

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 2:05 PM
To: 'dma46@myfairpoint.net'
Cc: Cindy Maguire; Evan Meenan
Subject: RE: Comments re: LEAB Proposed Statewide Taser Policy

Dear Attorney Albert,

Thank you for your letter and comments, I will pass them along to the LEAB.

Best,

Cindy Maguire

From: Daniel Albert <dma46@myfairpoint.net> [<mailto:dma46@myfairpoint.net>]
Sent: Monday, December 02, 2013 1:47 PM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Taser Policy

Please see two attachments. Thank you.

DANIEL ALBERT, ESQ.
48 PARTRIDGE LANE – PO BOX 69
WESTFORD VERMONT 05494
December 2, 2013

Attorney Cindy Maguire
Criminal Division Chief
Attorney General's Office
Montpelier Vermont

Sent via email

RE: Comments re LEAB Proposed Statewide Taser Policy

Dear Attorney Cindy Maguire:

Attached to this letter are specific comments on the Proposed Statewide Taser Policy. I would like this cover letter, as well as the attachment, to be shared with the LEAB.

First some general comments:

1. I am an actively licensed Vermont attorney. I practiced fulltime for 31 years as a criminal defense attorney. Yet I only learned of your solicitation for comments on November 30, 2013, through an informal process. Although your cover letter is dated November 13, 2013, I wonder how this comment period was publicized to the wider Bar. I assume the LEAB subcommittee had far longer than 21 days to draft its proposed statewide taser policy. Why is the comment period from "other interested parties" so short and so poorly publicized? Please extend it by at least 30 days.
2. You describe the subcommittee's work as informed by input from "law enforcement personnel, use of force instructors, and the LEAB. Why no input in the drafting stage of the process from civil liberties advocates, mental health, substance abuse and psychotropic drug experts, and the defense bar?

Letter to Attorney Cindy Maguire, Criminal Division Chief
RE: Comments on Proposed Taser Policy
December 2, 2013
Page Two

3. According to your letter, the LEAB empanelled the subcommittee to draft a statewide policy. Rather than a proposed statewide policy, the subcommittee has apparently come up with a proposed uniform policy the adoption of which it "encourages". This represents much more than a semantic difference.

For my entire career, I have been an interested observer of police use of force in Vermont (and elsewhere) and justice system's response, including that of the Vermont Attorney General. I am well aware of the US Supreme Court's reasonableness standard and deferential view of police actions in the field. Nevertheless, deference does not equal a rubber stamp. Over decades and continuing today, the Vermont Attorney General's office seems to have missed this critical distinction. This is nothing short of disgraceful.

Yours sincerely,

Daniel Albert, Esq.

TO: Attorney Cindy Maguire

FROM: Attorney Daniel Albert

DATE: December 2, 2013

SUBJECT: Comments re: LEAB Proposed Statewide Taser Policy

Introduction and Purpose:

Paragraph 1: "The purpose of this policy is to encourage..." This is not a statewide policy. See cover letter, attached hereto and incorporated herein by reference.

Paragraph 3: "This CEW policy is designed to supplement rather than replace any use of force policies." This further undermines uniformity of implementation. "Statewide policy" is clearly a misnomer.

Policy: Section 1- Definitions

1.2 Imminent: This definition is ridiculously vague and overbroad.

1.2.2: "A subject is armed and running to gain tactical advantage of cover." Does this include armed with a shovel. How does an officer if a subject is running to gain the tactical advantage of cover rather than, for example, to avoid a law enforcement officer whom the subject perceives to be out-of-control?

1.3 Objectively Reasonable: This definition is nothing more than bootstrapping one vague definition on another. Why is the evaluation of the officer's use of force "without regard to the officer's underlying intent or motivation" For example, what about when the totality of the circumstances points to an overriding racial intent or motivation on the officer's part? I am well aware of the US Supreme Court's reasonableness standard and deferential attitude to an officer's action in the field. Yet deference does not equal a rubber stamp.

1.6. Special Populations: "Members of special populations include subjects an officer has reason to believe are:

1.6.1 "Cognitively impaired such that they are unable to comply with an officer's instructions." This should be modified to read as follows: "Cognitively impaired including but not limited to mental illness; developmental delays; drug-induced cognitive impairment; and alcohol induced cognitive impairment such that they are unable to comply with an officer's instructions."

Two serious cases I worked on as a defense attorney come to mind:

a) an elderly gentleman was prescribed, by several different medical providers, several medications including some psychotropic drugs, to treat various physical and mental conditions. The medical providers failed to consult with each other and the gentleman became confused about what and how much of each he should take when. He ended up becoming seriously cognitively-impaired. He set fire to his house with his wife inside. She died.

b) a professional gentleman was prescribed steroids to address a serious progressive muscular disease. Even though the prescribing doctor had consulted with another clinician involved in the man's care, and this second doctor assured both the patient and doctor #1 that he could successfully balance the expected detrimental effects of the steroids by adding still another medication, this balance failed to

materialize. Instead, the man experienced an uncontrollable manic state –clearly including a significant cognitive impairment in which he was unable to comply with the instructions of law enforcement officers.”

2. Use of Force in General.

2.1. “...These risks shall include, but are not limited to the risk of additional criminal behavior, damage to property...” This standard is ridiculously overbroad. Does “additional criminal behavior” include disorderly conduct? It is hard to conceive of a situation in which potential damage to property could justify the use of a taser on a human being. Wasn’t there a situation in Bennington or Brattleboro not too long ago where officers used CEWs against some citizens engaged in nonviolent civil disobedience, and were roundly criticized for it?

2.3. Unjustifiably omits any mention or consideration of information from collateral sources, e.g.family members on the scene or in communication with the officers. ” Factors that may determine whether an officer escalates or deescalates the level of force use include...the relative skill level of the officer and the suspect....” What does this mean?

2.4. Use of Force Continuum

Active Resistance Compliance Techniques:

The inclusion of “chemical sprays” among permissible compliance techniques is problematic. The use of chemical sprays implicate some of the same risks and dangers implicated by CEWs. The Attorney General’s Office is well aware of the death of a man in custody of the police (about 15 years ago) who was tased and killed, and who it was later determined was under the influence of cocaine. The combination of the drug and the chemical spray killed him. He left 5 young children behind.

.....

Assaultive –Risk of Physical Injury Perceived

The inclusion of the term “imminent risk” once again is too vague and overbroad to be meaningful. See discussion of “imminent” (section 1.2 above). As used in this section, the word “imminent” is entirely predictive and subjective, with no proven accuracy.

.....

3. CEW Use and Deployment Procedures.

3.1. “...and on interacting with individuals experiencing a mental health crisis...”. As noted generally, in comments related to section 1.6.1, cognitive impairment and mental health crises come in many different flavors. Any training in this area must encompass many different and nuanced conditions, with varied sources and symptoms, and of varied duration.

3.8. “...The act of fleeing or destroying evidence, in and of itself, does not justify the use of a CEW.” The inclusion of the “in and of itself” phrase allows officers a great deal of “wiggle room” to invent retroactively supplementary justification for the use of CEWs.

4. Post Deployment Procedure.

4.3. The “offering” of medical attention at a medical facility is insufficient, post-deployment. Any defense attorney familiar with “offers of medical attention” delivered by law enforcement to DUI-

suspects, for example, after an accident realize how a person's refusal of such an offer is often colored by shock, injury, or machismo, whether fueled by alcohol and/or drugs or not. I suggest the language of this subsection be changed to read as follows: "Medical attention at a medical facility shall be provided to all individuals subjected to a CEW deployment. Subject should be brought inside an emergency medical facility and provided with medical attention."

4.7. "With the exception of the required spark test and accidental discharges that do not connect with any living thing, each time an CEW is deployed and/or displayed for compliance purposes...."

4.10 Amend to read: "Accidental discharges that do not connect with any living thing and any display of a CEW for compliance purposes shall be documented within 48 hours of the alleged accidental discharge or deployment for compliance purposes."

4.12. "Upon request, a suspect subjected to a CEW deployment, or his/her next of kin, shall be kept informed of the procedural status and final result of the review.

LEAB'S Key Components of Use of Conducted Electrical Weapon Policies

To the extent that this section of the draft document uses identical language already commented upon earlier, those comments also apply here. For example, "cognitively impaired"; "medical attention"; "emergency medical services"; adding "or his/her next of kin to section 13.f.

Training Standards

15.1. "Training shall also incorporate at a minimum:

- (4) The physiological effects upon an individual against whom such an CEW is deployed, including those individuals from the full gamut of special populations."

.....
END

Evan Meenan

From: Cindy Maguire
Sent: Wednesday, December 04, 2013 12:36 PM
To: 'Allen Gilbert' (agilbert@acluvt.org)
Cc: Cindy Maguire; Evan Meenan; John Treadwell; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Subject: FW: ACLU-VT comments on draft of Taser policy
Attachments: 12-4-13 -- ACLU-VT comments on draft Taser policy.pdf

Hi Allen,

Thank you for your comments; I will pass on to the Board for consideration.

Best,

Cindy

From: Allen Gilbert [<mailto:agilbert@acluvt.org>]
Sent: Wednesday, December 04, 2013 12:17 PM
To: Cindy Maguire
Subject: ACLU-VT comments on draft of Taser policy

Cindy –

Attached is a PDF with the ACLU-VT's comments on the Taser policy drafted by the LEAB.

I'll also be putting a paper copy of the comments in the mail this afternoon.

Hope you're well. See you on the 23rd, if not before.

Allen

Allen Gilbert
Executive director, ACLU-VT
137 Elm St.
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802-223-6304

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Dec. 4, 2013

Cindy J. Maguire
Attorney General's Office
109 State St.
Montpelier, VT 05602

Re: Law Enforcement Advisory Board Proposed Taser Policy
(comments submitted by e-mail and postal mail)

Dear Assistant Attorney General Maguire:

The American Civil Liberties Union of Vermont welcomes the opportunity to comment on the Taser policy drafted by the state Law Enforcement Advisory Board. (I use the more familiar "Taser" as shorthand for what the draft policy calls "CEWs," or "conducted electrical weapons.")

The ACLU-VT's expectation was that this would be a statewide policy setting minimum training and use standards that all Vermont law enforcement agencies would be required to adopt. We were under the impression that the Attorney General's Office was committed to that goal; it was the recommendation of the Attorney General's Taser Review Committee, on which I served. If it is indeed the case that the LEAB does not have the authority to establish statewide police policies, another way to do so must be found.

Even more disappointing, however, is that the draft policy appears to do little more than codify existing practices that have led to unnecessary injuries and, in one incident, death. As such, the document does not address the concerns raised by the ACLU-VT, other advocacy groups, and private citizens that Taser training and use standards be revised in order to reduce inappropriate uses and unnecessary injuries. The document also does not address concerns raised by House bill 225, introduced earlier this year.

We do not think it useful at this point to comment line-by-line on the draft policy language. Rather, we offer some general comments about what we see as the policy's major shortcomings. These shortcomings must be addressed before the policy is advanced.

Shortcomings rest on these points:

- **Incorrect standard for use of force.** The use of excessive force is almost guaranteed by the draft policy's insistence that "imminent" rather than "immediate" threat to the safety of officers or others be used as the standard justifying police use of deadly (or in the case of Tasers, so-called "less lethal") force. The one legal citation in the policy (to the U.S. Supreme Court case, *Graham v. Connor*) is used in the policy to suggest this "imminent" standard is consistent with that decision, when it is not. The *Graham v. Connor* standard is "immediate" not "imminent." The

difference is important. It is akin to the difference between “reasonable suspicion” and “probable cause,” a difference that officers are trained to recognize and respect.

- **“Active resistance” determination is subjective and promotes escalation of force.** The use of excessive force is also almost guaranteed by the draft policy’s language that a determination of “active resistance” includes both a negative subjective determination by an officer of what the term means (“the subject’s actions would not lead a reasonable officer to perceive a risk of physical injury to him/herself, the subject, or a third person”) as well as examples of general, natural actions any person ordered into an uncomfortable physical position might exhibit (“pulling away” or “other energy enhanced physical or mechanical defiance” represent “active resistance” in the draft policy). The description of “active resistance” is simply too broad.
- **Determination of appropriate use of force is skewed from one of objectivity to relativity through the policy’s definition of “objectively reasonable.”** The draft policy has changed the *Graham v. Connor* standard of “a reasonable officer on the scene” to a standard of “similarly trained and experienced officers.” The effect of this is to enshrine, as acceptable, current practices of current officers -- an “other officers do it” relative standard.
- **Regular testing of weapons is not required.** The claim that a Taser is “less lethal” rests on the weapon’s ability to deliver a charge of electricity that is within a prescribed range. Yet the draft policy contains no requirement that the charge be routinely measured to ensure the weapon is operating within specifications. Weapons not functioning correctly can create dangerous situations for the public and police officers, and can increase liability for agencies. The “spark test” referenced in the policy is not enough to determine if a Taser is functioning correctly. That test only determines if the weapon’s electrical circuits are functioning so that a discharge can occur.
- **Tasers may be used against “special populations.”** The draft policy does not prohibit Taser use on “special populations.” Instead, it states only that “special consideration” be given before using the weapon on these populations. It is our strong feeling that only if the life of the subject, officer, or members of the public is in immediate danger and use of deadly force is justified should a Taser be used against “special populations.” Also, the draft policy’s list of special populations is not as inclusive as that of the manufacturer; missing are those who are physically infirm, those suffering from the effects of alcohol or other drugs, and those in mental health distress.
- **Tasers may be targeted at all body areas.** Our understanding is that Taser itself labels its products with prohibitions against firing upon certain body areas because of the severe injuries that may result. Yet the draft policy grants discretion: “An officer should attempt to avoid deployment to a suspect’s head, neck, chest, genitals, female breast, and stomach of a pregnant woman.” Information from the manufacturer regarding where Tasers must not be aimed cannot be viewed as optional.
- **Meaningful accountability is missing.** In order to document correct deployment of a Taser, an officer should be wearing a body cam to capture audio and video of any incident in which a Taser may be used. This is not included in the draft policy. The draft policy also fails to require

independent review of Taser use by a non-agency panel. Internal agency reviews create the appearance, and/or reality, of bias. Review by an autonomous public body, with regular reporting to the community, removes this bias. The draft policy also lacks a requirement that any Taser be tested after each use to determine if the discharge is within prescribed parameters. Also, additional information should be required in any use-of-force report when a Taser has been deployed. Information should include the sex, race, age, height, weight, general physical condition, toxification status, disability status, and pregnancy status of Taser victims.

Each of these points is important to address. We cannot, as a state, dismiss the risks posed by the use of Tasers. The ACLU-VT feels strongly that the issue of Taser training and use, and development of a statewide policy, needs a broader discussion than one undertaken solely by a law enforcement board. Two avenues could be utilized to accomplish this:

- One would be to create a panel of outside subject-matter experts who could work with law enforcement, policy-makers, as well as the public to develop an acceptable policy.
- The other would be to acknowledge that legislative action is needed; this might be necessary if agreement among stakeholders on a Taser policy can't be reached or if it is determined that no mechanism currently exists for the adoption of statewide policies governing law enforcement practices.

In closing, I wish to state that the ACLU-VT supports the comments submitted by Disability Rights Vermont regarding the draft policy. The ACLU-VT, other advocacy groups, and individual advocates look forward to continuing discussions that lead to new policies that prevent Vermonters from being needlessly injured or killed, and that avoid the ill will and costly litigation that can result because policies governing a weapon's use are deficient.

A public comment submitted to the Attorney General's Taser Review Committee has stuck with me since I first read it a number of months ago. A woman whose elderly husband suffered from dementia had called police for help in locating him after he had gotten into his car and left their house in the middle of the night. Police found him several miles away; he was disoriented, gripping the steering wheel of his car. When police told him to get out of the car, and he wouldn't, he was first handcuffed and then Tased. The woman wrote the committee that neither she nor anyone else in her family would ever call 911 again for assistance.

I believe we must all work to ensure that such indictments of a citizen-established public service are avoided.

Sincerely,

A handwritten signature in cursive script, appearing to read "Allen Gilbert".

Allen Gilbert
Executive director, American Civil Liberties Union of Vermont

Evan Meenan

From: Allen Gilbert <agilbert@acluvt.org>
Sent: Thursday, November 28, 2013 10:30 AM
To: Cindy Maguire; Bill Sorrell; 'Richard Gauthier'
Cc: Evan Meenan
Subject: RE: Call from reporter today about LEAB draft Taser policy

I'll be sending more complete comments by Wednesday, Cindy, so you and the board will have those soon.

I was disappointed Neal didn't have quotes from others in the story, but I don't know what's people's availability might have been yesterday afternoon. A story on something like this needs to have more in order for readers to think it's a well-rounded piece of information.

Allen

Allen Gilbert
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From: Cindy Maguire [<mailto:cmaguire@atg.state.vt.us>]
Sent: Wednesday, November 27, 2013 4:34 PM
To: Allen Gilbert; Bill Sorrell; Richard Gauthier
Cc: Evan Meenan; Cindy Maguire
Subject: RE: Call from reporter today about LEAB draft Taser policy

Thank you for your comments Allen. As you know this draft is still in process and the LEAB is scheduled to consider the draft after reviewing comments. The LEAB meeting is scheduled for 12/23. I will pass along your comments to the subcommittee that is working on the drafting and to the full Board.

Best,

Cindy Maguire

From: Allen Gilbert [<mailto:agilbert@acluvt.org>]
Sent: Wednesday, November 27, 2013 3:39 PM
To: Cindy Maguire; Bill Sorrell; Richard Gauthier
Subject: Call from reporter today about LEAB draft Taser policy

Rick, Cindy, Bill –

My guess is that you, too, may have received a call Wednesday from a Vermont Press Bureau reporter, Neil Goswami, regarding the draft LEAB Taser policy.

Goswami asked me for my reaction to the draft. I said the ACLU hadn't yet submitted comments, but I was willing to give him my initial thoughts.

Those thoughts were:

- There is one encouraging sign about the draft. That sign is the recognition on the part of the AG's office and the LEAB that Taser regulation is an important issue and needs to be addressed.
- There are two discouraging signs about the draft.
 - The first sign is that the draft policy is only a recommended policy. I said the ACLU has felt strongly for some time that there needs to be a standard, mandatory statewide policy on Taser use. Different departments can't have the latitude to use deadly force in different ways. We thought the AG's goal was for there to be a statewide policy. The draft policy doesn't meet that goal.
 - The second sign is that the draft policy itself is inadequate. It seems to codify existing practices, some of which have led to unnecessary injuries and even death. Changes are needed in the guidelines for use-of-force and in the process for reviewing each incident when a Taser is displayed or fired. Also, regular measurement of the weapon's electrical discharge must be required.

I said that the ACLU cannot support the draft policy and would be working in the legislature this session for a statewide policy that makes substantive changes that better protect both the public and officers.

Allen

Allen Gilbert

Executive director, ACLU-VT

137 Elm St.

Montpelier, VT 05602

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Evan Meenan

From: Cindy Maguire
Sent: Tuesday, December 03, 2013 9:45 AM
To: 'Andrea Y'
Cc: Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Cindy Maguire; Evan Meenan
Subject: RE: Comments re: LEAB Proposed Statewide Taser Policy

Dear Andrea,

Thank you for your comments; I will pass them along to the LEAB.

Best,

Cindy Maguire

From: Andrea Y [<mailto:epiphanya@msn.com>]
Sent: Tuesday, December 03, 2013 9:20 AM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Taser Policy

If someone is coming after me in a threatening manner and I fear for my life, I'm not going to hesitate to protect myself based on whether I think the assailant may have special needs, be diabetic, on medication, mentally ill, drunk, or anything else. I'm going to protect myself. As a civilian. Who rarely (never?) finds herself in threatening situations. I would expect nothing less from a law enforcement officer who is going into a volatile situation and truly putting their lives on the line to protect people like me. I understand that Tasers can kill - I imagine they kill a significant percentage fewer than firearms do.

Evan Meenan

From: Cindy Maguire
Sent: Thursday, December 05, 2013 8:26 AM
To: 'Robert Appel'
Cc: Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Evan Meenan; Cindy Maguire
Subject: RE: CEW Proposed Policy Comments are Attached

Thank you Robert, I will pass on to the Board for consideration.

Best,

Cindy Maguire

From: Robert Appel [<mailto:rappel@kohnrath.com>]
Sent: Wednesday, December 04, 2013 6:34 PM
To: Cindy Maguire
Subject: CEW Proposed Policy Comments are Attached

Thanks, Cindy!

Robert Appel
Kohn Rath Danon & Appel LLP
P.O. Box 340
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**"A man can't ride your back unless it is bent."
Dr. Martin Luther King, Jr.**

Roger E. Kohn
rogerkohn@kohnrath.comDavid Rath
davidrath@kohnrath.comBeth Danon
bdanon@kohnrath.comRobert Appel
rappel@kohnrath.com**MEMORANDUM**

TO: CINDY MAGUIRE, AAG

FROM: ROBERT APPEL, ATTORNEY 

RE: COMMENTS ON DRAFT "TASER" POLICY

DATE: DECEMBER 4, 2013

I have reviewed the LEAB's proposed policy on the "Use of Conducted Electrical Weapons." While I applaud the effort, I remain concerned that the LEAB proposed policy may be offered as a sop to the House Government Operations Committee (and the Legislature as a whole), who as you know took testimony on two Taser related bills late last session. The Legislature is poised to resume work on this critical issue. Without a mandate for ALL police agencies to adopt state-wide uniform policies, not only on the use of CEWs but also on the use of force generally, I fear that we will continue to read headlines about tragic consequences of unarmed citizens being "tased" and/or shot without adequate provocation. A prototype to support my concern is the Bias-Free Policing Model Policy that was promulgated by the AG's Office. However, now two years later, we have no data on how many of the 74 +/- police entities in the state have adopted a policy that is at least as stringent as the model policy as was required by statute.

That said, let me address my comments to the specific recommended policy.

Page 1.-- In the introductory paragraph the proposed policy states, "[T]his CEW policy is designed to supplement rather than replace any existing use of force policies." This statement avoids addressing the need for a uniform use of force policy throughout Vermont.

1.1—"Definition of CEW." The wording of this definition leads the reader to believe that "drive stun" mode may be less incapacitating, and therefore less dangerous, than in "probe" mode. Given the variables in how both modes may be utilized and the unknown charge contained in each such weapon, this definition may produce the unintended consequence of more extended application of CEWs in drive stun mode, perhaps with tragic results.

1.2—The proposed expansive definition of "imminent" is so elastic as to essentially warrant (or excuse) an officer's use of a CEW. For example, how can one make an objective assessment of a suspect's "demonstrating an intention" to inflict bodily injury, defined in the criminal statutes as inflicting pain, see 13 VSA §1021(1) ("Bodily injury" means physical pain, illness or any impairment of physical condition.") Under the proposed language, an officer can justify deploying a CEW against a person who has no object in hand but clenches a fist; i.e., Macadam Mason, killed by the deployment of a Taser in Thetford in June of 2012.

1.3—"Objectively reasonable." Similarly "trained" would excuse an inexperienced officer, or one who is not well trained, from the consequences of violation of this policy. I would delete the reference to training. Also, I would delete both the quote and the court citation as I believe that this is an area of law which will continue to be both extraordinarily fact specific and fluid.

1.6—"Special populations." Most literature on the use of CEWs recommend against deploying this less-lethal weapon against persons who are obviously under the influence of alcohol and/or other intoxicating substances. There is no reference this to this population in the proposed policy.

2.1—"Use of Force in General." I suggest deleting the reference to "damage to property" as duplicative of the term "additional criminal behavior" warranting the use of force. Applying force, perhaps to include CEWs, to preserve property seems to loosely license officers' use of force.

2.2. – Deescalation. "When possible, officers should first attempt to deescalate situations by their presence or through the use of verbal persuasion." I suggest adding specific language referencing employing the partnership of mental health workers when dealing with a person who is obviously in the midst of a mental health crisis. In addition, language should be added that encourages officers whenever and wherever possible to SLOW DOWN, and allow the suspect time to understand and comply with the officer's directive. Adding encouragement to the officer to not yell and scream (and curse) at the suspect would also be appropriate in this section.

2.3 -- "Officers are not required to use ~~or consider~~ alternatives that increase danger to themselves or the public." However, officers should be encouraged to consider alternatives that may deescalate the conflict, and utilize those alternatives when doing so would not *significantly* increase danger to themselves or the public.

2.4. " Neither an officer, a subject, nor a third party has to actually suffer an injury before an officer is permitted to use reasonable force necessary to facilitate control over a subject."

CHART ON USE OF FORCE

The language in the chart fails to differentiate between active and passive resistance, which frequently may arise in civil disobedience actions where suspects may decide not to go limp and allow arrest (passive), but rather go rigid (active). Under the provisions of the chart, the police would be fully authorized to deploy whatever force they believe necessary (including the use of CEWs) to effectuate an arrest EVEN in the absence of risk of injury to officers or members of the public. While it is acknowledged that later in the policy (§3.8) it is stated that CEWs should not be deployed merely to achieve compliance, this nuanced distinction should be more fully addressed in any proposed model policy, and addressed and corrected in this chart.

3.1—Training. This section should specify the frequency and duration of such trainings and have a recertification requirement.

3.4.1.1—"Active resistance." See comment above regarding the wording of the chart's response to active resistance.

3.4.2— Suicide Prevention. "To prevent the *imminent* commission of a suicide or self-inflicted serious physical injury." Without adding the word imminent, officers may be authorized to

deploy CEWs on pure, unsupported speculation and/or on behaviors reported to them rather than witnessed personally by the officer.

3.5—No injury required prior to CEW deployment.

“Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified,” is a virtual verbatim repetition of language in 2.4; (“Neither an officer, a subject, nor a third party has to actually suffer an injury before an officer is permitted to use force to facilitate control over a subject.”) I would suggest omitting either one or the other.

3.7.—Number of CEW cycles. “Officers ~~should~~ are only authorized to use the minimum number of cycles possible and necessary to take a suspect into custody or mitigate their assaultive behavior.”

3.10—“Special populations.” I suggest renumbering this to become §3.3 and renumber the rest of the provisions of this section accordingly. This is necessary so that this premise does not appear to be an afterthought, but rather be first and foremost in the minds of officers to whom CEWs are issued. Absent making this premise a priority, we as a state are likely to experience more tragic events involving officers unnecessarily harming vulnerable persons.

4.4.4—Reference to multiple CEW deployments.

“Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.” Describing this expansive use/abuse of CEWs gives a mixed message as it conflicts with other language in the proposed policy . See §§3.7, 3.8. Fifteen seconds stun drive sounds extreme given that the normal stun drive cycle is reportedly 5 seconds in duration. Amend or delete please.

4.7.15. Preservation of evidence. “~~When possible~~, photographs of the CEW probe entry sites.” Preservation of all available evidence should be a clear mandate.

4.8.—Data collection. “... the department shall also collect all download data, etc.” By statute and policy, Vermont law enforcement entities should not be allowed to carry CEWs that do not have a video/audio recording component. In addition, each such CEW shall be checked, found and documented to be in proper working order (including the data download component) at the beginning of each and every shift by every officer carrying same. All deployments of CEWs should be recorded and available for subsequent inspection by proper authorities as the circumstances so warrant.

4.11.5— Reference to multiple CEW deployments.

“An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.” See comment to 4.4.4.

I recommend striking the Key Elements Approach as that merely invites circumvention of the objective of uniformity of approach in this regard. We have already seen such an approach fail with regarding to the Bias Free Policing Policy model. There will be absolutely no meaningful review and assessment of each agency’s compliance with the requirement of adopting an effective and uniform policy on the use of CEWs if individual agencies are authorized to “do their own thing.”

Thank you for allowing me the opportunity to comment. Please keep me advised on further opportunities to influence the LEAB's issuance of its final proposed policy.

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 4:43 PM
To: Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Cc: Cindy Maguire
Subject: FW: comments re LEAB proposed statewide taser policy

From: sandy bettis [<mailto:sandyb@pshift.com>]
Sent: Saturday, November 30, 2013 10:57 AM
To: Cindy Maguire
Subject: comments re LEAB proposed statewide taser policy

Do we really want the police having another lethal weapon????

Sandra Bettis
Middlesex VT

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 4:36 PM
To: 'Mary Alice Bisbee'
Cc: Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Cindy Maguire
Subject: RE: Comments re:LEAB Proposed Statewide Taser Policy

Dear Ms. Bisbee,

Thank you for your comments; I will pass them along to the Board for consideration.

Best,

Cindy Maguire

From: Mary Alice Bisbee [<mailto:mbisbee@myfairpoint.net>]
Sent: Saturday, November 30, 2013 5:02 PM
To: Cindy Maguire
Subject: Comments re:LEAB Proposed Statewide Taser Policy

To: Cindy J. Maguire
Criminal Division Chief
Attorney General's Office

Dear Cindy,

I am pleased to note that the State of Vermont is attempting to adopt a statewide policy on the use of Tasers. However, I am somewhat concerned about some of the conclusions your committee has made regarding its implementation. Apparently, it is going to be "recommended only", and will not have the force of law. There are also some troubling conclusions which I will try to explain from my position as a 76 year old former mental health patient who suffered two psychotic episodes in the early 1970's which have drastically changed my life, my family composition and has provided much pain for me over the years.

I believe that when I was totally out of control, after having no hints of problems prior, that I would have been even more traumatized than I was then, or perhaps dead, if tasered, by being tackled by four orderlies and injected with thorazine and then thrown in a solitary padded cell for a day and a night! This all happened long ago and in a different state, but the memories do persist....

My concerns are, and have always been, how on earth can a normal police officer recognize when a person is in extreme paranoia, otherwise known as FEAR? My concern is that any "normal" person who has become so deranged would be at extreme risk from an added electrical current, of dying or becoming much more impaired. (In my own case, it has more recently been decided that rather than Acute paranoid schizophrenia my dx. was PTSD. One does not have to be in a war to have this happen.)

As to the specific items in your draft, 1.1, pg 2,3, where you differentiate the two modes used; probe mode and drive stun mode. Although I certainly no expert on these two modes, it seems to me that the "drive stun" mode is highly preferable to the "probe" mode, particularly as a first line of attack. Only after a minute or so, when the drive stun appears to not work, should the probe mode be deployed. This whole issue does not appear to be addressed any where else in the draft. Temporary incapacitation may not be needed in most

cases to let the victim/perpetrator know that he/she has been warned in a highly dramatic way that compliance is required. I would assume that this issue has been addressed by your panelists, but it certainly would be welcomed by this commenter, to know "why" you have chosen not to address this concern? Certainly, I would hope that it might be spelled out under the box for Active Resistance/Compliance Techniques where CEW's are mentioned as a tool, but no distinction is made as to what sort of force may be permitted.

Under deployment standards (Definition of CEW), #8, pg 13, I believe strongly that there should be **no aims or hits anywhere from the head down past the genitals, of either sex**, due to the fact that unless one knows an individual's entire medical history, a hit anywhere in between these areas might be potentially lethal. An individual cannot run if their legs have been hit and they are immobilized, particularly if there is no lethal weapon in the hands of the assailant.

Under Special Populations, 1.6.1, page 4, the term "cognitively impaired" is used, but is not defined. Does it include temporarily emotionally or mentally impaired? Or does it mean, as I would assume, only of low intelligence, or as we used to say, "mentally retarded"?

On the whole, it is a well drafted piece, and I applaud the committee for their hard work. I would very much appreciate knowing what the procedure is now prior to finalizing this as legislation? a recommendation? and/or whether there are any further meetings being held to hear from the public.

Thank you for the opportunity to comment.

Sincerely,

Mary Alice Bisbee

3 Prospect Street, Apt. 308

Montpelier, VT 05602

802-223-8140

mbisbee@myfairpoint.net

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 4:47 PM
To: Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Cc: Cindy Maguire
Subject: FW: Comments re: LEAB Proposed Statewide Policy on CEWs (Tasers)
Attachments: CommentsofMorganW.BrownonLEABProposedStatewidePolicyonCEWsTasers.pdf

FYI – I am not sure, this may be a duplicate. Evan, please review against Mr. Brown's later submission.

Thanks

Cindy

From: Morgan W. Brown [<mailto:morganbrown@gmail.com>]
Sent: Saturday, November 30, 2013 5:36 AM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Policy on CEWs (Tasers)

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office

Attachment: Comments re: **LEAB Proposed Statewide Policy on CEWs (Tasers)**

Dear Ms. Maguire,

Thank you for the opportunity to provide comment concerning the Law Enforcement Advisory Board (LEAB) proposed statewide policy on Conducted Electrical Weapons (CEWs: aka Stun Guns, aka Tasers).

It is respectfully requested the attached comments of mine on the LEAB proposed statewide policy on CEWs (aka Tasers) **not** be summarized or condensed and that, instead, these comments be passed onto members of the Law Enforcement Advisory Board (LEAB), and whomever else it might concern, as is (i.e., without any modifications whatsoever).

For the sake of attempting to save time, space and paper, I have included only those portions drawn from the proposed policy, including the introductory segment (as well as, additionally, the key components found within the second

and related document), about which my comments specifically address and none other at this time.

The absence of comments concerning other portions of the proposed policy should **not** be either perceived or construed as a sign or position of neutrality, ambivalence or approval.

It is possible that, upon further study and reflection, additional comments could be submitted regarding other segments of the proposed policy prior to the comment deadline.

In addition, thank you in advance for any deliberation that might be given to these comments as well as recommendations of mine.

Respectfully submitted,

Morgan W. Brown
Montpelier
Saturday, November 30, 2013

Email: morganbrown@gmail.com

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

It is respectfully requested the below comments of mine on the proposed policy **not** be summarized or condensed and that, instead, these comments be passed onto members of the Law Enforcement Advisory Board (LEAB), and whomever else it might concern, as is (i.e., without any modifications whatsoever). For the sake of attempting to save time, space and paper, I have included only those portions drawn from the proposed policy, including the introductory segment, about which my comments specifically address and none other. The absence of comments concerning other portions of the proposed policy should **not** be either perceived or construed as a sign or position of neutrality, ambivalence or approval. It is possible that, upon further study and reflection, additional comments could be submitted regarding other segments of the proposed policy prior to the comment deadline.

Morgan W. Brown: morganbrown@gmail.com
Montpelier

Comments of mine have been inserted following certain indented and **highlighted portions** of the LEAB proposed policy (excerpted):

INTRODUCTION AND PURPOSE

The purpose of this policy is to **encourage** uniform, **state-wide** training and policies governing law enforcement agencies' use of Conducted Electrical Weapons ("CEWs").

Rather than using the term encourage, it is recommended that the word *establish* be used instead.

If the LEAB is not seeking to actually *establish* uniform, *statewide* trainings and policies governing the use of Conducted Electrical Weapons (CEWs: aka stun guns, aka Tasers) by law enforcement agencies across the state, then one wonders why the board has even bothered to draft such a proposal. Using the term encourage is not only confusing, but could easily serve the role of code language for law enforcement agencies to simply ignore the recommended policy. This could result from certain assumptions and perceptions made about how the proposed policy could merely be serving as political cover of a sort for the LEAB and the Attorney General's office, as well as the law enforcement community within the state at large, and not much else. If the LEAB is truly serious about its work and efforts in these regards, it will seek to utilize language that would indeed encourage law enforcement agencies and others to take the policy seriously than otherwise could be the

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

case. Unless I am mistaken, there is no hyphen needed between the words state and wide.

[...] In addition, the frequency with which law enforcement agencies must work together and community concern over the potential dangers of CEWs support the need for a consistent and safe approach to the use of CEWs as **less-lethal** law enforcement tools.

Although the remainder of the above sentence makes a valid point, and while it might be perceived that CEWs are relatively “less-lethal” than certain other deadly weapons have proven to be; the problem inherent with adopting marketing language or slogans promoted by any manufacturer of CEWs is that it reinforces the already existing perception that these lethal weapons are safe or safer than other lethal weapons. Indeed, this could be playing a part in the reasons behind why these type of devices can sometimes be too heavily relied upon as well as, then, overused and even misused by law enforcement officers; thus, in certain cases, resulting in either serious bodily injuries or even death.

It should be considered as well as recognized about how, although certain other lethal weapons can indeed be deadly when employed as well, the fact remains it is not always the case that seriously bodily injury or death can only result when CEWs are not properly used, but also can happen when these devices are overly relied upon and used due to the perception that they are safe or safer and, as a result, other viable options and alternatives are not carefully considered, weighed and utilized instead.

The sentence should be able to stand on its own without employing manufacturer marketing language used to market and sell the product within recommended state policy on CEWs.

Therefore it is highly recommended that the updated manufacturer marketing language “less-lethal” be dropped altogether and, other than possibly considering the use of the words *potentially lethal* instead, not be replaced by substitute language (including given that previous CEWs manufacturer marketing language had included the terms “nonlethal” and, later, “less-than-lethal”).

This is also recommended wherever the marketing term is employed elsewhere within the proposed policy as well.

[...] Although this policy contains provisions and **principals** that may apply to several different types of force, it focuses on CEWs and does not specifically address all other lawful types of force law enforcement officers may use in a given situation. [...]

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

Replace the word “principals” with the word *principles*.

POLICY

1. **Definitions.**

1.1. Conducted Electrical Weapon (“CEW”): A **less-lethal** law enforcement device that delivers an electrical pulse to the body of a subject in either a “drive stun” or “probe” mode. [...]

Refer to my comments above concerning the subject about part of why it is ill-advised to adopt and use CEW manufacturer marketing language “less-lethal” as well as related matters and the problems that can arise by doing so. As stated above, the same recommendation goes for any usage of the term elsewhere within the draft policy.

1.2. Imminent: Impending or about to occur. Imminent does not mean immediate or instantaneous, but that an action is impending. Thus, a subject may pose an imminent danger even if (s)he is not at that very moment pointing a weapon at another person. For example, imminent danger may exist if an officer **has reason to believe** any of the following:

Recommend replacing the words “has reason to believe” with the word *observes*.

1.2.3. A subject with the capability **to** inflicting bodily injury, serious bodily injury, or death is demonstrating an intention to do so.

Recommend replacing the word “to” with the word *of* ; either that or replace the word “inflicting” with the word *inflict*.

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

3. CEW Use and Deployment Procedures.

3.1. Only officers who complete training on the use of CEWs and on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.

Recommend the consideration and adoption of clarifying language along the following lines:

3.1 Only law enforcement officers whose training on the use of CEWs and on interacting with individuals experiencing a mental health or other type of crisis is both complete as well as up-to-date with current statewide training and practice in these regards, as recommended by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.

3.6. An officer should **attempt to** avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.

Recommend omitting the words "attempt to" and not replacing these with any substitute language either.

3.10. Officers having reason to believe they are dealing with a member of a special population **shall give special consideration to deploying an CEW.**

The highlighted portion of the sentence as worded is somewhat vague as well as rather confusing and, as such, could potentially lead to confusion and also unintended consequences. Recommend that clarifying language along the following lines be used to replace the current wording, after the words "special population": i.e.,

... shall provide as well as exercise special consideration prior to opting to deploy a CEW.

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

4. **Post Deployment Procedure.**

4.7. With the exception of the required spark test and accidental discharges, each time an CEW is deployed and/or displayed **for compliance purposes** it shall be documented in a use of force report within 24 hours of the deployment unless otherwise authorized by a supervisor. [...]:

The use of the words “for compliance purposes” could lead to confusion and should be omitted. Recommend clarifying language along the following lines after the words “accidental discharges”: i.e.,

... each display and/or deployment of a CEW shall be documented in a use of force report within 24 hours of the display and/or deployment unless otherwise authorized by a supervisor.

5. **Training Requirements.**

5.1. Training for officers authorized to carry CEWs shall be conducted annually.

Recommend inserting the words *and certified* between the words “conducted” and “annually.”

5.3. Training shall emphasize that CEWs **may be less-lethal**, but not non or less-than lethal.

Once again, it should be considered ill-advised to officially adopt and use what amounts to manufacturer marketing language within recommended statewide policy, particularly as the marketing language has evolved over time as additional serious bodily injury and deaths have continued to occur after use of these weapons. In fact, if I have understood correctly, even Attorney General Bill Sorrell is on record in saying about how CEWs are potentially deadly or lethal weapons, much like with most other weapons or use of force tactics and so on . Recommend either striking 5.3. altogether or replacing it along the following lines:

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

5.3. Training shall emphasize that CEWs are potentially lethal weapons, not non-lethal or less-than-lethal.

5.4. Training shall also incorporate, at a minimum:

5.4.10. Instruction on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council.

Recommend inserting the words **or other type of between the words “mental health” and “crisis, ...”.**

5.5. Departments should also evaluate the value of requiring or allowing officers to feel the effects of a CEW as part of training. If an officer decides to feel these effects, the training shall include an explanation of the potential differences between that officer’s experience and the experience of a subject in the field.

Since there have been documented cases, including ones brought and some of those later settled out of court, in which law enforcement officers have been injured after undergoing a hit by a CEW within a controlled environment as part of CEW training (e.g., Taser Settled 10 of 52 Cases It Said Was Dismissed; via Bloomberg; circa 2007; [here](#)), language along the lines of the following is highly recommended: i.e.,

5.6. Departments requiring or allowing its officers to undergo a hit from a CEW shall, beforehand, provide a thorough explanation of the potential injuries an officer could incur as a result of being hit by a CEW deployment even within a controlled training environment. Included within the presentation on the subject, officers will be provided with detailed information about injuries other law enforcement officers have encountered afterwards when CEW deployment was included during law enforcement CEW training exercises.

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

**LEAB's Key Components of Use of Conducted Electrical Weapon
Policies**

Definition of CEW

1. CEWs should be identified as **less-lethal**, as opposed to less-than-lethal.

*As previously stated, recommend replacing the marketing term "less-lethal" with the words ***potentially lethal***; as well as inserting the words ***or non-lethal*** after the term "less-than-lethal".*

Deployment Standards

8. Officers should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.

Recommend omitting the words "attempt to" and not replacing these with any substitute language either.

9. CEWs shall not be used in a punitive or coercive manner and shall not be used to awaken, escort, or gain compliance from passively **resistance** subjects. The act of fleeing or destroying evidence, in and of itself, does not justify the use of CEWs.

*Replace the word "resistance" with the word ***resistant***.*

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

Post Deployment Procedures

12. Officers should complete a use of force after deploying a CEW or displaying a CEW **for compliance purposes.**

The use of the words “for compliance purposes” could lead to confusion and should be omitted.

Training Standards

15. Training for officers authorized to carry a CEW shall be conducted annually.
 1. Departments should also evaluate the value of requiring or allowing officers to feel the effects of a CEW as part of training. If an officer decides to feel these effects, the training shall include an explanation of the potential differences between that officer's experience and the experience of a subject in the field.

Once again, ...

Since there have been documented cases, including ones brought and some of those later settled out of court, in which law enforcement officers have been injured after undergoing a hit by a CEW within a controlled environment as part of CEW training (e.g., Taser Settled 10 of 52 Cases It Said Was Dismissed; via Bloomberg; circa 2007; [here](#)), language along the lines of the following is highly recommended: i.e.,

2. Departments requiring or allowing its officers to undergo a hit from a CEW shall, beforehand, provide a thorough explanation of the potential injuries an officer could incur as a result of being hit by a CEW deployment even within a controlled training environment. Included within the presentation on the subject, officers will be provided with detailed information about injuries other law enforcement officers have encountered afterwards when CEW deployment was included during law enforcement CEW training

Comments of Morgan W. Brown
on LEAB Proposed Statewide Policy on CEWs (Tasers)

exercises.

Thank you for the opportunity to provide comment concerning the Law Enforcement Advisory Board (LEAB) proposed statewide policy on Conducted Electrical Weapons (CEWs: aka Stun Guns, aka Tasers).

In addition, thank you in advance for any deliberation that might be given to these comments as well as recommendations of mine.

Respectfully submitted,

Morgan W. Brown
Montpelier
Saturday, November 30, 2013

Email: morganbrown@gmail.com

Evan Meenan

From: Morgan W. Brown <morganbrown@gmail.com>
Sent: Monday, December 02, 2013 4:43 PM
To: Cindy Maguire
Cc: Richard Gauthier - LEAB Chair; Evan Meenan; Paco.Aumand@state.vt.us
Subject: RE: Supplemental Comments re: LEAB Proposed Statewide Policy on CEWs (Tasers)

You're welcome, Cindy. Thank you.

Morgan

On Dec 2, 2013 4:34 PM, "Cindy Maguire" <cmaguire@atg.state.vt.us> wrote:

Dear Mr. Brown,

Thank you for your comments. I will provide them in full to the Board.

Best,

Cindy Maguire

From: Morgan W. Brown [<mailto:morganbrown@gmail.com>]
Sent: Sunday, December 01, 2013 6:20 PM
To: Cindy Maguire
Subject: Supplemental Comments re: LEAB Proposed Statewide Policy on CEWs (Tasers)

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office

Attachment: Supplemental Comments re: LEAB
Proposed Statewide Policy on CEWs (Tasers)

Dear Ms. Maguire,

Attached are supplemental comments of mine on the LEAB proposed statewide policy on CEWs (aka Tasers), submitted with the same conditions and understanding respectfully requested within my initial submission of comments.

As for the attachment providing my initial submission of comments, please refer to my earlier email (dated: Saturday, November 30, 2013).

Thank you in advance for any deliberation that might be given to these supplemental comments as well as recommendations of mine.

Respectfully submitted,

Morgan W. Brown
Montpelier

Sunday, December 1, 2013

Email: morganbrown@gmail.com

On Sat, Nov 30, 2013 at 5:36 AM, Morgan W. Brown <morganbrown@gmail.com> wrote:

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office

Attachment: Comments re: **LEAB Proposed Statewide Policy on CEWs (Tasers)**

Dear Ms. Maguire,

Thank you for the opportunity to provide comment concerning the Law Enforcement Advisory Board (LEAB) proposed statewide policy on Conducted Electrical Weapons (CEWs: aka Stun Guns, aka Tasers).

It is respectfully requested the attached comments of mine on the LEAB proposed statewide policy on CEWs (aka Tasers) **not** be summarized or condensed and that, instead, these comments be passed onto members of the Law Enforcement Advisory Board (LEAB), and whomever else it might concern, as is (i.e., without any modifications whatsoever).

For the sake of attempting to save time, space and paper, I have included only those portions drawn from the proposed policy, including the introductory segment (as well as, additionally, the key components found within the second and related document), about which my comments specifically address and none other at this time.

The absence of comments concerning other portions of the proposed policy should **not** be either perceived or construed as a sign or position of neutrality, ambivalence or approval.

It is possible that, upon further study and reflection, additional comments could be submitted regarding other segments of the proposed policy prior to the comment deadline.

In addition, thank you in advance for any deliberation that might be given to these comments as well as recommendations of mine.

Respectfully submitted,

Morgan W. Brown
Montpelier
Saturday, November 30, 2013

Email: morganbrown@gmail.com

Supplemental Comments of Morgan W. Brown
on **LEAB Proposed Statewide Policy on CEWs (Tasers)**

As was the case within my initial submission of comments (dated: Saturday, November 30, 2013), it is once again respectfully requested that the below comments of mine on the proposed policy **not** be summarized or condensed and that, instead, these comments be passed onto members of the Law Enforcement Advisory Board (LEAB), and whomever else it might concern, as is (i.e., without any modifications whatsoever). For the sake of attempting to save time, space and paper, I have included only those portions drawn from the proposed policy as well as the related document about which my comments specifically address and none other. The absence of comments concerning other portions of the proposed policy should **not** be either perceived or construed as a sign or position of neutrality, ambivalence or approval. It is possible that, upon further study and reflection, additional supplemental comments could be submitted regarding other segments of the proposed policy prior to the comment deadline.

Morgan W. Brown (morganbrown@gmail.com); Montpelier

Comments of mine have been inserted following certain indented and **highlighted** portions of the LEAB proposed policy (excerpted):

POLICY

1. **Definitions.**

1.6. Special populations: Members of special populations include subjects an officer has reason to believe are:

1.6.1. Cognitively impaired such that they are unable to comply with an officer's instructions.

and, in reference made within the second to last paragraph of my below comments on the above subject matter:

1.7. Special consideration: A consideration of: (i) the potential additional risk of harm posed by deploying a CEW against a member of a special population; and (ii) whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population while still preserving the safety of that person, third parties, and the responding officer(s).

Supplemental Comments of Morgan W. Brown
on **LEAB Proposed Statewide Policy on CEWs (Tasers)**

Recommend omitting the word “Cognitively” (under 1.6.1) and not replacing it with substitute language whatsoever, so that the sentence reads: i.e.,

1.6.1. Impaired such that they are unable to comply with an officer’s instructions.

In this way, it would not only apply to persons falling within the category of “special populations” as currently defined within the proposal (i.e., 1.6), but would also apply more broadly to anyone else who might be observed and perceived or deemed as being “impaired” as well.

The fact is, there are several different medical conditions and illnesses, plausible reasons and causes as well as possible circumstances for why someone could be perceived as or actually be experiencing and exhibiting an impairment that might impede their acting in compliance with the instructions of a law enforcement officer.

Given about how, more than likely, a law enforcement officer might not necessarily be trained either at all or well enough in order to be able to determine on their own the potential reasons or causes behind a person’s perceived or actual impairment, and whether a person falls within the category of a special population or not; an impairment that might be causing someone to not comply with an officer’s instructions could be a sign of a medical condition or illness of one sort or another, underlying or otherwise, that could put them at increased risk of serious bodily injury or death if CEWs were deployed and used on them.

Therefore, rather than employing the use of CEWs merely for the act of noncompliance, it is advisable that special consideration -- as defined under 1.7 -- should be provided and exercised when interacting with anyone who appears to be experiencing and exhibiting an impairment that could be preventing them from complying with an officer’s instructions.

The same should go for the segment along these same lines listed under “LEAB’s Key Components of Use of Conducted Electrical Weapon Policies” as well.

Thank you in advance for any deliberation that might be given to these supplemental comments as well as recommendations of mine.

Respectfully submitted,

Morgan W. Brown; Montpelier; Sunday, December 1, 2013;
Email: morganbrown@gmail.com

Evan Meenan

From: Cindy Maguire
Sent: Wednesday, December 04, 2013 8:32 AM
To: 'Morgan W. Brown'
Cc: Richard Gauthier - LEAB Chair; Evan Meenan; Paco.Aumand@state.vt.us; Cindy Maguire
Subject: RE: VT EMS Statewide Protocols - Final 10/8/2013 Version: Tasers (CEW) Probe Removal & Assessment

Thank you Morgan. We will include this information in the comments provided to the Board.

Best,

Cindy Maguire

From: Morgan W. Brown [<mailto:morganbrown@gmail.com>]
Sent: Wednesday, December 04, 2013 12:46 AM
To: Cindy Maguire
Cc: Richard Gauthier - LEAB Chair; Evan Meenan; Paco.Aumand@state.vt.us
Subject: VT EMS Statewide Protocols - Final 10/8/2013 Version: Tasers (CEW) Probe Removal & Assessment

Cindy, et al:

In case it is not already available as well as part of the record, fyi:

Page 111, pertaining to Taser (CEW) Probe Removal and Assessment of the Vermont EMS Statewide Protocols is offered and submitted purely as a point of information and reference when considering what is currently proposed along these lines within the LEAB Proposed Statewide Policy on CEWs (Tasers):

2013 Protocol Education:
<http://healthvermont.gov/hc/ems/2013ProtocolEducation.aspx>

Vermont EMS Statewide Protocols - Final October 8, 2013 Version:
http://healthvermont.gov/hc/ems/documents/FinalProtocolsfor2013Oct81600LOCKED_002.pdf

Page 111: Tasers (CEW) Probe Removal and Assessment (screenshot):

Taser (Conducted Electrical Weapon) Probe Removal and Assessment 6.5

State and local law enforcement may use a conducted electrical weapon (CEW), also called a Taser. This device is a tool that can be deployed in either a drive stun (sensory nervous system) or dart (sensory & motor nervous systems that causes neuro-muscular incapacitation) mode. In the dart mode, two probes with attached wires are discharged from the CEW. The probes are #8 straightened fish hooks that penetrate the suspect's skin a maximum of 1/4 inch. Each trigger puff discharges an electric charge for a 5-second cycle. The electric charge is high voltage (generally 12,000 volts) and low amperes (generally 0.0036 amp). Current medical literature does not support routine medical evaluation for an individual after a CEW application. In most circumstances probes can be removed by law enforcement without further EMS or other medical intervention.

EMT/ADVANCED EMT/PARAMEDIC STANDING ORDERS

EMS should be activated and transport the patient following CEW (conducted electrical weapon) application (i.e., Taser™) in the following circumstances:

- The probe is embedded in the eye, genitals, or bone.
- Seizure is witnessed after CEW application.
- There is excessive bleeding from probe site after probe removal.
- Cardiac arrest, complaints of chest pain, palpitations.
- Respiratory distress.
- Altered mental status.
- Pregnancy.
- Developmental or physical disability and unable to assess the above.

INDICATIONS FOR REMOVAL

- Patient with uncomplicated conducted electrical weapon probes embedded subcutaneously in non-vulnerable areas of skin.

CONTRAINDICATIONS TO REMOVAL

- Patients with probe penetration in vulnerable areas of the body as mentioned below should be transported for further evaluation and probe removal.
- Genitalia, female breast, or skin above level of clavicles.
- Suspicion that probe might be embedded in bone, blood vessel, or other sensitive structure.
- Any condition listed above that requires transport to the emergency department.

PROCEDURE

1. Ensure wires are disconnected from weapon.
2. Stabilize skin around probe using non-dominant hand.
3. Grasp probe by metal body using dominant hand.
4. Remove probe by pulling straight out in a single quick motion.
5. Insure that the probes and barbs are intact.
6. Removed probes should be handled and disposed of like contaminated sharps in a designated sharps container, unless requested as evidence by police.
7. Cleanse wound and apply dressing.
8. If last tetanus immunization was greater than 5 years, advise the patient that they may need one.
9. Obtain a refusal of care for patients refusing transport.

E/A/P

Medical Procedure 6.5

Vermont EMS has taken extreme caution to ensure all information is accurate and in accordance with professional standards in effect at the time of publication. These protocols, policies, or procedures MAY NOT BE altered or modified. 2013

Evan Meenan

From: Cindy Maguire
Sent: Friday, November 15, 2013 6:22 PM
To: 'Schirling, Michael E.'; Sullivan, Matthew O.
Cc: Bloom, Drew (Drew.Bloom@state.vt.us); Evan Meenan; Cindy Maguire
Subject: RE: LEAB Proposed Statewide Policy on CEWs (tasers)

Hi Mike -

I am going to start with asking Matt, Drew and Evan to conference early next week. They may be able to talk through it and make a recommendation. Evan will set it up.

Thanks
Cindy

-----Original Message-----

From: Schirling, Michael E. [mailto:mschirling@bpdvt.org]
Sent: Friday, November 15, 2013 8:24 AM
To: Sullivan, Matthew O.
Cc: Cindy Maguire; Schirling, Michael E.
Subject: Re: LEAB Proposed Statewide Policy on CEWs (tasers)

Thanks, Matt

I concur with the suggestions.

Cindy – Can you advise whether there is / what the process would now be to make the 2-3 changes that Matt is suggesting?

Thanks much

From: <Sullivan>, "Matthew O." <msullivan@bpdvt.org<mailto:msullivan@bpdvt.org>>
Date: Friday, November 15, 2013 2:08 AM
To: Michael Schirling <mschirling@bpdvt.org<mailto:mschirling@bpdvt.org>>
Cc: Cindy Maguire <CMaguire@atg.state.vt.us<mailto:CMaguire@atg.state.vt.us>>
Subject: RE: LEAB Proposed Statewide Policy on CEWs (tasers)

Chief,

I have sent many lengthy responses to this policy to Cindy Maguire and Drew Bloom as well as others. It seems pretty good although I still have some concerns especially in the "Compliance techniques" section that is across from the "active resistance" section. Active resistance is still described as not posing risk of injury to the subject or the officers or third parties. I do not believe this is an accurate description of active resistance although one could describe it as a lesser category of active resistance where there is almost no force used by the suspect during resistance.

Then in the "compliance techniques" section the way it is written still implies the officer needs to attempt a control hold and have this fail prior to using a CEW. I think this could be fixed by changing the second "another" to "a" as "another" implies the officer has already attempted a control hold once.

This concern seems mitigated to some extent by section 3.4.1.1 where the section speaks to "attempting another control technique" coupled with increased risk of injury to officer or subject due to the attempt. I feel the language in the "compliance techniques" section will still be interpreted as necessitating officers to attempt a control hold prior to using a CEW while section 3.4.1.1 appears to indicate this is not the case if there is a perceived increased risk of injury in attempting another control technique.

I believe this could easily be cleaned up by changing the "another" to an "a" the second time "another" is used in the "compliance techniques" section. The way it is written now still leaves it open to interpretation.

Additionally the minimum requirements of the use of force report section 4.7.6 states within 24 hours an officer must complete the report including the number of cycles, the duration of each cycle, and the duration inbetween cycles. This appears in conflict with section 4.8 that states downloads should be completed as soon as practical. We have seen that officer often times will not know for sure how many cycles they administered, the duration or the time inbetween cycles due to the stress of the event. We also know, at least with our agency only one or two people have access to downloading the devices. So is the standard "as soon as practical" or "within 24 hours"?

These are the areas where I still have concern.

Matt

From: Schirling, Michael E.
Sent: Thursday, November 14, 2013 3:31 PM
To: Sullivan, Matthew O.
Subject: FW: LEAB Proposed Statewide Policy on CEWs (tasers)
Importance: High

Matt,

Please advise IF you have any concerns.

Thanks

From: Cindy Maguire <CMaguire@atg.state.vt.us<mailto:CMaguire@atg.state.vt.us>>
Date: Thursday, November 14, 2013 3:57 PM
To: "Sullivan, Matthew O." <msullivan@bpdvt.org<mailto:msullivan@bpdvt.org>>, Michael Schirling <mschirling@bpdvt.org<mailto:mschirling@bpdvt.org>>, "Bovat, Bruce D." <bbovat@bpdvt.org<mailto:bbovat@bpdvt.org>>
Cc: Cindy Maguire <CMaguire@atg.state.vt.us<mailto:CMaguire@atg.state.vt.us>>
Subject: LEAB Proposed Statewide Policy on CEWs (tasers)

Greetings Gentlemen –

The latest draft of the LEAB CEW Policy is attached, along with a document entitled Key Components. These documents have been disseminated to other interested parties for additional input/comment. See below for the distribution list and the time frame that we are working from. Please feel free to contact me with any questions.

Best,

Cindy J. Maguire

From: Cindy Maguire

Sent: Wednesday, November 13, 2013 4:06 PM

To: 'Allen Gilbert' (agilbert@aclvt.org<mailto:agilbert@aclvt.org>);

'Ed@DisabilityRightsVT.org<mailto:Ed@DisabilityRightsVT.org>>'

(Ed@DisabilityRightsVT.org<mailto:Ed@DisabilityRightsVT.org>);

aj@disabilityrightsvt.org<mailto:aj@disabilityrightsvt.org>; ANITKA@leg.state.vt.us<mailto:ANITKA@leg.state.vt.us>;
Ed@DisabilityRightsVT.org<mailto:Ed@DisabilityRightsVT.org>;
wlippert@leg.state.vt.us<mailto:wlippert@leg.state.vt.us>; 'Bill Lippert'
(billlippert@gmavt.net<mailto:billlippert@gmavt.net>); alice.nitka@gmail.com<mailto:alice.nitka@gmail.com>;
'Jonathan Williams'

Cc: Cindy Maguire; Gauthier, Richard

Subject: LEAB Proposed Statewide Policy on CEWs (tasers)

Importance: High

Greetings,

In June, Attorney General Sorrell requested the Law Enforcement Advisory Board (LEAB) to consider drafting a statewide policy for law enforcement on the use of tasers. Specifically, the Attorney General asked that a policy be drafted to address: (a) minimum training standards; (b) standards for deployment; and (c) reporting and accountability. The LEAB empanelled a subcommittee to review current policies and to draft a statewide policy. The attached draft is the result of the subcommittee's work, with input from law enforcement personnel, use of force instructors, and the LEAB. Also attached is a second document that outlines the key components that should be included in any taser policy.

As a next step in vetting this proposal, the LEAB is requesting input from other interested parties. Please review the attachments and send comments to me at the above email address by December 4, 2013. The LEAB will convene next on December 23, 2013 and is expected to take action on this proposal at that time.

Thank you,

Cindy J. Maguire

Criminal Division Chief

Attorney General's Office

802 828 5514

Evan Meenan

From: Cindy Maguire
Sent: Thursday, December 05, 2013 9:33 AM
To: 'JEFFERSON CARR'
Cc: Gauthier, Richard; Aumand, Paco (Paco.Aumand@state.vt.us); Evan Meenan; Cindy Maguire
Subject: RE: "Comments re: LEAB Proposed Statewide CEW Policy"

Dear Mr. Carr,

Thank you for your comments; I will pass them along to the Board for consideration.

Best,

Cindy Maguire

From: JEFFERSON CARR [mailto:jeff@vermontlanterns.com]
Sent: Wednesday, December 04, 2013 3:58 PM
To: Cindy Maguire
Cc: tebrown@vtdigger.org; neal.goswami@timesargus.com
Subject: "Comments re: LEAB Proposed Statewide CEW Policy"

Dear Assistant Attorney General Maguire,

Thank you for the opportunity to allow the public to comment on the proposed CEW policy by the Law Enforcement Advisory Board.

I think that Vermont has a wonderful opportunity to establish not just state but national standards relative to these controversial weapons.

I hope that you take the comments below in the same spirit they are given, with objective concern for safety and accountability for all.

Respectfully,

Jefferson Carr
54 Pleasant St.
Rutland, Vt 05701

"Comments re: LEAB Proposed Statewide CEW Policy"

The Law Enforcement Advisory Board's (LEAB's) Proposed Statewide Conducted Energy Weapon (CEW) Policy fails to address several key issues and, as a result, inadvertently exposes officers and the public alike to unnecessary risks associated with these weapons.

1. Paragraph 3.2 of the proposed policy states, "Only properly functioning CEWs shall be carried for use," yet the only provision to determine whether these potentially deadly weapons are "properly functioning" is a simple "spark test." <https://docs.google.com/document/d/1dNE4BQRSE6cizukeQj9AZ1D9uJz34zRX-WdCjrItGhY/edit?pli=1> A "spark test" does nothing more than demonstrate the presence of a power source (battery) and operable open circuit, hence the "spark" being discharged from the weapon. A "spark test" is an inadequate and unscientific method to determine whether a CEW is "properly functioning" and discharging the electrical current it is designed to produce.

2. The policy lacks a crucial requirement that must be met before a CEW is deployed – the testing of the electrical current discharged by the weapon as well as the characterization of the discharge. The measurement of CEWs is critical given that manufacturers, the federal government, independent researchers, and laboratories have all acknowledged that the electrical characteristics of these weapons can vary due to many different factors beyond an officer's control. Variations in the electrical discharge of CEWs can lead to tragic consequences. For example, a CEW not "properly functioning" can put an officer or a subject at greater risk, especially given that manufacturers have acknowledged that CEWs can capture cardiac function. Yet the electrical current discharged from these weapons is not measured by law enforcement upon initial receipt prior to being put into service, being returned from repair, or even after weapon failures.

3. The proposed policy fails to consider best practices and the latest research related to CEWs. When the Royal Canadian Mounted Police (RCMP) measured their CEWs in 2008 after a high-profile death, they found 80 per cent of their weapons were out of specification. <http://www2.canada.com/vancouver/news/story.html?id=4b1a12f2-17f4-4a20-b6d9-c3e9a7d71c36> As a result, measurement of CEWs in Canada is now mandatory. In fact, variability and measurement were important enough factors that the National Institute of Standards & Technology (NIST) Law Enforcement Standards Office (OLEs) developed a standardized measurement protocol for all CEWs. <http://www.gsnmagazine.com/node/22164> The NIST protocol is currently under review by the International Electrotechnical Commission (IEC). http://www.iec.ch/dyn/www/f?p=103:14:0:::FSP_ORG_ID,FSP_LANG_ID:8974,25 The IEC PT 62792: Measurement Methods for Electroshock Weapons (ESWs) is applicable to all ESWs/CEWs and is the first international standard proposed for CEW technologies.

And NIST and the IEC are not the only organizations that have recognized the need for measuring CEW output. The Council of Canadian Academies, an extremely well respected body of academic, medical and engineering professionals, stated in the latest independent report on CEWs that "The body's response to CEWs depends on the electrical characteristics of the weapons as well as how it is used." <http://www.scienceadvice.ca/en/assessments/completed/cew.aspx> The Hamilton County Association of Chiefs of Police (Cincinnati, Ohio) also stated in their report on CEWs that "Making sure the CEW is functioning properly is critical to the safety of both the officer and the offender." <http://www.gbfirm.com/656/> Both of these studies were conducted following cases in which deaths occurred after CEW deployments. Both of these organizations have called for the regular measurement of all CEWs.

The LEAB should also recognize that it is critical that manufacturers be required to disclose the electrical specifications and measurement protocol of CEWs that can allow Vermont law

enforcement agencies to measure the electrical characteristics of the weapons their officers deploy. The failure of CEW manufacturers to disclose the electrical specifications and a measurement protocol not only prevents law enforcement agencies from conducting their own independent safety assessments of these weapons but also prevent agencies from measuring them for conformity as well. The withholding of the electrical specifications and the measurement protocol has put law enforcement in the difficult position of not knowing what specifications to measure CEW output against. This lack of transparency on the part of manufacturers has, fortunately, now been addressed through the development by independent agencies of acceptable measurement protocols as noted above. The LEAB should include in its proposed policy a requirement that purchase and use of any CEW by a Vermont law enforcement agency be contingent on disclosure by the manufacturer of measurement protocols and discharge specifications. Failure to do so will not engender public support for these controversial weapons or the policies that support them. Additionally, new technologies have been developed that can quickly, safely, effectively and economically allow law enforcement agencies to measure CEWs. <http://www.aegisaxeos.com/aegis-axeos-video/>

4. Another important concern not addressed by the proposed policy is weapon failures. Failures while deploying CEWs is a reality, and there is valuable information related to these failures that can be collected, analyzed, recorded, and reported. The determination of whether a CEW failure was electrical, mechanical, or operator-related is critical to the identification of trends and development of more effective tactics, techniques, policies, and practices. The proposed policy should include a requirement that law enforcement agencies collect this information and forward it to an office within the state's Department of Public Safety for analysis and review. This approach increases safety and effectiveness while decreasing the risks and liabilities to both officers and the public.

5. The proposed policy does not address the procedures for the handling and measurement of CEWs when deployed and death results. CEWs used in a fatal shooting are no different than firearms used in a fatal shooting. These CEWs must be considered physical evidence and subject to forensic examination, including the measurement of the electrical current discharged according to an independently developed and recognized measurement protocol such as that introduced by the NIST. And if it is important enough to measure a CEW after a death, shouldn't it also be measured before the death to establish baseline performance data particular to that weapon?

6. Some claim these weapons are safe and others claim they are dangerous. Without independent measurement of the electrical current and characteristics of CEWs, no one really knows for sure. The time has come to acknowledge that each and every CEW in service should be regularly and scientifically measured, the results analyzed and then recorded. The measurement of CEWs will increase transparency and accountability, minimizing risks, and provide law enforcement officers and the public with increased confidence in these weapons. If radar guns, breathalyzers, and AEDs are required by laws and policies to be regularly measured, then CEWs should be as well.

Evan Meenan

From: Cindy Maguire
Sent: Tuesday, November 26, 2013 1:30 PM
To: Evan Meenan; John Treadwell
Subject: FW: LEAB Proposed Statewide Policy on CEWs (tasers)
Attachments: Taser standard comment ltr 11 26 13.pdf

From: AJ Ruben [<mailto:aj@disabilityrightsvt.org>]
Sent: Tuesday, November 26, 2013 1:30 PM
To: Cindy Maguire; agilbert@acluvt.org; ANITKA@leg.state.vt.us; Ed@DisabilityRightsVT.org; wlippert@leg.state.vt.us; billlippert@gmavt.net; alice.nitka@gmail.com; 'Jonathan Williams'
Cc: 'Gauthier, Richard'
Subject: RE: LEAB Proposed Statewide Policy on CEWs (tasers)

Hello Cindy and all,

Attached please find DRVT comments on the CEW policy draft. Please acknowledge receipt of it and let us know if DRVT can provide additional information or input at the upcoming LEAB meeting regarding this topic. Thank you for your consideration of these comments.

Peace, aj

A.J. Ruben
Supervising Attorney
Disability Rights Vermont
141 Main Street, Suite 7
Montpelier, VT 05602
802-229-1355
fax:802-229-1359

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From: Cindy Maguire [<mailto:cmaguire@atg.state.vt.us>]
Sent: Wednesday, November 13, 2013 4:06 PM
To: agilbert@acluvt.org; Ed@DisabilityRightsVT.org; aj@disabilityrightsvt.org; ANITKA@leg.state.vt.us; Ed@DisabilityRightsVT.org; wlippert@leg.state.vt.us; billlippert@gmavt.net; alice.nitka@gmail.com; Jonathan Williams
Cc: Cindy Maguire; Gauthier, Richard
Subject: LEAB Proposed Statewide Policy on CEWs (tasers)
Importance: High

Greetings,

In June, Attorney General Sorrell requested the Law Enforcement Advisory Board (LEAB) to consider drafting a statewide policy for law enforcement on the use of tasers. Specifically, the Attorney General asked that a policy be drafted to

address: (a) minimum training standards; (b) standards for deployment; and (c) reporting and accountability. The LEAB empanelled a subcommittee to review current policies and to draft a statewide policy. The attached draft is the result of the subcommittee's work, with input from law enforcement personnel, use of force instructors, and the LEAB. Also attached is a second document that outlines the key components that should be included in any taser policy.

As a next step in vetting this proposal, the LEAB is requesting input from other interested parties. Please review the attachments and send comments to me at the above email address by **December 4, 2013**. The LEAB will convene next on December 23, 2013 and is expected to take action on this proposal at that time.

Thank you,

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office
802 828 5514



formerly Vermont Protection & Advocacy
(800) 834-7890 (Toll Free)
(802) 229-1355 (Voice)
(802) 229-2603 (TTY)
(802) 229-1359 (Fax)

141 Main Street, Suite # 7, Montpelier, VT 05602

November 26, 2013

Via Email

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office
109 State Street
Montpelier, VT 05601
cmaguire@atg.state.vt.us

Re: LEAB Proposed Statewide Taser Policy

Dear Attorney Maguire,

On behalf of DRVT, the federally authorized protection and advocacy system in Vermont pursuant to (inter alia) 42 U.S.C. 10801 et seq. and the Vermont Mental Health Care Ombudsman, pursuant to 18 V.S.A. § 7259, I wish to express our appreciation for the efforts the Attorney General's Office and the Law Enforcement Advisory Board (LEAB) have made to draft this proposed statewide CEW policy. DRVT joins with many other stakeholders in urging the AG's Office and our legislature to implement a statewide policy governing the training, use and oversight of Tasers and similar CEW weapons. While the draft proposal submitted by the LEAB goes a long way to satisfying the desires of many stakeholders to have such a consistent and reasonable statewide policy, DRVT remains concerned that the draft policy does not sufficiently restrict the use of CEWs against people with disabilities nor does the proposed rule provide adequate oversight regarding the use of CEWs against people with disabilities. To be clear, many informed individuals have recognized that the use of CEWs against people with disabilities can have a more detrimental long term impact on this population than on people not yet disabled. There is agreement that we as a society do not endorse the use of CEWs against people with disabilities who may not understand or be able to comply with an officer's order and who are not assaultive but simply resisting being moved or grabbed by law enforcement. DRVT is concerned that unless significant changes are made to the statewide policy it will have failed to provide the confidence and security that members of Vermont's community of people with disabilities have been advocating for over the last several years. The failure of the policy to make adequate accommodations to ensure that people with disabilities are not unfairly subjected to and harmed by CEWs may violate State and Federal anti disability discrimination laws as well.

Regarding the LEAB Proposed Policy, DRVT makes the following comments and suggestions:

The example given under the definition of "imminent" at **section 1.2.4** asserts that fleeing from the scene of a violent encounter is an example of when an "imminent threat" exists. However elsewhere in the LEAB documents, e.g. **LEAB's Key Component document at 4.9**, suggest that fleeing is not a justification for the use of the CEW. DRVT suggests that both the Key document and the proposed policy clarify that

DRVT is the protection and advocacy system for the State of Vermont.

On the web: www.disabilityrightsvt.org

fleeing is not an allowable basis use a CEW against a person, unless as noted in examples in **section 1.2.2** the fleeing is clearly with the intent to gain tactical advantage with which to inflict significant harm on others and no other reasonable alternative exists to prevent that imminent harm.

In **section 1.6.1** DRVT suggests the definition be expanded to state “Cognitively *or physically* impaired....” to retain the commonsense notion that if a person is deaf, blind or has a physical disability making it impossible for the person to comply with the officer’s request or to even understand such a request, that person deserves special consideration prior to shooting them with the CEW.

In **section 1.6.8** DRVT suggests expanding and rephrasing this subsection as follows: “Subject to or diagnosed with a heart condition, epilepsy or other seizure disorders.” The basis of this suggestion, besides thinking the word “inflicted” is not used correctly, is to acknowledge that epilepsy and seizure disorders are also medical conditions that present heightened risk of harm to subjects of the use of CEWs.

Under the definition of “special consideration” in **section 1.7** DRVT suggests adding language that would require officers “to consider retreating and/or allowing for additional time for dialogue, cooling off, or the arrival of more appropriate personnel (such as mental health workers)” as additional considerations when confronted with a person from the Special Populations.

DRVT also suggests that in **section 1.7** the policy further identify restrictions on the use of CEW to include only allowing CEW use against a member of a Special Population if a) lethal force would be reasonably authorized or, if that is too high a standard, b) only when the subject from a special population is “assaultive” as defined further on in the Policy, and not when the subject is simply “actively resisting.” As noted in our settlement with the Vermont State Police regarding their use of CEWs, not every person with a disability who is “actively resisting” by pulling away from an officer is actually an imminent threat to the officer. Often the person is no threat at all but only trying to avoid being grabbed and moved.

Under the **section 2.4** Level of Force chart, DRVT suggests clearly prohibiting the use of CEW against a person from a special population who is only “actively resisting.” Instead DRVT suggests the policy make it clear that only when the person from a special population is actively “assaultive” may the CEW be deployed against them. As noted above, DRVT asserts that many people with a variety of disabilities may “actively resist” by pulling away from being grabbed by an officer without there be a reasonable threat to the officer’s safety. Because use of a CEW on people with disabilities can have more significant detrimental impacts than their use on people without disabilities, DRVT suggests it is appropriate to raise the standard as to when the CEW can be used against these Special Populations to the level of an actual threat of harm, ie Assaultive Behavior. DRVT asserts that prohibiting the use of CEWs against members of the Special Populations unless lethal force would also be authorized is actually the more optimal way to protect these populations for unnecessary and harmful use of CEWs.

At **section 3.1** DRVT suggests adding the words “successfully” and “annual” to this section requiring that officers successfully complete both the CEW and the Act 80 training before being certified to use the CEW and that these certifications are required annually.

At **section 3.4.1.1** DRVT reiterates our suggestion that the standards clearly prohibit officers from using CEWs against members of special populations unless either a) the subject is actively assaultive, not just pulling away, fleeing or otherwise actively resisting, or b) lethal force would otherwise be authorized. DRVT suggests there be a separate subsection **3. 4. 1. 3.** that provides direction specifically about when a CEW can be used against a known member of a special population.

Currently at **section 3.8** the draft policy asserts fleeing by itself is not sufficient to justify use of CEW but this subsection may be inconsistent with the Level of Force chart that appears to authorize use of CEW for active resistance that would include fleeing.

DRVT suggests that **Section 3.10** be augmented to require officers to attempt to determine by all available means whether or not the subject is a member of a special population prior to use of the CEW against them. In addition DRVT suggests that this section reiterate the restriction against using the CEW on a person from a special population unless they are actively assaultive or lethal force would otherwise be justified.

DRVT suggests augmenting **section 4.7.4** to require documentation of efforts to determine if the person was a member of a special population and the results of that inquiry.

DRVT suggests augmenting **section 4.13** to include information such as the sex, race, age, height, weight, general physical condition, toxification status, disability status, and pregnancy status, the number of CEW cycles applied, their total duration, and any ensuing injuries suffered by the victims (e.g. from falls, cardiac events, seizures).

DRVT also suggests that the draft policy include a requirement that the CEW devices are tested prior to each shift or at least monthly to determine if they are consistently emitting the amount of electrical discharge specified by the manufacturer.

Regarding the **LEAB Key Component** document, DRVT has the following comments and suggestions:

As noted above, DRVT suggests specific testing requirements to assure that the amount of discharge from each CEW is consistently within manufacturer's specifications.

As noted above, DRVT suggests expanding the definitions of "Special Populations" in **section 3.a and 3.h**.

DRVT suggests at **section 4** that the additional restrictions on CEW use against people from Special Populations be emphasized here, including the enhanced circumstance of actual assaultive behavior or other actions justifying the use of lethal force.

DRVT suggest amending **section 7** to delete "where it is safe to do so" and change to "Officers will always provide a warning prior to deploying the CEW unless to do so would result in significant harm to any individual."

DRVT suggests that special attention and reporting be given to the use of CEW's against special populations, including information about other community resources that were available or were considered or were deployed in circumstances where an officer deployed or used for show the CEW weapon against a member of a special population.

Thank you for your consideration of these comments and suggestions. DRVT remains available to discuss these issues further at your convenience.

Sincerely,

A.J. Ruben
Supervising Attorney

Evan Meenan

From: Cindy Maguire
Sent: Tuesday, December 03, 2013 5:57 PM
To: Jeff Dworkin
Cc: Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Cindy Maguire
Subject: RE: Comments re LEAB Proposed Statewide Taser Policy

Hello Jeff-

I will relay your comments and your view on the time for public comment, to the Board. Thank you for your input.

Best,

Cindy Maguire

From: Jeff Dworkin [<mailto:jeffdworkin@gmail.com>]
Sent: Tuesday, December 03, 2013 5:54 PM
To: Cindy Maguire
Subject: Comments re LEAB Proposed Statewide Taser Policy

Hi, Cindy:

Attached please find my comments regarding the proposal. Also, please convey to the Board my view that the time for public comment on this proposal, and the limited form for it, is inadequate for a topic as controversial as this one is, and for cultivating the public support that any controversial policy should have.

regards,
Jeff

--

Jeff Dworkin
Montpelier, Vermont
tel. 802.793.6567

TO: Law Enforcement Advisory Board

FROM: Jeffrey Dworkin

RE: Proposed Policy: Use of Conducted Electrical Weapons

Dec. 3, 2013

I offer the following comments pertaining to the proposed policy.

1. Much of the proposal is written in suggestive language rather than in mandatory terms (e.g., 2.1: "An officer should determine . . . "; 2.2: "When possible, officers should first attempt . . . "; 2.3: "Officers should continually evaluate . . . "; 3.6.1: "An officer should attempt to avoid deployment to a suspect's head" These and other uses of advisory language should be converted to mandatory terminology.

The use of such suggestive language may be because the Vermont League of Cities and Towns, which was apparently consulted by the Board, is a for-profit insurance company, and the League has, by its own admission, sought to draft proposed use-of-force policies for law enforcement agencies so as to minimize the potential for civil liability. It may also be because the Attorney General office, and/or other members of the Board, share this goal. But suggestive policy language, that local law enforcement agencies then incorporate, will not shield a governmental entity from liability. In fact, it will only increase a vulnerability to liability, by raising the issue of the negligent supervision of officers by leaving too much to the officer's discretion.

2. The draft's definition of "special populations" is restrictive, and in that way does not include all the types of individuals who should be included. Research regarding stun guns has shown that the definition of "special populations" should include the mentally ill, those with respiratory and seizure conditions, and the intoxicated, among others.

3. "Active resistance", defined as an "energy enhanced physical or mechanical defiance", shown by, for example "pulling away" or, in the case law, by as little as the hunching of shoulders, is a far too lenient and dangerous a standard for permitting the use of a potentially lethal weapon. Likewise is the standard of "Assaultive – Risk of Physical Injury Perceived". These are the type of supposedly narrow guidelines that one could drive a truck through. What officer could not, after the fact, claim he/she perceived a risk of physical injury in the subject's raised voice and "erratic behavior"? If, as the policy points out early-on, we may not second-guess an officer's on-the-scene judgment, then we must create standards that prevent easy post hoc rationales of a belief on the officer's part that there was a possibility of physical contact that would cause some kind of pain the officer.

4. For those reasons, Vermont, like a number of other states have adopted and studies have recommended, should only allow the use of stun guns where there is a reasonable belief there exists an imminent risk of serious bodily injury. It is only this standard that will prevent the premature and abusive use of stun guns, and avoid the tendency, demonstrated in studies, that the adoption of stun guns into a police for arsenal tends to cause an earlier resort by officers to a higher level of force, and less resort to “talking down” and other lesser approaches to control.
5. No officer should be allowed to operate a stun gun without successfully completing a week-long course in mental health and crisis intervention training, with meaningful yearly supplemental programs. The Vermont training program does not provide this, and is inadequate, even by its training coordinator’s admission.
6. No officer should be allowed to operate a stun gun without employing a full-time shoulder camera. A gun-mounted camera is inadequate, because it is deployed by the officer, and such deployment typically misses to precursors to stun gun deployment, which is where is found the material information to allow a competent determination of the propriety of the deployment.
7. Any policy from this Board should contain a recommendation that the Legislature pass meaningful legislation to strictly regulate the acquisition and use of this weapon by law enforcement agencies.

These are but a few suggestions regarding a proposal that would be inadequate and, in many ways, a dangerous invitation to further, poorly-regulated stun gun use in Vermont. I invite the Board to further study the Report of the Montpelier City Council Committee on Tasers, for further recommendations, cautions, and background on this issue.

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 2:58 PM
To: 'Nicholas M. Ecker-Racz'
Cc: Cindy Maguire; Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Subject: RE: comments re statewide taser policy

Greetings –

Thanks you for your comments; I will pass them along to the LEAB.

Best,

Cindy J. Maguire

From: Nicholas M. Ecker-Racz [<mailto:eckerracz@gmail.com>]
Sent: Sunday, December 01, 2013 8:58 PM
To: Cindy Maguire
Subject: comments re statewide taser policy

I am not sufficiently informed about police work to have a meaningful; comment re the use of tasers, except in view of my 9 year's experience as an EMT, I strongly suggest that the policy be written to forbid the use of tasers or other weapons for special populations, unless the officer or bystander is imminently in danger of lethal force from the "special" person. When I was an emt I dealt numerous times with people who were diabetic (and had a sugar/insulin imbalance), or were high on one or another drug, or who had an adverse reaction to a prescribed medication, etc. and as a result were belligerent, non-compliant, or just plain acting stupid. I never had to call a policeman with a stun gun to achieve the eventual compliance. It took patience, an understanding of the nature of the medical or psychological problem by getting a medical history (sometimes from a family member, or from a "vial of life" or other source of info. Sometimes the individual was known to the local hospital and insight in a medical condition explained the aberrant behavior and pointed toward a solution. The recent tragedy involving the epileptic and other similar incidents arise from officer' misunderstanding of the cause of a subjects non-compliance, and frankly lack of patience with taking the necessary time to take control of the situation without resorting to testosterone fueled physicality. Officers should be trained to always seek the support and knowledge of an emt, physician, or paramedic once it is known that a non-compliant subject may be acting out because of a medical condition. Perhaps you might consider attaching a few paramedics or experienced EMTs "on-call" to each police barracks for just this sort of service, or perhaps cross-training some of the police officers as EMTs. I could care less about how you document exactly what happened in a force-related incident(as justification or to avoid civil suit) which resulted in a tragedy(except insofar as it might lead to changes in future officer behavior). The focus of the policy should be on preventing the circumstance in the first place.

Nicholas MT, Selectman, Current Town Moderator, Glover, Vt.

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 4:31 PM
To: 'Erik Esselstyn'
Cc: Cindy Maguire; Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Subject: RE: "Comments re: LEAB Proposed Statewide Taser Policy"

Dear Erik,

Thank you for your comments, I will pass them along to the LEAB.

Best,

Cindy Maguire

From: Erik Esselstyn [<mailto:erikess@comcast.net>]
Sent: Monday, December 02, 2013 12:29 PM
To: Cindy Maguire
Subject: Fw: "Comments re: LEAB Proposed Statewide Taser Policy"

Please, see attached comments.

Respectfully submitted, Erik Esselstyn

Any effort to establish meaningful directives for the use of the Taser weapon must acknowledge that the Taser represents lethal force. Worldwide, several hundred people have died within moments after being Tasered. Currently the Taser Corporation enjoys a scientific *no man's land* in which researchers are unable to establish a direct link to being Tasered and the precise cause of death. This protective vacuum of imprecision allows the Taser Corporation a marketing swagger akin to the big tobacco firms before lung cancer was precisely linked to smoking.

Any rational assessment of current data on Taser related fatalities must assume that being shocked with a Taser weapon can indeed cause death.

Taser Corporation guidelines about obesity, pregnancy, mental illness, or heart conditions serve as little more than a legal fig leaf. Those categories might provide helpful discretion only in the most extreme situations. Juries deliberate for weeks with expert testimony to determine mental illness. Even well into the second trimester many pregnant women do not obviously reflect their pregnancy - add a heavy padded coat in a Vermont winter. And stories of patients deemed "healthy" by their physicians just days before a fatal heart attack are familiar to all.

Strip away all the comforting categories, all the carefully worded scaffolding to assure no user liability and wise policy makers run straight into the rock solid reality faced in any effort to establish meaningful guidelines for police behavior – it all seems to rest on selective recruitment and continual, high quality, well-funded training. The overall reputation and sense of public support for any police organization in Vermont rests, alas, on that emotionally insecure and poorly trained officer.

When Vermont is known throughout the nation for its progressive, psychologically focused, and well funded Police Academy, many of the challenges faced in creating behavioral guidelines will disappear.

Respectfully submitted,

ERIK C. ESSESLSTYN

2850 Route 14N
Plainfield, VT 05667
802-454-7306
erikess@comcast.net

ERIK C. ESSELSTYN

2850 ROUTE 14 N
PAINFIELD, VT 05667

January 14, 2011

Chief Anthony Facos
Montpelier Police Department
Montpelier City Hall
1 Pitkin Court
Montpelier, VT 05602

HAND DELIVERED

Dear Chief Facos:

The City Council's pending decisions about Taser use will say more about our community's character than any deliberations in recent history. We can join other Vermont cities, namely, Barre and Brattleboro, and confirm the mockery of responsible civilian oversight of our police force. Or, we can acknowledge that Tasers kill and supervise their use accordingly.

To review some facts:

A – Many people struck by bullets live,

Some people struck by bullets die;

B – Many people struck by Tasers live,

Some people struck by Tasers die;

C – The Taser is a lethal weapon.

Let's be certain that Taser use takes place under the same ironclad rules that apply to a deadly firearm. Let's be sure Taser use that breaches department guidelines warrants career consequences. And, to allay the justifiable concerns of civil rights advocates, let's guarantee **public** review of all uses of lethal force, i.e., pistols and Tasers. A final profound responsibility rests in assuring all Montpelier citizens, especially parents, that neither pistols nor Tasers will ever be used in our schools.

Of course, protect our police officers – and demonstrate equal concern for all citizens.

Policy guidelines for Taser use written by an insurance company flow from a legal obligation to maximize corporate profits. Let's be sure Montpelier's Taser guidelines reflect, first and foremost, concern for public and police safety. Corporate profits must be a secondary concern in formulating Taser use guidelines.

Thank you for your concern and time focused on Taser use in Montpelier.

Sincerely,

ERIK C. ESSELSTYN

Evan Meenan

From: Cindy Maguire
Sent: Wednesday, December 04, 2013 3:17 PM
To: 'Connie'
Cc: Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Evan Meenan; Cindy Maguire
Subject: RE: Tzar rules

Dear Ms. Godin,

Thank you for your comments; I will pass them along to the Board for consideration.

Best,

Cindy Maguire

From: Connie [<mailto:connieglna@hotmail.com>]
Sent: Wednesday, December 04, 2013 3:07 PM
To: Cindy Maguire
Subject: Tzar rules

I would like to comment on the new taser guidelines being considered for VT law enforcement. I think they are used wrong. That is do what I say or I taze you. As they were supposed to be a less deadly force tool I think that use is inappropriate, cruel, and not how it was put forth that they would be used. As I know that they will be continued to be used for compliance I'll go to my other reason for my strong feelings against how they are now used. Mecadum Mason. That officer fired a taser (multiple spellings intended) at his heart and killed him. He had no training and this death should never have happened. The USA is turning into a police state. The state of Vermont should not be killing it's citizens with tasers unless law enforcement's life is in jeopardy which I can't recall being the case with any tazer use in Vermont so far.

I also wish you & ATG Sorrell would stop excusing the wrongdoing of the police. They need to know they CAN"T continue dealing with the citizens of this state in the recless manner that they have become accustomed to.

Thank you for listening as I know you do not have entire control over this issue but today was the last day for comments and wanted to get mine in. The new rules do not go far enough to protect us the citizens from law enforcement.
Connie Godin Barre,VT

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 2:14 PM
To: 'Peter Grainger'
Cc: Cindy Maguire; Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Subject: RE: Comments re: LEAB Proposed Statewide Taser Policy

Dear Mr. Grainger,

Thank you for your input. I will pass your comment along to the LEAB.

Best,

Cindy J. Maguire

From: Peter Grainger [mailto:Peter.Grainger@bellmedia.ca]
Sent: Monday, December 02, 2013 1:33 PM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Taser Policy

More grist for the mill?

I am a reporter with CTV News in Vancouver that has done extensive research and reportage on Conducted Energy Weapons.

I wonder what legal significance the following ruling in the U-S could have in regards to continued CEW use? It would seem the

U-S Fourth Circuit Court of Appeals has decided CEWs are by definition 'lethal', so is reclassification a concern for you?

<https://www.google.com/url?q=http://www.beaufortobserver.net/Articles-NEWS-and-COMMENTARY-c-2013-11-24-270015.112112-Fourth-Circuit-uphold-multimillion-dollar-award-in-Taser-death.html&ct=ga&cd=MTA30TkyNzE2MjQxMDg2NzI2ODI&cad=CAEYAA&usg=AFQjCNHE236BpjK9SZdwwOfxm-c0e-NLA>

CEWs are still being used as an intermediate use of force, and yet there remains:

1. No government regulation.
2. No government oversight.
3. No verification of manufacturer's safety claims.
4. No threshold standards for electrical safety, especially when used invasively.
5. No disclosure of manufacturer's electrical specifications.
6. No standards for weapon performance.
7. No independently-derived method of measurement, to routinely prevent or predict 'output variance'.

Fourth Circuit upholds multi-million dollar award in Taser death

Beaufort Observer, November 24, 2013

The Fourth Circuit Court of Appeals, which has jurisdiction over North Carolina, last week returned a major decision that has significant implications for law enforcement agencies in North Carolina, and especially in Beaufort County.

The case is *Fontenot vs. Taser International, Inc.* You can read the decision by clicking [here](#).

The Court upheld a judgment of liability against Taser resulting from the use of a product they made, known as a Model X26. A Charlotte police officer used an X26 on a seventeen year old male who was acting in a disruptive manner in a Food Lion after being fired by the store's management. The youth died of cardiac arrest as a result of being tasered in the chest. The evidence showed that the officer used an abnormally prolonged dose of electrical current because the subject failed to be debilitated from the initial shock.

The jury awarded the mother and father of the young man ten million dollars. While the amount was later reduced to \$5.5 million the significance of the case is that it shows that Tasers are deadly weapons when used as the company recommended, and as the evidence showed the officer was trained to use it. The court remanded the case back to District Court for a determination of the precise amount of the award.

There has been a widespread debate in recent years about how dangerous Tasers are. The company and most law enforcement agencies have contended they are not deadly weapons. This case refutes that argument.

The implication for law enforcement policy now is whether the training officers receive in the use of Tasers will be changed and whether by policy they will be treated as deadly force, just as a firearm is.

Many police officers have been operating under the belief that Tasers are not lethal weapons. Thus, they are often used when deadly force would not otherwise be warranted. A close reading of the facts in the Charlotte case, for example, shows that the subject was not presenting imminent danger of harm, but rather was simply belligerent. The standard typically applied in the use of deadly force is that it is necessary to remove the threat of death or injury to the officer or others. It is worth noting that the police officer did not attempt to arrest the subject. He did tell him to "calm down" and he failed to do as instructed. But the mother contend that was not sufficient reason to use deadly force to subdue. Most training protocols in such situations call for the officer to await backup unless the subject present an imminent threat and then to use only the necessary force to abate the threat. The Court found, in this case that the officer used the force he did because he did not believe, based on his training, that it would be lethal. The decision blows that position away.

The decision of the Fourth Circuit is consistent with previous rulings by the N. C. Court of Appeals in holding that stun guns are dangerous weapons.

For the Legal Eagles among our readers we would note that the Court upheld the District Court's prohibition of TI using contributory negligence as a defense when they contended that the subject brought on his own death by failure to comply with the officers instructions.

Commentary

The case has, we believe, significant implications for Beaufort County. The use of Tasers is very prevalent apparently based on complaints we receive against the Sheriff's Office. Even the use of such devices in schools. After we received one such complaint we inquired of the Sheriff's Office what their policy was on the use of Tasers and specifically whether they were considered lethal weapons. We got no response. Thus, we assume they have no policy.

But clearly this case says all law enforcement agencies should have a policy, protocol and adequate training of officers that is predicated on the assumption that the devices can be lethal and that this should be taken into consideration in their use.

We would suggest that the policy should be simple. Tasers should be treated the same as a firearm. They should not be used as an alternative to other methods of restraint, including handcuffing, pepper spray and superior physical force

(backup). Law enforcement officers need Tasers. And they need to be able to use them when appropriate. But that use should be in accord with the same standard that would apply to the use of a firearm. There is, in our judgment, no question but that they are lethal weapons. All one has to do is look at news reports of the number of deaths that have been coincidental with their use. Just search this site for "taser" to see several examples. They should be used, but only as would a firearm.

Peter Grainger | Reporter

Bellmedia - CTV News | t 604-609-5840 | f 604-609-5894 | m 604-787-1858 | peter.grainger@bellmedia.ca
969 Robson St. Suite #500
Vancouver, BC V6Z 1X5
Canada



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TO: VT. LAW ENFORCEMENT ADVISORY BOARD, DEPT. PUBLIC SAFETY 11/29/2013
FROM: CARL HOLCOMB, 150 TORREY KNOLL, APT#14, MANCHESTER CTR., VT. 05255 (NO PHONE)

DEAR VT. LAW ENFORCEMENT,

I'M A MARINE VETERAN TRAINED IN THE USE OF A VARIETY OF COMBAT WEAPONS. I HAVE ALWAYS BEEN AGAINST THE USE OF TASERS BY ORDINARY POLICE OFFICERS. TASERS HAVE BEEN PROVEN TO BE DEADLY. THEY CAN BE USED TO ASSAULT OR KILL IN SPITE OF THE INTENDED PURPOSE TO SUBDUCE. TASERS ARE "WEAPONS". THEY ARE SPECIAL WEAPONS THAT SHOULD ONLY BE AUTHORIZED FOR USE TO SPECIAL UNITS.

SOMETIMES TASERS ARE LOST OR STOLEN SINCE AN OFFICER IS MORE CONCERNED WITH THE SAFETY OF HIS FIREARM. IT IS SCARY TO THINK OF A TASER GETTING INTO THE HANDS OF A CHILD KIDNAPPER OR RAPEIST OR ANY CRIMINAL. SINCE THE TASER IS NOT A FIREARM A CRIMINAL MAY NOT BE HELD AS ACCOUNTABLE FOR ITS ILLEGAL USE AS A CRIMINAL WOULD BE IF IT WAS A FIREARM.

VISCIOUS DOGS SHOULD BE SHOT, ANYWAY, SO THAT OTHER PERSONS ARE SAFE FROM THEM AND, USUALLY, JUST DISCHARGING A FIREARM WILL STOP A DOG WITHOUT HAVING TO KILL IT.

OFTEN, A POLICE OFFICER DOESN'T KNOW ANYTHING ABOUT A SUSPECTED CRIMINAL, THEREBY, RISKING KILLING THAT PERSON IF HE OR SHE HAD A HEART CONDITION.

WHAT IF A POLICE OFFICER PULLS THE TASER ON A CRIMINAL THAT THE OFFICER DOESN'T KNOW HAS A FIREARM? THE BAD GUY GETS SHOCKED, THE OFFICER GETS SHOT. IN THE DARK A CRIMINAL MIGHT THINK THE TASER IS A GUN.

I DON'T FORESEE MANY SCENARIOS INVOLVING SUICIDAL CASES WHERE THE TASER WOULD BE ANYMORE USEFUL THAN A TRANQUILIZER DART GUN.

NOTHING CAN REPLACE GOOD TRAINING OF WHEN AND WHEN NOT TO USE DEADLY FORCE. SO MANY PEOPLE DON'T TAKE A TASER SERIOUSLY. A FIREARM, HOWEVER, MEANS BUSINESS TO MOST PEOPLE.

THERE ARE MACHO MEN WHO THINK THEY CAN TAKE A ZAP BUT FEWER WHO THINK THEY CAN TAKE A BULLET.

THERE ARE FAR MORE POTENTIAL MISUSES OF A TASER THAN ACTUAL USES.

THEY ONLY USED TASERS IN STAR TREK BECAUSE A FIREARM WOULD OF PUT A WHOLE IN THE SPACESHIPS, THEREBY, SEALING THEIR DOOM.

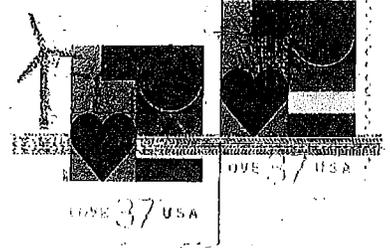
SPEND YOUR MONEY ON TRAINING NOT LETHAL TOYS.

FEEDBACK, CARL HOLCOMB, JR,

HOLCOMB, JR,
REY KNOLL, APT# 14
STER CTR., VT. 05255

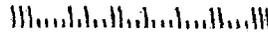
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VT. LAW ENFORCEMENT ADVISORY BOARD
DEPT. OF PUBLIC SAFETY
103 SOUTH MAIN ST.
WATERBURY, VT. 05671

Mail Room
DEC 02 2013
Dept. of Public Safety



Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 11:06 AM
To: Evan Meenan
Cc: Cindy Maguire; John Treadwell; Gauthier, Richard; Aumand, Paco (Paco.Aumand@state.vt.us)
Subject: FW: Comments on draft CEW policy, including a public records request
Attachments: bk comments to proposed CEW policy 12-1-13.pdf

Evan – please note that this is also a public records request. I have also attached Mr. Kade’s comments.

Rick/Paco – the AGO will respond to the public records request. We are in the process of putting all of the comments into one document, which we will send to you for distribution to the full Board, in advance of the 12/23 meeting.

Best,

Cindy

From: Cindy Maguire
Sent: Monday, December 02, 2013 11:03 AM
To: 'barrykade@hush.com'
Cc: Cindy Maguire; Gauthier, Richard; Aumand, Paco (Paco.Aumand@state.vt.us); Evan Meenan
Subject: RE: Comments on draft CEW policy, including a public records request.

Dear Attorney Kade,

Thank you for your comments, I will send them to the Board for further consideration. We are in the process of putting all of the comments received into a one document; I will send you that document once it is complete.

Best,

Cindy Maguire

From: Barry Kade [<mailto:barrykade@hush.com>]
Sent: Sunday, December 01, 2013 10:11 PM
To: Cindy Maguire
Subject: Comments on draft CEW policy, including a public records request

Attorney Maguire,

The attached PDF document contains my comments and a request for the comment and response data bank when completed.

Thank you for your attention to this matter.

Barry Kade
P.O. Box 55
Montgomery, VT 05470
933-2490

"If liberty means anything at all, it means the right to tell people what they do not want to hear."
-George Orwell

BARRY KADE
Attorney
604 North Main Street
P.O. Box 55, Montgomery, VT 05470
Bus.(802)933-2490 Res: 326-4867 barrykade@hush.com

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character. . .

Con. 1786, ch.1 art 4

December 1, 2013

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office
109 State Street
Montpelier, VT 05601
cmaguire@atg.state.vt.us

Re: LEAB Proposed Statewide Taser Policy

Dear Ms. Maguire,

I am a member of the Vermont Chapter of the National Lawyers Guild, as well as personally active in and supportive of various political causes that involve interactions with the various police departments throughout Vermont. I recently completed training by the Guild and am now a Legal Observer.

I am commenting out of concern both for the civil liberties of all persons, but especially members of "special populations" and non-violent political activists, including those engaged in civil disobedience.

I have copied and pasted the proposed policy below and have inserted my comments.

I also feel a need to lodge a complaint concerning the lack of public outreach during this process. I attended and commented at the A.G.'s public forum, being arbitrarily limited to just a couple of minutes of comment time. I left my contact information. I was not contacted by your office and only found out about the draft policy and the comment deadline early in the week before Thanksgiving. The A.G.'s office was not the source of my information, though it should have been. There is nothing readily visible either on the A.G.'s website or the LEAB website. So much for transparency.

Thank you for considering these comments. I am requesting a copy by electronic mail of the comment and response data bank. Please acknowledge that upon completion of the responses this request will be honored.

Sincerely,



INTRODUCTION AND PURPOSE

The purpose of this policy is to encourage uniform, state-wide training and policies governing law enforcement agencies' use of Conducted Electrical Weapons ("CEWs").

COMMENT BK: "mandate" not "encourage." Replace "uniform" with "minimum."

When properly used, CEWs can be an effective and efficient law enforcement tool that can reduce injuries to suspects, bystanders, and law enforcement officers. However, a recent review of existing CEW policies from around Vermont indicates that law enforcement agencies have different policies regulating when and how CEWs may be used. In addition, the frequency with which law enforcement agencies must work together and community concern over the potential dangers of CEWs support the need for a consistent and safe approach to the use of CEWs as less-lethal law enforcement tools.

This policy sets forth recommended minimum standards for training officers on using CEWs, the circumstances under which officers should use CEWs, and the procedures officers should follow after using CEWs. Although this policy contains provisions and principals that may apply to several different types of force, it focuses on CEWs and does not specifically address all other lawful types of force law enforcement officers may use in a given situation. This CEW policy is designed to supplement rather than replace any existing use of force policies. It is recommended that law enforcement agencies incorporate the provisions of this policy into their existing use of force policies.

Comment bk: "recommended" to "mandatory."

Finally, because this policy attempts to apply universally to all law enforcement agencies regardless of their size, it is not possible to fully detail the level of supervisory review of use of force reports completed after CEW deployment. Agencies should refine these provisions of this policy according to their size, existing policies, and the needs of the communities they serve.

POLICY

1. Definitions.

1.1. Conducted Electrical Weapon (“CEW”): A less-lethal law enforcement device that delivers an electrical pulse to the body of a subject in either a “drive stun” or “probe” mode. When used in “probe mode” the device discharges two probes that remain connected to the CEW via wire and which upon impact deliver an electrical pulse designed to temporarily incapacitate that subject. When used in “drive stun” mode, the device makes direct contact with and delivers an electrical pulse to the body of a subject, but does not result in the same temporary incapacitation of a subject as when used in “probe” mode.

1.2. Imminent: Impending or about to occur. Imminent does not mean immediate or instantaneous, but that an action is impending. Thus, a subject may pose an imminent danger even if (s)he is not at that very moment pointing a weapon at another person. For example, imminent danger may exist if an officer has reason to believe any of the following:

1.2.1. A subject possesses a weapon or is attempting to gain access to a weapon under circumstances indicating an intention to use it against another person.

1.2.2. A subject is armed and running to gain the tactical advantage of cover.

1.2.3. A subject with the capability to inflicting bodily injury, serious bodily injury, or death is demonstrating an intention to do so.

1.2.4. A subject is attempting to escape from the vicinity of a violent confrontation in which (s)he inflicted or attempted to inflict bodily injury, serious bodily injury, or death.

1.3. Objectively Reasonable: The amount of force that would be used by other similarly trained and experienced officers when faced with the known facts and circumstances that the officer using the force is presented with, without regard to the officer’s underlying intent or motivation. “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor*, 490 U.S. 386 (1989).

1.4. Reasonable Belief or Reason to Believe: The facts or circumstances, which would cause a reasonable person to act or think in a similar way under similar circumstances.

1.5. Serious Bodily Injury: A bodily injury which creates a substantial risk of: death or substantial loss or impairment of the function of any bodily member or organ; substantial impairment of health; or substantial disfigurement.

1.6. Special populations: Members of special populations include subjects an officer has reason to believe are:

1.6.1. Cognitively impaired such that they are unable to comply with an officer’s instructions.

1.6.2. Operating a motor vehicle.

1.6.3. Standing in an elevated area, near water, or near flammable materials (including but not

limited to alcohol-based chemical sprays).

1.6.4. Restrained.

1.6.5. Minors.

1.6.6. Pregnant.

1.6.7. Elderly.

1.6.8. Inflicted with a heart conditions.

Comment bk: .2, .3., .4, and .5 are not “special populations.” 2., .3. and .4 speak to the present temporary condition of a person. Define “elderly.” What about other physical conditions that make CEW particularly dangerous, other than heart condition? Since many physical conditions are not readily visible, CEWs should only be deployed as stated in my initial comment in Section 2, Use of Force.

1.7. Special consideration: A consideration of: (i) the potential additional risk of harm posed by deploying a CEW against a member of a special population; and (ii) whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population while still preserving the safety of that person, third parties, and the responding officer(s).

2. Use of Force in General.

COMMENT bk: Rather than nit pick the particulars, I have a major problem with the policy. CEWs are less lethal than firearms, but still lethal. That means the deployment of a CEW runs the risk of death or serious injury. They should only be deployed when the risk of using them is outweighed by the risk of injury or death to another person. The use is NOT justified to accomplish “compliance” that does not involve serious risk of injury or death. “Drop that knife” at close distance, justified. “Get out of the car” not justified, absent factors indicating to a reasonable officer that failure to follow the command poses a risk.

They should never be used on a pregnant woman or person with other obvious physical risks except where more deadly force would be justified.

They should never be used on a person undergoing a mental health crisis or who may otherwise not be able to comprehend or follow an order, unless the failure to follow the order itself poses an imminent risk of serious harm or death.

2.1. An officer should determine what type of force is appropriate on a case-by-case basis after considering the totality of the circumstances presented. The level of force used shall be objectively reasonable given the risks presented by the behavior the officer is responding to. These risks shall include, but are not limited to the risk of additional criminal behavior, damage to property, and harm to a third party, the officer, or the subject. In assessing the need to use force, the paramount consideration should always be the safety of the officer and the public.

2.2. When possible, officers should first attempt to deescalate situations by their presence or through the use of verbal persuasion.

2.3. Officers should continually evaluate the totality of the circumstances presented to determine whether it is objectively reasonable to increase or decrease the level of force used

against a subject. Factors that may determine whether an officer escalates or deescalates the level of force used include, but are not limited to: a suspect's level of resistance; the relative age, gender, size, and skill level of the officer and suspect; the number of subjects and officers present; proximity to weapons; prior experience and knowledge of the subject; location of the encounter; whether the officer is on the ground; and officer injury/exhaustion. Officers are not required to use or consider alternatives that increase danger to themselves or the public.

2.4. The use of force continuum below sets forth the preferred means of using force in order from least to the most severe measures. Neither an officer, a subject, nor a third party has to actually suffer an injury before an officer is permitted to use force to facilitate control over a subject.

Level of Resistance

Type of Force

Compliant/Cooperative:

A subject obeys directions, is compliant in his/her arrest, and otherwise appropriately responds to the officer's presence, direction, and control.

Cooperative Controls:

Measures designed to direct or take custody of a compliant or cooperative subject include, but are not limited to, compliant handcuffing, compliant escort techniques, officer presence, and voice control or verbal commands.

Passive Resistance:

A subject refuses, with little or no physical activity, to appropriately respond to the officer.

Examples include subjects who offer little or no physical or mechanical resistance upon contact, but who refuse to act or respond to an officer's attempt to take him/her into custody, stand when or walk where directed, or put their hands behind their back as directed.

Contact Controls:

Measures designed to gain compliance or take custody of passively resistant subjects include, but are not limited to, control holds and empty handed escort techniques.

Active Resistance:

A subject uses physical activity to resist or takes an affirmative action to defeat an officer's ability to take him/her into custody or to seize him/her, but the subject's actions would not lead a reasonable officer to perceive a risk of physical injury to him/herself, the subject, or a third person.

Examples include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance.

Compliance Techniques:

Measures designed to gain compliance or take custody of actively resistant subjects include, but are not limited to, chemical sprays, impact weapons for anatomical compliance only, empty hand control holds, empty hand and body strikes and/or takedowns, and police K-9. They may also include the use of CEWs provided another compliance technique has failed or the officer has reason to believe that attempting another compliance technique will fail and/or result in a greater risk of injury to him/herself, the subject, or a third party.

Assaultive – Risk of Physical Injury Perceived:

Behavior that creates an imminent risk of physical injury to the subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury.

Examples include an attack on an officer, strikes, wrestling, undirected strikes with injury potential, kicking, shoving, punching, and other words or behavior indicating that such actions are imminent.

Defensive Tactics:

Assaultive countermeasures designed to cease and/or prevent the subject's assault on themselves, the officer, or a third party and regain/facilitate control or take custody of the subject.

Examples include, but are not limited to, impact weapons used to strike with the intent to facilitate control, CEWs, and other specialty impact munitions.

Assaultive – Serious Physical Injury or Death Expected:

Behavior that creates an imminent risk of serious physical injury or death to the subject, officer, or third party. Examples include a weapons assault, attempted disarming, or grave weaponless assault.

OR

There is probable cause to believe a suspect has committed a violent crime involving the infliction or threatened infliction of serious bodily injury or death AND there is a reasonable belief that the freedom of the suspect poses an imminent threat of death or serious bodily injury to the officer or others.

Deadly Force:

Any force that creates a substantial likelihood of causing death or serious bodily injury.

3. CEW Use and Deployment Procedures.

3.1. Only officers who complete training on the use of CEWs and on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.

3.2. Prior to the start of each shift, an officer authorized to carry a CEW shall conduct a spark test of the CEW to ensure that it is properly functioning. Only properly functioning CEWs shall be carried for use. CEWs that are not properly functioning shall be taken out of service and sent for repair.

3.3. Whenever feasible, law enforcement should display and provide a warning prior to deploying a CEW.

3.4. Officers may use CEWs in the following circumstances:

3.4.1. In response to either:

3.4.1.1. Active resistance when another compliance technique has failed or the officer has reason to believe that attempting another compliance technique will fail and/or result in a greater risk of injury to him/herself, the subject, or a third person.

3.4.1.2. Assaultive behavior when lethal force does not appear to be objectively reasonable.

3.4.2. To prevent the commission of a suicide or self-inflicted serious physical injury.

3.4.3. To deter vicious or aggressive animals that threaten the safety of the officer or others.

3.5. Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.

3.6. An officer should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.

3.6.1. When targeting a subject from the front, the preferred target area is a horizontal line approximately 2 inches lower than the sternum and below. An ideal probe deployment from the front will "split the hemispheres" having one probe strike a subject above the belt line and the other probe striking the subject in the thigh or leg thereby activating the hip flexor.

3.6.2. When targeting a subject from the back, the preferred target area is below a horizontal line drawn even with the shoulders across the neck and below.

3.7. Officers should use the minimum number of cycles possible to take a suspect into custody or mitigate their assaultive behavior.

3.8. CEWs shall not be used in a punitive or coercive manner and shall not be used to awaken, escort, or gain compliance from passively resistant subjects. The act of fleeing or destroying evidence, in and of itself, does not justify the use of a CEW

3.9. Officers should avoid deploying more than one CEW on a single subject at the same time unless special circumstances exist such as an ineffective probe spread on the first CEW or the first CEW fails to achieve immobilization of the subject and a second deployment is independently justified. Before deploying a second CEW, officers should consider the feasibility and safety of attempting to control the subject with a lesser type of force.

3.10. Officers having reason to believe they are dealing with a member of a special population shall give special consideration to deploying an CEW.

4. Post Deployment Procedure.

4.1. Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration.

4.2. As soon as practicable after CEW deployment, the CEW probes shall be removed from the subject. The probes shall be treated as a biohazard. In the following cases, officers should wait for EMS to remove the probes:

4.2.1. The probes impinged in a sensitive area such as the face, neck, throat, groin, female breast,

or stomach of a pregnant woman.

4.2.2. The officer encounters problems when attempting to remove the probe.

4.3. Medical attention at a medical facility shall be offered to all individuals subjected to a CEW deployment.

4.4. Emergency medical services shall be contacted if a subject:

4.4.1. Suffers an obvious injury.

4.4.2. Does not appear to recover properly and promptly after deployment.

4.4.3. Is a member of a special population.

4.4.4. Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.

4.4.5. Exhibits signs of extreme uncontrolled agitation or hyperactivity prior to the CEW exposure or the subject was involved in a lengthy struggle or fight prior to the CEW exposure.

4.5. If a subject refuses additional medical attention, that refusal should be documented.

4.6. When an officer has reason to believe (s)he is responding to a situation that may necessitate emergency medical services, (s)he shall make reasonable efforts to summon such services in advance.

Comment bk: Dispatching personnel should ascertain, if possible, whether the subject is a member of a special population from all sources available. Where appropriate mental health workers shall be contacted along with the responding police unit.

4.7. With the exception of the required spark test and accidental discharges, each time an CEW is deployed and/or displayed for compliance purposes it shall be documented in a use of force report within 24 hours of the deployment unless otherwise authorized by a supervisor. This use of force report shall contain the following, at a minimum:

TYPO: Should be "a CEW" not "an."

4.7.1. The date, time, and location of the incident.

4.7.2. The officer(s) involved in the incident, identifying which officer(s) used CEWs.

4.7.3. The type of CEW deployment, i.e., display, drive stun, or probe mode.

4.7.4. Identifying and descriptive information for the subject.

4.7.5. A list of other known witnesses.

4.7.6. The number of CEW cycles used, the duration of each cycle, and the duration between cycles.

4.7.7. The level and description of resistance encountered.

4.7.8. Whether CEW use was effective.

4.7.9. The type of crime/incident the suspect was involved in.

4.7.10. The approximate range at which the CEW was used.

4.7.11. The point of impact.

4.7.12. Whether law enforcement used or attempted to use any other types of force.

4.7.13. The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.

4.7.14. The type of injuries, if any, sustained by any of the involved persons including the officer(s).

4.7.15. When possible, photographs of the CEW probe entry sites.

4.8. The department shall also collect the download data, cartridges, probes, and wires from the CEW that was deployed and shall maintain them pursuant to its evidence policies. The download shall occur as soon as reasonably practical after the CEW is deployed.

COMMENT BK: The download data and any photographs should be made available to the subject.

4.9. When possible, in instances in which more than one CEW has been deployed, a sampling of the AFID tags should also be collected and maintained pursuant to the department's evidence policies.

4.10. Accidental discharges shall be documented in a departmental memorandum explaining in detail how the discharge occurred.

4.11. All use of force reports and departmental memorandum required under this policy shall be reviewed by the officer's supervisor. The department shall conduct a use of force review in the following situations:

4.11.1. The department receives a complaint of excessive use of force.

4.11.2. The supervisor recommends conducting a use of force review.

4.11.3. The encounter resulted in death or serious bodily injury.

4.11.4. The individual exposed to the CEW is a member of a special population.

4.11.5. An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.

4.12. Upon request, a suspect subjected to a CEW deployment shall be kept informed of the procedural status and final result of the review.

COMMENT BK: Upon completion of the report, the data, photographs, and other records not specifically exempt from disclosure under the public records law, shall be made available to the subject, the press, and any person making a request.

4.13. Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council the total number of CEW deployments during the previous year and how many deployments resulted in a use of force review. The Council shall make this information available on its website.

5. Training Requirements.

5.1. Training for officers authorized to carry CEWs shall be conducted annually.

5.2. Training shall not be restricted solely to training conducted by the manufacturer of the CEW.

COMMENT BK: A means of certifying instructors should be established and only those certified should be allowed to conduct the required training.

5.3. Training shall emphasize that CEWs may be less-lethal, but not non or less-than lethal.

5.4. Training shall also incorporate, at a minimum:

5.4.1. Instruction on the use of force continuum.

5.4.2. Techniques to avoid or deescalate confrontations.

5.4.3. The underlying technology and operation of CEWs.

5.4.4. The physiological effects upon an individual against whom such a CEW is deployed.

5.4.5. The proper use of the weapon, including both the proper mechanical use of the weapon and the circumstances under which it is appropriate to use the weapon.

5.4.6. Scenario-based training.

5.4.7. Proper removal of CEW probes.

5.4.8. The potential medical needs of a subject who has been subjected to a CEW deployment.

5.4.9. The post-deployment reporting requirements.

5.4.10. Instruction on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council.

COMMENT BK: The training should emphasize that CEWs are potentially lethal weapons and their deployment is justified only when necessary to avoid serious harm to the subject, the officer or another person.

5.5. Departments should also evaluate the value of requiring or allowing officers to feel the effects of a CEW as part of training. If an officer decides to feel these effects, the training shall include an explanation of the potential differences between that officer's experience and the experience of a subject in the field.

6. Vermont's Law Enforcement Advisory Board shall review this policy annually.

FINAL COMMENT BK: A suggested policy that individual agencies may choose to adopt or not, does not eliminate the need for a mandatory state wide policy that must be the minimum for any agency that chooses to deploy CEWs.

Evan Meenan

From: Cindy Maguire
Sent: Tuesday, December 03, 2013 6:31 PM
To: 'Heather Anne'
Cc: Evan Meenan; Gauthier, Richard; Aumand, Paco (Paco.Aumand@state.vt.us); Cindy Maguire
Subject: RE: Taser Policy

Hello

Thank you for your comments. I will pass them along to the Board for further consideration.

Best,

Cindy Maguire

From: Heather Anne [mailto:kleine_bar@yahoo.com]
Sent: Tuesday, December 03, 2013 12:01 PM
To: Cindy Maguire
Subject: Taser Policy

Hello,

After reading the Times Argus article, "Board offers statewide Taser policy," I have questions about the following statement:

- Additionally, officers who believe they are dealing "with a member of a special population shall give special consideration" to using a Taser. Special populations include those who are cognitively impaired, minors, pregnant women, the elderly and those with a heart condition.

What is meant by "special consideration"? Could you define "cognitively impaired"? These terms both seem to be quite subjective and could be interpreted differently by any given individual. It seems this would make it difficult to investigate should there be an incident where an officer's "special consideration" is questioned or where there are questions about whether or not the individual that the taser is deployed upon was "cognitively impaired" and how the officer would know that.

In general, I would support the use of a taser within certain circumstances as outlined in a department's policy regardless of a person's cognitive impairment. Let's say that the policy contains similar language to that proposed in the article:

- In response to active resistance when another compliance technique has failed or when the officer believes that using another compliance technique will fail or result in a greater risk of injury to the officer, the subject or a third person.

It should not matter what the person's mental state is if they are actively resisting or if the officer believes that using another compliance technique will fail or result in a greater risk of injury to the officer. A cognitively impaired person is no less of a threat than someone who is not. It could even be argued that a cognitively impaired person is more of a threat as their actions may be more unstable and unpredictable. I can understand the sensitivity to this issue and I support mental awareness training and training involving interacting with people experiencing a mental health crisis; however, a threat is a threat, no matter who it is coming from.

Thank you,
Heather

Evan Meenan

From: Cindy Maguire
Sent: Wednesday, November 27, 2013 10:37 AM
To: Evan Meenan
Cc: Cindy Maguire
Subject: FW: Comments re: LEAB Proposed Statewide Taser Policy

From: Cindy Maguire
Sent: Wednesday, November 27, 2013 10:36 AM
To: 'Judith@judithlevine.com'
Cc: Cindy Maguire
Subject: RE: Comments re: LEAB Proposed Statewide Taser Policy

Dear Ms. Levine,

I will send your comments along to the Law Enforcement Advisory Board (LEAB), which is the entity that is drafting the statewide policy. The AGO is a member of the LEAB and we are assisting in the drafting process. We very much appreciate your input.

Sincerely,

Cindy J. Maguire

From: judithlevine51@gmail.com [<mailto:judithlevine51@gmail.com>] **On Behalf Of** Judith Levine
Sent: Wednesday, November 27, 2013 8:08 AM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Taser Policy

Dear Ms. Maguire,

Tasers should have no part in the law enforcement arsenal. They are not "less than lethal." And that misconception about them has led officers to use them excessively, in some cases killing unarmed people.

My comments are contained in a column I wrote that appeared in Seven Days on 9/20/10. The statistics about excessive and deadly use of Tasers in VT & elsewhere are a bit outdated -- they've only gotten worse. But the rest holds true.

The column says VT has no statewide guidelines for Taser use. Now it may. But they do not go any further than what most towns have in place already. They are "recommended" or "preferred" and (as I read it) not required.

The least the state could do is require that every officer carrying a stun gun is trained.

Thank you,

Judith Levine
Hardwick VT

--
judithlevine.com/blog

Evan Meenan

From: Cindy Maguire
Sent: Wednesday, December 04, 2013 8:27 AM
To: 'Deborah Lisi-Baker'
Cc: Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Evan Meenan; Cindy Maguire
Subject: RE: LEAB Proposed Statewide Policy on CEWs

Dear Ms. Lisi-Baker –

Thank you for your comments; I will pass them along to the Board for consideration.

Best,

Cindy Maguire

From: Deborah Lisi-Baker [<mailto:dlisibaker@gmail.com>]
Sent: Wednesday, December 04, 2013 7:43 AM
To: Cindy Maguire
Subject: LEAB Proposed Statewide Policy on CEWs

I am writing to comment on the proposed statewide policy on the use of CEWs. I am concerned that the proposed policy is only intended to encourage use of the proposed safeguards and standards rather than mandating use of a clear statewide policy. In addition, the proposed safeguards need to require more specific and require a consistent in-depth training and readiness assessments before taser use is allowed. I am also concerned that needed elements of training on avoiding taser use with vulnerable populations have not been more clearly defined. I hope that this draft policy will not be approved as now written.

Thank you for considering these concerns.

Deborah Lisi-Baker
Waterbury Vermont

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 2:57 PM
To: 'Me Here'
Cc: Cindy Maguire; Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Subject: RE: Comments re: LEAB Proposed Statewide Taser Policy

Thank you for your comments; I will pass them along to the LEAB.

Best,

Cindy Maguire

From: Me Here [<mailto:poubelle111@gmail.com>]
Sent: Sunday, December 01, 2013 9:25 PM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Taser Policy

- 1.) Taser's kill, period. Let's write that into policy. Saying they are "less than lethal" is insulting and smells of pandering to the manufacturer of these weapons, which gives an impression of corruption
- 2.) Use of any Taser should be recorded, video with audio.
- 3.) Officers should be recertified every year.
- 4.) Preferred target is always the back.

Thank you for your consideration

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 4:50 PM
To: 'Tony Smith'
Cc: Cindy Maguire; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Evan Meenan
Subject: RE: Tasers

Dear Tony Smith,

Thank you for your comments; I will pass them along to the LEAB for consideration.

Best,

Cindy Maguire

-----Original Message-----

From: Tony Smith [<mailto:Tonys@vsacoach.com>]
Sent: Thursday, November 28, 2013 9:57 AM
To: Cindy Maguire
Cc: neal.goswami@rutlandherald.com; Tony Smith; Andie Davis; Amber C. McDougall; Angelo Valenti
Subject: Tasers

Dear people: a big thank you to Neal for highlighting the very real operational perils of tasers in the Rutland Herald.... Including the death of Macadam Mason. These " guidelines" must be accountable and enforceable ---- without that preventable deaths of Vermont citizens will ensue. I have worked for years with corrections and law enforcement throughout Mass state prisons, Boston drug treatment clinics, and now as co Chair of Getting Out and Staying Out at Rikers island NYC prison where we reduce recidivism from 65% to 15% !!! With 1,200 men over 8 years. Tasers are only an improvement over live ammunition IF our officers are trained well A N D held to account. These are to be enforceable. And mandatory guide less for officer conduct or they will make no real difference. Thank you for your work with criminal justice!!!

Tony Smith Ascutney Vermont

Sent from my iPhone

Evan Meenan

From: Cindy Maguire
Sent: Thursday, December 05, 2013 8:21 AM
To: Evan Meenan
Subject: FW: CEW policy comments
Attachments: CEW comments, M. Sabourin

Are you able to open this?

From: Micahel Sabourin [<mailto:mothvet@yahoo.com>]
Sent: Wednesday, December 04, 2013 8:11 PM
To: Cindy Maguire
Subject: CEW policy comments

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office
109 State Street
Montpelier, VT 05601
cmaguire@atg.state.vt.us

Re: LEAB Proposed Statewide CEW Policy

Dear Attorney Maguire,

I would like to commend the office on the effort put into this CEW policy and for making it available for public purview

a few comments follow:

page 1: INTRODUCTION AND PURPOSE

The purpose of this policy is to “*encourage*” uniform

Would suggest replacing “encourage” with “establish”

It is “*recommended*” that law enforcement agencies incorporate the provisions of this policy into their existing use of force policies.

Would suggest replacing “recommended” with “expected”

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office
109 State Street
Montpelier, VT 05601
cmaguire@atg.state.vt.us

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Would suggest replacing “recommended” with “expected”

page 3 : 1.6. Special populations:

1.6.1. Cognitively impaired such that they are unable to comply with an officer's instructions.

Would suggest adding language such as psychiatric disability or mental health condition i.e. :

1.6.1. Psychiatric disability or other cognitively impaired

page 10- 3. **CEW Use and Deployment Procedures.**

3.1. Only officers who complete training on the use of CEWs and on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council, shall be "authorized" to carry CEWs.

Would suggest replacing "authorized" with "certified"

page 11- 3.6. An officer should "attempt to" avoid deployment to a

Would suggest omitting "attempt to"

consider adding - 3.10.1- Officers having reason to believe they are dealing with an individual with a psychiatric disability shall

give special consideration to consulting the area designated mental health agency

page 14 - consider adding - 4.7.16. Whether individual exposed to the CEW is a member of a special population.

consider adding - 4.7.17 - With an individual with a psychiatric disability was an area designated mental health agency consulted

page 15 - 5. **Training Requirements.**

consider adding a new - 5.1. - Officers should require "Act 80" training or a recognized equivalent in order to be certified to carry CEWs

the current 5.1 changes to 5.2, etc

Best regards,

Michael Sabourin
ACT 80 member
DMH/VPS Psychiatric Resident Advocate

(802) 479-8716

Evan Meenan

From: Cindy Maguire
Sent: Wednesday, November 27, 2013 10:05 AM
To: Evan Meenan
Cc: Cindy Maguire
Subject: FW: Comments re: LEAB Proposed Statewide Proposed Taser Policy

From: Cindy Maguire
Sent: Wednesday, November 27, 2013 9:07 AM
To: 'Rhonda'
Cc: Cindy Maguire
Subject: RE: Comments re: LEAB Proposed Statewide Proposed Taser Policy

Dear Ms. Taylor,

Thank you for your input on the proposed policy. I will share your thoughts with the Law Enforcement Advisory Board, whom we are working with in drafting a statewide policy. My sincere sympathies for the tragic loss of your son.

Best,

Cindy Maguire

From: Rhonda [<mailto:krtayl@worldpath.net>]
Sent: Wednesday, November 27, 2013 7:16 AM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Proposed Taser Policy

Dear Ms. Maguire,

I was emailed a link to your proposed policy and want to thank you for all of yours and everyone else's efforts involved with creating this policy.

My son: MacAdam Lee Mason died June 20, 2012 after being tasered and there are no words to describe our loss. I pray that this policy will keep anyone else's son, or father or loved one from dying.

Sincerely,
Rhonda L Taylor
603-455-9021

Evan Meenan

From: Cindy Maguire
Sent: Monday, November 18, 2013 5:53 PM
To: Evan Meenan
Cc: Cindy Maguire; John Treadwell
Subject: FW: LEAB Proposed Statewide Policy on CEWs (tasers)
Attachments: 2013-11-13 LEAB Draft CEW Policy w-Jack NGS Comments.doc

Evan, please review and recommend back to me.

From: Joe Damiata [<mailto:jdamiata@vlct.org>]
Sent: Monday, November 18, 2013 8:43 AM
To: Richard Gauthier; Cindy Maguire
Cc: Jonathan Williams; Karen Horn
Subject: FW: LEAB Proposed Statewide Policy on CEWs (tasers)

Hi Rick & Cindy:

We had Jack Ryan and Nancy Sheahan look at the state model Taser policy. Overall they seem to be ok with it. They did make a couple of edits which I hope the LEAB would consider. Please let me know your thoughts. Thanks a bunch!

Joe

From: Cindy Maguire [<mailto:cmaguire@atg.state.vt.us>]
Sent: Wednesday, November 13, 2013 4:06 PM
To: agilbert@aclvt.org; Ed@DisabilityRightsVT.org; aj@disabilityrightsvt.org; ANITKA@leg.state.vt.us; Ed@DisabilityRightsVT.org; wlippert@leg.state.vt.us; billippert@gmavt.net; alice.nitka@gmail.com; Jonathan Williams
Cc: Cindy Maguire; Gauthier, Richard
Subject: LEAB Proposed Statewide Policy on CEWs (tasers)
Importance: High

Greetings,

In June, Attorney General Sorrell requested the Law Enforcement Advisory Board (LEAB) to consider drafting a statewide policy for law enforcement on the use of tasers. Specifically, the Attorney General asked that a policy be drafted to address: (a) minimum training standards; (b) standards for deployment; and (c) reporting and accountability. The LEAB empanelled a subcommittee to review current policies and to draft a statewide policy. The attached draft is the result of the subcommittee's work, with input from law enforcement personnel, use of force instructors, and the LEAB. Also attached is a second document that outlines the key components that should be included in any taser policy.

As a next step in vetting this proposal, the LEAB is requesting input from other interested parties. Please review the attachments and send comments to me at the above email address by **December 4, 2013**. The LEAB will convene next on December 23, 2013 and is expected to take action on this proposal at that time.

Thank you,

Cindy J. Maguire
Criminal Division Chief
Attorney General's Office
802 828 5514

**LEAB's
Proposed Policy:
Use of Conducted Electrical Weapons**

INTRODUCTION AND PURPOSE

The purpose of this policy is to encourage uniform, state-wide training and policies governing law enforcement agencies' use of Conducted Electrical Weapons ("CEWs").

When properly used, CEWs can be an effective and efficient law enforcement tool that can reduce injuries to suspects, bystanders, and law enforcement officers. However, a recent review of existing CEW policies from around Vermont indicates that law enforcement agencies have different policies regulating when and how CEWs may be used. In addition, the frequency with which law enforcement agencies must work together and community concern over the potential dangers of CEWs support the need for a consistent and safe approach to the use of CEWs as less-lethal law enforcement tools.

This policy sets forth recommended minimum standards for training officers on using CEWs, the circumstances under which officers should use CEWs, and the procedures officers should follow after using CEWs. Although this policy contains provisions and principals that may apply to several different types of force, it focuses on CEWs and does not specifically address all other lawful types of force law enforcement officers may use in a given situation. This CEW policy is designed to supplement rather than replace any existing use of force policies. It is recommended that law enforcement agencies incorporate the provisions of this policy into their existing use of force policies.

Finally, because this policy attempts to apply universally to all law enforcement agencies regardless of their size, it is not possible to fully detail the level of supervisory review of use of force reports completed after CEW deployment. Agencies should refine these provisions of this policy according to their size, existing policies, and the needs of the communities they serve.

POLICY

1. Definitions.

- 1.1. Conducted Electrical Weapon ("CEW"): A less-lethal law enforcement device that delivers an electrical pulse to the body of a subject in either a "drive stun" or "probe" mode. When used in "probe mode" the device discharges two probes that remain connected to the CEW via wire and which upon impact deliver an electrical pulse designed to temporarily incapacitate that subject. When used in "drive stun" mode, the device makes direct contact with and delivers an electrical pulse to the body of a subject, but does not result in the same temporary incapacitation of a subject as when used in "probe" mode.
- 1.2. Imminent: Impending or about to occur. Imminent does not mean immediate or instantaneous, but that an action is impending. Thus, a subject may pose an imminent

danger even if (s)he is not at that very moment pointing a weapon at another person. For example, imminent danger may exist if an officer has reason to believe any of the following:

- 1.2.1. A subject possesses a weapon or is attempting to gain access to a weapon under circumstances indicating an intention to use it against another person.
 - 1.2.2. A subject is armed and running to gain the tactical advantage of cover.
 - 1.2.3. A subject with the capability to inflicting bodily injury, serious bodily injury, or death is demonstrating an intention to do so.
 - 1.2.4. A subject is attempting to escape from the vicinity of a violent confrontation in which (s)he inflicted or attempted to inflict bodily injury, serious bodily injury, or death.
- 1.3. Objectively Reasonable: The amount of force that would be used by other similarly trained and experienced officers when faced with the known facts and circumstances that the officer using the force is presented with, without regard to the officer's underlying intent or motivation. "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. ... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386 (1989).
- 1.4. Reasonable Belief or Reason to Believe: The facts or circumstances, which would cause a reasonable person to act or think in a similar way under similar circumstances.
- 1.5. Serious Bodily Injury: A bodily injury which creates a substantial risk of: death or substantial loss or impairment of the function of any bodily member or organ; substantial impairment of health; or substantial disfigurement.
- 1.6. Special populations: Members of special populations include subjects an officer has reason to believe are:
- 1.6.1. Cognitively impaired such that they are unable to comply with an officer's instructions.
 - 1.6.2. Operating a motor vehicle.
 - 1.6.3. Standing in an elevated area, near water, or near flammable materials (including but not limited to alcohol-based chemical sprays).
 - 1.6.4. Restrained.
 - 1.6.5. Minors.
 - 1.6.6. Pregnant.
 - 1.6.7. Elderly.
 - 1.6.8. Inflicted with a heart conditions.
- 1.7. Special consideration: A consideration of: (i) the potential additional risk of harm posed by deploying a CEW against a member of a special population; and (ii) whether other

types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population while still preserving the safety of that person, third parties, and the responding officer(s).

2. Use of Force in General.

- 2.1. An officer should determine what type of force is appropriate on a case-by-case basis after considering the totality of the circumstances presented. The level of force used shall be objectively reasonable given the risks presented by the behavior the officer is responding to. These risks shall include, but are not limited to the risk of additional criminal behavior, damage to property, and harm to a third party, the officer, or the subject. In assessing the need to use force, the paramount consideration should always be the safety of the officer and the public.
- 2.2. When possible, officers should first attempt to deescalate situations by their presence or through the use of verbal persuasion.
- 2.3. Officers should continually evaluate the totality of the circumstances presented to determine whether it is objectively reasonable to increase or decrease the level of force used against a subject. Factors that may determine whether an officer escalates or deescalates the level of force used include, but are not limited to: a suspect's level of resistance; the relative age, gender, size, and skill level of the officer and suspect; the number of subjects and officers present; proximity to weapons; prior experience and knowledge of the subject; location of the encounter; whether the officer is on the ground; and officer injury/exhaustion. Officers are not required to use or consider alternatives that increase danger to themselves or the public.
- 2.4. The use of force continuum below sets forth the preferred means of using force in order from least to the most severe measures. Neither an officer, a subject, nor a third party has to actually suffer an injury before an officer is permitted to use force to facilitate control over a subject.

Comment [JR1]: Since Graham is mentioned in the policy and is the actual analysis why not list Graham's three part test that an officer will be held to:
How serious is the offense, what is the physical threat, is the subject actively resisting or attempting to evade arrest by flight

Comment [JR2]: Throughout the Country it has been recognized that force continuums pigeon hole officer response whereas the legal analysis does not, in fact legal analysis indicates there is a range of force which will be reasonable in any circumstance. Additionally, force continuums fail to take into account the differences between officers. The following are comments from John Bostain of the Federal Law Enforcement Training Center-FLETC which trains 80 of the federal agencies:

Each continuum has its own general categories of subject actions. They include phrases such as passive resistance, verbal non-compliance, active resistance, assaultive, grievous bodily harm, you get the point. The problem is that there is no universal agreement on how to define each of these terms. Active resistance to one officer may appear passive to another, and may even appear assaultive to another. These types of inconsistencies may cause an officer to unnecessarily hesitate as he tries to pigeonhole a subject's actions into a specific definition on a Use of Force continuum. Use of Force continuums are a cognitive tool, and they're not very useful in the rapidly evolving dynamics of a critical incident.

In short, I think we should do away with them. That's what we've done here at FLETC. We have replaced the model with more legal training, which focuses on the Constitutional standard set forth by the United States Supreme Court. From the first week of training, FLETC students are exposed to Graham v. Connor and its requirements. After their initial legal training, the Constitutional standard is reinforced almost daily by our Firearms Division and Physical Techniques Division.

Level of Resistance	Type of Force
<p><u>Compliant/Cooperative:</u> A subject obeys directions, is compliant in his/her arrest, and otherwise appropriately responds to the officer's presence, direction, and control.</p>	<p><u>Cooperative Controls:</u> Measures designed to direct or take custody of a compliant or cooperative subject include, but are not limited to, compliant handcuffing, compliant escort techniques, officer presence, and voice control or verbal commands.</p>
<p><u>Passive Resistance:</u> A subject refuses, with little or no physical activity, to appropriately respond to the officer. Examples include subjects who offer</p>	<p><u>Contact Controls:</u> Measures designed to gain compliance or take custody of passively resistant subjects include, but are not limited to, control holds and empty handed escort techniques.</p>

<p>little or no physical or mechanical resistance upon contact, but who refuse to act or respond to an officer's attempt to take him/her into custody, stand when or walk where directed, or put their hands behind their back as directed.</p>	
<p><u>Active Resistance:</u> A subject uses physical activity to resist or takes an affirmative action to defeat an officer's ability to take him/her into custody or to seize him/her, but the subject's actions would not lead a reasonable officer to perceive a risk of physical injury to him/herself, the subject, or a third person. Examples include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance.</p>	<p><u>Compliance Techniques:</u> Measures designed to gain compliance or take custody of actively resistant subjects include, but are not limited to, chemical sprays, impact weapons for anatomical compliance only, empty hand control holds, empty hand and body strikes and/or takedowns, and police K-9. They may also include the use of CEWs provided another compliance technique has failed or the officer has reason to believe that attempting another compliance technique will fail and/or result in a greater risk of injury to him/herself, the subject, or a third party.</p>
<p><u>Assaultive – Risk of Physical Injury Perceived:</u> Behavior that creates an imminent risk of physical injury to the subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include an attack on an officer, strikes, wrestling, undirected strikes with injury potential, kicking, shoving, punching, and other words or behavior indicating that such actions are imminent.</p>	<p><u>Defensive Tactics:</u> Assaultive countermeasures designed to cease and/or prevent the subject's assault on themselves, the officer, or a third party and regain/facilitate control or take custody of the subject. Examples include, but are not limited to, impact weapons used to strike with the intent to facilitate control, CEWs, and other specialty impact munitions.</p>
<p><u>Assaultive – Serious Physical Injury or Death Expected:</u> Behavior that creates an imminent risk of serious physical injury or death to the subject, officer, or third party. Examples include a weapons assault, attempted disarming, or grave weaponless assault. OR There is probable cause to believe a suspect has committed a violent crime involving the infliction or threatened infliction of serious bodily injury or death AND there is a reasonable belief that the freedom of the suspect poses an imminent threat of death or serious bodily injury to the officer or others.</p>	<p><u>Deadly Force:</u> Any force that creates a substantial likelihood of causing death or serious bodily injury.</p>

3. CEW Use and Deployment Procedures.

- 3.1. Only officers who complete training on the use of CEWs and on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
- 3.2. Prior to the start of each shift, an officer authorized to carry a CEW shall conduct a spark test of the CEW to ensure that it is properly functioning. Only properly functioning CEWs shall be carried for use. CEWs that are not properly functioning shall be taken out of service and sent for repair.
- 3.3. Whenever feasible, law enforcement should display and provide a warning prior to deploying a CEW.
- 3.4. Officers may use CEWs in the following circumstances:
 - 3.4.1. In response to either:
 - 3.4.1.1. Active resistance when another compliance technique has failed or the officer has reason to believe that attempting another compliance technique will fail and/or result in a greater risk of injury to him/herself, the subject, or a third person.
 - 3.4.1.2. Assaultive behavior when lethal force does not appear to be objectively reasonable.
 - 3.4.2. To prevent the commission of a suicide or self-inflicted serious physical injury.
 - 3.4.3. To deter vicious or aggressive animals that threaten the safety of the officer or others.
- 3.5. Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.
- 3.6. An officer should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
 - 3.6.1. When targeting a subject from the front, the preferred target area is a horizontal line approximately 2 inches lower than the sternum and below. An ideal probe deployment from the front will "split the hemispheres" having one probe strike a subject above the belt line and the other probe striking the subject in the thigh or leg thereby activating the hip flexor.
 - 3.6.2. When targeting a subject from the back, the preferred target area is below a horizontal line drawn even with the shoulders across the neck and below.
- 3.7. Officers should use the minimum number of cycles possible to take a suspect into custody or mitigate their assaultive behavior.

Comment [JR3]: There is no provision for use to prevent escape where officer has probable cause to believe serious offense. Since deadly force can be used to prevent escape in some limited instances it seems that the CEW should have such a provision.

Comment [JR4]: Probably don't need this since we are avoiding chest

- 3.8. CEWs shall not be used in a punitive or coercive manner and shall not be used to awaken, escort, or gain compliance from passively resistant subjects. The act of fleeing or destroying evidence, in and of itself, does not justify the use of a CEW
- 3.9. Officers should avoid deploying more than one CEW on a single subject at the same time unless special circumstances exist such as an ineffective probe spread on the first CEW or the first CEW fails to achieve immobilization of the subject and a second deployment is independently justified. Before deploying a second CEW, officers should consider the feasibility and safety of attempting to control the subject with a lesser type of force.
- 3.10. Officers having reason to believe they are dealing with a member of a special population shall give special consideration to deploying an CEW.

4. Post Deployment Procedure.

- 4.1. Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration.
- 4.2. As soon as practicable after CEW deployment, the CEW probes shall be removed from the subject. The probes shall be treated as a biohazard. In the following cases, officers should wait for EMS to remove the probes:
 - 4.2.1. The probes impeded in a sensitive area such as the face, neck, throat, groin, female breast, or stomach of a pregnant woman.
 - 4.2.2. The officer encounters problems when attempting to remove the probe.
- 4.3. Medical attention at a medical facility shall be offered to all individuals subjected to a CEW deployment.
- 4.4. Emergency medical services shall be contacted if a subject:
 - 4.4.1. Suffers an obvious injury.
 - 4.4.2. Does not appear to recover properly and promptly after deployment.
 - 4.4.3. Is a member of a special population.
 - 4.4.4. Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.
 - 4.4.5. Exhibits signs of extreme uncontrolled agitation or hyperactivity prior to the CEW exposure or the subject was involved in a lengthy struggle or fight prior to the CEW exposure.
- 4.5. If a subject refuses additional medical attention, that refusal should be documented.
- 4.6. When an officer has reason to believe (s)he is responding to a situation that may necessitate emergency medical services, (s)he shall make reasonable efforts to summon such services in advance.

Comment [JR5]: Once restrained subject should be moved into a recovery position which facilitates breathing

Comment [JR6]: I would add that chest shots should be since, at minimum by EMS since in addition to 15 seconds, this is the other potential for death.

- 4.7. With the exception of the required spark test and accidental discharges, each time an CEW is deployed and/or displayed for compliance purposes it shall be documented in a use of force report within 24 hours of the deployment unless otherwise authorized by a supervisor. This use of force report shall contain the following, at a minimum:
 - 4.7.1. The date, time, and location of the incident.
 - 4.7.2. The officer(s) involved in the incident, identifying which officer(s) used CEWs.
 - 4.7.3. The type of CEW deployment, i.e., display, drive stun, or probe mode.
 - 4.7.4. Identifying and descriptive information for the subject.
 - 4.7.5. A list of other known witnesses.
 - 4.7.6. The number of CEW cycles used, the duration of each cycle, and the duration between cycles.
 - 4.7.7. The level and description of resistance encountered.
 - 4.7.8. Whether CEW use was effective.
 - 4.7.9. The type of crime/incident the suspect was involved in.
 - 4.7.10. The approximate range at which the CEW was used.
 - 4.7.11. The point of impact.
 - 4.7.12. Whether law enforcement used or attempted to use any other types of force.
 - 4.7.13. The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.
 - 4.7.14. The type of injuries, if any, sustained by any of the involved persons including the officer(s).
 - 4.7.15. When possible, photographs of the CEW probe entry sites.
- 4.8. The department shall also collect the download data, cartridges, probes, and wires from the CEW that was deployed and shall maintain them pursuant to its evidence policies. The download shall occur as soon as reasonably practical after the CEW is deployed.
- 4.9. When possible, in instances in which more than one CEW has been deployed, a sampling of the AFID tags should also be collected and maintained pursuant to the department's evidence policies.
- 4.10. Accidental discharges shall be documented in a departmental memorandum explaining in detail how the discharge occurred.
- 4.11. All use of force reports and departmental memorandum required under this policy shall be reviewed by the officer's supervisor. The department shall conduct a use of force review in the following situations:
 - 4.11.1. The department receives a complaint of excessive use of force.
 - 4.11.2. The supervisor recommends conducting a use of force review.
 - 4.11.3. The encounter resulted in death or serious bodily injury.
 - 4.11.4. The individual exposed to the CEW is a member of a special population.

Comment [JR7]: All TASER deployments beyond simple display should receive supervisory review

4.11.5. An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.

4.12. Upon request, a suspect subjected to a CEW deployment shall be kept informed of the procedural status and final result of the review.

4.13. Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council the total number of CEW deployments during the previous year and how many deployments resulted in a use of force review. The Council shall make this information available on its website.

5. Training Requirements.

5.1. Training for officers authorized to carry CEWs shall be conducted annually.

5.2. Training shall not be restricted solely to training conducted by the manufacturer of the CEW.

5.3. Training shall emphasize that CEWs may be less-lethal, but not non or less-than lethal.

5.4. Training shall also incorporate, at a minimum:

5.4.1. Instruction on the use of force continuum.

5.4.2. Techniques to avoid or deescalate confrontations.

5.4.3. The underlying technology and operation of CEWs.

5.4.4. The physiological effects upon an individual against whom such a CEW is deployed.

5.4.5. The proper use of the weapon, including both the proper mechanical use of the weapon and the circumstances under which it is appropriate to use the weapon.

5.4.6. Scenario-based training.

5.4.7. Proper removal of CEW probes.

5.4.8. The potential medical needs of a subject who has been subjected to a CEW deployment.

5.4.9. The post-deployment reporting requirements.

5.4.10. Instruction on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council.

5.5. Departments should also evaluate the value of requiring or allowing officers to feel the effects of a CEW as part of training. If an officer decides to feel these effects, the training shall include an explanation of the potential differences between that officer's experience and the experience of a subject in the field.

6. Vermont's Law Enforcement Advisory Board shall review this policy annually.

Comment [N8]: See JR2 comment above. Although the Introduction states that the CEW policy is not intended to replace existing use of force policies, as a practical matter that is the result once you require that officers receive training on the use of force continuum contained in this policy.

Evan Meenan

From: laura ziegler <zieweed@gmail.com>
Sent: Tuesday, November 26, 2013 4:09 PM
To: Cindy Maguire
Cc: Paco.Aumand@state.vt.us; Gauthier, Richard; Evan Meenan
Subject: Re: follow up/inquiry - CEW Policy

hi Cindy,

Thanks for the information.

I'm not situated to attend any meeting on the 23 as I expect to be out of state at the time. But I am concerned about the process.

What interested parties were communicated with concerning the draft other than law enforcement, VLTC and the Taser Forum Panel members?

I think that at a minimum the draft policy and key components documents and information about who to submit public comment to and what the deadline is should be posted by LEAB and notice and links posted on the AG's website, and that affirmative notice should be given to the people who testified or commented to the AG's office on the issue this spring, and to the people on the Act 80 Advisory Committee e-list.

If there is to be a meaningful public process regarding the draft policy I believe it would require an extended comment period and a public hearing(s). It does not appear that such a process was contemplated.

regards,

laura

On Tue, Nov 26, 2013 at 3:34 PM, Cindy Maguire <cmaguire@atg.state.vt.us> wrote:

Hi Laura –

The 12/23/13 Law Enforcement Advisory Board (LEAB) meeting is open to the public and will be noticed as required. I am copying the Chairs of the Board to alert them to your inquiry regarding a public comment period. A decision regarding a public comment period should be made by the Board; the AGO does not have any plans at this time to act independently from the Board.

The process for receiving input to date has included discussions with various law enforcement agencies, the Vermont League of Cities and Towns, sending the current draft to the Taser Forum Panel members (from the forum convened by the AGO last spring) and other interested parties, to include the ACLU and Disability Rights Vermont. If there are other individuals or entities that you believe should be contacted, please feel free to send the information that you have received, or let me know and I will be happy to do so.

Best,

Cindy Maguire

From: laura ziegler [mailto:zieweed@gmail.com]
Sent: Tuesday, November 26, 2013 11:09 AM
To: Cindy Maguire
Subject: follow up/inquiry

hi Cindy,

I was forwarded the message below -- with attachments, so I'm withdrawing yesterday's public records request.

I may be sending a more comprehensive one but for now, I would like to know if the AG's office plans on providing any affirmative outreach to the public (as opposed to e-mailing a short list of "interested parties") and whether there will be a public comment period on the draft statewide CEW policy.

Thanks for any information,

laura

From: Cindy Maguire [mailto:cmaguire@atg.state.vt.us]
Sent: Wednesday, November 13, 2013 4:06 PM
To: agilbert@acluvt.org; Ed@DisabilityRightsVT.org; aj@disabilityrightsvt.org; ANITKA@leg.state.vt.us; Ed@DisabilityRightsVT.org; wlippert@leg.state.vt.us; billlippert@gmavt.net; alice.nitka@gmail.com; Jonathan Williams
Cc: Cindy Maguire; Gauthier, Richard
Subject: LEAB Proposed Statewide Policy on CEWs (tasers)
Importance: High

Greetings,

In June, Attorney General Sorrell requested the Law Enforcement Advisory Board (LEAB) to consider drafting a statewide policy for law enforcement on the use of tasers. Specifically, the Attorney General asked that a policy be drafted to address: (a) minimum training standards; (b) standards for deployment; and (c) reporting and accountability. The LEAB empanelled a subcommittee to review current policies and to draft a statewide policy. The attached draft is the result of the subcommittee's work, with input from law enforcement personnel, use of force instructors, and the LEAB. Also attached is a second document that outlines the key components that should be included in any taser policy.

As a next step in vetting this proposal, the LEAB is requesting input from other interested parties. Please review the attachments and send comments to me at the above email address by **December 4, 2013**. The LEAB will convene next on December 23, 2013 and is expected to take action on this proposal at that time.

Thank you,

Cindy J. Maguire

Criminal Division Chief

Attorney General's Office

802 828 5514

Evan Meenan

From: Cindy Maguire
Sent: Thursday, December 05, 2013 8:19 AM
To: 'laura ziegler'
Cc: Gauthier, Richard; Aumand, Paco (Paco.Aumand@state.vt.us); Evan Meenan; Cindy Maguire
Subject: RE: Comments on LEAB draft recommendations on use of CEWs

Thank you Laura, I will pass on to the Board for consideration.

Best,

Cindy Maguire

From: laura ziegler [<mailto:zieweed@gmail.com>]
Sent: Wednesday, December 04, 2013 11:56 PM
To: Cindy Maguire
Cc: Gauthier, Richard
Subject: Comments on LEAB draft recommendations on use of CEWs

Cindy,

Attached are comments on the LEAB draft.

Yours truly,

Laura Ziegler

To: Assistant Attorney General Cindy Maguire, Office of the Attorney General
From: Laura Ziegler
December 4, 2013

Unsolicited and by no means comprehensive comments on LEAB proposed recommendations on CEWs

Given the time frame, the comments of others -- especially Jeff Dworkin's invitation to review the report of the Montpelier City Council's Committee on Tasers, which I would urge LEAB to accept* -- my comments will be limited to a few points.

1. It's encouraging that the issue of use of CEWs is being given some consideration by the Law Enforcement Advisory Board. But what LEAB refers to as a draft policy is actually a draft recommendation -- one which the myriad law Vermont enforcement agencies can take or leave. Unlike proposed legislation (H.225) currently in House Government Operations Committee, it would not fill the present vacuum of statewide standards. Nor would it address the problems with current standards and practice.
2. Even if LEAB had authority to promulgate rules or set policy or otherwise create standards, there is another vacuum: the absence of effective remedies (other than private lawsuits) when law enforcement violate their own policies. To meaningfully address taser use or misuse by adopting a policy there must be some mechanism to make law enforcement accountable for not adhering to it.
3. Deployment of CEWs should be reasonably related to the degree of threat posed to public safety. The LEAW draft recommends a threshold that accommodates disproportionate use of force. "Active resistance" covers a very broad array of behaviors and allows CEWs to be used on people who are posing no actual threat. An "assaultive" threshold still allows CEWs to be used on people who are posing no actual threat of significant injury to officers or the public. CEWs have significant potential for causing injury (and occasionally death), and routinely inflict excruciating pain. I believe their use cannot be justified absent assaultive behavior posing an imminent* risk of serious bodily injury to an officer or member of the public. The best articulation of an appropriate threshold that I've come across is this:

"The proper test... for the use of Taser is that its use will be lawful where it is immediately necessary to prevent or reduce the likelihood of recourse to lethal force (e.g.: conventional firearms).

IX. This is a test that is just below that for the use of lethal force (such as conventional firearms), but a much stricter test than that which applies for other uses of non-lethal force. It means that Taser can be used in circumstances where there is a threat to life or a threat of serious injury, but that threat has not quite reached the threshold where lethal force (such as conventional firearms) could be justified."

--p. 3, *The PSNI's [Police Service of Northern Ireland's] Proposed Introduction of Taser: Human Rights Advice*, Keir Starmer, QC, and Jane Gordon, 2007

(the report can be downloaded at http://www.communitylaw.org.au/cb_pages/taser_trap_.php)

4. Meaningful consideration of heightened vulnerability to CEWs or impaired or non-existent ability to understand and comply with commands requires clear and comprehensive language and actual prohibitions. I'd like to flag some unequivocal language in the Miami Beach Police Standard Operating Procedure on Use of Force (posted at <http://cbsmiami.files.wordpress.com/2013/08/use-of-force.pdf>), which requires that CEWs "not be used when the subject is known or appears to be;
- (1) A pregnant woman (unless the use of deadly force is justified);
 - (2) A child under the age of 13 (unless the use of deadly force is justified);
 - (3) An elderly person (unless the use of deadly force is justified)

The above list, like the LEAB's, falls short; it imposes no restrictions on using CEWs on people with cognitive impairment, other mental or physical disability or medical conditions (e.g. postictal or hypoglycemic confusion), people who are deaf or people who are intoxicated. But aside from the lack of a definition for "elderly" its wording provides **clear prohibitions** absent a high threshold of justification. The LEAB's draft language only requires officers to "give special consideration." It does not take into account the full spectrum of disabilities or conditions that might prevent or seriously impair a person's understanding of, or ability to comply with, an officer's commands (or to see or recognize that the officer is an officer). Nor is "special consideration", as defined in the draft, particularly special: it requires assessing additional risk of harm from CEW deployment and considering other forms of reasonably available uses of force to effect control. But these would be reasonable requirements for all but the most exigent/dangerous circumstances under which CEWs could be deployed.

The Miami Beach Police Standard Operating Procedure on Use of Force also requires that "[v]erbal warnings shall be issued to the subject prior to deploying the ECD to allow him the opportunity to comply with the officer's commands, unless the warning would provide a tactical advantage to the subject being taken into custody." The LEAB's suggests pre-deployment warning "whenever feasible." The LEAB draft repeatedly employs this kind of weak wording.

Re: "elderly persons," which LEAB's draft also fails to define: age related risk from CEWs include fractures as a result of falls or muscle contractions. In its 12/9/11 report SHOCKING: The Lack of Responsible Taser Policy in Minnesota (posted at https://www.aclu.org/files/assets/aclu_report_on_taser_policy_12_2011.pdf), ACLU of Minnesota reports that according to CDC, NIH and the National Osteoporosis Foundation it's estimated that *over 50%* of Americans over age 50 have osteoporosis or osteopenia, which increases risk of fractures. At what point are people "elderly"?

5. Any electronic control device used by law enforcement officers should be required to be equipped with functioning camera and recording equipment, and all incidents of use be recorded. Such documentation is critical to understanding just how CEWs are actually being used.

When CEWs are deployed the recordings should be public record and accessible to the public in keeping with the Access to Public Records Act (see H.126, introduced last year by Representative Lippert).

6. If LEAB wants input -- especially from populations disproportionately subjected to or at risk from CEWs, and their advocates -- it could attempt to communicate directly with those constituencies. There has been no apparent public notice or public comment period concerning the draft recommendations. Nor was the A.G.'s Act 80 Advisory Committee, a cross disability forum that includes representatives from law enforcement and advocates concerned about law enforcement training and practice, notified. Nor were people who testified or commented at the A.G.'s public forum notified. On Nov. 26 I was provided with the draft policy by A.J. Ruben of Disability Rights Vermont, who forwarded me a Nov. 13 e-mail from the AG's office to Disability Rights Vermont, ACLU, The League of Towns and Cities (already represented on the LEAB) and two legislators chosen by the AG's office for their Taser Review panel.

There is no indication of how the public input which was solicited by the A.G. back in March -- including from A.J. Ruben, Robert Appel, and Jeff Dworkin, who were invited to present at the forum, and members of the public, who testified or submitted written comments -- was incorporated or rejected by LEAB in its draft, or reviewed by it at all. (The comments are public record, and if LEAB wishes to review the proceedings a video recording by ORCA Media is posted at <http://vp.telvue.com/preview?id=T01221&video=148839>).

As difficult as it may be to address issues surrounding the use of CEWs through legislation, that process would seem to be more transparent, accessible to all stake holders and capable of resulting in some kind of actual statewide standard. While the LEAB recommendations should inform that process it would be unfortunate if they were promoted as a substitute.

*In the event that LEAB declines to review the report Montpelier City Council Committee on Tasers, I'm flagging its list of vulnerable populations and some of its concluding recommendations:

http://acluvt.org/issues/tasers/mont_taser_rpt.pdf

(excerpt, pp. 9 and 10)

Every report on the Taser, whether from law enforcement interests or from civil and human rights organizations or from the Taser company itself, recognizes the dangerousness of Tasers, and proscribes its use in certain situations and locations, against certain classes of individuals ("vulnerable populations" or "at risk" individuals), and on certain parts of the body. Barring an emergency where there is not other way to prevent death or serious bodily injury, it is forbidden to use a Taser on these individuals:²⁴

- elderly
- children

- physically frail or infirm
- alcohol- or drug-intoxicated
- serious mental disturbance
- hearing impairment or cognitive disability²⁵
- cardiac condition, pacemaker, seizures, sickle cell, pulmonary disease, or other significant disease; also osteopenia, osteoporosis, spinal injury, previous muscle, disc, ligament, joint, bone or tendon damage or surgery
- pregnant
- thin physique
- highly agitated (“excited delirium”)²⁶

Forbidden circumstances regarding a subject include:

- flight or running
- operating a motor vehicle or machinery
- near flammable substance
- in water or mud
- standing on a height (ledge, roof, etc.)
- restrained, handcuffed, incapacitated or immobilized

And most of the frontal area of the body is forbidden for targeting, including:

- head
- face
- neck
- chest
- groin and genitals

24 This list of limitations is culled from the major studies of Tasers and from the company’s own warnings.

25 The intoxicated and mentally ill are widely recognized among the populations especially vulnerable to death or serious bodily injury from Tasers. Tina Wood, a representative of Disability Rights Vermont, a non-profit designated by the governor of Vermont to assure compliance with the federal disability rights acts, made the important point to the Committee that many of the disabled are similarly vulnerable, due to conditions such as cognitive impairment, deafness, and language processing problems. The Committee agrees with the Coalition, and so includes the disabled among the categories of vulnerable populations.

26 The American Medical Association describes “excited delirium” as follows: “Although not a validated diagnostic entity . . . , ‘excited delirium’ is a widely accepted entity in forensic pathology and is cited by medical examiners to explain the sudden in-custody deaths of individuals who are combative and in a highly agitated state. Excited delirium is broadly defined as a state of agitation, excitability, paranoia, aggression, and apparent immunity to pain, often associated with stimulant use and certain psychiatric disorders. The signs and symptoms typically ascribed to “excited delirium” include bizarre or violent behavior, hyperactivity, hyperthermia, confusion, great strength, sweating and removal of clothing, and imperviousness to pain. Speculation about triggering factors includes sudden and intense activation of the sympathetic nervous system, with hyperthermia, and/or acidosis, which could trigger life-threatening arrhythmias in susceptible individuals. . . The intense pain associated with [Taser] exposure, the psychological distress of incapacitation, and hazards associated with various restraint methods also could

contribute." "Use of Tasers by Law Enforcement Agencies" (2009), pp. 6-7, available at http://www.policeone.com/policeone/data/pdfs/Taser_ecd_resolution.pdf excerpted from pp. 36-42

Should the Council approve the purchase of Tasers notwithstanding the Committee's recommendation, it is critical that high standards, strict safety measures, extensive training, and vehicles for heightened police accountability be implemented before such purchase and deployment. The Committee believes the following, culled from the major studies of Tasers, are essential preconditions to Taser acquisition by the Montpelier Police Department.

.....

7. Carry defibrillators in cruisers and require officer training and competency in their use: Tasers are especially dangerous for individuals with heart conditions or who are highly agitated. Such agitation is often seen in incidents involving an intoxicated or mentally unbalanced individual. Heart complications, such as ventricular defibrillation, are a serious concern and a prominent suspect in Taser-related deaths. The Committee and Chief Facos agree with the wisdom of placing a defibrillator in every cruiser. Officers must be trained and shown competent in their use.

11. Prohibit drive stun mode: Some reports on Tasers would recommend allowing the drive stun mode in exigent circumstances to prevent death or serious bodily injury. Other studies recommend this mode never be permitted, because in that mode the device does not immobilize, but only causes excruciating pain, which some subjects can "fight through", with the result of the aggravation of the already-tense encounter. The Committee recommends the prohibition of the device in drive stun mode, to prevent both the aggravation of an encounter and to make less likely the potential for abusive deployment of the device.

12. Prohibit tasing a fleeing or running subject: All major studies prohibit deploying Tasers on fleeing or running subjects, due to the increased risk of injury or death.

17. Prohibit use of a Taser as a pain compliance weapon or general force tool. The proposed VLCT policy states: "Officers are prohibited from using the device as a punitive measure." (IV)(F)(b)(xv). This is insufficient, in light of the view of the major reports on Tasers that go beyond punitive use, to also prohibiting use for compliance and as a general force tool.

18. Prohibit multiple shots and continuous or prolonged exposure except where lethal force would be justified: Taser shocks should be as brief as possible. Multiple shots against a subject are significantly associated with Taser-proximate fatalities, particularly if the subject was emotionally disturbed, drug intoxicated or showed continued resistance.⁶²

"An officer should only administer an additional ECW discharge after the initial discharge if the officer has reevaluated and concluded that the subject still poses an imminent threat of significant physical harm and other options are not appropriate. Repeated or prolonged (*i.e.*,

beyond the 5-second standard cycle) discharges should be avoided whenever possible.” (Maryland Report at 71)

19. Prohibit Taser use on subjects in restraints except where lethal force would be justified. (*Accord*: ACLU of Northern California report at 4). The ability of a subject to cause a threat of harm while in restraints is not eliminated but is greatly reduced. Other forms of control must be used in this circumstance unless the subject poses an ongoing threat of causing imminent serious bodily injury.

20. Avoid impairment of respiration: Given the respiratory complications that are associated with Taser use, an officer must, following use of a Taser, not employ a restraint method that could impair a subject’s respiration.

23. Reporting, supervision and monitoring: All Taser incidents must be reported on a use-of-force form detailing events leading up to and following the discharge. Data to be reported include but are not limited to: a detailed description of the subject’s behavior, the facts and level of aggression presented by the subject, the officer’s reasons for concluding there was a likelihood of imminent harm by the subject, the number of cycles and the duration of shock, the duration between shocks, all witnesses, the range, the mode used, the distance fired, the point of impact on the body, whether there was any indication that the subject was a member of any vulnerable population as described earlier in this report, the time and type of medical care provided, and any injuries suffered by any person.

24. Supervisors should respond to the scene of any Taser deployment as soon as possible: The quick presence at the scene of a deployment by a supervisor would both ensure to officer and the public the seriousness with which the police force and the city regard Taser deployment, and also assure an immediate assessment of the appropriateness of the deployment.

25. Conduct rigorous investigation following each deployment: A supervisory-level or higher inquiry must be conducted to determine the appropriateness of every deployment and whether there was strict adherence to policy and training. Such investigations should include interview of witnesses; review of video, photographic and data evidence, test results on the weapon; and other relevant information. Such investigation must also be conducted externally, by Citizen Review Board or otherwise, when a subject dies or is seriously injured, when there has been a substantial deviation from policy or training, and when the subject is a restrained or a vulnerable person as defined in this report.

26. Monitor Taser use by the agency: The police force should use a tracking database that is capable of maintaining detailed information as to each device and each deployment, can reveal the circumstances of every Taser deployment, and shows the extent to which officers are relying on the device compared to other forms and methods of control. This information and data must be available to the public.

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 02, 2013 4:46 PM
To: 'lzigman@comcast.net'
Cc: Cindy Maguire; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Evan Meenan
Subject: RE: Comments re: LEAB Proposed Statewide Taser Policy

Dear Ms. Zigman,

Thank you for your comments; I will pass them along to the LEAB for consideration.

Best,

Cindy Maguire

From: lzigman@comcast.net [<mailto:lzigman@comcast.net>]
Sent: Saturday, November 30, 2013 9:22 AM
To: Cindy Maguire
Subject: Comments re: LEAB Proposed Statewide Taser Policy

I read the article in the newspaper this week about proposed changes in the policy regarding the use of tasers by police, and wish to submit to you my opinions on this critical issue.

The proposed changes seem to be sound and going in the right direction, especially the part about not hitting a person in an area that can cause serious injury or even death, as has happened in at least one case in recent years.

At the risk of offending police officers, I feel that at times they overreact and do not properly assess some situations. I also feel that some officers feel

empowered by their status and ability to "take someone out" with not only tasers but with guns.

In essence, it is time to use common sense and at times the necessary use of tasers and guns - the latter in instances where the officer's life or the life of someone else is in peril.

Except in the most critical situations I feel the officers should be able to "take a threat down" by aiming at arms and legs rather than using deadly force and maiming or killing a person.

I thank you for taking my feelings and comments into consideration in generating a new policy in the use of tasers. In recent years Vermont has acquired a bad reputation for inappropriate use of tasers - as well as guns.

Lorraine Zigman
Perkinsville VT
802-263-5245
lzigman@comcast.net

Evan Meenan

From: Cindy Maguire
Sent: Friday, December 06, 2013 11:11 AM
To: 'Carol Robbins'
Cc: Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Evan Meenan; Cindy Maguire
Subject: RE: Comments re: LEAB proposedStatewide Taser Policy

Dear Ms. Robbins,

Thank you for your comments; I will pass them along to the LEAB.

Best,

Cindy Maguire

-----Original Message-----

From: Carol Robbins [<mailto:DAGARO@COMCAST.NET>]
Sent: Friday, December 06, 2013 9:06 AM
To: Cindy Maguire
Subject: Comments re: LEAB proposedStatewide Taser Policy

To Whomever This May Concern:

Actually, this matter concerns us all and I am grateful that my comments have been invited. I would like to go on record against the proposal recently presented in the newspaper. Citizens need to be concerned about the power shift always under the guise of "safety." Law enforcement at all levels needs to do a better job of training officers with guns, and now they want to carry tasers. I think not! Whatever happened to winging a perpetrator who might be potentially dangerous, rather than filling him or her full of bullets and asking questions later? Giving even "trained" officers another means of powerful control over ordinary citizens is risking the unnecessary injury or even death of a misunderstood citizen.

Sincerely,
Carol Robbins

Evan Meenan

From: Cindy Maguire
Sent: Friday, December 06, 2013 4:31 PM
To: 'Peter Grainger'
Cc: Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard; Cindy Maguire
Subject: RE: cmaguire@atg.state.vt.us

Thank you Mr. Grainger, I will pass this information along to the LEAB.

Best,

Cindy Maguire

From: Peter Grainger [mailto:Peter.Grainger@bellmedia.ca]
Sent: Friday, December 06, 2013 4:20 PM
To: Cindy Maguire
Subject: cmaguire@atg.state.vt.us

Hi Cindy:

Here's something else that will keep your LEAB busy. The Council of Canadian Academies concluded two years of research (basically a literature review) on CEWs with its conclusions published this past October called "The Health Effects of Conducted Energy Weapons". As a journalist who has investigated CEWs quite extensively, I found it an interesting, but troubling read.

You can view the executive summary and full report in the link below:

<http://www.scienceadvice.ca/en/assessments/completed/cew.aspx>

Although the research panel concedes CEW related deaths are seemingly rare, the members also note that they do not know WHY these deaths are occurring. They agree they are uncertified electrical devices (which is in and of itself a violation of the Canadian Electrical Safety Standards Act) being used as weapons on the public. They point out the early data gaps, and the fine-print health warnings from the manufacturers after deaths began happening with these supposed 'non-lethal' devices. They do call for much more rigorous research and advocate for proper, independent, scientifically-derived measurement, to be done routinely.

Regular testing is still not happening in Canada, or anywhere else for that matter. There has been some lab testing, using several different protocols supplied by the manufacturers, so the results could be questionable because of bias. The RCMP does say it has tested its entire inventory and admits it has discovered 'output variance', even when using the manufacturer's measurement protocol(s).

Output variance simply means not all CEWs perform the same way- some give out higher or lower current than others- something the company denied was possible. My colleagues at the Canadian Broadcasting Corporation had 50 Tasers, chosen at random from U-S police agencies, tested independently in 2008- and they found 12-percent were performing outside manufacturer specifications (although no one has yet independently verified those specs). Via FOI request, CTV saw the unpublished results of subsequent tests done by the RCMP, showing a 20-percent failure rate. The RCMP asked the manufacturer what to do—and the answer was to simply raise the resistance level in the test formula from 250 Ohms to 600 Ohms. That resistance value seems artificially and arbitrarily elevated.

The other thing that should be considered is there is still NO electrical safety standard for INVASIVE shocks.

In BC, a whopping 80-percent of the older model M26s tested in an Ottawa lab *failed* to meet manufacturer specs; these devices were pulled from service; subsequently the RCMP shelved all of the older M26s from coast-to-coast. *(It should be noted M26s are true 26-watt weapons, the X26 is NOT 26 watts; the company spec sheets reveal they are powered at 17-watts; no explanation was offered to its customers or us in the media, for this unannounced decrease in power; no one outside the company really knows the true power of the newer X2 models).*

The Canadian government via Defence Research & Development Canada (DRDC) is aware of an independently-derived measurement protocol which is in development in your country. It is called the **Electroshock Measurement Protocol PT 62792**, brought forward by the National Institute of Standards & Technology (NIST) and the Office of Law Enforcement Accountability (OLEA). The International Electrotechnical Commission (IEC) is verifying this protocol- with the involvement of safety standards bodies like the Underwriters Lab (UL) and Canadian Standards Association (CSA). Electrical engineers from these safety bodies are saying it is impossible to determine safety thresholds of CEWs without first knowing how to *measure* the devices fairly and properly. Again- this has yet to happen.

There have been more than 830 fatalities in North America since CEWs were introduced; you'd think if this was a defective car part or prescription drug associated with this many unexplained deaths, there would be a much louder public outcry. Somehow, because it is a police tool, they are exempt from liabilities? Personally, after investigating this file since 2007, I find it is a tragic example of complete public policy failure.

I interviewed Simon Fraser University Criminology Professor Rob Gordon, who was a contributing panelist involved in the "Health Effects of CEWs" report. Here's the script of what we aired October 15th.

(Intro)
A PANEL OF MEDICAL EXPERTS FROM ACROSS CANADA IS WEIGHING IN ON TASERS -- WARNING POLICE MAY WANT TO THINK ABOUT TOUGHENING THEIR USAGE POLICIES.

VO
THE REPORT IS A REVIEW OF ALL AVAILABLE SCIENCE ON THE SUBJECT. ALTHOUGH DEATHS ARE RARE, IT SAYS TASERS CAN CAUSE POTENTIALLY FATAL RESPIRATORY AND CARDIAC COMPLICATIONS. THEY SAY THERE IS A NEED FOR HIGHER-QUALITY EVIDENCE TO FULLY UNDERSTAND THE HEALTH EFFECTS OF THE WEAPONS.

ROB GORDON SFU Criminologist
15-RAW-VAN-TASER

7125 @ 13:01:55

"If I were a chief of police right now, with this report in my hands, I think I'd be looking very, very closely at practices & policies, because there will be legal consequences if there is a fatality or some other injury that occurs as of the result of using a Taser."

VO
PANEL MEMBER ROB GORDON SAYS A MORATORIUM SHOULD BE CONSIDERED BECAUSE THERE IS NO GOVERNMENT OVERSIGHT, NO STANDARDS FOR ELECTRICAL SAFETY AND NO RELIABLE OR REGULAR MEASUREMENT OF THE DEVICES.

Here are some other quotes from Mr. Gordon's interview:

ROB GORDON
SFU Criminologist
15-RAW-VAN-TASER

7125 @ 13:04:03

"Given what the report has NOT been able to establish, as a result of a comprehensive & independent review of all the research literature that's been done, I think I would still be having some concerns at a policy level about Tasers being in the hands of police officers."

7125 @ 13:01:50

"As a criminologist who is interested in policing practices, I would find this to be highly problematic. If I were a chief of police right now, with this report in my hands, I think I'd be looking very, very closely at best practices & policies, because there will be legal consequences if there is a fatality or some other injury that occurs as of the result of using a Taser."

7125 @ 12:59:48

"The report is pointing to the fact that we need to do a whole lot more work in the research field on the implications of Taser use before we can be absolutely sure that these are safe to use".

(When asked if there was enough in the report to support a moratorium, Gordon replied in the affirmative)

7125 @ 13:03:24

"Speaking as a citizen of British Columbia, yeah I think there needs to be a very close look at useage; it seems in the province at any rate because of the Braidwood Commission, and policies developed by that commission, we seem to have a pretty good set of rules about useage. That may be adequate at this point because they're talking about minimal use of the weapon, issuing warnings and that sort of thing."

(ON a two shot)

7126 @ 13:10:40

No matter how you dance on the head of a pin with this, the bottom line is these are weapons, the consequences of which are not clear, so I say don't use them! These guys (POLICE) are gonna get sued."

Feel free to get in touch if you want elaboration on any of the issues raised. Be aware CEW use in BC has dropped 90-percent now that rank & file police officers have been educated about the deficiencies of the devices by the Braidwood Commission Inquiry and some of us in the media, who inspired our provincial government to take a long, hard look at the current generation of CEW technology and how it is being used.

Best regards,
Peter Grainger.

Peter Grainger | Reporter

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Canada



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Evan Meenan

From: Morgan W. Brown <morganbrown@gmail.com>
Sent: Friday, December 06, 2013 10:23 PM
To: Cindy Maguire
Cc: John Calvi; Evan Meenan; Richard Gauthier - LEAB Chair; Paco.Aumand@state.vt.us; laura ziegler; barrykade@hush.com
Subject: *Urgent*: Comments made on stun gun policy sent tonight (dated: 11/30/2013)

Dear Cindy, et al:

Since it is not really clear to me either way, just in case, I am making sure the below forwarded comments from John Calvi of Putney regarding the draft LEAB proposed statewide CEWs (Taser) policy were submitted and received by you as intended.

If I understand correctly (based upon the subject of his email to me on the subject), Mr. Calvi had sent his comments my way after he sent them to you.

Having since reviewed the two separate files of documents sent to Laura Ziegler and Barry Kade in response to their public records and documents request pertaining to the draft LEAB proposed statewide CEWs (Taser) policy and, unless I somehow missed it, not finding John Calvi's comments within either file, I am sending the comments to you on his behalf.

Although the draft proposed policy comment deadline has since passed, given that he had sent his comments prior to the deadline, it is requested that John Calvi's be included within the comments submitted to the LEAB, the subcommittee that worked on the draft, as well as other interested parties.

Besides cc'ing Mr. Calvi on this particular email of course, I am also cc'ing both Laura Ziegler as well as Barry Kade so they will be informed concerning the matter and so both Laura and Barry now have a copy of the submitted comments that were not included within the AG's office official response to their public records request.

Morgan
Morgan W. Brown
Montpelier

----- Forwarded message -----

From: John Calvi <calvij@sover.net>
Date: Sat, Nov 30, 2013 at 11:49 PM
Subject: Comments made on stun gun policy sent tonight
To: "Morgan W. Brown" <morganbrown@gmail.com>

Ms Maguire,

Having read the proposed policy, I find it remiss that there is no mention that use of stun guns has killed people, that they are a lethal weapon that has been misused resulting in death. Furthermore, I find the lack of information on how death results to be an important piece of missing information. The transaction to be understood by all is simple - as a muscle is worked it creates acid in the muscle and bloodstream. When a stun gun is deployed at full force every muscle in the body goes into spasm or contraction overwhelming the body with a sudden influx of acid which can interrupt normal processes from resuming, such as the heart continuing to beat. This idea must be taught so that every person choosing to use this weapon knows death is a possible result. And in consideration of this reality, I find it absolutely intolerable that target areas should include the torso near the sternum, close to the heart. Such ignorance welcomes lethal results. I find this guidelines unnecessarily broad and vague and to easily used for the protection of police and easily used to defend further ignorant and lethal results in Vermont.

Sincerely, John Calvi

John Calvi

calvij@sover.net

www.johncalvi.com

[802/387-4789](tel:8023874789)

PO Box 301

Putney, VT 05346

www.quit-torture-now.org

author - THE DANCE BETWEEN HOPE & FEAR

Evan Meenan

From: Cindy Maguire
Sent: Monday, December 09, 2013 9:17 AM
To: 'Rhonda'
Cc: Cindy Maguire; Evan Meenan; Aumand, Paco (Paco.Aumand@state.vt.us); Gauthier, Richard
Subject: RE: Taser policy

Dear Ms. Taylor,

Thank you for your comments, they will be considered by the LEAB.

Best,

Cindy Maguire

From: Rhonda [<mailto:krtayl@worldpath.net>]
Sent: Sunday, December 08, 2013 3:35 PM
To: Bill Sorrell; Cindy Maguire; ANITKA@leg.state.vt.us; wlippert@leg.state.vt.us; billlippert@gmavt.net; alice.nitka@gmail.com; Paco.Aumand@state.vt.us; drew.bloom@state.vt.us; michael.henry@state.vt.us; Tom.Lesperance@state.vt.us; kclark@windhamsheriff.com; keith.clark@state.vt.us; Richard.Gauthier@state.vt.us; thanley@middleburypolice.org; waltergoodell@state.vt.us
Subject: Taser policy

To Whom It May Concern:

I would like to thank you for your efforts regarding the LEAB proposed Statewide Taser Policy. I pray that the suggestions submitted in response to your request for feedback will influence changes and solidify specific wording throughout the policy. The completed document needs to impose definitive regulations to taser use, training and mental health support statewide and cannot be open to individual or group interpretation. I am then sure that the final, unified standard policy for the controlled and situational use of tasers will set a precedence for other states to follow .

Sincerely,

Rhonda L Taylor (MacAdam Mason's mother)