

DPS Law Enforcement Advisory Board Meeting
Thursday, August 7, 2014
1:00 p.m. – 3:00 p.m.
Public Safety Headquarters, 3rd Floor Large Conference Room
Waterbury, VT

AGENDA

- Call to Order
- Review Minutes from 06/19 Meeting
- Old Business:
 1. CEW Model Policy Revision
 2. CEW Measurement and Calibration
 3. CEW Reporting Mechanism and Criteria
 4. Eyewitness Identification and Custodial Interrogation
- New Business
- Adjournment

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

INTRODUCTION AND PURPOSE

The purpose of this policy is to effectuate 20 V.S.A. § 2367 and establish 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 principles 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 expected 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. CEWs include "Electronic control devices" which are defined at 20 V.S.A. § 2367(a)(1) as "device[s] primarily designed to disrupt an individual's central nervous system by means of deploying electrical energy sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses."

- 1.2. **Special populations:** Members of special populations include subjects an officer has reason to believe are:
 - 1.2.1. **Cognitively impaired such that they are unable to comply with an officer's instructions.**
 - 1.2.2. **Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or follow directions.**
 - 1.2.3. **Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer's directions.**
 - 1.2.4. **Under 18 years of age.**
 - 1.2.5. **Pregnant.**
 - 1.2.6. **Over 65 years of age.**
 - 1.2.7. **Physically infirm, subject to or diagnosed with a heart condition, or epilepsy, or a seizure disorder.**
- 1.3. **Special circumstances:** Special circumstances include situations where an officer has reason to believe the subject is:
 - 1.3.1. **Operating a motor vehicle.**
 - 1.3.2. **Standing in an elevated area, near water, or near flammable materials (including but not limited to alcohol-based chemical sprays).**
 - 1.3.3. **Restrained.**
- 1.4. **Special consideration:** A consideration of: (i) the potential additional risk of harm posed by deploying a CEW against a member of a special population or a subject in special circumstances; and (ii) whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population or a subject in special circumstances while still preserving the safety of that person, third parties, and the responding officer(s).
- 1.5. **Active Resistance:** A subject using 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 of active resistance include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance. Refusing to move upon verbal direction or chaining oneself to an object does not constitute active resistance.
- 1.6. **Active Aggression:** 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.

2. **CEW Use and Deployment Procedures.**

- 2.1 Only officers who complete training on the use of CEWs containing the minimum elements set forth in Section 4 of this policy, as approved by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
- 2.2 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.
- 2.3 **When it is safe to do so, law enforcement should display and provide a warning prior to deploying a CEW.**
- 2.4 **Officers may only deploy CEWs in the following circumstances:**
 - 2.4.1 **In response to either:**
 - 2.4.1.1 **A subject exhibiting active aggression.**
 - 2.4.1.2 **A subject actively resisting in a manner that, in the officer's judgment, is likely to result in injury to the subject, the officer, or third persons.**
 - 2.4.2 **If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.**
 - 2.4.3 **To deter vicious or aggressive animals that threaten the safety of the officer or others.**
- 2.5 **Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.**
- 2.6 An officer should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
 - 2.6.1 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.
 - 2.6.2 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.
- 2.7 Officers should use the minimum number of cycles necessary to take a suspect into custody or mitigate their assaultive behavior.
- 2.8 **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.**

2.9 When it is safe to do so, officers should attempt to deescalate situations. However, officers are not required to use alternatives to a CEW that increases the danger to the officer, another person or the public.

2.10 Officers should avoid deploying more than one CEW on a single subject at the same time unless 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.

2.11 Officers having reason to believe they are dealing with a member of a special population or are dealing with special circumstances shall give special consideration to deploying an CEW. Officers having reason to believe they are dealing with an individual with a psychiatric disability shall consider consulting with the area designated mental health agency.

3 Post Deployment Procedure.

3.1 Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration. Once restrained, the subject should be moved into a recovery position that facilitates breathing.

3.2 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:

3.2.1 The probes embedded in a sensitive area such as the face, neck, throat, groin, female breast, or stomach of a pregnant woman.

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

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

3.4 Emergency medical services shall be contacted if a subject:

3.4.1 Suffers an obvious injury.

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

3.4.3 Is a member of a special population.

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

3.4.5 Has been subjected to a deployment to his or her chest.

3.4.6 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.

- 3.5 If a subject refuses additional medical attention, that refusal should be documented.
- 3.6 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.
- 3.7 With the exception of the required spark test and accidental discharges that do not connect with any living being, each time a CEW is deployed and/or displayed 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:
 - 3.7.1 The date, time, and location of the incident.
 - 3.7.2 The officer(s) involved in the incident, identifying which officer(s) used CEWs.
 - 3.7.3 The type of CEW deployment, i.e., display, drive stun, or probe mode.
 - 3.7.4 Identifying and descriptive information for the subject, including any information indicating if the subject was a member of a special population or encountered during an incident involving special circumstances. If law enforcement consulted with any mental health agencies that fact should be noted.
 - 3.7.5 A list of other known witnesses.
 - 3.7.6 The number of CEW cycles used, the duration of each cycle, and the duration between cycles.
 - 3.7.7 The level and description of resistance encountered.
 - 3.7.8 Whether CEW use was effective.
 - 3.7.9 The type of crime/incident the suspect was involved in.
 - 3.7.10 The approximate range at which the CEW was used.
 - 3.7.11 The point of impact.
 - 3.7.12 Whether law enforcement used or attempted to use any other types of force.
 - 3.7.13 The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.
 - 3.7.14 The type of injuries, if any, sustained by any of the involved persons including the officer(s).
 - 3.7.15 When possible, photographs of the CEW probe entry sites.
- 3.8 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.
- 3.9 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.
- 3.10 Accidental discharges that do not connect with any living thing shall be documented in a departmental memorandum explaining in detail how the discharge

occurred within 48 hours of the alleged accidental discharge unless otherwise authorized by a supervisor.

3.11 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:

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

3.11.2 The supervisor recommends conducting a use of force review.

3.11.3 The encounter resulted in death or serious bodily injury.

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

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

3.12 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.

3.13 **Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council all incidents involving the use of a CEW in a form to be determined by the Council. The Council shall make this information available on its website.**

4 Training Requirements.

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

4.2 Training shall not be restricted solely to training conducted by the manufacturer of the CEW. **However, training shall include the recommendation by manufacturers for the reduction of risk of injury to subjects, including situations where a subject's physical susceptibilities are known.**

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

4.4 Training shall also incorporate, at a minimum:

4.4.1 Instruction on the use of force continuum.

4.4.2 Techniques to avoid or deescalate confrontations.

4.4.3 The underlying technology and operation of CEWs.

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

4.4.5 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.

4.4.6 Scenario-based training.

4.4.7 Proper removal of CEW probes.

- 4.4.8 The potential medical needs of a subject who has been subjected to a CEW deployment.
- 4.4.9 The post-deployment reporting requirements.
- 4.4.10 Instruction on interacting with individuals experiencing a mental health crisis, emotional crisis or other type of crisis, as recommended by the Vermont Criminal Justice Training Council.

4.5 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. Departments requiring or allowing its officers to undergo a CEW deployment shall, beforehand, provide a thorough explanation of the potential injuries an officer could incur as a result of the deployment even within a controlled training environment.

5 Review

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

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- 1.2. **Special populations:** Members of special populations include subjects an officer has reason to believe are:
 - 1.2.1. Cognitively impaired such that they are unable to comply with an officer's instructions.
 - 1.2.2. Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or follow directions.
 - 1.2.3. Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer's directions.
 - 1.2.4. Under 18 years of age.
 - 1.2.5. Pregnant.
 - 1.2.6. Over 65 years of age.
 - 1.2.7. Physically infirm, subject to or diagnosed with a heart condition, or epilepsy, or a seizure disorder. [20 V.S.A. § 2367(b)(7)]
- 1.3. **Special circumstances:** Special circumstances include situations where an officer has reason to believe the subject is:
 - 1.3.1. Operating a motor vehicle.
 - 1.3.2. Standing in an elevated area, near water, or near flammable materials (including but not limited to alcohol-based chemical sprays).
 - 1.3.3. Restrained. [20 V.S.A. § 2367(b)(7)]
- 1.4. **Special consideration:** A consideration of: (i) the potential additional risk of harm posed by deploying a CEW against a member of a special population or a subject in special circumstances [20 V.S.A. § 2367(b)(7)]; and (ii) whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population or a subject in special circumstances while still preserving the safety of that person, third parties, and the responding officer(s).
- 1.5. **Active Resistance:** A subject using 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 of active resistance include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance. Refusing to move upon verbal direction or chaining oneself to an object does not constitute active resistance.
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2. CEW Use and Deployment Procedures.

- 2.1 Only officers who complete training on the use of CEWs containing the minimum elements set forth in Section 4 of this policy, as approved by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
- 2.2 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.
- 2.3 **When it is safe to do so, law enforcement should display and provide a warning prior to deploying a CEW. [20 V.S.A. § 2367(b)(4)]**
- 2.4 **Officers may only deploy CEWs in the following circumstances:**
 - 2.4.1 **In response to either:**
 - 2.4.1.1 **A subject exhibiting active aggression.**
 - 2.4.1.2 **A subject actively resisting in a manner that, in the officer's judgment, is likely to result in injury to the subject, the officer, or third persons.**
 - 2.4.2 **If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.**
 - 2.4.3 **To deter vicious or aggressive animals that threaten the safety of the officer or others. [20 V.S.A. §§ 2367(b)(2) and (8)]**
- 2.5 **Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified. [20 V.S.A. § 2367(b)(3)]**
- 2.6 An officer should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
 - 2.6.1 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.
 - 2.6.2 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.
- 2.7 Officers should use the minimum number of cycles necessary to take a suspect into custody or mitigate their assaultive behavior.
- 2.8 **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. [20 V.S.A. § 2367(b)(5)]**

2.9 When it is safe to do so, officers should attempt to deescalate situations. However, officers are not required to use alternatives to a CEW that increases the danger to the officer, another person or the public. [20 V.S.A. §§ 2367(b)(3) and (4)]

2.10 Officers should avoid deploying more than one CEW on a single subject at the same time unless 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.

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3 Post Deployment Procedure.

3.1 Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration. Once restrained, the subject should be moved into a recovery position that facilitates breathing.

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3.4.3 Is a member of a special population.

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- 3.6 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.
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 - 3.7.2 The officer(s) involved in the incident, identifying which officer(s) used CEWs.
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 - 3.7.4 Identifying and descriptive information for the subject, including any information indicating if the subject was a member of a special population or encountered during an incident involving special circumstances. If law enforcement consulted with any mental health agencies that fact should be noted.
 - 3.7.5 A list of other known witnesses.
 - 3.7.6 The number of CEW cycles used, the duration of each cycle, and the duration between cycles.
 - 3.7.7 The level and description of resistance encountered.
 - 3.7.8 Whether CEW use was effective.
 - 3.7.9 The type of crime/incident the suspect was involved in.
 - 3.7.10 The approximate range at which the CEW was used.
 - 3.7.11 The point of impact.
 - 3.7.12 Whether law enforcement used or attempted to use any other types of force.
 - 3.7.13 The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.
 - 3.7.14 The type of injuries, if any, sustained by any of the involved persons including the officer(s).
 - 3.7.15 When possible, photographs of the CEW probe entry sites.
- 3.8 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.
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- 3.12 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.
- 3.13 **Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council all incidents involving the use of a CEW in a form to be determined by the Council. The Council shall make this information available on its website. [20 V.S.A. § 2367(f)]**

4 Training Requirements.

- 4.1 Training for officers authorized to carry CEWs shall be conducted annually.
- 4.2 Training shall not be restricted solely to training conducted by the manufacturer of the CEW. **However, training shall include the recommendation by manufacturers for the reduction of risk of injury to subjects, including situations where a subject's physical susceptibilities are known. [20 V.S.A. § 2367(b)(6)]**
- 4.3 Training shall emphasize that CEWs may be less-lethal, but are not non or less-than lethal.
- 4.4 Training shall also incorporate, at a minimum:
- 4.4.1 Instruction on the use of force continuum.
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 - 4.4.3 The underlying technology and operation of CEWs.
 - 4.4.4 The physiological effects upon an individual against whom such a CEW is deployed.
 - 4.4.5 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.

- 4.4.6 Scenario-based training.
- 4.4.7 Proper removal of CEW probes.
- 4.4.8 The potential medical needs of a subject who has been subjected to a CEW deployment.
- 4.4.9 The post-deployment reporting requirements.
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5 Review

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