

**VERMONT DEPARTMENT OF PUBLIC SAFETY
LAW ENFORCEMENT ADVISORY BOARD**



**SUMMARY REPORT
2014**

The Law Enforcement Advisory Board advises the commissioner of public safety, the governor, and the general assembly on issues involving the cooperation and coordination of all agencies and constables that exercise law enforcement responsibilities.

Prepared by: DPS Law Enforcement Advisory Board

Date: January 15, 2015

Table of Contents

Introduction.....	3
LEAB Members	4
CEW Model Policy.....	5
CEW Use Report Form.....	6
Electronic Recording of Custodial Interrogation.....	7
Eyewitness Identification Model Policy	8
Body Camera Recommendation	9
CEW Measurement and Calibration	10
Appendix A CEW Model Policy	12
Appendix B CEW Use Report Form	20
Appendix C Implementation Plan for Act No. 193	23
Appendix D Eyewitness Identification Model Policy	27

INTRODUCTION

In 2004, the Vermont General Assembly created a Law Enforcement Advisory Board (LEAB) of the Department of Public Safety with authorizing language contained in T.24 V.S.A. § 1939. The purpose of the Board is to advise the Commissioner of Public Safety, the Governor, and the General Assembly on issues involving the cooperation and coordination of all agencies that exercise law enforcement responsibilities. Membership of the Board is set by statute. The current members are listed on Page 4.

In 2014, the Vermont legislature tasked the LEAB with the following:

- Creating a model Conducted Electrical Weapon (CEW) Policy;
- Drafting a CEW Use Report Form;
- Making recommendations for the implementation of Sec. 4 of Act 193, regarding the electronic recording of custodial interrogations;
- Providing a model Eyewitness Identification Policy for agencies to adopt on January 1, 2015;
- Making a recommendation regarding officers certified to use CEW's wear body cameras;
- Ensuring that CEW's are measured and calibrated as required by the CEW Model Policy.

As always, LEAB members would welcome an opportunity to offer testimony and answer any questions regarding any subject in this report.

Respectfully submitted,

Richard B. Gauthier
Executive Director, VT Criminal Justice Training Council
2014 Chair, LEAB

LEAB Members

2014

Chair: Richard Gauthier, Executive Director, Vermont Criminal Justice Training Council

Vice-Chair: Paco Aumand, Director, Criminal Justice Services Division

Commissioner Keith Flynn, Commissioner of the Department of Public Safety

Colonel Thomas L'Esperance, Director of the Vermont State Police

Chief Jennifer Morrison, Vermont Association of Chiefs of Police

Sheriff Roger Marcoux, Lamoille County Sheriff, Vermont Sheriffs' Association

Karen Horn, Vermont League of Cities and Towns

John Treadwell, Attorney General's Office

Executive Director, State's Attorney & Sheriff's Office

James Leene, U. S. Attorney's Office

Matthew Valerio, Defender General's Office

Michael O'Neil, Vermont Troopers Association Representative

Constable Nelson Tift, Vice-President, Vermont Constable Association

CEW Model Policy

Act 180, **An Act Relating to Statewide Policy On The Use Of and Training Requirements For Electronic Control Devices**, Sec. 1. 20 VSA 2367(b), required the Law Enforcement Advisory Board to establish a statewide policy on the use of and training requirements for electronic control devices (ECD), also referred to as conducted electrical weapons (CEW). The Act also specified some provisions that were to be included in the model policy.

The LEAB had previously drafted a proposed model policy that met with some resistance and criticism, and conducted a number of public hearings intended to get citizen input on law enforcement use of CEW's in Vermont. Using the results of these hearings, testimony presented to both House and Senate Committees on Government Operations, and the provisions contained in the Act, the LEAB worked with representatives from the American Civil Liberties Union (ACLU) and Disability Rights-Vermont (DR-V) to create the CEW Model Policy referenced in this report (see Appendix A).

The policy as written complies with the criteria specified in the Act, and the LEAB will review the policy annually to ensure that it remains up-to-date with any developments involving CEW use.

CEW Report Form

Act 180, **An Act Relating to Statewide Policy On The Use Of and Training Requirements For Electronic Control Devices**, Sec. 1. 20 VSA 2367(f) requires that *“Every State, local, county, and municipal law enforcement agency and every constable who is not employed by a law enforcement agency shall report all incidents involving the use of an electronic control device to the Criminal Justice Training Council in a form to be determined by the Council.”*

Though not reflected in the Act, the LEAB received a verbal request from Senate Government Operations to work with the ACLU and DR-V in creating the form and contents. Given that the current LEAB Chair is also the VCJTC Executive Director, having the LEAB work on the form would comply with both legislation and the SGO request.

The LEAB created a small working group consisting of the chair and representatives from the ACLU and DR-V to draft a CEW report form to submit for review to the entire board. The initial draft went through several revisions before being finalized by the board (see Appendix B).

The VCJTC will accept CEW use reports from agencies and host them on a separate page, accessible to the public, on the VCJTC website. Agencies will be required to provide CEW Use Reports quarterly of all incidents that are approved and ready to be released within that quarter. All deployments for a calendar year will be due no later than January 15 of the following year.

The Council will not be hosting the entire law enforcement report on an incident, and individuals seeking more specific detail than that included in the CEW Use Report Form will be directed to the agency submitting the form.

Electronic Recording of a Custodial Interrogation

No. 193. **An act relating to law enforcement policies on eyewitness identification and bias-free policing and on recording of custodial interrogations in homicide and sexual assault cases**, requires that the LEAB develop a plan for the implementation of Sec. 4 of this Act (electronic recording of a custodial interrogation) assess the scope and location of current recording inventory in Vermont, develop recommendations on how to adequately equip agencies with recording devices, and provide recommendations on the expansion of recordings for any felony offense.

The Act also required the LEAB to submit a written report to House and Senate Committees on Judiciary with its recommendations for implementation of Sec. 4, 13 VSA 5581, by October 1, 2014. This report (see Appendix C) was completed and submitted by the due date. The survey was also completed and the results attached to this report.

Recommendation

The LEAB determined that recording equipment is inexpensive and should be considered essential equipment that is built into an agency's budget. Given that the Act allows for audio recording alone if "...law enforcement does not have the current capacity to create a visual recording...", an agency should, at a minimum, be audio recording custodial interrogations while building the capacity to add video recording.

The LEAB further recommends that a best practice would be for an agency to record all custodial interrogations regardless of offense.

Model Policy for Eyewitness Identification

No. 193. **An act relating to law enforcement policies on eyewitness identification and bias-free policing and on recording of custodial interrogations in homicide and sexual assault cases**, requires that by January 1, 2015, law enforcement agencies shall adopt an eyewitness identification policy and that the policy will contain the essential elements as identified by the LEAB and specified in the Act.

The LEAB, working with the Innocence Project (IP), developed a model policy two years ago. The existing policy (see Appendix D) was reviewed in September 2014 by the IP Director of State Policy, who affirmed that it was up to date and in compliance with the provisions in the Act.

Agencies and constables will be notified of the requirements of the Act and provided with a link to the model policy.

Body Camera Recommendation

The LEAB recognizes the valuable role that body cameras could play and is convinced that the recordings produced by the cameras would exonerate officers far more frequently than implicate them in wrongdoing, but would suggest a more comprehensive study before requiring that officers wear them. Though the LEAB was tasked only with developing a recommendation regarding officers certified to use a CEW also being required to wear a body camera, it became evident during Board discussions that a more universal recommendation should be developed, with individual agencies then deciding which officers, if any, should wear them and when they should be activated.

Issues that would warrant more consideration are as follows:

Financial: The actual acquisition of the cameras would be the least expensive step in the process. The price per unit has dropped significantly at the same time that recording quality has improved. But the need for and cost of storage capacity can be prohibitively expensive, particularly if agencies are required to store recordings for long periods of time.

Policy: Questions concerning camera usage need to be resolved and best practices identified.

Legal: There are concerns regarding camera usage and privacy, notification to individuals that they're being recorded and their ability to refuse, how long the videos have to be stored, how they are treated from a public records perspective and how to address voluminous public records requests within the staffing and budgetary constraints of law enforcement budgets, etc.

Recommendation

Given that these issues are interconnected and each will affect the other, the LEAB recommends that we be given additional time to explore them in depth during 2015 with identified stakeholders, with the goal of making a more comprehensive and informed presentation to the legislature and to Vermont law enforcement in the 2015 report.

CEW Measurement and Calibration

The section of the CEW Model Policy that addresses measurement and calibration reads as follows:

5 Measurement and Calibration

- . *5.1 CEWs shall be calibrated at the _____ to ensure the electrical output of the device is within manufacturer's specifications under the following circumstances:*
 - . *5.1.1 Upon receipt by a law enforcement agency and prior to use in the field, only if measurement and calibration equipment is available in the state;*
 - . *5.1.2 Annually, only if measurement and calibration equipment is available in the state; and,*
 - . *5.1.3 After a critical incident, regardless of whether there is measurement and calibration equipment available in the state or the unit needs to be sent back to the manufacturer for testing.*
 - .
- . *5.2 Exception – CEWs that are self-calibrating are not subject to these provisions unless a law enforcement agency requires calibration pursuant to its own policies and procedures or there are reasonable grounds to believe that the self-calibration is not functional.*
- . *5.3 If a CEW's electrical output is determined to be outside of manufacturer's specifications it shall not be used in the field until it has been found to have output within manufacturer's specifications.*

At the time this section of the policy was written, the VCJTC was planning on purchasing a testing station for approximately \$17,000, and the station would have been made available for use either at the Academy or in the field by VT law enforcement agencies, as needed, free of charge. Given that this was not a budgeted expenditure, the VCJTC was planning on using carryover money to fund the purchase. Unfortunately, that opportunity was lost due to the VCJTC rescission spending cuts.

Without in-state testing availability, CEW measurement and calibration will prove to be difficult and expensive for Vermont law enforcement agencies. Currently, Taser (the predominant CEW brand used by VT law enforcement) charges \$500 per unit to test, and the unit has to be shipped to the company.

Assuming a \$17,000 price for the testing station and \$500 that Taser would charge for each individual test, if the VCJTC purchased the testing station, its cost would be recovered once 34 CEW units were tested, whether that be upon receipt of the device, annually or subsequent to a critical incident.

It should be noted that it is unknown how many current CEW models issued to law enforcement officers have the self-calibration feature, though they should still be subject to independent testing after a critical incident.

Recommendation

Continuing efforts are being made to develop an in-state testing option. Until that becomes available, sending units away for annual testing will prove to be too much of a financial and logistical hardship for agencies. CEW's are tested before being shipped from the factory and it's the recommendation of the LEAB that agencies only be required to rely on this until/unless testing equipment is readily available in-state, at which time agencies should adhere to provisions 5.1.1 and 5.1.2, above.

Appendix A

CEW Model Policy

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 statewide 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.

1.7. Critical Incident: A deployment of a CEW that results in serious bodily injury or death of the subject.

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.
 - 3.4.4 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 or encountered during an incident involving special circumstances. If law enforcement consulted with any mental health agencies that fact should be noted. indicating if the
 - 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 Measurement and Calibration

- 5.1 CEWs shall be calibrated at the _____ to ensure the electrical output of the device is within manufacturer's specifications under the following circumstances:
 - 5.1.1 Upon receipt by a law enforcement agency and prior to use in the field, only if measurement and calibration equipment is available in the state;
 - 5.1.2 Annually, only if measurement and calibration equipment is available in the state; and,
 - 5.1.3 After a critical incident, regardless of whether there is measurement and calibration equipment available in the state or the unit needs to be sent back to the manufacturer for testing.
- 5.2 Exception – CEWs that are self-calibrating are not subject to these provisions unless a law enforcement agency requires calibration pursuant to its own policies and procedures or there are reasonable grounds to believe that the self-calibration is not functional.
- 5.3 If a CEW's electrical output is determined to be outside of manufacturer's specifications it shall not be used in the field until it has been found to have output within manufacturer's specifications.

6 Review

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

Appendix B



CEW Incident Reporting Form

To be completed by any Vermont Law Enforcement Officer after the display or deployment of a Conducted Electrical Weapon

1. Case number: _____
2. Use of CEW (check all that apply):
 - display
 - probes shot. Where did probes hit subject? _____
 - drive stun mode. How many cycles: _____ Where was CEW held against subject's body _____
3. Date and time of display or deployment: ___/___/___ at _____.
4. Location of display or deployment (city, town or village): _____
5. Was the subject human or animal? (circle one). If animal, complete only questions 13 – 20.
6. Sex of subject: male female
7. Perceived race of subject:
 - White Hispanic or Latino
 - Black or African-American American Indian or Alaska Native
 - Asian
6. Age of subject (if unknown, give an approximate guess): _____
7. Before deployment, did you have reason to believe the subject was a member of a special population? If so, check all that apply. If none apply, complete only questions 12-20):
 - pregnant traumatic brain injury
 - elderly (over 55) emotional crisis to extent subject may have had difficulty understanding requests or orders
 - child (under 16)
 - low body mass index (thin) epilepsy/seizure disorder
 - disability heart condition
 - mental health condition deaf/hard of hearing
 - developmental/intellectual disability low vision/blind
8. If any box was checked in question 7, how did you obtain information leading to your belief the subject was a member of a special population? Check all that apply:
 - subject notified officer
 - civilian witness notified officer
 - professional witness notified officer
 - dispatch notified officer
 - personal perception of subject

2014 LEAB Summary Report

9. Were mental health care or developmental disabilities professionals contacted for assistance with the subject? No (If no, go to question 11) Yes, contacted by Officer or someone else (list whom):

If yes, when?

- Prior to the display or deployment
 During the display or deployment
 After the display or deployment

Other

comments: _____

10. If you answered "yes" to question 9, what was the outcome of that attempt to contact mental health care or developmental disability professionals? Check all that apply:

- Professional assisted to resolve situation more promptly or with less coercion than without contact;
 Professional did not result in any positive or helpful impact on the situation;
 Professional provided limited positive or helpful impact on the situation;
 Contact was attempted but no one could be reached;
 Professional helped reduce the time officers had to be at the scene;
 Intervention helped avoid involuntary placement in detention or emergency department;
 Intervention helped provide appropriate follow-up and service provision;
 Intervention was ineffective.

11. Was the training "Interacting with People Experiencing a Mental Health Crisis" (also known as Act 80 training) useful in dealing with this incident? Yes No N/A

12. To the best of your knowledge, was the person under the influence of alcohol or other drugs at the time of the event? Yes No Unknown

13. Decision to use CEW was based on:

- active aggression of subject;
 active resistance of subject, with injuries to others or subject likely to occur;
 anticipated injuries to subject, officer, or others at scene.

14. What was the subject's response to the use of the CEW?

- Subject was compliant directly after use of CEW;
 Subject was not compliant directly after use of CEW, requiring additional force;
 CEW failed; subject had to be handled through other means. State reason for failure if known: _____

15. Was any other force used in addition to the CEW? Check all that apply:

- OC or other chemical fire arm
 physical force baton
 other (describe): _____

Was this additional use of force before or after use of the CEW?

Before After

16. Was medical assistance provided to the subject following the use of the CEW? Yes No
If yes, by whom? Officer Paramedic

17. Check any box below relating to noteworthy details not already described:

- Incident occurred on an elevated location such as a roof, stairs, or bridge;
 Subject was near or in water at time of incident;
 Subject was wearing heavy clothes;
 Subject was more than 25 feet away when CEW probe shot;
 Subject was fleeing when CEW probe shot.

2014 LEAB Summary Report

18. Was a recording device running at the time of the incident? Yes No
If yes, was it a body cam dashboard cam other
(describe): _____

19. CEW model and serial number:

20. Was the subject charged? Yes No
If yes, what
charge(s)? _____

Return this completed form to Gail Williams at gail.williams@state.vt.us

Vermont Criminal Justice Training
Council
Vermont Police Academy
317 Academy Road, Pittsford, VT
05763
Tel: (802) 483-6228 Fax: (802) 483-
2343 www.vcjtc.vermont.gov

2014 LEAB Summary Report

Appendix C

**Law Enforcement Advisory Board
Report to the Senate and House Committees on Judiciary
Implementation Plan for Act No. 193, Sec. 4, 13 VSA 5581
(Electronic Recording of a Custodial Interrogation)**

October, 2014

Act No. 193 requires the Vermont Law Enforcement Advisory Board (LEAB) to develop an implementation plan on the following:

§ 5581. ELECTRONIC RECORDING OF A CUSTODIAL INTERROGATION

(a) As used in this section: (1) “Custodial interrogation” means any interrogation:

(A) involving questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject; and (B) in which a reasonable person in the subject’s position would consider himself or herself to be in custody, starting from the moment a person should have been advised of his or her Miranda rights and ending when the questioning has concluded.

(2) “Electronic recording” or “electronically recorded” means an audio and visual recording that is an authentic, accurate, unaltered record of a custodial interrogation, or if law enforcement does not have the current capacity to create a visual recording, an audio recording of the interrogation

(3) “Place of detention” means a building or a police station that is a place of operation for the State police, a municipal police department, county sheriff department, or other law enforcement agency that is owned or operated by a law enforcement agency at which persons are or may be questioned in connection with criminal offenses or detained temporarily in connection with criminal charges pending a potential arrest or citation.

(4) “Statement” means an oral, written, sign language, or nonverbal communication.

(b)(1) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony violation of chapter 53 (homicide) or 72 (sexual assault) of this title shall be electronically recorded in its entirety.

(2) In consideration of best practices, law enforcement shall strive to record simultaneously both the interrogator and the person being interrogated.

(c)(1) The following are exceptions to the recording requirement in subsection (b) of this

2014 LEAB Summary Report

section:

(A) exigent circumstances;

(B) a person's refusal to be electronically recorded;

(C) interrogations conducted by other jurisdictions;

(D) a reasonable belief that the person being interrogated did not commit a felony violation of chapter 53 (homicide) or 72 (sexual assault) of this title and, therefore, an electronic recording of the interrogation;

(E) the safety of a person or protection of his or her identity; and

(F) equipment malfunction.

(2) If law enforcement does not make an electronic recording of a custodial interrogation as required by this section, the prosecution shall prove by a preponderance of the evidence that one of the exceptions identified in subdivision (1) of this subsection applies. If the prosecution does not meet the burden of proof, the evidence is still admissible, but the Court shall provide cautionary instructions to the jury regarding the failure to record the interrogation.

Implementation Plan

It's been a long-standing practice of the LEAB to develop and recommend statewide model policies for law enforcement agencies on various topics, as well as identify essential components that an agency's policy should contain. This practice allows agencies to either adopt the LEAB policy or modify existing policies to ensure they contain the essential components. With regards to Act. 193, the LEAB will follow the same process.

- 1.) 13 VSA 5581 contains very specific requirements for law enforcement agencies regarding the recording of custodial interrogations, as noted above. Though some agencies in VT are already recording interviews and have policies addressing this,

2014 LEAB Summary Report

there is no one model policy available to agencies that either don't currently record interviews but will in the near future, or that contains the essential components as laid out in statute.

- 2.) The LEAB has partnered with Project Innocence to review policies from around the state and those supplied by Project Innocence in order to identify best practices and incorporate the language in 13 VSA 5581, and then create a statewide model policy that agencies can adopt or use to compare to the language and procedures in their own policies.
- 3.) The LEAB goal is to have this model policy available for agencies by January 1, 2015, the same date that agencies have to adopt an eyewitness identification policy.
- 4.) The LEAB has conducted a survey of current recording equipment possessed and used by VT law enforcement agencies, and will develop recommendations on how to assist law enforcement agencies seeking to equip their facilities.

Respectfully submitted,

Richard B. Gauthier, Chair
Vermont Law Enforcement Advisory Board

2014 LEAB Summary Report

Survey Results

Agency	Equipment in Station			Equipment in Cruisers			Policy	Media type		Comments
	Audio	Video	Both	Audio	Video	Both		Digital	Analog	
BarreTown PD	x						no	x		
Bennington PD	x					x	no	x		
Dover Police Dept	x			x			yes	x		
Hardwick Police	x					x	yes	x		
Milton Police Department	x					x-	yes	x		not enough for every officer
Orange County Sheriff's Office						x-victims only	no	x		Main office equipment died
Richmond Police Department	x			x		x	YES	x		
Rutland City Police Dept.	x			x		x	YES			
Vergennes Police Department	x			x		x	yes			
Vermont State Police (All barracks)	x			x		x				
Washington Co. Sheriff's Office	x			x		x				DUI processing room only
Winooski Police Department	x			x		x	yes			

2014 LEAB Summary Report

Appendix D

Model Policy for Eyewitness Identification

EYEWITNESS IDENTIFICATION Sample Model Policy

BACKGROUND:

The identification of a suspect by an eyewitness can be an important component of a criminal investigation, but can be equally significant in clearing an innocent suspect. Many people who have been convicted of serious crimes, only to later be exonerated by scientific evidence, were originally convicted based in large part on mistaken identification by a witness. Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in over 75% of convictions overturned through DNA testing. The [INSERT] Police Department recognizes that it is as much the responsibility of the police to protect the innocent from conviction as it is to assist in the conviction of the guilty.

The identification of criminal offenders must be approached with extreme caution as the court may exclude eyewitness evidence if it determines that police methods were unnecessarily suggestive.

POLICY:

It is the policy of the _____ Police Department that:

1. Eyewitnesses will be given specific instructions prior to being shown a suspect;
2. Photo arrays and line-ups will be conducted using sequential rather than simultaneous presentation; and
3. Photos arrays, line-ups and voice identifications will be conducted using blind administration.

DEFINITIONS:

Show-up: The presentation of one suspect to an eyewitness shortly after the commission of a crime.

Field View: The exposure of an eyewitness to a group of people in a public place on the theory that the subject may be among the group. A field view differs from a show-up in that it may be conducted well after the commission of the crime, and may be conducted with or without a suspect in the group.

2014 LEAB Summary Report

Photo Array: The showing of photographs of several individuals to an eyewitness for the purpose of obtaining an identification.

Sequential Presentation: The showing of photographs one at a time.

Simultaneous Presentation: The showing of a group of photographs at the same time.

Line-up: The live presentation of a number of people to an eyewitness for the purpose of obtaining an identification. A line-up differs from a field view in that it is conducted in a controlled setting, such as a police station, a known suspect is in the mix, and the participants are aware that an identification procedure is being conducted.

Voice Line-up: A procedure whereby a witness is permitted to hear the voices of several people for the purpose of obtaining an identification of a suspect's voice.

PROCEDURES:

Right to Counsel During Identification Procedure

No right to counsel attaches for non-corporeal identification procedures, such as those involving photographs or composite drawings, whether conducted before or after the initiation of adversarial criminal proceedings.

The right to counsel attaches to in-person identification procedures after the suspect has been arraigned or indicted.

General Considerations

Due process requires that identifications be conducted in a fair, objective, and non-suggestive manner. Due process is violated when identification procedures arranged and/or conducted by the police are unnecessarily suggestive and conducive to irreparable mistaken identification.

Prior to conducting an identification procedure, officers should take a full description of the suspect from the witness and document said description.

If practicable, the officer should record the procedure and the witness' statement of certainty. If not, the officer should jot down the witness' exact words and incorporate them into his/her report. The witness should be asked to initial and date the front of the photograph selected.

Police officers should avoid any words or actions that suggest to the witness that a positive identification is expected, who they expect the witness to identify, or congratulating the witness on a 'correct' identification.

2014 LEAB Summary Report

A report of every show-up, photo array, line-up or voice identification procedure, whether an identification is made or not, shall be submitted. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the officer (this should be accomplished by submitting the appropriate witness instruction form), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.

Witness Instructions

Whenever practicable, an officer conducting an identification procedure will read the witness a set of instructions from a departmental form (show-up card, or photo array or line-up instruction form). Those instructions should include the following:

The person who committed the crime may or may not be (the person, or in the set of photographs) you are about to view.

You should remember that it is just as important to clear innocent persons from suspicion as to identify guilty parties.

The individuals you view may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change. (Not for use during show-ups or voice identifications.)

Regardless of whether or not you select someone, the police department will continue to investigate the incident.

The procedure requires the officer to ask you to state, in your own words and without using a numerical scale, how certain you are of any identification.

If you do select someone, please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.

Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.

Show-ups

1. Show-up identification procedures should only be used soon after a crime has been committed, typically within two hours, or under exigent circumstances, such as the near death of the only available witness. Show-ups should be conducted live whenever possible and not photographically. Officers should not attempt to obtain identifications using DMV, or other photos, unless a dire emergency exists.

2. When a show-up is arranged in an emergency situation, where either a witness or a victim is in imminent danger of death or in critical condition in a hospital, and the circumstances are such that an immediate confrontation is imperative, the emergency identification procedure shall be conducted in a non-suggestive manner.

2014 LEAB Summary Report

3. Every show-up must be as fair and non-suggestive as possible. Specifically, if the suspect is handcuffed, he/she should be positioned so that the handcuffs are not visible to the witness. Unless necessary for the safety of the officers or others, the suspect should not be viewed when he/she is inside a police vehicle, in a cell, or in jail clothing.

4. Detaining a person who fits the description of a suspect in order to arrange a show-up is lawful where the officer has reasonable suspicion that the suspect has committed a crime, even if probable cause to arrest has not yet developed.

5. If the witness fails to make a positive identification and sufficient other evidence has not developed to provide probable cause to make an arrest, the suspect must be permitted to leave. His/her identity should be recorded and included in the officer's report.

6. If a suspect is stopped within a short time after the commission of the crime, he/she may be taken to a location where he/she can be viewed by a witness for possible identification; or, he/she may be detained at the site of the stop and the witness taken there to view him/her. Transporting the witness to the site of the stop is preferred if circumstances permit.

7. Suspects should not be brought into a crime scene as contamination may result. For the same reason, clothing articles found at the crime scene should not be placed on or in contact with a suspect. A suspect should not be brought back to the home of a victim or witness unless that was the scene of the crime.

8. Police officers must not do or say anything that might convey to the witnesses that they have evidence of the suspect's guilt. Officers should turn down their radios so that the witness they are transporting does not pick up information about the stop of the suspect.

9. The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect should not be permitted to communicate with those who have not.

10. Where multiple witnesses are available to identify the subject, officers should permit the subject to be identified by only one or two. Once one or two witnesses have identified the subject during a show-up, further identifications should be attempted by means of a photo array or line-up.

11. Officers may transport victims or witnesses in police vehicles to cruise the area where a crime has just occurred in order for them to attempt to point out the perpetrator. While checking the area, officers must be careful not to make any statements or comments to the witnesses which could be considered suggestive.

12. Officers should make written notes of any identifications and any statements made by witnesses at the time of confrontation with the suspect. Once a witness has indicated his/her opinion regarding the identity of the subject, the officer should ask the witness

2014 LEAB Summary Report

how certain he/she is of the identification. Officers should ask the witness not to use a numerical scale, but rather to indicate certainty in his/her own words. All statements by the witnesses should be incorporated into the officers' report.

Preparing a Photo Array

1. Photo arrays should be shown to witnesses as soon as possible after the commission of a crime.
2. Include one suspect and seven fillers (non-suspects) in each array. Mark the back of each photo with numbers one through eight.
3. Try to use photographs of the same size and basic composition. Do not include more than one photograph of the same person.
4. Use a photo of the suspect that closely depicts his/her current appearance.
5. Select fillers who generally fit the witness' description of the offender. Avoid fillers who so closely match the suspect that a person familiar with the suspect would have difficulty distinguishing the filler.
6. Ensure that photos bear no markings indicating previous arrests.
7. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature such as facial scars or severe injuries by adding or covering the feature.
8. Once the array has been assembled, examine it to ensure that nothing about the suspect's photo makes him/her stand out.
9. Consider changing the order of photos from one witness to the next, or when a witness asks to see the array a second time.
10. When showing a witness an array containing a new suspect, avoid using fillers from a previous array.

Showing a Photo Array

1. The procedure must be conducted in a manner that promotes reliability, fairness and objectivity.
2. Allow each witness to view the photographs independently, out of the presence and hearing of the other witnesses.

2014 LEAB Summary Report

3. Never make suggestive statements that may influence the judgment or perception of the witness.
4. A second officer who is unaware of which photograph depicts the suspect should actually show the photographs. This technique, called blind administration, has been recommended by the National Institute for Justice, and is intended to ensure that the witness does not interpret a gesture or facial expression by the officer as an indication as to the identity of the suspect. The technique also allows the prosecution to demonstrate to the judge or jury at trial that it was impossible for the officer showing the photographs to indicate to the witness, intentionally or unintentionally, which photograph he/she should select.
5. The investigating officer or the second officer (the administrator) should carefully instruct the witness by reading from a departmental Photo Array Instruction Form, and the witness should be asked to sign the form indicating that he/she understands the instructions. The investigating officer and the administrator should also sign and date the form.
6. For the reasons above, the officers should explain to the witness that the officer showing the array does not know the identity of the people in the photographs. The investigating officer should leave the room while the array is being shown by the administrator.
7. The officer should show the photographs to a witness one at a time and ask the witness whether or not he/she recognizes the person.
8. When the witness signals for the next photograph, the officer should move the first photograph so that it is out of sight and ask the witness whether he/she recognizes the next photograph.
9. The procedure should be repeated until the witness has viewed each photograph. If the witness identifies a subject before all the photographs have been viewed, the officer should remind the witness that he/she is required to show the rest of the photographs.
10. If the witness fails to make an identification, but asks to view the array a second time, the officer administering the identification should ask the witness if he/she was able to make an identification from the original viewing. If the witness is unable to make an identification, but feels that it would be helpful to repeat the procedure, then it is permissible to show the entire array a second time. The order of the photographs should be shuffled before the array is shown for the second time. An array should not be shown more than twice.
11. If the witness identifies the suspect, the officer should ask the witness how certain he/she is of the identification. Officers should ask the witness not to use a numerical scale, but rather his/her own words.

2014 LEAB Summary Report

12. The photo array should be preserved as evidence in the same configuration as when the identification was made.

13. If more than one witness is to view an array and a witness has already marked one of the photos, a separate unmarked array shall be used for each subsequent witness.

Line-ups

1. Line-ups shall be conducted under the direction of a detective supervisor, or in his/her absence the [agency head or designee] and, when feasible, after consultation with the State's Attorney's Office.

2. A suspect cannot be detained and compelled to participate in a line-up without probable cause to arrest. If a suspect refuses to participate in a line-up, the State's Attorney's Office may be asked to apply for a court order to compel the suspect to cooperate.

3. Before any suspect who has been arraigned or indicted is shown to eyewitnesses in a line-up or other live identification procedure, he/she must be informed of his/her right to have an attorney present at the line-up and of his/her right to be provided with an attorney without cost if he/she is unable to afford such legal counsel. Unless a valid waiver is voluntarily and knowingly made, in writing if possible, no such identification may proceed without the presence of the suspect's attorney.

4. Select a group of at least five fillers who fit the description of the subject as provided by the witness(es). Because line-ups will be administered by an officer who does not know the identity of the suspect, the fillers selected should not be known to the officer administering the line-up. In selecting line-up fillers, abide by the guidelines for photo array fillers as described above.

5. All persons in the line-up should carry cards that identify them only by number and should be referred to only by their number. As with photo arrays, each witness must view the line-up independently, out of the presence and hearing of the other witnesses.

6. The investigating officer should explain to the witness that a second officer (the line-up administrator) will be conducting the line-up, and that he/she does not know the identity of the people in the photographs.

7. The investigating officer should carefully instruct the witness by reading from a departmental Line-up Instruction Form, and the witness should be asked to sign the form indicating that he/she understands the instructions. The officer should also sign and date the form.

8. The investigating officer should leave the room while the line-up administrator conducts the line-up.

2014 LEAB Summary Report

9. The line-up should be conducted so that the suspect and fillers do not actually line up, but rather so that they are displayed to the witness one at a time. This can be accomplished either by having them stand with their back to the witness and then face the witness one at a time, or by having them enter the room individually and leave before the next one enters.

10. The procedure for showing the participants to the witness and for obtaining a statement of certainty is the same as for photo arrays. If practicable, the officer should record the procedure.

11. When an attorney for the suspect is present, the attorney should be permitted to make reasonable suggestions regarding the composition of the line-up and the manner in which it is to be conducted. Any suggestions made by the suspect's attorney should be included as part of the line-up report.

12. Allow counsel representing the accused sufficient time to confer with his/her client prior to the line-up. Once the line-up is commenced, attorneys should function primarily as observers and he/she should not be permitted to converse with the line-up participants, or with the witnesses, while the line-up is underway. The concept of blind administration requires that no one be present who knows the identity of the suspect. For this reason, the attorney should leave the room before the line-up begins.

13. The suspect's attorney is not legally entitled to the names or addresses of the witnesses attending a line-up if the suspect has not yet been arraigned or indicted. If an attorney in such a situation insists on having information about line-up witnesses, advise him/her to direct his/her request to the State's Attorney's Office.

14. During a line-up, each participant may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions or to walk or move in a certain way. If officers are to ask the participants to wear an article of clothing, they must guard against circumstances where the article only fits the suspect. All line-up participants shall be asked to perform the same actions.

15. Line-up participants must not speak during the line-up. If identification of the suspect's voice is desired, a separate procedure must be conducted. (See section on voice identification below.)

16. After a person has been arrested, he/she may be required to participate in a line-up regarding the crime for which he/she was arrested. After arrest, a suspect may lawfully refuse to participate in a line-up only if he/she has a right to have counsel present (post arraignment/indictment) and the counsel is absent through no fault of the suspect or his/her attorney.

2014 LEAB Summary Report

Voice Identification

1. Although considerably less common than visual identifications, voice identifications may be helpful to criminal investigations where the victim or other witness was blind, the crime took place in the dark, the subject was masked, the witness' eyes were covered by the perpetrator, or they were never in the same room with the perpetrator but heard his/her voice. If officers wish to conduct a voice identification procedure with a witness who also saw the subject, they must first consult with the a detective supervisor, or in his/her absence the [agency head or designee] and, when feasible, the State's Attorney's Office.

2. As with any in-person identification or confrontation, if the suspect has been arraigned or indicted, he/she has a right to the presence of counsel at the voice identification procedure.

3. Where a voice identification is attempted, the following procedures should be employed to the extent possible:

a. As in a line-up, there should be at least six persons whose voices will be listened to by the witness; one-on-one confrontations should be avoided. Because line-ups will be administered by an officer who does not know the identity of the suspect, the fillers should not be known to the officer administering the procedure, and officers should abide by the guidelines for photo array and line-up fillers as described above;

b. The suspect and other participants shall not be visible to the witness; this can be done by using a partition, or by similar means;

c. All participants, including the suspect, shall be instructed to speak the same words in the same order;

d. The words recited by the participants shall not be the ones spoken by the offender during the crime; the line-up participants should speak neutral words in a normal tone of voice;

e. When both a visual and voice line-up are conducted, the witness should be informed that the line-up participants will be called in a different order and by different numbers;

f. If there are two or more suspects of a particular crime, present each suspect to witnesses in separate line-ups. Different fillers should be used to compose each line-up.

4. The investigating officer should carefully instruct the witness by reading from a departmental Voice Identification Line-up Instruction Form, and the witness should be

2014 LEAB Summary Report

asked to sign the form indicating that he/she understands the instructions. The officer should also sign and date the form. If practicable, the officer should record the procedure.

5. Adhere to the principles of blind administration as described above. As is the case with photo arrays and line-ups, the investigating officer should leave the room while the administrator conducts the procedure.

Courtroom Identification

Prior to conducting any courtroom identification procedure, officers should consult the State's Attorney's Office. The same right to an attorney and the same due process considerations that apply to all other identification procedures also apply to station house and courtroom identifications.

1. If the suspect has been arraigned or indicted, he/she has a right to have counsel present at any in-person identification/confrontation.
2. Live confrontations and informal viewings of the suspect by witnesses must be conducted in such a manner as to minimize any undue suggestiveness.
3. Officers shall not state or suggest that the suspect has been arrested or booked or that he/she has made any confession or incriminating statement or that any incriminating evidence has been uncovered. The witness' identification, particularly if it takes place in a police station or courtroom, must be a result of his/her recollection of the appearance of the perpetrator and must not be unduly influenced by information or suggestions originating from the police.

Drawings and Identi-Kit Composites

An artist's sketch, computerized drawing, composite, or other depiction can sometimes aid an investigation, but are most effective when a witness has a good recollection of the offender's facial features. However, research has shown that a person selected based on resemblance to composite is more likely to be mistakenly identified. Additionally, building a composite has been shown to lower a witness' accuracy for identifying the original face.

Prior to attempting a sketch or composite, officers should take from the witness and document a full description of the offender.

1. A sketch prepared by a trained artist is preferred over a composite.
2. Sketches and composites should not be attempted prior to the showing of a photo array or line-up.

2014 LEAB Summary Report

3. Once the sketch or composite has been completed, the witness should be asked to state in his/her own words how accurately the composite reflects how the suspect appeared during the crime and a report should be prepared regarding the sketch or composite procedure.

4. The fact that a suspect resembles a sketch or composite is not, without more, probable cause to believe that the suspect is the offender.

Mug Shots

When an investigation has failed to identify a suspect, it may be advisable to have eyewitnesses come to the police station to look through photographic files.

However, officers should not resort to this procedure until other investigative avenues have been exhausted.

1. Remove or hide any information on the photographs that might in any way influence the witness;
2. Ensure that the files contain only one photograph of each individual and that the photographs are reasonably current;
3. Do not refer to the photographs as “mug shots”;
4. If photographs of various formats are used, ensure that several of each format are used;
5. Permit the witness to look at a number of photographs before making his/her selection;
6. Do not call to the attention of the witness any particular photograph;
7. A report shall be filed following the procedure, regardless of whether an identification is made. The report should describe the photographs viewed by the witness(s).
8. Officers should be extremely cautious before charging a subject based on this type of identification alone.

Hypnotically Aided Identification

Hypnotically aided testimony is not admissible at trial. Memory recalled prior to hypnosis which was the subject of a hypnotic session may be excluded as hypnotically aided. In light of the serious consequences which could result from asking or permitting a witness to undergo a hypnotic session, such a procedure shall not be undertaken until the entire matter has been reviewed by the [agency head], the State’s Attorney’s Office, and appropriate hypnosis experts.

2014 LEAB Summary Report

Instruction Card for Show-up Identification Attempt

- 1. You are going to be asked to view someone.**
- 2. The person who committed the crime may or may not be the person you are about to view.**
- 3. You should remember that it is just as important to clear innocent persons from suspicion as it is to identify the guilty.**
- 4. Regardless of whether or not you identify the person, we will continue to investigate the incident.**
- 5. When we are done, our procedures require me to ask you to state, in your own words, how certain you are of any identification.**
- 6. If you do select someone, please do not ask us questions about the person you have selected, as no information can be shared with you at this stage of the investigation.**
- 7. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.**
- 8. Do you have any questions before we begin?**

If identification is made, ask “Without using a numeric scale, how certain are you?”

2014 LEAB Summary Report

Voice Identification Line-up Instruction Form

1. You are being asked to listen to several people speak.
 - a. You will be hearing them one at a time.
 - b. Please listen to all of them.
 - c. They are in random order.
 - d. Please make a decision about each person before moving on to the next one.
2. The person who committed the crime may or may not be one of the people you are about to hear.
3. You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty.
4. The officer administering this procedure does not know whether any of the people were involved in the crime.
5. Please pay no attention to the content of the words spoken. They have been chosen at random.
6. Regardless of whether or not you select a person, the police department will continue to investigate the incident.
7. The procedure requires the officer to ask you to state, in your own words, how certain you are of any identification.
8. If you do select someone, please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
9. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.
10. Do you have any questions before we begin?

Witness Signature _____ Date _____

Officer Signature _____ Date _____

Administrator Signature _____ Date _____

If an identification is made:

Without using a numeric scale, tell me how certain you are.

2014 LEAB Summary Report

Photo Array Instruction Form

1. You are being asked to view a set of photographs.
 - a. You will be viewing the photographs one at a time.
 - b. Please look at all of them. I am required to show you the entire series.
 - c. They are in random order.
 - d. Please make a decision about each photograph before moving on to the next one.
2. The person who committed the crime may or may not be in the set of photographs you are about to view.
3. You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty.
4. The officer showing the photographs does not know whether any of the people were involved in the crime.
5. The individuals in the photographs you view may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
6. Regardless of whether or not you select a photograph, the police department will continue to investigate the incident.
7. The procedure requires the officer to ask you to state, in your own words, how certain you are of any identification.
8. If you do select a photograph(s), please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
9. Regardless of whether you select a photograph(s), please do not discuss the procedure with any other witnesses in the case.
10. Do you have any questions before we begin?

Witness Signature _____ Date _____
Officer Signature _____ Date _____
Administrator Signature _____ Date _____

If identification is made:

Without using a numeric scale, tell me how certain you are

2014 LEAB Summary Report

Line-up

Witness #:

Witness:

Notes:

Did anyone look familiar?

(If identification is made) Without using a numerical scale, tell me how certain you are.

Officer's signature: