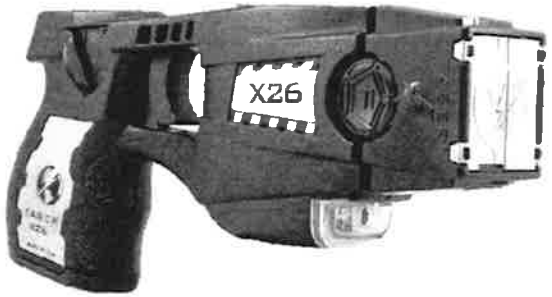
Annual CEW User Update



Version 19

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Annual Certification Requirements

- Each agency must determine the contents of each continuing and update training
- TASER's minimum requirements for annual user recertification include:
  - Review of this entire presentation including notes
  - Review of current law enforcement warnings
  - Firing two cartridges

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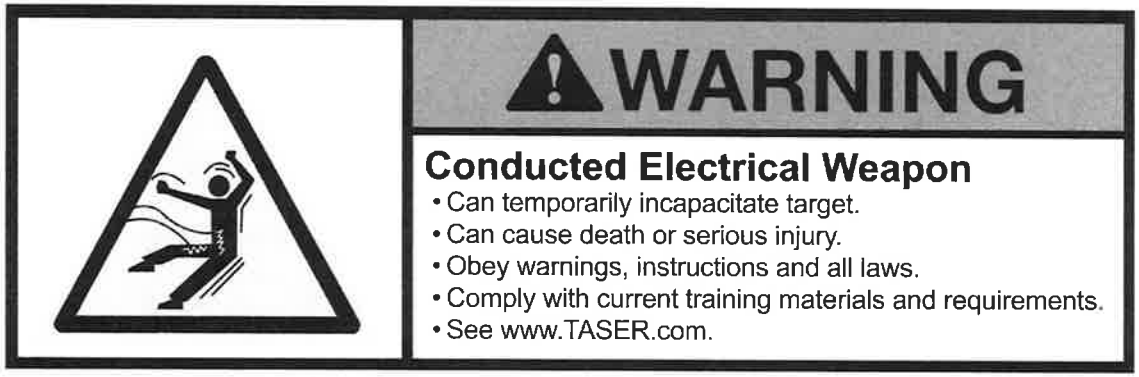
Contents

- ECD Smart Use Guidelines: Legal Update
- Medical and Safety Refresher
- Tactical Consideration Update



Be sure to read the notes for each slide

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CEW Smart Use Considerations

TASER does not provide legal advice.

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4th Amendment Risk Benefit Standard

"[I]n judging whether [officer's] actions were reasonable, we must consider the risk of bodily harm that [officer' s] actions posed to [suspect] in light of the [suspect's] threat to the public that [officer] was trying to eliminate."

Scott v. Harris, 550 U.S. 372, 383 (2007)

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4th Amendment – CEW Probe Mode

CEW in dart mode constitutes an "intermediate, significant level" of force that must be justified by a strong government interest[1]

- Pepper spray and batons are also intermediate force options.

CEW against a non-violent misdemeanant who appeared to pose no immediate threat and who was given no warning was unconstitutional excessive force[2]

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4th Amendment

"It is an excessive and unreasonable use of force for a police officer repeatedly to administer electrical shocks with a [CEW] on an individual who no longer is armed, has been brought to the ground, has been restrained physically by several other officers, and no longer is actively resisting arrest."*

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CEW Probe Mode Guidance

(**Generally**) To use CEW in probe mode officer must reasonably perceive subject to be:

- An immediate threat of harm/injury, or
- Fleeing or flight risk from serious offense crime and the officer is justified in tackling the person.

Consider necessity of a verbal warning before deploying the CEW.

Be aware of foreseeable primary risks and risks of secondary injury, especially falls from heights or on hard surfaces, ignition of flammables, or effects of intermittent clothing disconnects.

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X26 CEW Drive-Stun Guidance
(Using Force ONLY to Gain Volitional Compliance)

Using X26 CEW for volitional compliance (when feasible):

- Reasonably perceive person is "actively resisting"
- Have a reasonable belief person is capable of volitional compliance to commands
- Avoid conflicting commands
- Give a warning of the imminent application of force
- Must give adequate time for volitional compliance to warning:
  - Time "to recover from extreme pain" experienced,
  - Opportunity to "gather herself,"
  - Opportunity to "consider her refusal to comply" with officer's commands/directives before next force application
- Always prepare clear, complete, unambiguous reports

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X26 CEW Drive-Stun Guidance

(Using Force ONLY to Gain Volitional Compliance)

Person must be given a reasonable opportunity to comply with officer's directives prior to each X26 CEW drive-stun application.

For example, the 9th Cir.[1] has found that 3 X26 CEW drive-stun applications in rapid succession provided no time for an actively resisting pregnant female to recover from the extreme pain she experienced, gather herself, and reconsider her refusal to comply.

This does **NOT** apply to multi-electrode CEWs including the X2 and X3 CEWs.*

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Additional Force Factors

- Court may consider "the availability of [less injurious] alternative methods of capturing or subduing a suspect." [1]
- Court may consider what officers knew about the suspect's health, mental condition, or other relevant frailties.*[2]
- Officer should give a warning before force when appropriate.

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Considerations to Avoid CEW Excessive Force Liability

Force decision must reasonably consider (as time and circumstances reasonably permit):

- Officer's reasonable perceptions of subject's actions or behaviors the officer is attempting to stop, thwart, or control
- Officer's objective for using force
  - Use CEW only to accomplish lawful objectives
- Quantum of Force:
  - Foreseeable risks of injuries or harm to subject resulting from force to be used
  - Foreseeable secondary risks of injury
- (When necessary) Give warning and reasonably perceive subject capable of complying with demands

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Considerations to Avoid CEW Excessive Force Liability

- Follow "targeting guidelines" when feasible and use 5-second "window of opportunity" to restrain and "cuff under power"
- Every CEW trigger pull or 5 seconds of discharge must be justified under the specific circumstances of the incident
- CEW use is within:
  - Law (correctly applied legal standards of care) and
  - Agency Policy and Training
- Do not use CEW for:
  - verbal defiance
  - belligerence
  - punishment
  - horse play

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Considerations to Avoid CEW Excessive Force Liability

- Fully document
  - Subject's threats, behaviors, and actions
  - Each use or application of force
  - Each CEW trigger pull or 5-second discharge
  - Each mode of CEW use
  - Each injury or allegation of injury
- Avoid multiple, repeated, prolonged, extended, or continuous CEW exposures[1] unless necessary to counter reasonably perceived threat(s) and it is justifiable
  - — always document your justifications

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Brief Overview of Selected Portions of Medical and Safety

Review TASER's CEW Research Index and other documents and materials contained on the Training DVD and on TASER's website.

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CARDIAC

CEW cardiac risks are not zero.

CEW cardiac risks are sufficiently remote that making accurate risk or probability estimates are very difficult.

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CARDIAC

Experts have identified the following key factors related to CEW cardiac risks:

- Dart-to-heart ("DTH") distances,
- Amount of delivered electrical charge

The further a CEW dart is away from the heart and the lower the delivered electrical charge the lower the risk of the CEW affecting the heart.

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CARDIAC

To reduce cardiac risks (when possible):

- Target the back
- Avoid targeting chest
- Avoid prolonged and repeated exposures

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Avoid Extended Durations

Several law enforcement groups have set out 15 seconds (multiple applications or continuous) of CEW exposure as a significant safety point:

- Police Executive Research Forum (PERF), Community Oriented Policing Services (COPS), and US Department of Justice (DOJ) (March 2011)
- Int'l Association of Chiefs of Police (IACP) (April 2010)
- American Academy of Emergency Medicine (AAEM) (May 2011)
- National Institute of Justice (NIJ) (May 2011)
- Civil Rights Division, DOJ (December 2012)

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Physiologically or Metabolically Compromised Persons

- Law enforcement personnel are called upon to deal with individuals in crises that are often physiologically or metabolically compromised and may be susceptible to arrest-related death ("ARD")
- The subject may already be at risk of death or serious injury as a result of pre-existing conditions, individual susceptibilities, or other factors
- **Any physiologic or metabolic change may cause or contribute to death or serious injury**
- Follow your agency's guidance and policies when dealing with physiologically or metabolically compromised persons

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Tactical Considerations

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Know Your CEW Trigger Operation: Continuous Discharge

- Remember, if you hold the trigger back, the X26 CEW will continue to discharge after the 5-second cycle until you release the trigger , as long as the battery charge is sufficient to support discharge
  - Does not apply to X2/X26P CEWs with APPM
- Holding the trigger back may result in continuous, extended, or prolonged CEW discharges and allegations of excessive force or elevated or cumulative subject injury

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TARGETING

Avoid intentionally targeting the CEW on sensitive areas of the body such as the head, throat, breast, chest or area of the heart, genitals, or known pre-existing injury areas without legal justification.

- The preferred target areas are below the neck area for back shots and the lower center mass (below chest or heart area) for front shots
  - Avoid sensitive areas

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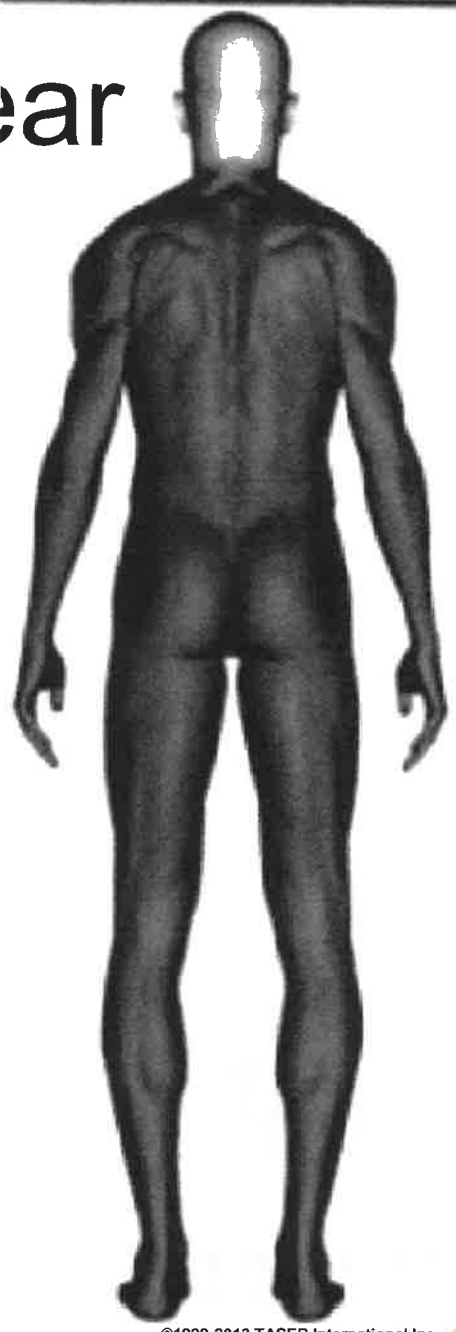
Preferred Target Zone Rear
(when possible)

Below neck (blue zone)

- Large muscles
- Avoid head

The back is always the preferred target area when reasonably practicable under the totality of circumstances of the incident.



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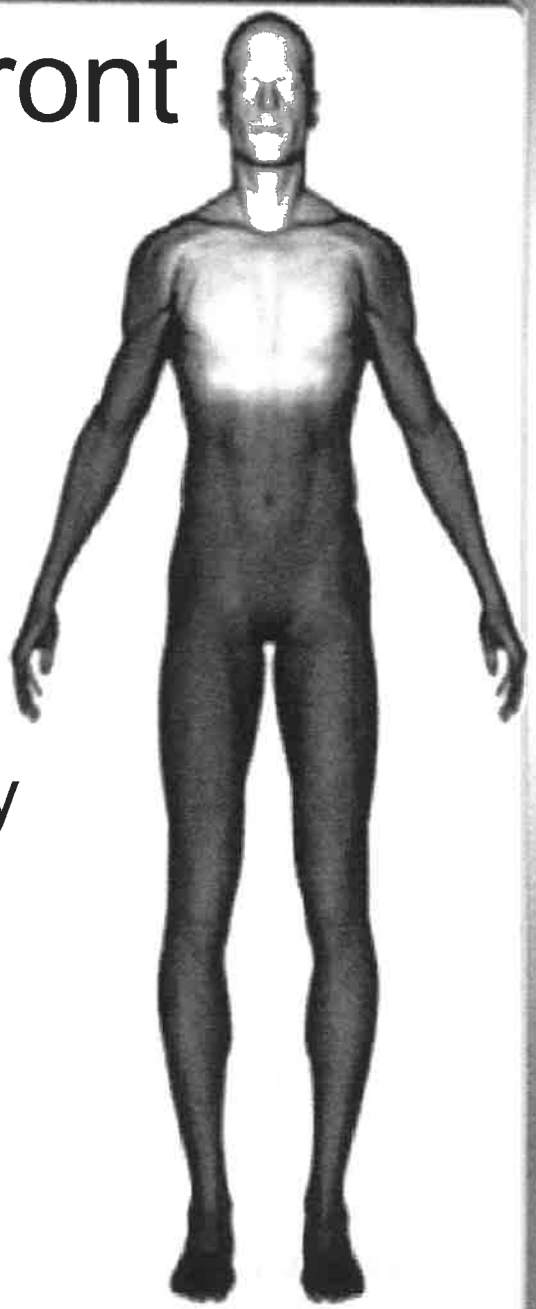
Preferred Target Zone Front
(when possible)



Lower torso (blue zone below chest)

- More effective
  - Split the belt line
  - Larger muscles
- Reduces risk of hitting sensitive body areas (see current product warnings)
- Increases dart-to-heart (DTH) safety margin distances
- Do not intentionally target genitals

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Probe Placement

- Deploy per department SOP
- Greater probe spread generally increases effectiveness
  - "Incapacitation by all measures was found to be a function of spread; generally increasing in effectiveness up to spreads between 9 and 12 in. There were notable differences between front and back exposures, with front exposures not leading to full incapacitation of the upper extremities regardless of probe spread."[1]
  - If practical, minimum four-inch spread to have some effect
  - Narrow probe spreads typically are more effective if one probe is above the belt and the other probe is below the belt

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Neuro-Muscular Incapacitation (NMI)

- There are different levels of NMI ranging from limited area effects to significant body lockup
- The greater probe spread, the higher likelihood of NMI
- CEWs may not achieve total NMI incapacitation
- Subject may maintain muscle control, particularly in arms and legs (depending on many factors, including probe locations)
- Be prepared with other force options including a drive-stun follow up to spread NMI over a wider area if necessary and reasonably appropriate
- Drive stun alone usually will not achieve NMI, only localized pain

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Injuries From Falls

- NMI frequently causes subject to fall
- Falls are often uncontrolled and subject is often unable to protect or catch himself
- Falls, even from ground level, can cause serious injuries or death
- Consider the environment (including the ground surface) and the likelihood of a fall related injury
- Consider intermittent connections/effects, such as intermittent clothing disconnects

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Controlling/Cuffing Under Power

You can go hands on with the subject during the 5-second cycle without feeling the effects of the NMI

- Electricity generally follows the path of least resistance
- Do not place hands on or between probes

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Controlling/Cuffing Under Power

- Use each 5-second CEW cycle as a "window of opportunity" to establish control/cuff while the subject is affected
- Move in, control, and handcuff subject while the CEW is cycling during the 5-second "window of opportunity"

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Controlling/Cuffing Under Power

- Be aware that emotionally disturbed persons (EDPs), focused, intoxicated, deaf, and excited delirium individuals may not comply with verbal commands
- The need for multiple 5-second cycles, or extended or prolonged CEW exposures, may be avoided or reduced by "controlling/cuffing under power" during the "window of opportunity" the 5-second CEW cycle provides

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Avoid Extended, Repeated, or Prolonged TASER CEW Applications[1] Where Practicable

- Each trigger pull and/or 5-second cycle or discharge must be legally justified
- Avoid extended, repeated, or prolonged CEW applications where practical
- The application of the CEW is a physically stressful event
- Attempt to minimize the physical and psychological stress to the subject

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Avoid Extended, Repeated, or Prolonged TASER CEW Applications Where Practicable

- Only apply the number of 5-second cycles reasonably necessary to capture, control or restrain the subject
- Human studies have not shown that CEW applications affect or impair breathing patterns
- If circumstances require extended duration or repeated discharges, the operator should carefully observe the subject and provide breaks in the CEW stimulation when practicable

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Be Careful of Distractions

- There are incidents/cases where officers have been accused of using excessive CEW exposures caused by distractions (including by nearby family members, bystanders, incident witnesses), stress, etc.
- Be alert to and avoid potential or occurring distractions and stress induced hesitations that result in unnecessary additional 5-second CEW cycles or extended exposures
- Distraction and stress may result in the officer inadvertently holding the trigger down unintentionally which may result in a constant electrical discharge of unintended duration

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Clearly Record the Incident

- If available, use on-officer point of view ("POV") incident recording equipment
- When safe, consider using your radio to establish record of significant events with dispatch time logs (call in):
  - Immediately at end of CEW use
  - Immediately upon subject being handcuffed
  - Person's perceived medical status and condition and any changes

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