The police officers involved in cases examined by The Sun either couldn't be reached to comment or declined to be interviewed.

Silver Spring resident Karreem Ali, known formerly as Cicero Satterfield Jr., "appeared to be drunk or high on something," according to the report. Stanley said that when Ali would not respond to her commands, she attempted to guide him out of the building to a nearby sidewalk.

Officer James Walsh then arrived and tried to move Ali, but the 5-foot-4-inch, 225-pound man increased his resistance and began swinging his arms, the report said. Walsh sprayed Ali with pepper spray, but the report said it had no impact.

Stanley then used her Taser in the drive-stun mode, "with little effect." Still, she continued to drive-stun Ali, and the officers managed to get Ali's hands cuffed behind his back "after a 10-minute struggle."

The computer-chip log on Stanley's Taser showed 16 activations, for a total of 108 seconds. The longest drive-stun lasted 25 seconds.

Toxicology reports would later show that Ali had no drugs in his system. The man known as "Bubba" battled mental issues. A day earlier, he had called police to his apartment to report that his brother had stolen his prayer rug. The brother told officers that Ali had mental problems, and the matter was dropped.

Walsh asked paramedics to wash pepper spray from Ali's face, but then they left. It is standard protocol for paramedics to check any person struck by a Taser, and Walsh later explained in a deposition why he did not tell the paramedics an officer had used one on Ali.

"I was worried about his eyes, and I honestly thought something might be wrong with his shoulder. It didn't come into my mind to think about the Taser," Walsh said.

Stanley, Walsh and two other officers then loaded Ali into a transport van. Moments later, Ali stopped breathing. Paramedics returned to rush Ali to the hospital. Ali never regained consciousness and died four days later.

The autopsy noted that Ali had sustained multiple cuts and bruises on his head and neck and broken ribs during the struggle; the officers said they also used a baton on Ali. He had another 21 "diamond/square shaped abrasions" from the Taser on his upper left and right sides, both arms and left leg and left buttocks.

The medical examiner ruled that Ali died from "schizophrenia induced agitated delirium complicated by police restraint, cardiomegaly and obesity." The manner of death — homicide, accident or natural causes — could not be determined.

'How many times do you think you Tased him?'

Ali's family filed a lawsuit in federal court.

In August 2013, the family's attorney, Gregory Lattimer, questioned Stanley. According to a 38-page deposition, Stanley said she confronted Ali because the 911 caller had said he was trespassing. Stanley, then a six-year veteran, said she and Walsh were trying to make him comply.

"You Tase people to get them in handcuffs?" Lattimer asked.

"If they're not complying and resisting," Stanley replied. She said Ali had not thrown any punches but was kicking his legs while being held on the ground and refused to follow orders.

"How many times do you think you Tased him?" Lattimer asked.

"I would say probably 10," Stanley replied.

Lattimer showed Stanley the computer report from her Taser, which recorded 16 trigger pulls.

She continued to say she only stunned Ali five to 10 times, noting something was "going on" with her Taser.

During Walsh's deposition that same day, he said Ali did not use "force" against either officer.

"But he was noncompliant to her, which is — it's still resistance," said Walsh, then a 12-year veteran. And with Ali's hands tucked beneath his stomach, both officers feared he could pull a weapon.

Lattimer asked Walsh why Stanley repeatedly stunned Ali on his left side after they handcuffed his right wrist.

"We used the Taser on the left side to get the same success we had on the right," Walsh replied.

In March 2014, a new Montgomery County Police Department policy warned officers that any activation longer than 15 seconds "may increase the risk of death or serious injury." The warning came three years after the Police Executive Research Forum guidelines and a year after Taser issued its warning about such prolonged exposures.

The following month, the county paid Ali's family \$450,000 to settle the lawsuit but admitted no wrongdoing. Based on orders from the county government's attorney, police officials declined to comment on Ali's death or the incident.

Still, Ali's family continued to believe Ali died after choking on pepper spray, and they were not aware that he was stunned so many times.

Terry Satterfield, a retired psychologist, said his brother would often stay away from the family when his mental illness flared up. He also had asthma. The second of 13 children, Ali had embraced the Muslim faith and worked as a teacher and barber.

"Bubba was my role model," Satterfield said at his home in Clinton.

When The Sun told him about the multiple Taser activations, Satterfield sobbed, got up from the couch and walked around the room, trying to regain his composure.

"No, man," Satterfield wailed.

Satterfield called for police to improve training when confronting people with mental issues. He said his brother had received services from the county's mental-health system.

"Bubba respected the police," Satterfield said. "He called the police for protection ... but the same department he respected let him down and killed him."

Relying on Tasers

Plaintiffs' attorneys and policing experts said the Maryland data show that officers may be turning to Tasers before their safety is at risk.

In reporting Taser incidents to the state, police departments must record the reason for discharging the weapon. Officers have only three options: "non-compliant and non-threatening," "use of threat" or "use of force."

Of all incidents from 2012 through 2014, police reported firing Tasers in 59 percent of cases because individuals were noncompliant. Officers said they fired because individuals used force against them in 23 percent of cases and because officers were threatened in 18 percent.

Lattimer, the attorney who sued Montgomery County, said police officers believe they can use Tasers whenever suspects do not comply with their instructions — regardless of the reason.

"They use Tasers as a compliance mechanism," Lattimer said. "If you don't do what I say, I'm going to Tase you."

Police also must report whether the suspect was armed; only 20 percent were. Guns accounted for 2 percent, "edged" objects 8 percent and "blunt" objects 1 percent. Officers listed "other" in the remaining 9 percent of cases, according to the data.

Goldberg, who spoke on behalf of Maryland police associations, said the data do not provide a complete picture of every Taser incident. An officer can still be in danger when dealing with a noncompliant suspect, he said, but the state doesn't collect the data in a way that shows that. Nor do the data show the suspect's level of resistance.

Moreover, the terms from which police must choose have different meanings in each agency, he said, and the state does not require further clarification.

"I don't like that terminology," Goldberg said.

Goldberg also said the data does not capture numbers for "success stories" when officers threaten to use a Taser by pointing its laser-aiming mechanism at suspects to resolve incidents without force. Taser cites studies that show pointing the laser or activating the drive-stun to demonstrate the electrical current leads to fewer discharges.

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"I'd like to know those things," Goldberg said.

The Maryland data also don't reflect when individuals are hit with a stun gun after being handcuffed, which is widely discouraged unless doing so is necessary to prevent bodily harm to officers or others.

Police used a Taser on a handcuffed individual in one death in Maryland, according to an autopsy.

In that incident, paramedics and police responded to an accident scene on the night of June 28, 2011. Delric East, 40, had crashed his 1993 Cadillac Eldorado into a guardrail as he drove down Columbia Pike in Silver Spring. The air bags deployed, trapping East in the car.

When paramedics arrived, East began to "violently resist" their help. Montgomery County police officers freed East, but he continued to be combative.

In an autopsy that found East died of PCP and alcohol intoxication, a medical examiner wrote that police placed him "face down on the ground, applied handcuffs and subsequently deployed a Taser." A mask also had been placed on East's face to prevent spitting before he was hit with a Taser, according to the autopsy.

East stopped breathing during transport, "one minute" from the hospital. The medical examiner ruled the death an accident.

Coroners conduct their own investigations, interviewing officers and reading police reports, before making their determinations. The conclusion in this case contradicts what officers had written in previous reports — that East was shocked before being restrained. An officer wrote in a report at the time of the incident that the Taser was deployed and the subject "was eventually subdued and handcuffed."

Another police report written four months after the incident showed that Officer David Courtemanche fired his Taser at East for four cycles for a total of 37 seconds. The first cycle lasted 21 seconds.

East's family members attempted to obtain videos of the incident recorded by the police cruisers' dashboard cameras. But in August 2012, Montgomery County attorneys denied their request.

The county said that the recordings were part of a personnel investigation — exempting them under the state Public Information Act. County lawyers also feared the videos could end up on YouTube, documents show.

A family attorney requested that the Montgomery County Circuit Court review the denial. In an April 2013 order, Judge Eric M. Johnson wrote that the family could use the videos in a civil lawsuit and only

show them to a "close family relative," or face contempt charges, and must destroy all copies at the end of the litigation.

The family never filed a lawsuit, saying a lawyer had advised them they didn't have a case. And they never got the videos.

Montgomery County police spokesman Capt. Paul Starks stressed that officers followed proper procedures in the four deaths since 2009 — the most in any jurisdiction in Maryland — and noted that grand juries declined to file charges against the officers involved.

"We can't change history. We're sorry," Starks said. "The fact that these people have died is sad and tragic. Family members love and miss them. ... But sometimes the results of proper law enforcement aren't pretty."

Starks said Maryland law prohibits the agency from discussing personnel matters and whether any officer received internal discipline for their actions.

Officer Scott Davis, coordinator of the department's Crisis Intervention Team, said it's difficult at times to get someone handcuffed when suspects use drugs or have a mental illness. Depending on the situation, sometimes activating the Taser for more than 15 seconds is needed, he said.

"We have to make split-second decisions," Davis said.

Repeated Taser shots

Taser has "continuously warned of risks from repeated exposures since June 2005," according to Tuttle, the company spokesman. And since March 2013, he said the warnings have advised that "repeated, prolonged or continuous" use of the device on a person "may contribute to cumulative exhaustion, stress, cardiac, physiologic, metabolic, respiratory, and associated medical risks which could increase the risk of death or serious injury."

“

We have to make split-second decisions

— Officer Scott Davis, Montgomery County police

Data obtained by The Sun shows the incidents with the longest activations stretch across Maryland.

Hagerstown police recorded one use in 2013 with 31 activations for 159 seconds. A Cheverly officer's 23 activations in one 2012 incident lasted for 91 seconds; a Baltimore officer's 22 activations in a 2012 incident lasted for 68 seconds. Others included 16 activations for 80 seconds in Baltimore County, and

16 activations for 102 seconds in Rockville.

None of those people died.

Emergency medical personnel have been put on alert about such cases. Since 2010 they have been advised to consider additional evaluation and treatment for patients hit by a Taser for longer than 15 seconds, according to the American Academy of Emergency Medicine.

Taser and police officials said that the computer chip in the weapon holds officers accountable, as they may not remember how long they shocked individuals and record shorter uses in police reports.

"It's recording and tracking how it is being used," said Starks, the Montgomery County spokesman. "The officer can't adjust that."

Travis Lamont Smith of Baltimore experienced one of the longest Taser hits recorded in Maryland.

In December 2012, two Baltimore officers responded to Dudley Avenue in the Northeast District to confront a suspected burglar. The officers found Smith trying to enter a rowhouse. They wrote that Smith was removing his shirt and pants and that he charged at one officer. Another fired a Taser.

Smith pulled out one of the barbs, the report said. The officer reloaded a Taser cartridge and "used it again."

Paramedics transported Smith to MedStar Union Memorial Hospital. After doctors examined him, he was released without being charged.

The police report does not indicate how many times Smith was shocked. But state data shows that the officer activated the Taser for 22 cycles, totaling 68 seconds, one of the highest in the state in a single incident.

In a recent interview, Smith said he was trying to enter his grandmother's house and never charged at the officer. He also said his hands were raised when the officer fired the weapon. After he pulled a barb from his chest, another pierced his side, he added.

"I was trying to survive," Smith, 28, said on his grandmother's porch. "It was taking over my body. It's the worst feeling in the world."

Baltimore City police officials said they have since updated their Taser policy to make clear that officers should avoid repeated exposures.

John Hoey was hit by a Taser by officers from three different police departments — Anne Arundel,

Baltimore and Prince George's counties — over four months in 2014, according to police records. In each case, he was unarmed.

In early April 2014, Anne Arundel County police shot the 49-year-old Pasadena man once with a Taser after a traffic stop. He later pleaded guilty to resisting arrest.

A week later, Baltimore County police arrived after a neighbor said Hoey had tried to break into the upstairs apartment in the same house where his girlfriend rented a unit. Police stunned him twice while he was in his underwear with his hands cuffed behind his back on a bed in his girlfriend's Lansdowne apartment, the report said.

The report does not list how many times the officer activated the device. But state data show twice for a total of 10 seconds. Numerous charges against him were dropped after he pleaded guilty to malicious destruction of property for breaking a padlock on the door between the two units.

Using a Taser on handcuffed suspects is "strongly discouraged," Baltimore County spokeswoman Elise Armacost said. "However, it is not prohibited because every case is different."

The third Taser incident occurred in July 2014 after a College Park gas station owner called Prince George's County police to complain that Hoey's car was stuck at a pump. His vehicle's alcohol monitoring system had malfunctioned.

Officers helped him move the car to a corner of the lot earlier in the day, but different officers returned hours later after the owner complained that he was still there.

Officers believed Hoey was intoxicated, smelled PCP and found the drug after ordering him out of the car, the police report states. As four officers used their knees, hands and batons to handcuff him, Hoey resisted until he was hit by a Taser, the report states.

The "use of force" report filed by police says there were two Taser strikes for a total of five seconds. But state data list eight activations for a total of 32 seconds — above the recommended 15 seconds. The police report states Hoey was stunned before he was handcuffed, but Hoey says he was hit by a Taser while handcuffed.

"It was like they were taking target practice on me," Hoey said.

He pleaded guilty to drug possession, but charges of trespassing, resisting arrest and disorderly conduct were dropped.

Police officials did not explain why the state data and the incident report do not match. An attorney for

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the Prince George's County Police Department said gas station surveillance video of the incident backed up the officers' accounts.

Statewide over three years, three-fourths of the incidents that led to a Taser being deployed were criminal in nature, data show. About 20 percent were coded "non-criminal," and 5 percent were traffic-related.

Chest shots

Since 2009 Taser has advised police that whenever possible, they should avoid targeting "sensitive areas of the body, such as the head, throat, chest/breast, or known pre-existing injury areas." The preferred target areas, according to Taser, are "below the neck area for back shots and the lower center mass (below chest) for front shots."

John G. Peters Jr., president of the Nevada-based Institute for the Prevention of In-Custody Deaths, said that Taser's safety bulletins about chest shots have evolved. "They've gone 180 degrees on their warnings," he said.

In 2009, Taser suggested avoiding the chest because of the "controversy" over whether the weapons "do or do not affect the human heart." Then in 2013 Taser warned: "When possible, avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death."

The company makes clear in safety bulletins that following its guidelines could help police avoid legal liability.

"Should sudden cardiac arrest occur in an arrest situation involving a Taser electronic control device discharge to the chest area — plaintiff attorneys will likely file an excessive use of force claim against the law enforcement agency and officer," the company said in a bulletin.

Peters, whose institute was once funded by Taser, believes that officers need to be better trained on "when not to use it."

"Police have over-relied on it," Peters said. "Even the manufacturer has agreed that officers have become codependent on the Taser and they would rather not physically engage people and use the Taser. That's pretty much true nationally."

He added: "Police officers have one-half the power of God: the power to take a life. They don't have the power to restore life. You want them to be as well-trained as possible."

In one high-profile case in Baltimore, a teenager died in a hospital after being hit by a Taser in the chest.

In May 2014, a toothache and a series of seizures landed 19-year-old George Vonn King, who was in the foster care system, in the emergency room at Good Samaritan Hospital. After suffering another seizure at the hospital, he was to be moved to intensive care.

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Police officers have one-half the power of God: the power to take a life. They don't have the power to restore life. You want them to be as well-trained as possible.

— John G. Peters Jr., Institute for the Prevention of In-Custody Deaths

King objected and tried to leave the hospital. He became combative and struck a nurse. Five security guards couldn't restrain King and called police. An officer struck King in the chest with the Taser's drive-stun mode and with the darts. State data shows six discharges totaling 27 seconds.

King fell into a coma, dying five days later. A lawyer told The Sun at the time that he represented the family, but no lawsuit has been filed.

Prosecutors later cleared the officers of wrongdoing.

In one of the biggest judgments against Taser International, California attorney John Burton won a \$10 million wrongful-death lawsuit against the company in 2011. The company appealed, and it was later settled for a confidential amount. No other details about the settlement were made available.

The case involved a 17-year-old boy who died of cardiac arrest after being hit by a Taser in the chest for 37 seconds in the Charlotte, N.C., supermarket where he worked. The teen was arguing with a supervisor when someone called police, who arrived and hit the employee with a Taser.

Burton said officers resort to Tasers when traditional methods for calming tense situations would suffice.

"They're just so subject to abuse," Burton said. "It's torture."

Differing policies

Taser recommends at least six hours of training on how to use the weapon. But policies at several of the state's largest departments disregard key safety recommendations from experts and Taser's manufacturer, according to a Baltimore Sun analysis of the 15 agencies with the most incidents from 2012 to 2014.

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Those recommendations advise officers to avoid shocking suspects more than 15 seconds. Any further discharges should be "independently justifiable, and the risks should be weighed against other force options," according to the Police Executive Research Forum. The guidelines also discourage targeting the chest or shocking someone who is handcuffed, and make clear that Taser's electrified-darts method is preferable to the device's drive-stun mode.

Baltimore City and Harford County did not include any of those recommendations during the three-year period. Baltimore updated its policy in October to include them.

Harford County's Taser policy remains one of the shortest.

"While the Harford County Sheriff's Office policy does not give specific recommendations on Taser usage, it should not be construed as a disregard of specific safety recommendations," Maj. John Simpson, chief of the Services and Support Bureau, said in a statement.

Simpson said deputies receive "comprehensive training" and yearly recertifications on proper use of force. He also said the department's policy is "under review" and will be modified to include separate sections to address the various methods of force, including Taser and pepper spray.

Anne Arundel County includes the four recommendations in its policy. Along with Baltimore County — and Montgomery County starting in 2014 — the county tells officers to avoid activating the Taser for longer than 15 seconds. Eleven other agencies give officers latitude to determine what's needed to gain control.

Five agencies, including Anne Arundel and Howard counties, instruct officers to avoid targeting the chest area. Four other agencies say officers can shoot in the chest area if they have no other choice. The others provide no guidance to officers on the matter.

On shocking handcuffed suspects, seven agencies don't offer guidelines. Five others say officers shouldn't stun them, while Baltimore, Montgomery and Prince George's counties provide exceptions to that rule.

While policing experts have said officers should limit the use of Tasers in drive-stun mode, only six agencies discourage the practice in their policies.

Police departments in Maryland, Virginia and three other states have begun revising their policies after the U.S. Court of Appeals for the 4th Circuit deemed some routine Taser uses as excessive force.

The task force convened by former Maryland Attorney General Gansler issued dozens of recommendations in 2009, including many of the guidelines eventually adopted by the Justice

Department. Gansler sent the report to every police department in the state and to every state attorney general across the country.

In Gansler's home state, the recommendations were "sadly ignored," said Cary Hansel, a defense attorney who served on the panel, to the peril of residents who face serious injuries and to police and local governments that face legal liability.

"You see repeatedly what I consider lazy law enforcement, where officers don't want to take the time to use verbal techniques and calming techniques," Hansel said. "They are just flippantly going to the Taser."

Excited delirium

It is rare for coroners to directly blame a Taser for a death. The state medical examiner's office in Maryland hasn't done so in any of the deaths here.

One of the more common causes of death is the condition called excited or agitated delirium. In Maryland, the condition has been blamed, in part, in the deaths of four people hit by Tasers in confrontations with police since 2009.

But for years experts have debated the legitimacy of the condition. While coroners have adopted the controversial diagnosis, it is not recognized by the American Medical Association.

Symptoms of excited delirium include acting irrationally, removing clothes, shouting and grunting, refusing to follow orders, and displaying extraordinary strength and high tolerance to pain. Such individuals, who also may be mentally ill, and on cocaine or PCP, are considered to be at a high risk for sudden cardiac arrest when resisting police restraint.

A 2009 Taser bulletin warned officers that people who exhibit signs of excited delirium, exhaustion or distress after being stunned need immediate medical attention. "These subjects are at significant risk of arrest-related deaths," the bulletin said.

Maryland's medical examiner, Dr. David Fowler, said the only accurate way to determine whether a Taser caused a death is if a person were shocked in a controlled setting where the heart was monitored.

Excited delirium "is a very, very complex and interesting topic, and it's not going away anytime soon," Fowler said.

Gansler's task force said that because excited delirium is open to interpretation, medical examiners should "specifically indicate" whether the use of a Taser "may have or did contribute to the death."

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"Excited delirium should not be cited as the cause of death where there is a known direct cause," the task force wrote. "The medical examiner should explain in the autopsy and death certification the cluster of symptoms that led to the finding of 'excited delirium.'"

Fowler, who has been in his role since 2002, said isolating one direct cause of death in Taser cases is extremely difficult. Instead he has identified a number of factors that contributed to those deaths, including drug use, mental health problems, excited delirium, heart conditions and police restraint.

"I'd love to be able to give you a clean answer. The human being is complex," he said.

Taser use could play a role, he added, but it cannot be cited as a cause without scientific evidence. When and if his office finds such proof, he said, it will say so in an autopsy.

Fowler noted that other uses of force, such as hogtying and chokeholds, have been deemed improper and are no longer used by police. "Then along came Taser," he said. "There is a suspicion that Taser is another one of these events in a long history."

"Most people have gone from the idea of saying the Taser is perfectly safe — the jury is still out — to one where it's less than lethal."

But blaming the Taser without proof could result in police losing a useful tool that's a better option than other potentially lethal uses of force, he added.

As federal agencies such as the FBI devise new ways to track deaths from police encounters, Fowler, the president of the National Association of Medical Examiners, said there should be a central database for deaths involving stun guns and excited delirium.

Medical examiners working separately across the country cannot detect trends, he said. He compared it to groups who track deaths from consumer products or the data collected on sudden infant death syndrome.

"It's very important because that's the only way over time we're going to get enough statistical data to be able to analyze this and say whether or not it is or is not a risk," he added.

For the past decade, the Institute for the Prevention of In-Custody Deaths has taught police officers across the nation and in Maryland how best to avoid fatalities by immediately requesting medics once they have identified someone exhibiting signs of excited delirium. Suspects who have been stunned also should be immediately transported to a hospital once in custody, said Peters, the institute's president.

"The gold standard, which has been adopted across the country, is when you get a call like this or you

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arrive on a scene, you request EMS to come and stage," Peters said. "When you have the person down, EMS moves in."

In one case in Baltimore County, emergency personnel were the first on the scene.

On May 27, 2010, Carl D. Johnson, 48, crashed his truck near the intersection of interstates 795 and 695.

Johnson refused to get out of his car, which was stuck in mud, according to police reports. The wheels spun until the tires blew. A Maryland State Police trooper said he instructed Johnson to roll down his window. When he did, the trooper attempted to unlock the door, and Johnson punched his hand.

The trooper sprayed pepper spray and Johnson got out, wiping his eyes before swinging punches, according to the reports. Two Baltimore County police officers fired Tasers. Johnson fell. Officers handcuffed him while he was on his stomach. Minutes later, he was unresponsive. CPR was administered, but Johnson died.

Johnson's family sued and blamed his death on excessive force. The lawsuit also said Johnson was a diabetic and behaved erratically when experiencing low blood sugar levels. To settle the lawsuit, Baltimore County paid \$90,000 and the state police paid \$80,000, while not admitting to any wrongdoing.

His autopsy cited excited delirium as a cause of death.

'There's got to be a different way'

The family of Anthony Howard, the man who died in 2013 after Montgomery County police hit him with Tasers, didn't immediately know what had happened to him. They worried when he didn't show up to work. For decades, Howard worked alongside his brother repairing cars at a body shop.

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Most people have gone from the idea of saying the Taser is perfectly safe -- the jury is still out -- to one where it's less than lethal.

— Dr. David Fowler, Maryland's medical examiner

He didn't respond to calls and texts. The anxiety spilled into the next day. Then the family heard about a television report in which police shot a man with Tasers in front of a crowd in Gaithersburg.

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Howard's sister, Robbin, called the reporter, who contacted a police captain. More than 27 hours after Howard died, six officers arrived at her home to tell her of her brother's death.

Family members were enraged. Why had it taken so long to notify them? Why did police fail to inform them that an autopsy was ordered and performed?

In the following weeks, Howard's relatives knocked on dozens of doors in the townhome community in search of video that captured the incident. Residents told the family that police had collected cellphones to download the videos but deleted the recordings.

The family called lawmakers for help. They circulated petitions to change the laws on Tasers. The efforts failed, and they abandoned any thought of a lawsuit.

Starks, the Montgomery County police spokesman, said he didn't know why the videos weren't turned over to the family, as he was not part of that decision. He said the videos that police obtained in 2013 included the 17-minute video taken by a bystander and later obtained by The Sun.

Starks also said officers responding to the Howard incident feared he would enter a townhome or charge at one of the bystanders.

Last month, the family watched the 17-minute video. As it played, they stared at the screen. For long stretches none of them blinked. They sat silently and shook their heads. They noted afterward that Howard complied with an officer's order to drop two small rocks, and they watched him back up against a door. Officer Shaun Santos fired pepper spray, but the wind blew it back in his face, stirring laughter from the crowd.

On the video, as two other officers approach with Tasers, bystanders playfully yell for them to "Tase that man!"

Officer Alexander Patapis fires his Taser.

"Tase him again!" someone shouts.

Officer Dana Russell fires her Taser.

Both officers were named in police reports.

"You can hear them Tasing him again," Howard's 24-year-old son said as he watched the video. "He's down on the ground; they're still Tasing him."

An onlooker in the video yells, "He's dead!" and "This man got Tased seven times!" The mood shifts

when Howard doesn't move. "These are all white cops!" a young man shouts.

"It's sad," Howard's 82-year-old father said softly after watching the video, his eyes filling with tears. "I don't understand."

As the three-year anniversary of the death approaches, the family still struggles to understand why officers hit him with a Taser rather than waiting for medical professionals.

Montgomery County police classified the incident as "criminal" and Howard as "noncompliant" in its report to the state. In a police report, the department says "none of the video seized reveals anything contradictory to officer or civilian statements." In a supplemental synopsis, investigators said one of the two barbs from Russell's Taser didn't connect with Howard's body.

A grand jury later determined the officers' actions were justified. An autopsy found he died from a combination of agitated or excited delirium, cocaine intoxication, heart trouble and police restraint.

"He comes to me in my dreams," said Anthony Howard Jr., wiping tears. "I don't have that father figure in my life. There's got to be a different way to deal with these people."

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How we did it

During a six-month investigation, The Baltimore Sun produced the first-ever analysis of Taser discharges in Maryland. With raw data obtained from Maryland Governor's Office of Crime Control & Prevention, The Sun created a database of every Taser discharge on an individual from 2012 to 2014. That office has details on every Taser incident, but its online reports only summarize the aggregate data. To find people behind the data, The Sun requested more than 150 police reports that corresponded with the times, dates and locations of Taser incidents listed in the state's information. In addition to police, lawyers, government officials and law enforcement experts, reporters interviewed the people who had been stunned or, for fatal encounters since 2009, their family members. The Sun also obtained and reviewed several thousand pages of police records, 47 police department policies for Tasers, 10 autopsies and scientific research on the weapon.

This article is related to: Medical Research, Mental Health Research, Crime, Hospitals and Clinics, U.S. Department of Justice, Maryland General Assembly, Maryland Public Information Act

Leggett asks for review of Taser use by Montgomery County police

Bill Turque March 24

Montgomery County Executive Isiah Leggett has asked police to review the department's use of Tasers, the electric-shock stun guns deployed by county officers in four fatal incidents since 2009 — the most of any jurisdiction in the state.

Leggett (D) said Thursday he asked Police Chief Thomas Manger to examine Taser use in the four deaths, along with the department's policies and training, in response to a Baltimore Sun investigation published Saturday. "To my surprise, we're leading the pack in the number of deaths by Tasers," Leggett said. "It raises questions to me about how, when and how frequently we use them. . . . I've asked Chief Manger to go back and review all of it."

Leggett added that he might also ask an outside consultant to participate in the review "to make sure we have enough eyes on it."

Police spokeswoman, Lucille Baur, confirmed that the review is underway. "The chief and the county executive are on the same page as usual," Baur said.

The Sun reported that Montgomery police have been involved in four of 11 fatal Taser incidents in Maryland since 2009. In three of the four, officers exceeded the recommended 15-second safety limit, the newspaper reported. Between 2012 and 2014, there were 42 incidents involving Montgomery police in which Tasers were activated for longer than 15 seconds. In one instance, Tasers were activated for 108 seconds. Overall, Montgomery ranked third in the state for stun-gun use behind the city of Baltimore and Baltimore County, with 326 incidents since 2009.

The Sun story included a 17-minute iPhone video of the fatal April 2013 incident in which a Taser was used on Anthony Howard, 51, in a Gaithersburg cul-de-sac. Howard, who had been acting erratically, was standing still, holding a child's stroller, when officers fired Tasers nine times for a total of 37 seconds.

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Police spokesman told the Sun that grand juries cleared officers of any criminal behavior in the incident and the three other fatal episodes. But Leggett said the department's policies regarding Taser use may need revision.

Looking at it as a criminal matter is a different standard," said Leggett, who said it seemed from the video that Howard had been hit with the stun guns "too often and too long."

Montgomery County Council member Marc Elrich (D-At Large), chairman of the Public Safety Committee, praised Leggett's decision to call for a review. He said the committee will hold an April 28 hearing with police officials on Taser policies.

Elrich said he was reluctant to draw conclusions before talking to police, but he called the Howard video "disturbing."

"You can't possibly be trained to do that," Elrich said.

Bill Turque, who covers Montgomery County government and politics, has spent more than thirty years as a reporter and editor for The Washington Post, Newsweek, the Dallas Times Herald and The Kansas City Star.

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USE OF FORCE

FC No.: 131

Date: 03-10-14

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

Contents:

- I. Policy
 - II. Definitions
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- Appendix A: Use of Force Report-Criteria for Use

I. Policy

- A. The need to use force, whether deadly or non-deadly, is one of the most demanding and critical decisions that a law enforcement officer must make. There are situations when an officer is forced to make the irreversible decision of whether or not to use deadly or non-deadly force. Such a decision can have a powerful and possibly harmful effect on the officer, the department, and the community. The purpose of this policy is to provide some guidance to aid in the exercise of that decision.
- B. Officers may only use force which is *objectively* reasonable to make an arrest, *an investigatory stop/detention or other seizure, or in the performance of their lawful duties*, to protect themselves or others from personal attack, physical resistance, harm, or death. The decision to exercise force must be based upon the circumstances that the officer reasonably believes to exist. *In determining the appropriate level of force to be used by an officer, the nature of the threat or resistance faced or perceived by the officer as compared to the force employed should be considered. Factors to be considered in assessing the level of force to be used include, but are not limited to the following:*
 - 1. *the severity of the crime at issue,*
 - 2. *whether the subject poses an imminent threat to the safety of the officers or others, and*
 - 3. *whether the subject is actively resisting arrest, or the subject is attempting to evade arrest by flight.*
- C. *All officers have a number of force options available to use in those situations where force is objectively reasonable. Examples may include but are not limited to:*
 - 1. *Subduing or arresting a physically assaultive person*
 - 2. *Instances that reasonably threaten the safety of an officer or other person*
 - 3. *Stopping a person who is attempting to flee or escape a lawful detention or arrest*
 - 4. *When directing, controlling, or escorting resistive or physically uncooperative persons*

FC No.: 131

Date: 03-10-14

5. *Other situations where persons who are being placed into custody are non-compliant or resistant to lawful orders*

II. Definitions

- A. Deadly Force: *Any use of force which is intended to or likely to cause a substantial risk of death or serious physical injury.*
- B. Medical Treatment: *A minimum of an on-scene response by MCFRS.*
- C. Non-Deadly Force: *Any use of force other than that which is considered deadly force.*
- D. Objectively Reasonable Force: *That level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who actually utilized the force.*
- E. Passive Resistance: *A refusal by an unarmed person to comply with an officer's verbal command or physical control techniques in such a way that the subject does not use physical force, or resistance of any kind.*
- F. Probable Cause: *Facts and circumstances that would lead a reasonable person to believe that a crime has been committed and a particular individual has committed that crime.*
- G. Protective Instruments: *Devices or tools authorized by the department that are intended to protect the officer or others or to affect an arrest, investigative stop/detention, or seizure. These include the expandable baton, electronic control devices, OC Aerosol, flashlight, and kinetic energy /12 gauge impact projectiles.*
- H. Scene: *The location(s) where force was utilized during an event.*
- I. Serious Physical Injury: *Bodily injury that creates a substantial risk of death, causes a serious, permanent disfigurement, or results in long term loss or impairment of any bodily member or organ.*

III. Force Options

An officer may encounter situations that require not only the officer's presence, but some form of verbal or non-verbal communication. This communication may take the form of providing information, giving commands, physical gestures, or directions, asking or answering questions, conducting interviews, etc. It may also take the form of issuing specific instructions to individuals or groups, dealing with arguments, verbal assaults, or threats, handling disputes, disagreements, etc. The department recognizes that some situations require the application of force.

A person need not strike or attempt to strike an officer to be considered a physical threat as long as an officer has an objectively reasonable belief (verbal threats, verbal defiance, physical stance, etc.) that the person is physically threatening and has the present ability to harm the officer or another. Examples of actions or observations that may lead an officer to believe that a person is a threat include, but are not limited to, clenched fists, displayed hostility or anger, verbal threats, aggressive stance, non-compliance, and furtive movements, among other things. Under the law, officers are not obligated to retreat when confronted with a threat. The department relies on the officer's judgment and discretion to employ objectively reasonable force under each unique circumstance.

A. Authorized Use of Non-Deadly Force

1. *Non-deadly force, as defined herein, may be used to effect arrests, to safely make or maintain an investigative detention or seizure, or to protect officers or others from personal attack, physical resistance, or injury, provided the force applied is reasonable based upon the immediate circumstances confronting the officer at the time.*
2. *Non-deadly force may involve the use of defensive tactics (hands/body) and/or protective instruments.*
3. *Although the department issues authorized protective instruments, in exigent circumstances, officers are not prohibited from using another object or instrument in order to protect themselves or others as long as the object is used in accordance with the limitations on force contained in this policy.*

B. Authorized Use of Deadly Force

Officers may use deadly force to defend themselves or another person from what they reasonably believe is an imminent threat of death or serious physical injury. The United States Supreme Court has ruled that any use of deadly force must be objectively reasonable. This standard will be applied to all uses of deadly force regardless of whether or not a suspect is fleeing when an officer employs deadly force.

C. Destruction of Animals

1. Humane Destruction of Injured Animals

Officers may discharge their firearms to destroy injured animals when no other reasonable alternative exists. Factors taken into account must include backstop, location, etc. When an animal is destroyed, officers must complete the MCP 37, "Use of Force Report," in accordance with Appendix A. An incident report will be completed for the destruction of injured domestic animals (cats, dogs, cattle, horses, etc.). An incident report is not required for the humane destruction of non-domestic animals (deer, raccoons, and other wildlife). Officers/Animal Services Division (ASD) will attempt to locate the owner of a destroyed domestic animal.

2. Destruction of Dangerous or Vicious Animals

If an officer destroys a dangerous or vicious animal (domestic or non-domestic) that presents a threat to the safety of the officer or another, an incident report documenting the incident shall be completed in addition to the MCP 37. This includes attempted destruction by firearm. Officers who are confronted by dangerous animals are encouraged to consider the use of non-firearm alternatives, to include an ECD. An MCP 37 is required in cases where an officer uses a protective instrument against a dangerous or vicious domestic animal.

IV. Firearms

A. Drawing a Firearm

Firearms may be drawn whenever officers reasonably fear for their safety or the safety of others.

B. Consideration of Backstop

When discharging a firearm for any reason, officers must exercise reasonable caution in order to avoid unnecessarily endangering the lives of bystanders. When possible, officers should give consideration to background, bystanders, and location.

C. Prohibitions

1. *Warning shots are prohibited.*
2. *Officers are prohibited from intentionally placing themselves in the path of a moving vehicle where an officer's use of deadly force would be the probable outcome. When confronted by an oncoming vehicle, officers will move out of its path, if possible, rather than fire at the vehicle.*
3. *Officers are prohibited from shooting at or from moving vehicles unless the circumstances would authorize the use of deadly force.*

V. Electronic Control Devices

A. **General:** *An Electronic Control Device (ECD) is a less-lethal weapon and as such is to be used to help control persons who are actively resisting or acting aggressively. An ECD is not an all-purpose weapon that takes the place of de-escalation techniques and other options. Officers are reminded that an ECD, as a less-lethal weapon, has some potential to result in a fatal outcome even when used in accordance with policy and training. Each application of an ECD must be independently justified, and risks should be weighed against other force options.*

1. **Definition**

The department-issued electronic control device (ECD), currently the TASER, is a protective instrument which utilizes neuro-muscular incapacitation technology to temporarily incapacitate an individual in order to enable officers to gain control and/or custody of that person.

2. **Authorized Users**

Only officers that have successfully completed the department's approved training and certification requirements will be permitted to carry and/or utilize an ECD.

3. **Carrying the ECD**

Only department-issued ECDs will be carried by members of the department. Officers will only carry the ECD in a department issued holster on their side opposite their handgun.

4. **Verbal Notifications**

When practical, the ECD operator will:

a. *Give verbal warnings to a subject that the ECD is about to be deployed.*

b. *Verbally announce "TASER" to other officers before the ECD is discharged. This will let the officers involved know that the ECD is being deployed.*

B. **Appropriate Use of the ECD**

1. *As a de-escalation technique, sparking the ECD from a safe distance without a cartridge as well as pointing the ECD's laser at the subject is permitted in order to gain compliance prior to deploying the ECD.*

2. *ECDs should be used only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officers judgment, is likely to result in injuries to themselves or others. The ECD may be used to incapacitate a person who is actively assaulting or physically resisting an officer, and to prevent an assault upon and/or an injury to officers, other persons, and/or the subject.*

3. *The ECD may be used to incapacitate a subject who is fleeing when the officer has reasonable suspicion to believe the subject is involved in criminal activity. However, fleeing should not be the sole justification for using an ECD against a subject. Personnel should consider the severity of the offense, the subject's threat level to themselves or others, and the risk of serious injury to the subject before deciding to use on a fleeing subject.*

4. *Personnel should use an ECD for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. In determining the need for additional energy cycles, officers should be aware that an energized subject may not be able to respond to commands either during or immediately following an ECD exposure. Assisting officers must secure the subject as soon as practical and, if practical, handcuff the subject when the ECD is cycling.*

5. *The ECD may be used during department-authorized training programs and/or demonstrations.*

C. **Prohibited ECD Uses**

Officers are prohibited from using the ECD under the following circumstances:

1. *In a punitive or malicious manner.*

2. *In drive stun mode as a prod or escort device.*

3. *To rouse unconscious, impaired, or intoxicated individuals.*

4. *The ECD shall not be used on those who passively resist as defined in this policy.*

5. *On handcuffed subjects, unless the subject poses an imminent threat to the officer, the subject, or others and other techniques have been or would likely be ineffective (specific articulation of exigent circumstances is required).*

6. *To experiment on a person or allow a person to experience the ECD device even if the person requests it, when the ECD's use would not otherwise be allowed by this policy. This prohibition does not apply to voluntary ECD exposures of sworn officers during training or demonstrations that are authorized by the department. Voluntary ECD exposures to non-sworn personnel must be approved by the Director of the Training Academy prior to the training or demonstration.*
7. *In a known flammable or explosive environment (i.e., a meth lab, where gasoline is stored, or where alcohol based OC spray was used, etc.) unless the officer's only other option would be deadly force.*
8. *The ECD must not intentionally be aimed or discharged at the eye, face, head, throat, neck, or groin unless such use occurs when deadly force is authorized. The ECD must not be intentionally discharged in the chest area near the heart.*

D. Elevated Risk Factors

The department strongly discourages ECD usage under the following conditions due to the increased risk of harm to a subject or others. However, officers may face circumstances that dictate the necessity to utilize the ECD when elevated risk factors are present. Officers must specifically articulate the circumstances justifying the use of the ECD when:

1. *Immediate surroundings create an obvious undue hazard (i.e., the subject could fall from a significant height or fall into water, etc.).*
2. *The subject has control of a moving motor vehicle or machinery.*
3. *The subject is obviously pregnant, elderly and frail, or is a small child.*
4. *Repeated ECD applications (more than three 5 second cycles or drive stuns)*
5. *When more than one ECD device is used on a subject simultaneously, (this includes situations when officers use the ECD in conjunction with officers from another agency).*
6. *Personnel should consider that exposure to the ECD for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. All applications should be independently justifiable, and the risks should be weighed against other force options.*

E. ECD Limitations

1. *Continued ECD applications administered to a subject that is highly resistant to pain may not change the subject's behavior. If the desired behavior is not achieved after deployment, officers should consider alternative methods.*
2. *ECD applications will be administered in a manner and duration consistent with training provided by the Department.*

F. Accidental Cartridge Discharge

In the event of an accidental ECD discharge, the officer shall promptly notify their supervisor who will ensure an incident report is completed documenting the incident.

G. ECD Probe Removal

1. *Officers will take photos of:*
 - (a) *All visible signs of injury,*
 - (b) *ECD probes in skin or clothing prior to removal, and*
 - (c) *All marks produced by ECD probe or drive stun.*
2. *Officers may remove probes from non-sensitive areas according to probe removal training guidelines. Officers are responsible for providing first aid after probe removal by applying alcohol wipes and band aids, if needed. Probes are to be treated as bio-hazard sharps and handled accordingly.*
3. *Medical personnel shall remove probes located in sensitive areas (eye, face, breasts, throat, or groin) or deeply embedded in a body part.*

VI. 12 Gauge Impact Projectiles

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FC No.: 131

Date: 03-10-14

- A. *The 12 gauge impact projectiles are intended to provide a less-lethal use of force option with greater standoff distance than other protective instruments.*
- B. *All officers who use this system must ensure that any person struck with the projectile and in custody receives a prompt medical evaluation at a hospital. Officers will request that Montgomery County Fire Rescue Services transport the person. If MCFR refuses to transport the person an on-scene supervisor will ensure the person is transported to the hospital by an officer. Photos of all injuries will be taken.*

VII. Custody and Transport Responsibilities

A. Important Considerations

Officers must be mindful of certain indicators and/or conditions when detaining or arresting a person. The following conditions and/or indicators may potentially contribute to sudden unexpected death following extreme physical exertion and/or restraint;

1. *Excited Delirium: State of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, euphoria, hostility, exceptional strength, and endurance without fatigue.*
2. *Alcohol or drug use/abuse*
3. *Obesity*
4. *Display of erratic/psychotic behavior*
5. *Incoherent speech*
6. *State of agitation*
7. *Subject intentionally injuring themselves*
8. *Subject disrobing or naked*

Officers must recognize these factors and closely monitor a subject in custody in the aftermath of a struggle when one or more of the above indicators are present and the scene is secure.

- B. *Officers must take appropriate measures so that the individual being transported is able to breathe without restriction and if possible should lay the subject on their side or seated in an upright position. Officers should avoid transporting subjects in a face-down position whenever possible. Additionally, officers should avoid transporting a person in any position which places pressure on the ECD probes.*
- C. **Medical Emergencies**
Officers must immediately summon emergency medical assistance if the subject exhibits or complains of trouble breathing, becomes unresponsive, exhibits reduced levels of consciousness, or if in the officer's opinion the subject requires evaluation or medical treatment.
- D. **Medical Treatment**
Officers and supervisors shall obtain medical treatment as soon as practical for individuals:
 1. *who show signs of injury as a result of any use of force.*
 2. *who complain of injury as a result of any use of force and the person requests medical attention.*
 3. *when the officer or supervisor reasonably believes an individual is in need of medical attention as a result of any use of force.*
 4. *who show obvious signs that chemical restraint may be necessary.*
 - a. *Officers must specifically request an Advanced Life Support Unit (ALS). ALS units carry medication, such as Haldol or Ketamine, which can assist in treating individuals suffering from an excited or agitated delirium.*
 5. *who have been exposed to an ECD (MCFRS Ambulance medical is an appropriate level of care; no hospital/emergency medical center visit is required.)*
- E. *Medical treatment will not be refused for any individual who requests it.*

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- F. If safety circumstances reasonably dictate moving the subject to another location, officers may have emergency medical personnel meet the officers at a nearby location to assess the subject and render aid.

VIII. Use of Force Reporting Requirements

A. When to Report Use of Force or Firearms Discharge

The MCP 37 will be completed in the following circumstances (refer to Appendix A):

1. Anytime force is used to counteract a physical struggle.
2. Following the use of any force which results in an injury to an individual.
3. When an individual claims *to have been injured as a result of use of force*.
4. Whenever force is applied using a protective instrument.
5. Whenever a firearm is discharged other than authorized target practice.
6. Whenever a department canine inflicts injury on any subject or suspect in conjunction with a search, arrest, or attempted apprehension.
7. *Anytime an officer is assaulted or ambushed.*

B. One Subject - One MCP 37

When multiple officers are involved in a use of force incident with one subject, it will be considered a single event for reporting purposes. Only one MCP 37 is needed unless more officers are involved than can be captured on a single MCP 37; in that case, additional MCP 37s must be completed.

C. Multiple Subjects - Multiple MCP 37s

When force is used against more than one subject in an incident, an MCP 37 must be completed for each subject.

- D. The MCP 37 will be completed prior to the end of the tour of duty. It will be forwarded, via the chain of command, to the *bureau chief* who, after review, will forward it to the *Policy and Planning Division*. No copies of the MCP 37 will be *maintained* other than those kept by the *Policy and Planning Division*.

- E. The MCP 37 will be used administratively to evaluate use of force department-wide and will not be used by the Internal Affairs Division (IAD) in any subsequent investigation. An *annual report summarizing the data from* these forms will be made to the Use of Force and Weapons Review Committee, which, after review, will report its analysis and *any* recommendations to the Chief of Police.

F. Officer's Responsibilities

In every circumstance described in section VIII.A. above, officers are required to adhere to the following:

1. *On-duty officers must immediately report the incident to their on-duty supervisor. Off-duty officers must immediately report the incident to an on-duty supervisor in the district of occurrence.*
2. *Officers will complete or provide information for the completion of an incident report(s), charging document(s), and/or the MCP 37. If the officer involved in the use of force does not complete some or all of the required documentation, then the reporting officer must ensure the information is accurately recorded. The reporting officer will identify the source of the information in the required documentation. If it is investigatively necessary to keep the source out of the required documentation then the identity of the source will be maintained on notes in the officer's and/or detective's case file.*

G. Supervisor's Responsibilities

An ECC supervisor will immediately notify an on-duty patrol supervisor of, and the on-duty supervisor will respond to, all ECD deployments, firearm discharges, 12 gauge impact projectiles, and any use of force that results in serious bodily injury or in-custody death. Supervisors are required to notify the Duty Commander, or the District Commander of the district of occurrence during daytime hours Monday-Friday, of any of the above incidents.

1. ***Notifications: Supervisors are required to make the below notifications in the circumstances described regardless of whether the involved employee is on or off-duty.***
 - a. ***Homicide and Sex Section:*** Immediately notify a Homicide and Sex Section supervisor in the following instances:
 - i. All intentional firearm discharges by an employee, whether injuries occur or not, with the exception of authorized range practice or the destruction of dangerous or injured animals.
 - ii. All accidental firearm discharges by an employee that result in an injury to anyone, including the involved officer.
 - iii. *All incidents where an individual sustains life-threatening injury as a result of police action.*
 - b. ***Internal Affairs Division (IAD):*** Immediately notify IAD in the following instances:
 - i. All intentional and accidental firearm discharges *involving departmental firearms and authorized off-duty firearms, regardless of injury (except range practice or the destruction of an animal)*
 - ii. *Any range practice or destruction of an animal incident resulting in injury*
 - iii. *Any use of force incident resulting in death or serious injury requiring the immediate hospitalization of a person in police custody*
 - iv. *Any other event or situation as may be deemed necessary after consultation with an executive officer.*
 - c. ***Training and Education Division (TED):*** Notify the TED to provide a replacement firearm, as appropriate.
2. Complete the MCP 37 if the officer is unable to complete it.
3. Review the submitted MCP 37 for *accuracy and* completeness.
4. ***Ensure that an incident report and any additional reports are completed and submitted if required.***
5. ***In incidents involving intentional or accidental firearms discharges (except for authorized range practice or for the purpose of destroying animals), the supervisor will complete the MCP 37. In the section for supervisor's comments, the supervisor will indicate that the incident is under investigation and not provide any judgment about the circumstances.***
6. Forward the MCP 37 to the *bureau chief* via the chain of command prior to the end of the tour of duty.
7. ***In instances where force was used to destroy a dangerous animal (domestic or non-domestic) that presented a threat to the safety of the officer or anyone else, supervisors will forward a copy of the incident report through the chain of command to their respective bureau chief. The bureau chief will, in turn, forward copies of the incident report to the ASD and IAD for review.***
8. Remove *any* officer from line duty who has been involved in any use of force that results in death or serious physical injury and refer *them* to the department's Traumatic Incident Program in accordance with that program's guidelines. (See FC 310, "Administrative Leave" and Appendix O of the FOP Collective Bargaining Agreement)
9. On-duty supervisors in the district of occurrence will ensure that off-duty officers involved in reportable use of force events fulfill the requirements of this directive. The on-duty supervisor will complete the supervisor's section of the MCP 37 and forward it, along with a copy, to the officer's assigned supervisor.

IX. Use of Force and Weapons Review Committee

- A. The Use of Force and Weapons Review Committee will review *all in custody deaths and* intentional discharge of firearms by department personnel and report the results of this review, along with any conclusions or recommendations, to the Chief of Police, as requested. The committee will focus on overall operations and procedures and not on individuals. In addition, the committee will periodically evaluate the list of authorized departmental *firearms* and protective instruments and, in coordination with the Joint Health and Safety Committee, make recommendations concerning approval, adoption, and required training/certification.

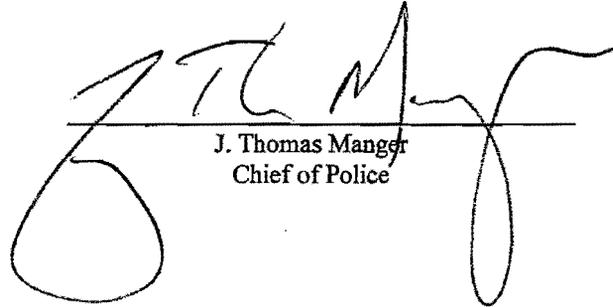
- B. The committee will be comprised of at least two executive officers from the *Patrol Services Bureau (one will be the administrative lieutenant of PSB), one executive officer from the Investigative Services Bureau, (as determined by the Assistant Chief, ISB), one executive officer from IAD, the Director, Policy and Planning Division, and the Director, Training and Education Division, who will serve as the chair. The committee will meet three times a year.*
- C. The *Policy and Planning Division* will be the repository for the *MCP 37* and will provide annual reports to the committee and the *FOP*. Information for the committee will be provided by the *Policy and Planning Division*. Recommendations from the committee will be forwarded to the *Labor-Management Relations Committee*.
- X. **Training/Certification Requirements**
- A. Authorization
Only officers who have successfully completed specified training courses and any required recertification courses as determined by the department are authorized to carry and/or use any defensive tactic, protective instrument, or firearm.
- B. Annual Certification
Each officer must certify annually with all approved firearms and protective instruments that the officer is authorized to use. Annual firearms certification must meet the standards of the *Maryland Police and Corrections Training Commission* and department training standards. Failure to recertify annually on any firearm or protective instrument will withdraw from the officer the authorization to carry or utilize that force option. In the case of department-issued firearms, the firearm will be immediately turned over to range staff until recertification is completed. In the case of department issued protective instruments, such equipment will be immediately turned in to a sworn academy staff member until recertification is completed.
- C. Use of Force Policies
Officers will be provided a copy of, and instruction in, the department's use of force policy prior to being authorized to carry any firearm or protective instrument.
- D. Documentation/Administration
The Director, TED, is responsible for the maintenance of certification records, approval lists for protective instruments and defensive tactics, training materials, and approved lesson plans.
- E. Defensive Tactics
Original training in defensive tactics occurs during Entry Level Training. Retraining occurs during In-Service Training every year. The number of hours of training dedicated to defensive tactics will be determined by the Director, TED, who will maintain course descriptions and a list of approved defensive tactics.
- XI. **CALEA Standards:** 1.3.1 through 1.3.13
- XII. **Proponent Unit:** Office of the Chief
- XIII. **Cancellation**

This directive cancels Function Code 131, effective date 05-11-98, and Headquarters Memoranda 01-19, 02-02, 02-05, and 02-13.
- XIV. **Disclaimer**

FC No.: 131

Date: 03-10-14

This directive is for department use only and does not apply in any criminal or civil proceeding. This department policy should not be construed as the creation of a higher legal standard of safety or care in a legal proceeding relating to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions.



J. Thomas Manger
Chief of Police

Use of Force Report – MCP 37
Criteria for Use

Appendix A
FC 131

Incident	Instructions/Notifications	Reports Required
<ul style="list-style-type: none"> • <i>Force used to counteract a physical struggle</i> • <i>When injury occurs from use of force</i> • <i>When injury is claimed to have occurred from use of force</i> • <i>Use of a protective instrument</i> 	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
<p><i>Intentional</i> discharge of firearm – other than authorized target practice and destruction of animals</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD and Homicide and Sex Section 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
<p>Accidental discharge of firearm <u>with</u> injuries</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD and Homicide and Sex Section 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
<p>Accidental discharge of firearm <u>without</u> injuries</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
<p>Incident resulting in death or serious injury</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD and Homicide and Sex Section 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
<p>Use of force against a police officer (police officer assaulted/ambushed)</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
<p>Destruction of a <i>non-domestic</i> animal</p>	<p>MCP 37 forwarded to Policy and Planning Division (direct from supervisor via unit commander)</p>	<ul style="list-style-type: none"> • No police report • No CR # (event # required) • MCP 37 only
<p>Destruction of a <i>domestic</i> animal (including attempted destruction by firearm)</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
<p>Destruction of a dangerous/vicious animal (including attempted destruction by firearm)</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
<p>Canine (K-9) infliction of injury</p>	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37 • MCP 741

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**MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE**

TRAINING BULLETIN

#16-01

01/22/2016

SUBJECT: *Armstrong v. Village of Pinehurst*

OBJECTIVE: The purpose of this bulletin is to provide a legal update on the use of a TASER and clarify the Montgomery County Police Department's use of force policy as it relates to utilizing a TASER on an individual who is offering stationary and non-violent resistance to a lawful seizure.

On January 11, 2016, the U.S. Court of Appeals for the 4th Circuit decided the case of *Armstrong v. Village of Pinehurst*, where the issue concerned whether police used excessive force when a TASER was used in a "drive stun" mode against a non-compliant, non-threatening subject who was suffering from a mental illness. Armstrong, who suffered from a bipolar disorder and paranoid schizophrenia, checked into a hospital for assistance, but left before a final evaluation was completed. Based on information from his sister, the doctor determined Armstrong should be involuntarily committed based on being "mentally ill and dangerous to self" but did not note he was dangerous to others. The police were called to assist with getting Armstrong back to the hospital. When they arrived, they engaged Armstrong in conversation, and although he was calm and cooperative, he was "acting strangely" and would not submit to the police. He then wrapped himself around a stop sign pole, and the police, after learning final commitment papers were issued by the doctor, tried to physically remove him but were unsuccessful. Thirty seconds after telling Armstrong about the final commitment, a warning was given and a TASER was then deployed 5 times over a period of 2 minutes for pain compliance but only served to increase Armstrong's resistance. After the TASER failed, two hospital security guards assisted the three officers with physical force and all 5 were able to remove the subject and take him into custody. He was laid face down, handcuffed and his legs shackled. He subsequently stopped breathing and was pronounced dead despite medical attention.

The opinion of the court specifically instructs officers: "Where, during the course of seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a TASER in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force. While qualified immunity shields the officers in this case from liability, **law enforcement officers should now be on notice that such**

TASER use violates the Fourth Amendment.” The court concluded that the use of the TASER is “serious use of force” and that “a police officer may only use serious injurious force, like a TASER, when an objectively reasonable officer would conclude that the circumstances present a risk of immediate danger that could be mitigated by the use of force.” The court stressed that “physical resistance” alone is not synonymous with “risk of immediate danger”. A “claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other ‘seizure’ of [a] person” is “properly analyzed under the Fourth Amendment’s ‘objective reasonableness’ standard.” *Graham v. Connor*, 490 U.S. 386, 388 (1989). There are three factors the Court enumerated to guide this balancing.

First, the court looks to “the severity of the crime at issue”;

Second, the court examines the extent to which “the suspect poses an immediate threat to the safety of the officers or others”; and

Third, the court considers “whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.”

To properly consider the reasonableness of the force employed, the court considers whether the level of force used is **proportional** under the totality of the circumstances.

In the *Armstrong* case, the court determined that the level of force used was not objectively reasonable. Immediately tasing a non-criminal, mentally ill individual (information known to the police at the time), who only seconds before had been conversational, was not deemed a proportional response to the situation. Erratic behavior and mental illness, in and of themselves, may not necessarily create a safety risk that would warrant TASER deployment for the sole purpose of preventing an individual from harming themselves.

In these situations, where officers encounter an unarmed and minimally threatening individual exhibiting symptoms of some form of mental illness, officers should make every effort to deescalate the situation to “adjust the application of force downward” to avoid the necessity to use a TASER. A TASER is not an all-purpose weapon that takes the place of de-escalation techniques and other options. Officers are reminded that there have been circumstances where fatal outcomes have occurred after a TASER has been deployed by law enforcement officers even when used in accordance with policy and training.

The State of Maryland is within the 4th Circuit and subject to the court’s ruling in *Armstrong*. Thus, moving forward, Montgomery County Police Officers who utilize a TASER on a non-violent, passively resistant, mentally ill subject (either in probe mode or drive stun mode) risk the loss of their qualified immunity. If immunity is lost, an officer is subject to civil (monetary damages) liability. While the County, under State law, is responsible to pay civil judgments entered against an employee acting within the scope of his/her employment and without malice, in such a case, a verdict of liability may be entered against the individual employee. Montgomery County Police Function Code 131 prohibits the use of TASERs on subjects who are passively resistant. Passive resistance is defined as the refusal by an unarmed person to

comply with an officer's verbal command or physical control techniques in such a way that the subject does not use physical or verbal aggression towards the officer or others, or does not present an immediate threat to the safety of officers or others. A TASER should be used only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer's judgement, is likely to result in injuries to the officer or others. A TASER should not be used against an unarmed, passively resistant subject.

Reference Materials: US Court of Appeals 4th Circuit, Armstrong v. The Village of Pinehurst

Montgomery County Fire and Rescue Service

Fire Chief's General Order

NUMBER: 13-17

December 23, 2013

TO: All MCFRS Personnel

FROM: Fire Chief Steven E. Lohr



SUBJECT: Excited Delirium

MCFRS and Montgomery County Police Department representatives have agreed to the guidelines below to manage patients who exhibit Excited Delirium (ExD), since both Departments respond for apparent ExD patients suffering adverse consequences after being subdued and/or tazed. To avoid future problems, the new procedures below will be implemented.

- **Staging:** All MCFRS units should continue staging on suspected or confirmed ExD calls due to the violent behavior of the patient. As before, MCPD will confirm that the scene is safe before calling in MCFRS units.
- **Dispatch:** Police ECC will train their call takers and dispatchers to recognize the signs of possible ExD, and Police dispatchers will alert responding MCP officers for suspected ExD patients.
- **Early Discovery:** MCPD will train its frontline personnel in signs of ExD to enable earlier detection of possible ExD. MCP officers also will be trained to call for more back-up and to request FRS ALS resources to stage. This may result in more POL-ALS dispatches, and our EMS Section will monitor this.
- **Restraint/Positioning:** *Never* place patients with suspected ExD in the prone position. Instead, position them to facilitate *continuous observation* of the status of their airway and breathing.
- **Transport:** *Because of the high risk of death, all patients with suspected ExD must be transported to an appropriate facility.* If MCFRS is called to assist MCP with the evaluation of these patients, MCP officers are aware that this will result in transport to a hospital. MCFRS providers should maintain a high index of suspicion of ExD for any patient in police custody who had to be tazed or subdued. Also, a patient who was tazed - **regardless** of the incidence of suspected ExD - **must be transported to an appropriate facility for evaluation.**

Some common situational set-ups and warning signs of ExD include:

- Suspected substance abuse, particularly stimulants including Methamphetamines, cocaine, "uppers", etc.;
- Incoherence or clouding of consciousness;
- Aggression;
- Hyperactivity;
- Increased strength and decreased sensitivity to pain;
- Violent behavior;
- Sense of invincibility, i.e., one person taking on a group ;
- Other signs of sympathetic nervous system discharge, e.g., diaphoresis, tachycardia, hot skin, dilated pupils, etc.;
- Removal of clothing, due to perceived hyperthermia.

A patient who exhibits signs compatible with ExD may experience sudden cardiac arrest and should be considered an ALS patient. They should be transported by an ALS provider and receive cardiac, SAO₂, and EtCO₂ monitoring whenever feasible. ALS providers should also consider using chemical restraint for a physically-restrained patient, especially an ExD patient who meets the indications expressed in the Maryland Medical protocols.

Please contact the EMS Section or the on-duty EMS Duty Officer if you need additional information.

TASER Use Questions from Public Safety Committee

- 1) I have the 3-10-2014 Use of Force Policy, which discusses ECDs. Is this the department's most recent version? If not, please provide the most recent.

Response: The March 10, 2014 version of the MCPD Use of Force Policy is the current policy in effect. However, MCPD has been working on a revised Use of Force Policy since mid-2015 that continues to reflect Police Executive Research Foundation (PERF) recommendations, best practices, lessons learned, and additional guidance on use of force options, including Taser use.

- 2) The incident mentioned in the Baltimore Sun article occurred 4/19/2013. What was the use of force and/or TASER policy then?

Response: The May 11, 1998 version of the MCPD Use of Force Policy, including Headquarters Memorandum 01-19 (dated November 30, 2001), that provided guidance for department use of the M26 Taser. However, since 2001, in conjunction with information included in draft policy updates, the department has continuously updated its Taser Operator Training Program to reflect best practices such as the PERF Electronic Control Weapons (ECW) Guidelines and Taser Safety and Informational Bulletins issued by the ECD's manufacturer (Taser International). All of this information and material was integrated into lessons plans that was conveyed to officers as part of the ECD initial training program, as well as required refresher training.

- 3) We have discussed the use of force in prior Committee sessions, including the use of TASERS. I believe that the ECC now often dispatches a paramedic to meet police, in situations similar to the one covered in the Sun, where someone is at a higher risk of injury or death due to intoxication, obesity, etc., so that medical help is immediately available if needed. Is this correct? Is there a formal policy regarding this dispatch procedure?

Response: Yes, there is a procedure/protocol that is delineated in the MCPD Use of Force policy that requires officers and supervisors to obtain medical treatment (Advanced Life Support) as soon as practical for individuals who have been exposed to an ECD and show obvious signs that chemical restraint may be necessary since ALS units carry medication (such as Haldol or Ketamine) that can help individuals suffering from excited or agitated delirium.

This protocol is documented in Montgomery County Fire and Rescue Service – Fire Chief's General Order 13-17, that went into effect on December 23, 2013. This general order was the outcome of a series of meetings in mid to late 2013 between MCFRS and MCPD representatives that established guidelines to manage patients who suffer adverse consequences and/or exhibit Excited Delirium (ExD), after being tased. The general order also called for Police ECC to train their call takers and dispatchers to recognize the signs of possible ExD, and Police dispatchers to alert responding MCP officers for suspected ExD patients. In conjunction with this, MCPD also trained its frontline personnel in recognizing the signs of this condition to enable earlier detection.

MCP officers also were trained to call for more back-up and to request ALS resources to stage at the scene so that medical help is immediately available once the scene has been stabilized and it is safe for fire-rescue personnel to administer first aid/treatment.

- 4) Please provide data on the number of times TASERS have been used over the past three years. Is this data broken down into drive-stun use vs. dart use? If so, please provide.

Year	No. of Reported ECD Deployments Based on Use of Force Reports	ECD Cartridge	ECD Drive-Stun
2013	148	127	21
2014	63	50	13
2015	59	49	10

- 5) Please explain current training procedures for the use of TASERS. Is “refresher” training repeated on a regular basis? Or is it ever mandated after use?

Response: Before an MCPD officer can carry an Electronic Control Device (ECD), he/she must attend a 40 hour Crisis Intervention Training (CIT) block. This training focuses on dealing with the mentally ill and de-escalation strategies for people in this type of distress. Once the officer completes the CIT course, they are eligible but not required to carry an ECD. If the officer chooses to carry the ECD, he/she must attend a 10 hour Basic ECD User Course. After successfully completing this course, the officer is issued an ECD. Each year, after becoming a certified ECD operator, the officer must attend a refresher course that typically is between three and five hours depending on how much material is covered. As for being mandated after use, that is not our practice. Anytime a supervisor or manager requests remedial training on any topic, including ECD use, it is provided. To date, there has not been an instance of remedial ECD training conducted.

- 6) CE Leggett has ordered a Police Department review of its use of Tasers and review the investigations into four deaths of individuals who were tasered. When is this expected to start and finish?

Response: The review pertaining to the ECD incidents began with a Use of Force Review Team Meeting on March 22, 2016. The review along with an outside review by a consultant specializing in police use of force issues is tentatively scheduled to be completed on or before June 1, 2016.

Prior to the review of the specific Taser-related incidents, the department began a comprehensive assessment of its use of force policy and practices in the fall of 2015. An internal group of policy, legal, tactical, and training experts recently completed a comprehensive assessment of the agency’s use of force policy and have prepared a revised draft policy that is undergoing a final review prior to being shared with the Fraternal Order of Police (FOP) per the Article 61 CBA process for review and comment.

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