



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

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POLICY DIRECTIVE 18-259

TO: ALL UNIFORMED SERVICES EMPLOYEES

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE *AGD*

RE: CONDUCTED ELECTRICAL WEAPONS

DATE: SEPTEMBER 26, 2018

Scope:

This directive sets forth policies for Officers in the Uniformed Services Division relating to Conducted Electrical Weapons (CEW). It includes policies on issuance, restrictions, maintenance, storage, and training.

Related Policies, Procedures and Memoranda: This policy supersedes any contrary language in any Delaware Justice of the Peace Court State Constable and Court Security Officer handbook dated prior to August, 2018.

Effective Date:

This policy shall take effect October 1, 2018 and shall continue until further notice.

Definitions:

Agency: State of Delaware, Justice of the Peace Court

Force: in addition to its ordinary meaning, includes confinement.¹

¹ 11 Del.C. §471(c). The phrase ordinary meaning indicates that there is no technical meaning peculiar to the law, [State v. Harrigan, 1982, 447 A.2d 1194](#). Webster's defines force as, "violence or power used on a person or thing".

Less than Lethal Force: Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another, including but not limited to manual and vascular restraints, soft/hard control methods including hand/foot strikes, handcuffs, use of impact weapons (e.g. expandable batons), un-holstered service weapons and Conducted Electrical Weapon (CEW) including display of and/or conducting an ECW spark demonstration for the purpose of obtaining subject compliance.

Objectively Reasonable: The determination that the necessity for using force and the level of force used is based upon the Officer's evaluation of the situation in light of the totality of the circumstances known to the Officer at the time the force is used and upon what a reasonably prudent Officer would use under the same or similar situations.²

Officer: An employee of the Justice of the Peace Court, including full-time, part-time, contract, and casual seasonal employees, assigned to the Uniformed Services Division, including but not limited to the Chief of Uniformed Services, Trainer/Educator II, Chiefs of Court Security, Constables, and Court Security Officers.

Passive resistance: Passive resistance occurs when a subject refuses to comply with a lawful order from an Officer, but does not attempt to engage in physical action likely to cause physical injury to the Officer or another person.

Physical Injury: Impairment of physical condition or substantial pain.³

Serious Physical Injury: physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ., or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.⁴

Spark Check: An equipment check conducted outside of public view to ensure the Conducted Electrical Weapon (CEW) is operable. A spark check is conducted by removing the cartridge, test firing the CEW, and observing the electrical arc.

Policy:

It is the policy of the Justice of the Peace Court that Officers in the Uniformed Services Division maintain the highest level of professionalism, competence and safety for the protection of all staff and the public. It is further the policy of the Justice of the Peace Court that all Officers in the Uniformed Services Division are trained properly to be proficient, safe, and competent in the use of all of their issued equipment, including the Conducted Electrical Weapon (CEW). The Conducted Electrical Weapon (CEW) may be used by authorized and trained personnel in accordance with the Use of Force Policy and additional guidance established in this Policy and in annual CEW training.

² National Consensus Policy on Use of Force (October 2017), 2.

³ 11 Del.C. §222(23)

⁴ 11 Del.C. §222(26)

A. Requirement to Carry a Conducted Electrical Weapon and Issuance

All Officers of the Uniformed Services Division must be able to carry a Conducted Electrical Weapon in order to execute the essential functions of their position.

Officers shall be issued a CEW upon successful completion of the initial training course and certification requirements outlined by the CEW manufacturer. Additionally, Officers are required to successfully complete an annual re-certification course as outlined by the CEW manufacturer.

Only properly functioning and charged CEWs shall be used.

Officers shall report to their supervisor any condition or prohibition that renders them unable to carry a CEW as soon as practical. This includes any physical or mental condition, whether temporary or permanent, and/or any legal impediment that prohibits the Officer from lawfully possessing a CEW. The inability to carry a service weapon may result in an assignment of alternative duty, remedial training, or the dismissal of the Officer from employment.

An Officer shall not carry his or her CEW while off-duty⁵ under any circumstances, unless authorized by the Chief Magistrate or his or her designee.

B. Personal Conducted Electrical Weapon Prohibited

An Officer shall not carry or possess a personally owned CEW while on-duty under any circumstances.

C. Conducted Electrical Weapon: Carry, Storage, and Safety

Officers shall carry their assigned CEW while on regular uniformed duty. For approved assignments, where an officer is not wearing their duty belt, they are not required to carry the CEW.

For uniformed Officers the CEW shall be carried in an authorized, agency issued holster on the side of the body opposite of the service weapon.

Except for specifically identified instances that are approved in writing by the Chief Magistrate, a CEW shall not be worn by on-duty Officers who are not in uniform. Officers who are assigned work that does not interact with the public directly are not required to carry a CEW.

When a CEW is not in the immediate possession or control of an Officer, including while at his or her residence, Officers shall ensure the CEW is kept in a secured manner that prevents unauthorized persons from having access to it.

⁵ An Officer is considered off-duty during non-working hours and while not in uniform. If an Officer is in uniform, the CEW should be carried. In order to minimize the amount of time carrying a CEW during non-working hours, Officers should only remain in uniform before and after work hours for a reasonable period of time.

D. Display of Conducted Electrical Weapon

An Officer shall not display or un-holster his or her CEW except under any of the following circumstances:

1. For maintenance or inspection of the CEW by the agency quartermaster, CEW instructor, or a supervisor.
2. To secure the CEW.
3. To conduct a spark check prior to the beginning of the Officer's shift.
4. During CEW training or re-certification.
5. At the direction of a Uniformed Services Supervisor or any other Justice of the Peace Court employee designated by the Chief Magistrate or his or her designee to give such direction.
6. When the Officer has a reasonable belief that it may be necessary for the Officer to use the CEW in accordance with the agency's defined Use of Force policy.

Officers must notify their supervisor and submit a written report as soon as practicable anytime their CEW is displayed, other than during agency maintenance, CEW Training, or to secure it.

E. Use of Conducted Electrical Weapon

An Officer may elect to deploy a CEW to control a dangerous or violent subject in order to protect the Officer or another person from physical injury. CEW's are primarily used to control subjects who are engaged in active resistance.

The decision to deploy a CEW will be made by a certified CEW operator.

If a decision is made to deploy the CEW, the Officer is to avoid targeting the head, face, neck, groin and chest.

Any discharge of the CEW, other than a spark check function test shall necessitate the immediate notification of a supervisor.

F. Use of Force Report Required

A supervisor will be notified as soon as practicable and a Use of Force Report will be completed by the Officer under any of the following circumstances:

1. Laser/Light Targeting - Placing the CEW in the "on mode" and targeting the subject with the laser or integrated flashlight to achieve compliance and control without discharging the device.
2. Spark Display — A non-contact demonstration of the CEW's ability to discharge electricity. This is conducted only when the cartridge has been removed from the weapon. The purpose of this display is to convince the subject to comply with a lawful order and avoid the deployment of the CEW.
3. Drive Stun — Contact is made by pushing the front of the CEW (cartridge removed or already discharged) into the body of a subject and activating the CEW.
4. Probe Deployment — The CEW is most effective when the cartridge is fired and the probes make direct contact with the subject. The optimum range for probe deployment is 7 to 15 feet, with a 25foot maximum distance.

The expended cartridge, deployed probes, and at least two AFID (Anti-Felon Identification) tags will be collected and placed into an envelope and turned over to the Officer's supervisor. If the probes were removed from an animal or subject, the envelope will be marked as a Bio-Hazard.

G. Treatment of Individuals who have been subjected to Conducted Electrical Weapon

Persons who have been subjected to a CEW, or the probes, shall be treated as follows:

1. EMS will be notified and will remove the probes and determine whether the subject needs further treatment or transport to a hospital.
2. Any subject struck in the head, face, female breast, or groin should be transported to a hospital for removal of the probes.
3. EMS personnel will be notified how many cycles were administered to the subject. Any subject exposed to three (3) or more cycles should be transported to a hospital for evaluation.
4. Whenever possible, photographs will be taken of any injuries to the subject, to include Probe contact points. The photographs will be attached to the Use of Force Report.

H. Conducted Electrical Weapon will not be deployed:

1. When an Officer knows a subject has been exposed to potentially flammable OC Spray, or that the subject has come in contact with other flammable liquids or is in a flammable atmosphere (gas pumps, clandestine drug labs, etc).
2. When the subject is in an elevated position or in a position where a fall may cause substantial injury or death.
3. Punitively for purposes of coercion, or in an unjustified manner.

4. To escort or jab an uncooperative subject.
5. To awaken unconscious or intoxicated individuals.

I. Conducted Electrical Weapon should not be used:

CEW's should not be used in the following circumstances, unless there are compelling reasons to do so which can be clearly articulated:

1. When the subject is operating a motor vehicle.
2. When the subject is holding a firearm.
3. When the subject appears to be twelve years of age or younger, or sixty-two years of age or older, or is physically disabled.
4. In a situation where deadly force is clearly justifiable unless another Officer is present and capable of providing deadly force cover to protect the Officers and/or civilians as necessary.
5. When a subject is handcuffed.
6. When the subject is visibly pregnant.
7. When the subject is engaged in passive resistance.

J. Conducted Electrical Weapon and Intoxicants, Illicit or Prescribed Drugs

Officers shall not consume or be under the influence of intoxicants while carrying their assigned CEW.

Officers shall refrain from taking any substance, including medication or prescription drugs, that diminishes the Officer's ability to remain alert and in control of their surroundings. It is the duty of each Officer to report to their supervisor any drug they may have consumed that may impair their ability to remain alert and in control of their surroundings.

K. Conducted Electrical Weapon and CEW Cartridges in Vehicles

A CEW) may be stored temporarily in an agency vehicle or personal vehicle when wearing or carrying the CEW would be impractical. However, no CEW or CEW cartridges shall be left in view in any unattended vehicle.

L. Conducted Electrical Weapon Cartridges

CEW shall only be loaded with issued CEW cartridges.

M. Authorization to Carry Concealed Conducted Electrical Weapon (CEW)

An Officer shall not carry his or her CEW in a concealed manner unless specifically authorized in writing as outlined herein. An Officer is authorized to carry a CEW in a concealed manner only upon written authorization issued by the Chief Magistrate when the Officer is assigned a plain clothes special assignment and is on duty. Traveling to and from work is considered on-duty for the purpose of carrying the Concealed CEW while in plain clothes on special assignment, and with authorization to carry the CEW concealed.

N. Alterations or Repairs to Conducted Electrical Weapon (CEW)

Officers are not to alter or attempt any repairs of their assigned CEW.

O. Damage, Inspection, and Maintenance

An Officer shall make an oral or written notification to his or her supervisor as soon as practicable whenever his or her CEW is damaged or not functioning properly. The Officer also shall submit a written report to his or her supervisor detailing the damage or malfunction, including information regarding how the damage occurred and any other information relevant to the damage or malfunction. The agency quartermaster will replace the CEW so that the Officer may be returned to full duty as soon as possible.

The quartermaster will arrange for any repairs and/or maintenance of the CEW. Prior to shipping damaged units, the quartermaster will ensure a full data download is conducted per manufacturer's instructions

P. Inventory

The quartermaster shall maintain an accurate written record of all CEW cartridges, including a recording of serial numbers of Conducted Electrical Weapons, the name of the Officer assigned the equipment, quantity of assigned cartridges, and any other information relevant to maintaining a current and accurate inventory.

The quartermaster will also monitor the supply of spare cartridges (duty and training) and battery packs, and he or she will replenish supplies when necessary.

Q. Conducted Electrical Weapon Training

CEW shall be issued to and used only by Officers who have successfully completed the Agency's Conducted Electrical Weapon training program or a training program administered by the CEW manufacturer.

R. Failure to Qualify

Failure of an Officer to successfully complete the CEW initial training or recertification course may result in alternative duty assignment and/or remedial training or in dismissal from

employment. Officers who fail to successfully complete required CEW training shall not be permitted to carry their assigned CEW.

Any Officer who fails to successfully complete CEW training shall notify his or her supervisor as soon as practicable. In addition, the CEW trainer shall notify the Officer's supervisor of any Officer's failure to qualify.

S. Practice with Conducted Electrical Weapon

Any type of practice or drills with the CEW other than during agency authorized training is prohibited.

T. Supervisory responsibilities

In the event of a CEW deployment, the supervisor will ensure that all proper steps are followed as outlined in this agency's Use of Force Policy. This will include ensuring all reports are completed and reviewed, all appropriate photographs of injuries are taken, and that all evidence is collected and secured.

cc: All Justice of the Peace Court Employees
Honorable Leo E. Strine, Jr
Honorable Andre Bouchard
Honorable Jan Jurden
Honorable Alex J. Smalls
Honorable Michael K. Newell
Amy Quinlan, State Court Administrator
Marianne Kennedy
Jody Huber, Esquire
Mark Hitch
Jill Malloy
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