

Law Enforcement Advisory Board Meeting
State House, Room 11, Montpelier
Minutes of Meeting
January 13, 2014

- Francis (Paco) Aumand called the meeting to order at 1:29 pm by giving a brief introduction of himself and started the meeting with a notation about the microphones, a review of the time frame for the meeting and the role of the Law Enforcement Advisory Board and its authority to “undertake an ongoing formal review process of law enforcement policies and practices with a goal of developing a comprehensive approach to providing the best services to Vermonters”. He also noted that the purpose of this meeting was to discuss the draft CEW (Conducted Electrical Weapon) policy that started with the Attorney General’s office and has undergone a lot of work by the LEAB’s Subcommittee. The agenda for the meeting was reviewed, which will include hearing from law enforcement officers, deliberate on the draft and comments received, hear any additional public comments, and talk about the next steps. with Board members: Paco Aumand, Keith Clark, Tom Hanley, James Hughes, Tom L’Esperance, Mike O’Neil, James Leene, Cindy Maguire, Karen Horn, and Non-members: Suellen Royea, Drew Bloom, Major Walt Goodell, Mike Henry (VSP), Morgan Brown, Jonathan Williams, Evan Meenan, Dan Stein, Laura Ziegler, Allen Gilbert, . Microphones. Make sure everyone can hear. For those in the room, introduced. : Francis Aumand, Vice-Chair, gave the time frame of the meeting. Role of the Advisory board is and was established in statute. We are here to talk about the CEW policy. (Read goal of board), this subject started with the AG’s office. This has already gone under a lot of work by the LEAB subcommittee. Today’s agenda was reviewed. Hear from law enforcement and will deliberate on the draft and review some of the comments that have been heard and then have public comment (anything new or heard in reaction to IE perspective or boards discussion) Then next steps and meetings. Introductions: Morgan Brown-not everyone will know the acronyms and speak in English and keep from side conversations. CEW –stands for conducted electrical weapon-referred to as Tasers. Board Members-Jim Hughes, Tom Hanley, Keith Clark, Cindy Maguire, Suellen Royea, Karen Horn, Thomas L’Esperance, Mike O’Neil, James Leene, Evan Meenan-AGO, Laura Ziegler, Erick Esselstyn, Jeff Dworkin, Drew Bloom-DMV, Mike Henry-VPS, Jonathan Williams-VLCT, AJ Rubin-Disability Rights, Glen Button-DMV, Michael Henry, Allen Gilbert-ACLU, Sgt. Sean Selby-VSPDerby, Major Goodell, Debra Munson-VSP Derby, Dan Albert former defense attorney, John Treadwell-AGO, Morgan Brown, Daniel Stein-OCRA. Copies of the agenda and a print out of DPS Home Page (Paco explained the agenda and DPS home page-wanted everyone to know about the LEAB page, All of our deliberations and draft minutes, policies and information about the discussion about the CEW policy is contained in the meeting minutes section. We are trying to attempt to record today’s meeting.

Paco asked Drew Bloom and Mike Henry to give a law enforcement perspective. Drew thanked to come speak. He is a captian with DMV and a law enforcement for 24 years and an instructor. His concern is with the use of force in general and was asked to help craft a model policy. After

comparing policies in VT and USA. Teaches law enforcement and military as a master instructor and has the opportunity to train and teach in North America and throughout the world and this policy meets and exceeds. In the active resistance area, an officer can use a CEW, but they should try another technique first. The amount of LE get is 56 hours of use of force and tactics and does not include CEW. There instructed to what happens to the human body under stress. Officers have to make decisions. I believe quite strongly that CEW needs to be in the active resistance column. We have to use our level of force based on the person's level of resistance. Wherever the person's resistance is, we need to apply a little more. Teach a use of force vetim and sits as a vice chair on that committee. In his view there is not a force problem in VT. There are very few complaints of excessive force; called in a couple of times. Officers need to use objective reasonable. Officers are trained, age, size, gender, officers presents versus suspects, close proximity to weapons, officer injured, on ground and officers trained to try to mitigate their use of force may cause (physical and secondary-fall, or impact with an object). Officers are trained on how to respond, to how to help EMTs responding. The use of CEW at the active resistance level, there are times when an assault...gave an example of a small officer trying to arrest someone. From experience, OC spray, anything from tensioning up can cause injury. Often times sprayed can be more agitated. And can put up struggles. Those instances where electronic weapon is prudent to take control. It's not if someone says they are not going to be arrested, there are other techniques used. Officers receive less training to take someone into control than a junior wrestler receives before their first meet. Training twice a year and 12 hours refresher training throughout the year for mandated training. A lot of training went into the CEW model policy and is handicapping officers if not there. Paco, Board questions:

Cindy-Thank you, covered a lot and you focused on one of the core. I think it would be helpful to go back a little before tasers were on the scene. What are some of the other tools available? Drew-use of force model is referred to response resistance, is really a pictorial guide to give them an idea of what they can do. Compliant is the lowest level of the continuum-escort technique that is safe for the officer (moved from point a to point b); next level is passive resisters (doesn't want to get up, but respond on physical contact) they get up and leave-non-compliant escort with a slightly degree of force;. Next level-active resistance, contact is made and tense up and show pre-assault cues, officers taught to identify those, during that time teach de-escalate techniques, start to resist or flee, or trying to handcuff and resisting hard, officers trained to use OC spray, potential offixiaation-respiratory problems, also used empty hand strikes or kicks to mitigate their level of resistance, use of police baton to take to ground, arm bar take down. Also electronic devices are used in this portion. Basic training this is where it would fall, but up to the agency to provide additional training. Above is assaultive at that level everything below can be used and up to use of deadly weapon-firearm. Baton, OC Spray or CEW that the department chooses to issue. Cindy- a lot of discussion in the active resistance level, a CEW could be utilized provided that a lower level of force had been attempted, is that in your view appropriate. Drew-Yes. Paco-Lt. Henry is there anything you would like to add. Lt. Henry added that he heard some talk of CEWs being overly used, looking at VSP to the # of arrests and the use of force, looking at the VSP numbers, 4497 arrests last year, 105 uses of force, all use of

force is capture on a form and includes anything above compliant. Roughly from that number the numbers of tasers deployed, 15 times displayed 18 times. The numbers of use of force are around 2% compared to the number of arrests, included is the number of times went to mental health or for protective custody. (part of the 105) In a lot of these situations, not sure of what is going to happen next. Brought a video of what the decisions have to be made. Paco- asked that this policy should be more restrictive and heavy on may's and not a lot of shall's. Heard both of you the situations are tense, how might you a more restrictive policy instead of may: as an example, special populations? Drew – officers are already taking into account of what prior knowledge and some tools on belt may not be appropriate. It is not until after the fact they find out there were some issues. The facts may not be available at that time. The degree of force ... Have to mitigate the injury to myself or someone else. Officers are taught and have to base what their use on force based on information they have. And the information continues once on a scene. Feels what we have done is reasonable for Vermont, national and internationally. Tom L'Esperance-the Lt. has a video to show based on the last meeting to show understanding. Keith-how long electronic weapons have been used in Vermont. Drew 1990-winooski, stun gun. Clark-currently at the academy how much training is disengagement –Both trained in where officers to compliant handcuffing to very difficult assault handcuffing, the officer need to stop at that level to make sure they stop deescalation and escalation 50/50. Great deal of emphasis on deescalation and escalation. Cindy-dis-engagement, the walkaway concept. Drew- on the every first day of training, LE will win, but it doesn't have to be today.

Meeting moved to next section (Eric asked use mic) . Lt. Henfy noted that in the first situation there were 2 officers, it is not the usual. While in route, come across someone walking. (Video from front seat of car.) (Video shown) There was some discussion. L'esperance the point is in that moment, that split second, it is not very common for someone to come walking down the middle of the street with arms height. Morgan-asked for comment to wait. Colonel-Sgt.Selby- Asked some additional officers that I would bring troopers in; Sean Selby at Tyler Jacobs Orleans sheriff. Described a situation in December, with a subject yielding a sword and threatening a female in the building (1 mile from barracks) gets another call from the feed store, pull in see a gentleman get out of a truck, possibly bi-polar, right in front of main store, people in store and out of store, asks Tyler to cover, and asks to drop the sword, few steps to store, screaming and hollars taser, and fired. As soon as it it deployed, subject dropped the sword, and was apprehended. That was the closest he has come to shooting someone. Without the taser and coverage was able to use the taser, and does not want to think about what would have happen if he did not have it . been in IE for 20 years and dealt with drunks, but this is one scenario of him carrying the taser saved the subject's life. Rural. Deputy Jacobs, was leaving his office on route 5, behind a female trooper male 10-96 destroying with sword, received other 911 calls, last call was that the was at a business, I pulled in behind the trooper and before could get out saw the sword and felt that amy's life was at risk then and pulled weapon, he did stop. When he graduated from academy in May 2013, was taught that he would get tunnel vision and remembers seeing the two sights and the male , customers employees holding onto doors, and an. Sgt. Was 4 ft to left made a short charge at us above his head and

luckily he stopped and it didn't go any further. We holstered and went in it was quite stressful and quite traumatic. If he had responded alone, he would have had to shoot him with his service weapon. Sgt. Selby, we found out after the fact he was bi-polar and taking medications and mental health was going to help him. He was 4 ft from a show room with people inside. Can't say enough that the taser saved his life. Paco-on way .. Sgt. Selby, there was a call that he was off his medication and bi-polar. Paco-one of the aspects of this policy is that the electrical weapon not be used when an individual is identified as special population. It sounds like if the policy was restrictive in this situation your limitations may have been more restrictive to use deadly force. Selby-it's a sword, that he could have thrown. Clark-did both prongs touch him? Selby-had 25 feet, but after the cartridge went off, he dropped the sword and then he started to take him down.

Cindy-did you have any information goin into it regarding drug use? Had a minute, did recall they called on the radio that he was bi-polar and off his medications.

L'Esperance-Trooper Munson: Aout of the Derby barracks, incident occurred in 2012. By herself in Island Pond nearest backup ½ hour away, got a call an ex-boyfriend was banging on door. Went by the apartment. Turned around, saw a gentleman in the parking lot in March with no shirt. Stopped him and asked him his name, and asked him to sit and talk. Did tell her he had a problem with exgirlfriend. Could tell he was intoxicated, as she looks over away from cruiser, sees a female, ask ehre to wait. As she is engaging with him, he was invited over and asked him to stand aside, and the woman keeps walking towards her, but the male keeps coming up. Talking with the female, came in broke chairs, coffee mugs, she said he was angry and was concerned something would be thrown and hurt the kids. He did leave and came back. Not many people living in apartments. Knew that she had to take him into custody. Turns around and faces the fence. At this point dispatch asked if okay. AS trooper approaches him he turns around and swipes her hands, and he heads towards the back of apartment. On the ground fighting with him, knows her backup is not available, he breaks away, nesxte she tases him, he is on the ground, deployed for 5 seconds. He continued to roll. Advaisd again stop rolling get on your stomach, he kept rolling, deployed again and then deployed again ut it stopped working. It was already damaged, he headed back to the apartment, tased 2 and still fighting. Not sure how long that lasts, still fight, and breaks away. Tring to get in t ht b ulk head. Then he said he gave up. He went to get on his kness and he charges her again. He put her in a chok hold. She knew he was tired, somehow she gets out of hold, heads to senior center. Final drew firearm on him and get on ground. And he stays on the ground, there was an offcdty officer that came which took him 14 minutes to get there. Had she not used the taser, not sure what he was on, knew he had been drinking, the only other option would have been to shoot him. The taser tired him out and both were very tired, male 28 years old, Not sure if she would have been able to break out of the chok hold. Not sure what else she would have gone to. Jim Leene commended her for doing her duty. Cindy-that is an incredible story. Paco-first physical confrontation, you got out of it; She was not sure where he was heading and felt he had already committed a felony. L'esperance-thankiy you for doing your job.

Paco-ask the board to start deliberations concerning the policy. Does the board have any opinions or suggestions on how to proceed. Jim Leene-that we would probably will not be voting on this as it is out of their expertise and it would have to be sent to Washington, DC. Very interested in the process and participating and commend the folks who testified, but will not be voting on the policy. Tom Hanley to stay away from a reasonable persons standard. Paco-the concept of recommended versus mandated. Tom-feels it sets the standard. Paco-open that concept to other board members might frame a motion for the board to : motion to stick with ;karne- we heard today from the folks and we heard a number of comments from folks the last time and some being legitimate, the most basic testing and having it in a policy not sure she is ready to vote and clarification if the this recommendation to AG's office or individual agencies, what is the impact? Paco-At the end of the day it is the recommended policy sample that we recommend that at least the key component be in any policy they may write. Cindy-of the view of not wise to vote on the policy today and to continue with public comment and some entities come in to offer some information (taser to come in) AEGIS around the issue of measurement, so suggest that it may be more prudent to continue the dialogue prior to any vote. Paco here is a motion Keith seconded the motion for purposes of discussion. Would ask the board in our discussions to remember Cindy's comments and open for discussion.

Cindy-we had a lot of discussion at subcommittee level around may and/or shall and is consistent with other policies. Allow officers to respond and apply as situations. All of the board members have been provided all the comments, draft policy and key components similar to biasfree policing. A little premature as we have not heard the scope of information we need to hear.

Paco-other comments: Motion: Proceed as a basis as a reasonable persons standard versus ultimate fact standard. Morgan Brown-when you were talking about one of the aspects when you asked some of the officers in terms of raise concern about use of tasers on certain populations, and my understanding versus what I understood from what you had said, what people were asking that there be special consideration in...was about certain circumstances where people would use a firearm, that then a special consideration and tasers would not be automatically. People were saying never to use it at all. Paco-thank you for the clarification and I did infer that it was not to be used, and I thought I did see in some of the documents that if knowledge was made in.

Barry Kade-The motion appears to be replacing a policy with a reasonable person should be used that is not a policy. Every policy has may and shall. An example would be if a reasonable person believes such a and such is happening, unless a reasonable person....

Ken Stethem-specifically to the point, it really is interesting. Thank you for being sensitive to the word you are using. 2. This is a recommended policy by the LEAB, it is not mandatory throughout the state, so you want to be as accurate as you can be. There is one thing in the policy as it is written now, it is a shall as it is written and it has to do with the cornerstone of this policy only properly functioning weapons shall be carried. That is absolutely reasonable. That goes to measurement issue, that is a shall. So if you are going to take out that verbiage, then maybe that sentence is not as strong. That only properly operating weapon shall be carried.

Cindy-Deployment and whether or not it is deployed. Not sure your motion was clear on that point. It is going to be difficult to have a productive discussion on the policy without some information.

Tom-Amended motion to add how the unit is deployed in the field. Keith-agrees and second the amendment. Paco-summarized the motion deals with proceeding on a reasonable person standard on deployment of CEW.

Laura-reminded her comments included an excerpt from FL, all police departments are dealing with active situations. That if you are going to be making some of the sweeping deci...

Drew-reasonable persons should be reasonable officer, to be consistent with training.

Dan Stein-First comments the work here and international and his testimony and work is compelling. Puts into perspective a definitive policy may prevent you from protecting people. A lot of the challenges, a lot of us have respect for in the moment, but in a split second situation you need to make split second decisions. When in courts those... as well as the judge to have a lot of leeway also make the first recommendation that deployment must be vague enough for the officer to make decision I think that it comes with video or audio recording and that officer's decision is questioned. And that if this policy is that vague there may not be any retribution for the victim for an officer's decision. There is not enough information to make a decision.

The motion before us is a very small portion, it just deals with this one aspect as a form of language in the deployment. The chair made note that this motion may have been premature in our discussion and in the spirit of this board trying to take a step forward and consider whether this is the right time to consider. It.

Alan: Executive Director American Civil Liberties Union for Vermont.. This is a very large matter. If you move away from you are taking on liability when taser has recommended not to utilize it, where an officer has aimed a taser at a pregnant belly and it kills the baby. Elderly is another group, mentally ill and know nothing is done to address the underlying problem, you will be here...also think there is a problem with page 2, 1.3 objectively reasonable definition. Similarly trained and experienced officer is; suggested to table this now and consult legal council.

Morgan-for the record, Name is Morgan Brown and lives in Montpelier.

Karen-if the motion is adopted, Cindy-don't think we can piecemeal the deliberations of the policy. Excepts that there will be a new draft around Alne's comments and the purpose, but the motion is premature. The LEAB is not often called to act this way and stumble sometimes with the order of meeting. Will need a full re-draft once completed and then to go line by line. Paco wants to support the idea of the motion but does not want to approve a motion that will lock us into something. Does want to see it in writing before. Dan-explained some meeting order. Barry also noted that you could call the motion out of order. Tom-motion was brought out to gather information. Paco-suggested tabled the motion

for further discussion and votion. Cindy made motion to table tom hanleys motion. Motion seconded by Karen. Motion tabled.

Paco requested final public comments.

AJ Rubin-attorney for rights of disabilities for vermont. He worked with a hyoung man that was tased and settled for a small token. He acknowledged the officers work, and the more the public knows that better, but none o fthe stories dealt with the use of these force whten use of force would not have been used and is concerened thte board doesnot take into account tye communit's concerens. Thinks this board to take a stand up for the homjeless who refuse to leave a convenineanc store, MacAdam mason who was unaramed and killed by taser. I think the board is missing aan opoportunity to that the policy is lacking signigacnat ofversight. Viewed 50 videos, there were manyt cases where it was appropriately and others that we were not. Oir if the thie cvictims were ever todlk of any discipline. L'Esperance-felt compelled, thank you for developeing our policy, as far as oversight, the State Police advisory is reviewed by governor by civilian.

Paco-uyou highlighted this barods concern si ato marinate the board and community's consercne. The use of this weapon and the scope of this weapon are up to . You are correcdt that there is not systemai=c accaountailiy for this use of weapon, but there have never been either thoruvh the court or training,. yYour point is takne but beyond the scope of this committee.

Ken Stethem-Aplogize for being late, would like to reiterate that the cornerstone of the policy si proeperlyly fundtioning weapon. A spark test can tell if there is a b attery, or a spark. The last thing the ELAB wanst is ; would add a measurement, alos if there is amalfunciton with the wapon, lkookk at the output, it ocould be an electrical, tactical, if you don't measure you can't taken the electrical factor y=our., Paco-we had more intention fo invinting you back forfurther itestimnonly.

Paco-we do need to wrap up . Talk bprocdes s nad next meeting. 1. Have an evening or two meetings depending on the work we get done and drive the public to come. To have Taser here and Ken Stethem testimony on their professional aspect . Cindy-Chair House Gove. Operations on update of where the LEaB is at, AEGIS is a company that can measure output, might be helpful and taser supplies most of the Tasers used. Representative is also interested and suggested to continue and hodl off . Agrees with 1-2 evening sofr public comment. Not sure we can set a date today, but could set one by thye end of the weekl.

Morgan-It would be good if it would be a public hearing but on by the LEAB. And stonrgly recommend 1 nor more public Hearinmg. Public Hearing-may want to get ; also suggested to hold it at the Pavilion.

How does the LEWAB publicise the meeting? We have public ized thourght he Deparytment of Libararies. Did agee thatr we need to do a better job. Not sure what that is.

Cindy-Did take Morgna's suggestion, If the LWEAb wanted to publicisae would issue a press release. Paco will talk iwht chair to pick deates and coridnaae with the board. Will get back to memeaber swith la suggested plan.

Keith moved to adjourn. Motion seconded by Cindy. Mettyin adjourned at 3:41.

- CEW Policy Discussion Continuation