County of Fairfax, Virginia

MEMORANDUM

DATE: January 20, 2016

TO: Command Staff

FROM: Edwin C. Roessler Jr., Colonel *ECR*
Chief of Police

SUBJECT: Required Changes to General Order 540.1 - Use of Force and Standard Operating Procedure 06-025 Electronic Control Weapon

REF: U.S. Court of Appeals for the Fourth Circuit, ruling

The ruling by the U.S. Court of Appeals for the Fourth Circuit in the matter of Armstrong v. Village of Pinehurst, 2016 WL 105386 (4th Cir. 2016) necessitates immediate changes to General Order 540.1 and Standard Operating Procedure 06-025.

Effective immediately the use of the Electronic Control Weapon (ECW), whether in "probe" or "drive stun" mode **shall not be used on passive resisting subjects who pose no immediate risk of danger to themselves, or others**.

Additionally, effective immediately, the "drive stun" mode should be used only to supplement the probe mode to complete the neuro-muscular incapacitation circuit, or in response to a subject's assaultive behavior as a countermeasure to gain separation from the subject so that officers can consider another force option. Officers should not use drive stun solely as a pain compliance technique against someone who is not a threat to themselves or others.

Commanders shall ensure that all sworn personnel under their command are immediately instructed on these changes. Our policy manuals will be amended accordingly. The following is the link to the ruling: 151191.P.pdf

Fairfax County Police Department
4100 Chain Bridge Road
Fairfax, Virginia 22030

TITLE: Conducted Energy Weapon

SOP NUMBER: 06-025

EFFECTIVE DATE: 06-01-15

REPLACES/RESCINDS: 01-01-13

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I. PURPOSE

The purpose of this Standard Operating Procedure is to provide officers with guidance and direction on the use of Conducted Energy Weapons.

II. POLICY

It is the policy of this agency to use only that level of force reasonably necessary to control or otherwise subdue violent or potentially violent individuals. Conducted Energy Weapons have been proven effective in furtherance of this policy and are authorized for use in appropriate circumstances by trained personnel. Conducted Energy Weapons should be used as a weapon of need, not a tool of convenience, and officers should not rely on Conducted Energy Weapons in situations where more effective and less risky alternatives are available.

III. DEFINITION

Conducted Energy Weapon (CEW): A general class of device that is designed to disrupt a subject's sensory and motor nervous system by means of deploying battery powered electrical energy which is sufficient to cause neuro muscular incapacitation (NMI), which is uncontrolled muscle contractions that override an individual's voluntary motor responses.

Drive Stun: A CEW delivery method used by activating the CEW and making physical contact with the subject to gain pain compliance. It does not cause NMI.

IV. PROCEDURES

A. Authorized Users

Officers authorized to carry a CEW must have satisfactorily completed this agency's training. All personnel authorized to carry these devices shall complete annual in-service refresher training. This training covers the physical capabilities of the CEW device, device retention, changes in agency policy, technology changes, review of local and national trends in CEW use, and overview of CEW deployment strategies, probe removal, and prisoner care.

B. Authorized Equipment

Authorized users shall carry only Conducted Energy Weapons approved by the Director of the Fairfax County Criminal Justice Academy. All bureaus and divisions requiring specialized CEW equipment shall coordinate with the Academy Director for testing, evaluation, and final approval by the Chief of Police. The Academy shall be responsible for developing a training regime for the authorized equipment as well as maintaining a list of authorized and distributed equipment. Personally purchased or owned CEW devices are not authorized and shall not be carried.

C. Device Readiness

Authorized users will carry the CEW in an approved holster, worn on the officer's support side in a cross draw carry, position on their Sam-brown belt. Specialty Units that carry CEWs must have a written variance to this support side carry standard from the Director of the Criminal Justice Academy. The Academy Director may provide this variance after consultation with the Academy's range staff supervisor. Only certified CEW Instructors have authorization to make alterations or repairs to the CEW.

D. Deployment

1. The CEW disrupts the sensory and motor nervous system of a subject by means of deploying battery-powered electrical energy sufficient to cause sensory and NMI responses. Officers shall only utilize one CEW against a subject, unless the first CEW fails to achieve the desired result. Following the application of a cycle, officers shall evaluate its effectiveness and determine if subsequent cycles are necessary. Additionally, officers should only use the number of CEW applications reasonably necessary to bring the subject into compliance with lawful commands.

   (a) Fleeing should not be the sole justification for using a CEW against a subject. Officers should consider the severity of the offense, the subject's threat level to others, and the risk of injury to the subject before deciding to use a CEW on a fleeing subject.

   (b) The CEW should not be used on handcuffed subjects unless doing so is necessary to prevent them from causing bodily harm to themselves or others <u>and</u> if lesser attempts of control have been ineffective.

   (c) The CEW should not be used against subjects in physical control of a vehicle in motion (e.g., automobiles, trucks, motorcycles, ATV's,

bicycles, scooters).

(d) When practical, a warning should be given to a subject prior to activating the CEW unless doing so would place any person at risk. Warnings may be in the form of verbalization, display, laser painting, arcing, or a combination of these tactics.

(e) Handcuffed persons resisting arrest or assaulting officers present a unique use of force decision. Officers may use only that amount of force reasonably necessary to ensure safe custody or to overcome the person's resistance to a lawful arrest. Striking instruments, OC, and the CEW shall not be used on a handcuffed person unless the person continues to pose a threat to the officer, to others, to the person himself, and/or other force alternatives have been ineffective or deemed unacceptable for the situation.

2. Use of Force Model (CEW Probes) - The CEW probe delivery method is considered non-deadly force; however, it should only be deployed against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer's judgment, is likely to result in injuries to themselves or others. When determining whether to deploy the CEW, the totality of the circumstances and the surrounding environment should be considered in conjunction with the likelihood of physical injury resulting from a CEW, such as unintentional probe contact to a sensitive area or a secondary injury to the subject from falling.

3. Use of Force Model (Drive Stun Mode) – In the drive stun mode, the CEW is considered non-deadly force. The CEW drive stun causes pain without NMI. The CEW should only be deployed in the drive stun mode in certain circumstances, such as supplementing the probe mode to complete the NMI circuit, or as a countermeasure to gain compliance of an actively resisting or aggressive subject in which probes are not an option due to the proximity of other officers.

   To deliver a cycle of energy when operating the X-26 model in the drive stun mode, the operator must remove the cartridge prior to the cycle of energy to ensure the probes do not deploy. Removal of the cartridges when operating the X2 model is not necessary prior to depressing the arc switch. In both systems the unit is pressed firmly into the following suggested areas:

   - Brachial plexus tie-in (upper chest)
   - Radial (forearm)
   - Common perennial (outside of thigh)

- Tibia (calf muscle)

WARNING: *If possible, avoid applying drive stun to:*

- Carotid (sides of neck)
- Pelvic Triangle

These areas are sensitive to mechanical injury (i.e., crushing to the trachea or testicles when applied forcefully). These sensitive areas should only be targeted when officers are defending themselves from violent attacks.

4. The CEW operator must be familiar with the surrounding environment prior to deploying the system. Officers should be cognizant that a subject's elevated position may result in secondary injuries due to a fall after application of the CEW. The operator must weigh the need for incapacitation against the need to prevent serious bodily injury to the subject, civilians, and other officers.

5. Officers should be particularly cognizant of the potential for secondary injuries in elderly subjects who are incapacitated by a CEW. Coexisting medical diseases and/or increased possibility of bone fractures in the elderly require an elevated level of justification prior to deploying the CEW against them.

6. Officers should be particularly cognizant of the potential for secondary injury in pregnant women. Injury may occur to the unborn child due to a fall onto the abdomen. The use of a CEW on subjects known to be, or thought to be pregnant should be limited to those situations where such risks are deemed necessary. **A pregnant woman, or a woman thought to be pregnant, must be evaluated at a medical facility following application of a CEW.**

7. There is no reason to suspect that children would be likely to suffer injury if exposed to a CEW. However, children's low body mass and secondary injuries require that officers must have an elevated level of justification and articulable facts prior to utilizing the CEW on children.

8. Officers who use a CEW on subjects exhibiting symptoms of a mental health crisis or drug abuse should consider that these subjects may be experiencing, or are at an increased risk of developing, excited delirium. Excited delirium is a potentially fatal acute medical illness. Subjects exhibiting signs or symptoms of excited delirium shall be evaluated at a medical facility. Excited delirium should be strongly suspected in a subject who exhibits unusual strength, little or no reaction to pain, ability to resist multiple officers, excessive sweating, bizarre or violent behavior, aggression, extreme paranoia, incoherent shouting, and destruction of property - particularly glass.

Officers should summon rescue if the subject is exhibiting signs of excited delirium so they can be medically evaluated as soon as practical upon apprehension.

9. Use of a CEW against an attacking animal may reduce the need for greater, more injurious force against the animal and should be based on the officer's intent to provide a safer and less traumatic conclusion to the incident.

   (a) It is appropriate to use a CEW if the animal has attacked someone or is an active threat to a person, officer, another animal, or has caused a continuing public nuisance, and the animal needs to be captured for reason of public peace or safety, preservation of property, or other legitimate purpose.

   (b) The length of the animal's body should be targeted. The officer may need to cant the CEW to a horizontal position to achieve this target area. Care should be taken to avoid the head and other sensitive areas on the animal. It is understood that deployments against animals may be very dynamic in nature and the probes may impact unintended areas.

   (c) Procedures for probe removal should take place as outlined herein. Personnel will take reasonable measures to consider that the animal's welfare is provided for, in the event that probes impact a sensitive area, or it appears the animal's health is in jeopardy. Officer safety is paramount when removing probes from a potentially dangerous animal. In these situations, the assistance of an Animal Control Officer should be requested.

E. CEW Probe Removal and Medical Requirements

CEW operators trained in the removal of probes may normally remove CEW probes that are embedded in a subject's skin. When removing these probes, the officer should wear protective gloves. The officer should grab the probe and pull it directly away from the subject's skin, while simultaneously supporting the skin surrounding the probe with their opposing hand. Once the probe is removed, it shall be visually inspected to ensure the barb is still attached to the probe. It shall be inserted into the expended cartridge for disposal. The expended cartridge should be encapsulated within the officer's protective glove, then double wrapped with the second glove and disposed of. The officer shall clean the wound on the subject with an antiseptic wipe, and then cover the impact area with a bandage.

In most instances, there will be a small amount of blood visible around the probe wound. In these instances, the officer's supervisor shall complete the appropriate paperwork to document this Exposure Incident non-risk event if there is blood or body fluid transfer to the officer's intact skin. If an Exposure Incident risk-event should occur, the officer's supervisor shall complete the required Exposure Incident risk-event paperwork. Officers shall not remove probes if the subject objects, or if the probe embeds in a subject's face, genital area, buttocks, spine, or in a woman's breast. Transport the subject to a medical facility for the removal of the probes in these instances.

Rescue personnel in the field or at a medical facility should consider all subjects exposed to CEW application, excluding drive stun, for medical evaluation. This consideration should be based upon the circumstances surrounding the CEW use, to include:

- Symptoms of excited delirium
- Admitted or known serious medical condition
- Prolonged physical exertion, such as actively resisting or fighting

Subjects exposed to prolonged application (i.e., 3 or more 5-second cycles) shall be transported to a medical facility for evaluation.

Any subject exposed to CEW application requires notification of receiving personnel at the ADC or other detention facility.

F. CEW Reporting Requirements

The use of the CEW and the removal of its probes require a completed CEW report form. Copies of the Incident Report and Use of Force Supplement - CEW Report shall be forwarded to the Internal Affairs Bureau.

The Office of the Medical Director (OMD) and the Internal Affairs Bureau (IAB) conduct reviews of all CEW deployments to consider issues related to the potential for secondary injury, coexisting medical or mental health illness or intoxication, and all potential health and safety concerns. OMD coordinates these reviews with the Commander of IAB. Upon review of deployment cases, IAB coordinates with the Criminal Justice Academy to ensure that relevant training is provided to all CEW operators to ensure deployments adhere to this policy.

V. ACCREDITATION STANDARDS REFERENCE

VLEPSC

ADM.	**PER.**
05.01	10.01
05.02	
05.03	
06.01	

This SOP becomes effective June 1, 2015 and rescinds all previous rules and regulations pertaining to the subject.

Issued by:

Chief of Police