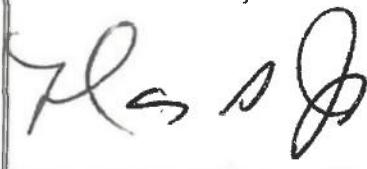




## MONTGOMERY COUNTY DEPARTMENT OF POLICE

### CONDUCTED ENERGY WEAPONS

<b>DIRECTIVE NO:</b> <b>FC 133</b>	<b>EFFECTIVE DATE:</b> <b>February 17, 2023</b>
<b>REPLACES:</b>  FC 0133, September 21, 2016 Training Bulletin 16-01, January 22, 2016	<b>ACCREDITATION STANDARDS:</b>  CALEA Standards: 4.1.1, 4.1.4, 4.1.5, 4.2.1, 4.2.2, 4.3.1, 4.3.2, 4.3.3, and 4.3.4
<b>PROPOSER UNIT:</b>  Office of the Chief	<b>AUTHORITY:</b>  Marcus G. Jones, Chief of Police 

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).

#### I. POLICY

- A. *The Montgomery County Department of Police (MCPD) respects the sanctity and dignity of every human life. The MCPD is committed to accomplishing this mission with respect and minimal reliance on the use of force, and whenever possible, strives to de-escalate encounters to avoid the need to resort to any level of force that increases the likelihood of physical injury to subjects, officers, or other persons.*
- B. *The MCPD shall issue CEWs to department-trained and certified officers to provide those officers with additional less-lethal use-of-force options. The department's policy is that its personnel may use the CEW when warranted, but only in accordance with department training and guidelines set forth in this directive and the department's Response to Resistance and Use of Force directive (FC 131).*
- C. *CEW-use on an unarmed individual offering stationary and non-violent passive resistance to a lawful seizure is considered a violation of the Fourth Amendment (Armstrong v. Village of Pinehurst, (2016)). 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 de-escalate the situation and "adjust the application of force downward" to avoid the necessity to use a CEW.*

D. *The use of a CEW is not intended to replace the use of firearms in those situations where the use of deadly force is warranted and authorized but rather to provide a less-lethal option for officers to deploy within the guidelines of FC 131.*

## **II. PURPOSE**

*Consistent with the holding in the Armstrong v. Pinehurst case, deploying a CEW is considered a serious use of force and, as a less-lethal weapon, has some potential to result in a fatal outcome even when used in accordance with policy and training. Therefore, the purpose of this directive is to provide guidelines and procedures governing the use of CEWs by department personnel.*

## **III. DEFINITIONS**

A. **Active Resistance:** *Refers to any action or evasive movements a subject takes to avoid or physically counteract an officer's attempts to detain or place them in custody or take control. Active resistance may include but is not limited to pushing away, tensing arm muscles to avoid handcuffing, or pulling away from an officer who is using force in response to resistance in the lawful performance of their duties.*

B. **Arcing:** *Pressing the arc switch to activate a CEW without discharging the probes. This may be done to warn a subject or to perform a functionality test.*

C. **Conducted Energy Weapon:** *The department-issued conducted energy weapon (CEW) is a less-lethal weapon that utilizes neuro-muscular incapacitation technology to temporarily incapacitate an individual to enable officers to gain control and/or custody of that person.*

D. **De-escalation tactics and techniques:** *Proactive actions and approaches used by a law enforcement officer to stabilize the situation so that more time, options, and resources are available to gain a person's voluntary compliance, including verbal persuasion, warnings, tactical repositioning techniques, slowing down the pace of an incident, waiting out a subject, creating distance between the officer and the threat, and requesting additional resources to resolve the incident.*

E. **Deployment:** *In the context of this directive, the term "deployment" refers to using a CEW in an attempt to deliver electrical energy into a subject in either drive-stun mode or probe mode. CEW arcing or laser painting are not considered deployments.*

F. **Drive-stun mode:** *Placing the CEW in direct contact with the subject's body during an electrical cycle. Drive-stun is generally used for a brief application as a pain compliance technique or distraction, as a three or 4-point contact to attempt neuromuscular incapacitation (NMI), or to break contact when tied up with a subject.*

- G. **Excited Delirium:** *A state of extreme mental and physiological excitement characterized by extreme agitation, hyperthermia, epiphora, hostility, exceptional strength, and endurance without fatigue.*
- H. **Exigent Circumstances:** *Situations with a pressing or demanding need to take immediate action.*
- I. **Handcuffing Under Power:** *A tactic where a secondary officer handcuffs a subject while the CEW (being deployed by another officer) is cycling, and the subject is in neuro-muscular incapacitation (NMI).*
- J. **Laser Painting:** *The act of removing the CEW from its holster, pointing it at a subject, and activating the CEW's laser dot to show that the device is aimed at the subject.*
- K. **Lawful Order:** *Within the context of this directive, the term "lawful order" refers to an officer's commands based on the officer's lawful authority (i.e., affecting an arrest, investigatory stop, legal seizure, legal command to move).*
- L. **Medical Treatment:** *A minimum of an on-scene response by a medically trained professional.*
- M. **Passive Resistance:** *A refusal by an unarmed person to comply with an officer's verbal command or physical control techniques by non-violent actions. Examples include, but are not limited to, ignoring verbal instructions by failing to respond, failing to move, linking arms, or going limp.*
- N. **Positional Asphyxia:** *Positional asphyxia can occur when a subject's chest is restricted from expanding properly or the position of the subject's head obstructs the airway disrupting normal breathing. The risk of positional asphyxia may increase in the presence of alcohol intoxication, drugs, physical ailments, delirium, or respiratory diseases.*
- O. **Preferred Target Zone:** *Areas below the neck area for back shots and lower center mass (below the chest or heart area) for front shots on subjects.*
- P. **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.*
- Q. **Probe Mode:** *Probe mode occurs when two probes are fired from a disposable cartridge to deliver electrical pulses to the body disrupting voluntary control of muscles to achieve temporary neuro-muscular incapacitation.*
- R. **Response-to-Resistance:** *Any action other than compliant handcuffing or unresisted escorting that an officer is required to use to compel compliance to arrest an individual suspected of committing a crime, temporarily detain an individual to complete an investigation, or to address an immediate threat to the safety of the public, law enforcement officers, or persons as a result of non-compliance with a legitimate law enforcement purpose.*
- S. **Serious Bodily Injury:** *Bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in a long-term loss or impairment of any bodily member or organ.*

T. **Totality of the Circumstances:** All credible facts that are known to the law enforcement officer leading up to and at the time of the use of force, including the actions of the person against whom the law enforcement officer uses such force and the actions of the law enforcement officer.

#### IV. CEW USAGE GUIDELINES

A. Officers may only deploy a **CEW** when the *totality of the circumstances* presents a risk of immediate danger that is reasonably likely to be mitigated by *using the CEW*.

1. *Immediately before deployment, the officer shall use their best efforts to visually and physically confirm that the device selected is the CEW, not a firearm.*
2. A **CEW** may be used against subjects who are actively resisting in circumstances that, in the officer's judgment, present a risk of immediate danger to *the individual(s), officers, or others*.
3. *Upon firing the device, an officer shall energize the subject the least number of times to accomplish the legitimate law enforcement objective.*
4. *The preferred target areas (are below the neck area for back shots) and the lower center mass (below the chest) for front shots. Back shots are preferable to front shots when practicable.*
5. *An officer should not fire a CEW if there is a substantial risk that the electrode/darts will strike an innocent person unless firing the device in such circumstances is necessary to protect the innocent person(s) from being killed or seriously injured by the person against whom the conducted energy device is targeted.*
6. *Officers may use a CEW against aggressive animals that pose a threat of physical injury or potential harm to officers or others.*

B. A **CEW** is a less-lethal force option that is considered a serious use of force. It can potentially result in a serious injury or a fatal outcome even when used in accordance with policy and training. A **CEW** is not an all-purpose weapon that takes the place of de-escalation techniques and other options.

C. *When feasible, officers should issue verbal and visual warnings consistent with training before deploying the CEW and allow a reasonable amount of time for the subject to comply unless doing so would unnecessarily increase the risk of injury to officers, the subject(s), or other persons involved.*

D. *Officers should consider the totality of circumstances, including suspect movement, limited sighting capability, and their ability to accurately deploy the CEW to reduce the risk of accidental probe contact with an unintended body part.*

- E.** Each application of the **CEW** must be independently justified, and the risks should be weighed against other force options. *The fact that the CEW was used on a subject for initially resisting and being non-compliant does not necessarily justify additional CEW applications. Each application of the CEW must be justified by continuous active resistance. The subject should be allowed ample time to comply before additional application of the CEW unless exigent circumstances exist.*
- F.** Fleeing shall not be the sole justification for using a **CEW** against a subject. A **CEW** may only be deployed on a fleeing subject when the circumstances present a risk of immediate danger to the officer or others that are likely to be mitigated by *using* the **CEW**.
- G.** The intended reaction of a person exposed to a **CEW** discharge is the loss of some voluntary muscle control, potentially resulting in the subject falling to the ground. For this reason, there is a possibility of some secondary injury to the subject caused by falling and striking a hard surface (e.g., concrete sidewalk, curb, asphalt driveway, or parking lot).
- H.** Only officers that have successfully completed the department's approved training and certification requirements will be permitted to carry and/or utilize a **CEW**.
- I.** Only department-issued **CEWs**, issued holsters, and issued cartridges are authorized for use. *Officers issued a CEW shall wear and carry their CEW in a department-issued holster whenever they work in a uniformed capacity, including secondary employment.* Holsters must be mounted on the officer's weak/support side of the duty belt or the *weak/support side* of their *duty* vest. Personnel carrying a departmental **CEW** while on duty must have both (2) cartridges affixed to their **CEW** at all times. The only exception would be if the officer has deployed a single cartridge and is awaiting a replacement cartridge.
- J.** Whenever practical, the **CEW** operator will:

  - 1. Give verbal warnings to a subject that the **CEW** is about to be deployed. This *allows* the suspect to comply with the officer's lawful orders *voluntarily*.
  - 2. Verbally announce "TASER" to other officers before the **CEW** is discharged. This will let the *involved officers* know that the **CEW** is being deployed.
- K.** As a de-escalation technique, sparking (*arcing*) the **CEW** from a safe distance, as well as pointing the **CEW**'s laser at a subject in the preferred target zone, is permitted to gain compliance *when resistance, assault, and/or violence against the subject(s), officers, or others is anticipated before* deploying the **CEW**.
- L.** Personnel should use a **CEW** 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 a **CEW** exposure. Assisting officers must secure the subject as soon as practical and, if practical and safe, move in and handcuff under power. Officers will only use the minimum number of *necessary* activations to place the person into custody. *Each five-second cycle or partial*

*cycle is considered a separate application of force and must be articulated and documented.*

- M. Continued **CEW** applications administered to a subject that is highly resistant to pain may not change the subject's behavior. *Suppose the deployment of the CEW is not having its intended effect, and based on the officer's training and experience, the subject does not respond to the CEW deployment in an anticipated manner. In that case, officers shall consider transitioning to alternative force options, control measures, and/or tactics.*
- N. **CEW** applications will be administered in a manner and duration consistent with training by the Department.
- O. A **CEW** may be used during department-authorized training programs and/or demonstrations. In these instances, officers are exempt from the mandatory reporting requirement.
- P. A **CEW** may be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective. An MCP 37 (*Use of Force Report*) is required in cases where an officer uses a **CEW** against a dangerous or vicious domestic animal.

## V. PROHIBITED **CEW** USES

- A. Officers are prohibited from using the **CEW** under the following circumstances:
  1. *The CEW shall not be used on individuals who exhibit stationary, non-violent passive resistance.*
  2. In a punitive or malicious manner, *to threaten to use or use a CEW to punish or retaliate against an individual.*
  3. *To resolve a situation more quickly.*
  4. *Based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or other protected classification.*
  5. In drive-stun mode as a prod or escort device.
  6. To rouse unconscious, impaired, or intoxicated individuals.
  7. On *restrained*/handcuffed subjects, unless the subject poses a risk of immediate danger to the officer, the subject, or others and other techniques have been or would likely be ineffective (specific articulation of exigent circumstances is required) *or would be impractical or unsafe to do so.*
  8. To experiment on a person or allow a person to experience the **CEW**, even if the person requests it when the **CEW**'s use would not otherwise be allowed by this *directive*. This prohibition does not apply to voluntary **CEW** exposures of sworn officers during *department-authorized* training or demonstrations.

Voluntary **CEW** exposures to non-sworn personnel must be approved by the Director of the Training and Education Division *before* the training or demonstration.

9. In a known flammable or explosive environment (i.e., a meth lab, where gasoline is stored, or where *any alcohol-based product that might be ignited by an open spark*, unless the *use of the CEW would be used to prevent serious physical injury or death of another person if the action was not taken*).
10. *Against a subject the officer knows or reasonably believes has a neuromuscular disorder such as muscular dystrophy or epilepsy.*
11. The **CEW** must not intentionally be aimed or discharged in the chest area near the heart, at the eye, face, head, throat, neck, groin, or *known pre-existing injury areas, absent a reasonable belief by the officer that they are facing an immediate risk of serious physical injury or death and deadly force is authorized*.
12. Officers shall not knowingly simultaneously deploy more than one **CEW** at a time against a subject.

## VI. ELEVATED RISK FACTORS

- A. The department strongly discourages **CEW** 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 **CEW** when elevated risk factors are present. Officers must specifically articulate the circumstances justifying the use of the **CEW** when:
  1. Immediate surroundings create an obvious undue hazard (i.e., the subject could fall from a significant height above the ground or *fall into a body of water such as a swimming pool, etc.*)
  2. *The subject could fall on a sharp object or surface (e.g., holding a knife or falling on glass).*
  3. *The subject is operating or riding any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, or train), conveyance (e.g., escalator, moving walkway, elevator, skateboard, rollerblades), or machinery.*
  4. The subject is elderly and frail, or obviously pregnant, or a small child.
  5. Repeated **CEW** applications (more than 15 seconds total exposure, three 5-second cycles, or drive-stuns).
- B. Personnel should consider that exposure to the **CEW** for longer than 15 seconds (whether due to *repeated, prolonged* applications or continuous cycling) may *contribute to cumulative exhaustion, stress, cardiac, physiologic, metabolic, respiratory, and associated medical risks that may cause death or serious injury*. All applications should be independently justifiable, and the risks should be weighed against *using* other force options.

C. *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."*

## VII. UNINTENTIONAL CARTRIDGE DISCHARGE

A. In the event of an *unintentional CEW* discharge, the officer shall promptly notify their supervisor, who will ensure *documentation and reporting procedures in FC 131 (Response to Resistance and Use of Force) is completed.*

## VIII. CEW PROBE REMOVAL

A. Officers will photograph:

1. All visible signs of injury.
2. *CEW* probes in skin or clothing *before their* removal.
3. All marks produced by *CEW* probe or drive-stun.

B. *CEW probes shall be removed from the subject as soon as practical and safe after deployment and control by following the procedures in probe removal training.*

C. 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.

D. Medical personnel shall remove probes located in sensitive areas (eye, face, *chest*, throat, or groin) or deeply embedded in a body part.

## IX. MEDICAL AND TRANSPORT CONSIDERATIONS

A. Officers and supervisors shall obtain medical treatment as soon as practical for individuals *exposed to a CEW.*

1. *Emergency Medical Services (EMS) such as Montgomery County Fire and Rescue Service (MCFRS) units are an appropriate level of care; a hospital/emergency medical center visit may not be required.*
2. *For any subject(s) who show obvious signs that chemical restraint may be necessary, officers must specifically request an Advanced Life Support (ALS) Unit. ALS units carry medication that can assist in treating individuals suffering from excited or agitated delirium.*

B. Officers must be mindful of certain indicators and/or conditions when detaining or arresting a person. *Some individuals may be particularly susceptible to the effects of CEW use. In a physiologically or metabolically compromised person, any physiologic or metabolic change may cause or contribute to sudden death.* The following conditions and/or indicators may potentially contribute to sudden unexpected death following extreme physical exertion and/or restraint:

1. Excited Delirium
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 themself
8. Subject disrobing or naked

C. *Officers must recognize these factors, closely monitor anyone exposed to a CEW after an encounter and be aware of any signs or symptoms of medical distress that warrant emergency medical assistance.*

D. *Officials shall not leave a subject exposed to a CEW unattended in a police vehicle.*

E. Officers must take appropriate measures so that *transported* individuals *can* breathe without restriction. If possible, *officers* should lay the *transported individual* on their side or seat *the subject* in an upright position. *Whenever possible*, Officers must avoid transporting subjects in a face-down position *due to the potential for positional asphyxia*. Additionally, officers should avoid transporting a person in any position which places pressure on the *CEW* probes.

F. Medical Emergencies

1. 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.
2. Officers shall render medical aid, consistent with their training, as soon as *it is* practical and safe.

G. Medical treatment will not be refused for any individual who requests it.

H. 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.

## **X. CEW REPORTING REQUIREMENTS**

A. *Officers will document all CEW deployments, including all instances of pointing a CEW at an individual (other than for those situations such as training/demonstrations as specified in this directive), in accordance with FC 131, Section VIII. Use of Force*

***Reporting Requirements. The incident report and any supplemental reports should contain information that articulates and documents each use and pointing of the CEW by each officer involved in an incident.***

B. Officers will download the **CEW** no later than the end of *their* assigned shift unless *a supervisor authorizes an exception. The incident report, MCP 37, and CEW data log will be submitted to the officer's supervisor before the end of duty unless a supervisor authorizes an exception.*

1. In a critical incident (such as an officer-involved shooting, in-custody death, or another officer-involved incident that results in serious injury or death), a supervisor may immediately take custody of the **CEW** and, in such case, will be responsible for the download.
2. District Commanders (or their designee) will review the incident report, *any supplemental reports, any Body Worn Camera/MVS footage associated with the incident, the CEW data log, and all MCP 37s associated with all CEW deployments that occur within their respective districts as part of the use of force review and approval process. The documents will be forwarded, via the chain of command, to the bureau chief, who will forward them, after review, to the Policy and Planning Division. District Commanders may retain copies of the CEW Data Log Summary and Incident Report. All copies of the MCP 37 will only be retained by the Policy and Planning Division.*

## **XII. OFFICER'S RESPONSIBILITIES**

- A. In every incident where a **CEW** is deployed, officers are required to adhere to the guidelines prescribed in the Officer's Responsibilities Section of FC 131.
- B. The **CEW** will be removed from the vehicle and stored at the officer's residence or station locker when the vehicle is unattended other than for a short period. For example, the **CEW** should be removed when the *Personal Patrol Vehicle* (PPV) is parked overnight at the officer's residence or the *Single-Officer Fleet Vehicle* (SOFV) is parked overnight at an approved facility. Officers will ensure unauthorized persons do not handle the **CEW** and *make their best efforts to ensure unauthorized persons do not have access to the CEW.*
- C. *Officers will perform a full five-second functionality test of the CEW at the beginning of each shift to ensure that it is sparkling properly, has adequate battery performance, and has no fault icons displayed on the central information display (CID). However, officers in non-uniformed assignments who are assigned a CEW that is not operationally carried on a regular basis shall perform a minimum of one weekly functionality test and will perform a functionality test at the beginning of any detail, deployment, or shift for which they will be carrying the CEW.*
- D. *When a CEW is used (discharged, arc display, laser painting, pointing, etc.), the battery from the CEW used will be docked/exchanged as soon as practicable, so the information from the device will be uploaded to Evidence.com. Additionally, officers shall dock/exchange their battery at least every 30 days. This will ensure the battery is operating properly and the information from the CEW is uploaded to Evidence.com.*
- E. *Every officer has an obligation to ensure compliance, by themselves and others, with department directives and regulations, as well as all applicable laws. Officers must*

*comply with the duty to intervene requirements of Function Code 300, Rule 6 – Use of Force. Officers who intervene with another's actual force must report such intervention to their supervisor as soon as practical. Any officer who makes such a report is protected from retaliation consistent with department policy.*

### **XIII. SUPERVISOR'S RESPONSIBILITIES**

- A. An ECC supervisor will immediately notify an on-duty patrol supervisor, and the on-duty supervisor will respond to all **CEW** deployments in accordance with the guidelines *outlined* in the Supervisor's Responsibilities Section of FC 131. In addition, on-duty supervisors will ensure that the appropriate notifications, reviews, and reporting requirements are completed as listed in FC 131.
- B. *Supervisors shall report potential violations of law or policy through their chain of command in accordance with departmental procedures.*

### **XIV. TRAINING/CERTIFICATION REQUIREMENTS**

- A. **Authorization**  
*Officers using CEWs will be trained in their use and shall maintain any certifications as required, and shall utilize these devices consistent with the training provided.*
- B. Only officers who have successfully completed specified training courses (e.g., *New User Training*) and any required recertification courses as determined by the department are authorized to carry and/or use a **CEW**.
- C. **Annual Recertification**

Each officer must certify annually with the **CEW** that the officer is authorized to use. Annual recertification must meet the standards of the Maryland Police Training *and Standards* Commission and department training standards. Failure to recertify annually on the **CEW** will withdraw the *officer's* authorization to carry or utilize that force option. In the case of department-issued **CEW**s, such equipment will be immediately turned in to a sworn academy staff member until officers complete remedial training and all requirements for recertification *are successfully* completed.

#### **D. CEW DIRECTIVE**

Officers will be provided a copy of, and instruction in, the department's **CEW Directive** before being authorized to carry a **CEW**. The *Armstrong v. Pinehurst* decision can be located here: [151191.P.pdf \(uscourts.gov\)](https://www.uscourts.gov/151191.P.pdf)