

Law Enforcement Advisory Board  
CEW Subcommittee Working Group Meeting  
Minutes of Meeting  
December 13, 2013

- Rick Gauthier called the meeting to order at 1:03 pm. Subcommittee members: Cindy Maguire, Major Walt Goodell, non-board members Major Sheets, Evan Meenan, Suellen Royea, Matthew Sullivan, Ken Stethem, Laura Ziegler, Dan Albert, Esq., and Barry Kade present. In addition, members from the media (WCAX) were present. Rick Gauthier explained that we would do a quick overview and noted that there was a signup sheet for attendance and to indicate whether you would like time to speak.
- **Discuss Draft Policy:** Rick Gauthier gave a brief overview which highlighted that in June, the LEAB was asked to look at developing a model policy for the State of Vermont. He noted that generally when the LEAB is asked to review policy, they break off into a small group, which talks to experts in the field, takes testimony and drafts a model policy and key components document. The purpose of today's meeting was to take more time for comments and then make recommendations to the Board.

A question was asked for introductions. A roll call of those present from the Subcommittee included: Walt Goodell, Vermont State Police; Cindy Maguire, Assistant Attorney General; Rick Gauthier, Executive Director of the Vermont Criminal Justice Training Council; and Suellen Royea, Administrative Assistant for CJS.

Cindy Maguire stated that a number of comments were received and reviewed. Some of them included: Section 1.2 better terminology for the word "imminent" would be "immediate" and asked the subcommittee to consider that change and for the full Board to review; Section 1.3 "Objectively reasonable", she noted that a couple people commented that the term suggests that is a difficult standard and could substitute language and pass that on to the full Board; and Section 1.6 "Special Populations" was another area for further consideration. She noted there was a lot of discussion and research done and that there were questions about whether there should be an expansion of the class of special populations and also whether a higher standard for deployment should be imposed. She suggested that the full Board engage in further discussion of that section as well. In summary, Cindy Maguire noted that those were the issues that jumped out that require additional consideration by the subcommittee and the full Board. In addition, she noted that other comments have been made and will be forwarded to the full Board for review and consideration.

Rick Gauthier inquired about some comments about passive resistance. Cindy Maguire noted that there was robust discussion around page 4 of the draft policy, and she then read the

section entitled active resistance. Walter Goodell suggested a further discussion on the issue with the larger group.

- **Public Comments:** Rick Gauthier requested that for those that comment, to keep their comments to the contents of the proposed policy. Cindy noted that Allen Gilbert could not be present but sent a memo today that will be part of the permanent record and that copies of his comments are available.

**Dan Albert:** Mr. Albert noted that he is a retired Defense Attorney and that he filed comments. His question was if the topics Cindy Maguire outlined would be the only topics for further consideration or if other topics would be considered. He also noted that Mr. Gauthier referred to a model policy and his understanding was a statewide policy instead of a model policy. His understanding was that the LEAB was asked to create a statewide policy. Rick noted that the LEAB cannot mandate policies, they can only make recommendations. Mr. Albert cited Cindy Maguire's 11/13/2013 memo states: "In June, Attorney General Sorrell requested the Law Enforcement Advisory Board (LEAB) to consider drafting a statewide policy for law enforcement on the use of tasers." Cindy answered that her comments were limited to some portions of the policy and are not all encompassing. She added that the comments she flagged are potentially easy fixes and that all comments will be available for the full Board for review. She also answered that the Attorney General did request a statewide policy, but as Rick Gauthier noted, the LEAB does not have the authority to mandate policy. Mr. Albert suggested to change "imminent" to "immediate" in Section 1.2, but had concerns about the second sentence. Cindy Maguire recognized that the change in Section 1.2 to immediate would require the following sentence to be updated.

**Barry Kade:** Mr. Kade noted that he submitted substantial comments and asked if the subcommittee will put out a sheet with all the issues that were raised and the resolutions. He noted that DOC summarizes the comments and the responses when they have proposed policy changes. Additionally, he noted that no incidents were reviewed to draft the policy. Rick Gauthier responded that neither the Academy nor the LEAB keeps those records. Mr. Kade noted that he spoke with John Treadwell and that the Attorney General did not review any incidents. Cindy Maguire noted the Subcommittee consulted with a lot of law enforcement that regularly use this device. Mr. Kade felt it was looking at one side of the story. The subcommittee noted his comments.

**Laura Ziegler:** Ms. Ziegler noted she is a member of a committee that was aware of a study on use of force which reviewed incidents and wrote them up. It took a long time to get a copy of the study, but asked the LEAB to review the study/reports. She also noted that she was

concerned about whether deliberations and public comments from a public forum that was held during the day were considered and/or used for this draft policy. Rick Gauthier responded that knowledge of the material was available. Ms. Ziegler asked why would you look at the comments now, why did you not look at them then. Rick Gauthier answered that overall some of the information gained from the forum was used to revise the training being revised now. Cindy Maguire shared that she was part of the forum and brings to the subcommittee all information gathered from the forum. Ms. Ziegler expressed her thoughts that what is going on now is more of a compilation of all the policies, but the comments and issues being raised again did not seem to affect the policy. These issues are being raised as if for the first time; special populations concerns, cameras' recording was not noted, the testing of the devices was not raised, and it seems to be a very direct deficiency and/or problem with this process. She suggested that if you are serious about wanting a policy, that public meetings be held. She did not think that this meeting would have been public if she had not put in a request, especially when it is not just the policy being that is controversial but that the science is also controversial. She noted that the Act 80 group has discussed de-escalation efforts. Rick Gauthier noted that training has been modified based on information from the Act 80 meeting. Ms. Ziegler urged to hold public forums during hours when public could attend and that ongoing legislation appears to be an attempt to undermine and not sure why the rush to get it done by the end of the year. Rick Gauthier explained that the LEAB has to provide a report to the Legislature by mid-January. Then the public would have an opportunity to comment further in the Legislature. The LEAB work of the model policy is done, which is why we are wrapping it up by the end of the year. She recommended that the report say that the Board is continuing to work on the policy. Rick Gauthier noted that the Board will consider that recommendation.

**Ken Stethem:** Mr. Stethem thanked everyone for their comments brought up, for the Board's work, and wanted to present some points. He noted that he works in the industry. After a high profile death, there was a Bravewood inquiry to look at technology and to look at the approach RCMP took at airport. He was asked to present and was there the whole time. At end of the week, the judge noted that there is one group that says that these are safe and one group that says they are not. They measured what came out of the devices and 80% were not within spec, some variables were high and some were low. He applauded the LEAB that the cornerstone was properly operating weapons should be used, but there is no provision to test if they are properly operating. He noted that spark tests tells you if the weapon sparks. Considering the only way you can determine if they are operating properly is by measurements, the policy should contain a method for measurements. The old way of testing was cumbersome and costly, but that is not the case anymore. There is a way to know when an officer goes out the door that it is operating properly. He noted that it is hard to find manufacturer specifications, but should include electrical specifications and the methodology for measurement. Measurement is important for

officers to control the situation. He suggested collecting information on the number of malfunctions, whether it was mechanical, tactical, or electrical. There were 5 deaths in Cincinnati, and they have spent the last year developing best practices. They say they need measurement. Law Enforcement Standards group after they found out there was variability in the weapons, have a model measurement policy which is now in front of the ICP. There is a standardized way to measure the weapons. He felt the weapon is great, but if you are not going to shoot, it should not be used. Canada has an academy of science that conducted a study that released the results that recommended every weapon should be measured. If there is a death, the weapon becomes evidence. Inside the policy, these weapons should be secured subject to forensic examination, the historical performance for uses. If there is a standard for safety, there should be standard for measurement. If there is no provision to ensure it is properly working, it is a liability. Bad policies increase risk and cost lives. All he is asking is to stop and consider why we aren't measuring these. Mr. Stethem noted coming into the building seeing a cartridge for the winter and suggested to also include in the policy that if cartridges are made for seasonal purposes that those cartridges are changed when the season changes, and measurement isn't the beginning of appropriate use, it is not a point just for this board, or this room, but this is for a national level and bringing integrity into the use of these weapons.

**Erick Esselstyn:** Mr. Esselstyn expressed his appreciation for the clarity and real evidence just heard. He noted that he served as a Dean of Students in Charlotte, North Carolina back in the 1970's when thousands of returning veterans were experiencing PTSD. Because of his position, he could use Baker's Law, which allowed someone to be taken away for mental evaluation. He watched the Charlotte Police Department come in and with superb training, watched these unarmed officers take care of someone who was going berserk. Later, he was the executive Director for an agency that dealt with mentally disturbed individuals who were violent, and found that training is the key for this process to work smoothly. Mr. Esselstyn shared that he has lived in Vermont for eleven (11) years and yearns for well trained mediators. The stories you hear about a veteran with a rifle in his hand and a mediator talking that person down. He emphasizes that what we are working with today, well trained, well calibrated weapons, that it is important that we have well trained police officers. Not sure where the mediator stands in Vermont where someone could go in and talk someone down, but it is important for people to feel confident and trust law enforcement. This is an enormous responsibility and he has seen where it has worked well and where it has been abused. He suggested making a real effort to hear the concerns and offer a solution as a singular team to make life in Vermont work.

Comments session closed. Rick Gauthier moved to take the recommendations noted and take them to the full Board. Cindy Maguire agreed and seconded that the full Board should consider the comments. She expressed appreciation for the information on measurement and reiterated

that all the comments received will be forwarded to the full Board for consideration. It was noted that there is not a firm deadline, but the report will be submitted in January and this was a logical place to begin finding some consistency across the state. Some differences were found, and it is good to hear comments from law enforcement, the public and experts in the field. She also noted that the Legislature may have more discussions and there may be more work, but that this is a good starting point. Major Goodell noted that the comments will have an impact on the work.

- Meeting adjourned at 1:56 pm.



**TO: Law Enforcement Advisory Board Taser Policy sub-committee**  
**FROM: Allen Gilbert, executive director, ACLU-VT**  
**DATE: Dec. 13, 2013**  
**SUBJECT: Proposed Taser policy**

I am sorry that I am not able to attend Friday's special meeting of the LEAB Taser sub-committee. I am already double-booked at two different legislative committees and feel I can't skip my commitments there.

I don't know what format is planned for Friday's meeting. I understood the purpose of the meeting is to offer a further chance for additional feedback on the policy beyond what we at the ACLU, and others, have already submitted.

The ACLU's central objections to the draft policy were laid out in the comments we submitted Dec. 4. Reading the comments of others, and thinking more about your draft, I hope you'll consider substantial revisions to the policy. The reason I ask this is that I'm convinced the policy simply won't address the concerns that have been raised about Taser training and Taser use in Vermont.

Central to those concerns is a desire – which I think we all agree on – to prevent unnecessary and even tragic incidents, involving Tasers, like those that have occurred in the past. No one wants to see innocent, at times disturbed or helpless, individuals hurt or die.

It can benefit no one when a weapon is used inappropriately – or when the weapon isn't functioning within proper specifications, or when the officer hasn't received training that shows how it is possible to de-escalate rather than escalate use of force in tense situations. Everyone would benefit if every encounter involving Tasers was recorded, and after each use the recording was reviewed to analyze what happened and whether the outcome was positive – and if not positive, how a better outcome could be achieved the next time.

This is difficult work, but the ACLU's hope is that in time it will lead to greater police professionalism that will be respected by all.

Thank you for your efforts.

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

## INTRODUCTION AND PURPOSE

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

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

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

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

## POLICY

### 1. **Definitions.**

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

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

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

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

## 2. Use of Force in General.

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

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

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

### 3. CEW Use and Deployment Procedures.

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

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

#### **4. Post Deployment Procedure.**

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

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

- 4.11.5. An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.
  - 4.12. Upon request, a suspect subjected to a CEW deployment shall be kept informed of the procedural status and final result of the review.
  - 4.13. Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council the total number of CEW deployments during the previous year and how many deployments resulted in a use of force review. The Council shall make this information available on its website.
5. **Training Requirements.**
  - 5.1. Training for officers authorized to carry CEWs shall be conducted annually.
  - 5.2. Training shall not be restricted solely to training conducted by the manufacturer of the CEW.
  - 5.3. Training shall emphasize that CEWs may be less-lethal, but not non or less-than lethal.
  - 5.4. Training shall also incorporate, at a minimum:
    - 5.4.1. Instruction on the use of force continuum.
    - 5.4.2. Techniques to avoid or deescalate confrontations.
    - 5.4.3. The underlying technology and operation of CEWs.
    - 5.4.4. The physiological effects upon an individual against whom such a CEW is deployed.
    - 5.4.5. The proper use of the weapon, including both the proper mechanical use of the weapon and the circumstances under which it is appropriate to use the weapon.
    - 5.4.6. Scenario-based training.
    - 5.4.7. Proper removal of CEW probes.
    - 5.4.8. The potential medical needs of a subject who has been subjected to a CEW deployment.
    - 5.4.9. The post-deployment reporting requirements.
    - 5.4.10. Instruction on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council.
  - 5.5. Departments should also evaluate the value of requiring or allowing officers to feel the effects of a CEW as part of training. If an officer decides to feel these effects, the training shall include an explanation of the potential differences between that officer's experience and the experience of a subject in the field.
6. Vermont's Law Enforcement Advisory Board shall review this policy annually.

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

This document lists the essential elements that each Vermont law enforcement agency should include in any policy governing the use of Conducted Electrical Weapons ("CEWs") if the agency decides not to adopt the LEAB's model policy on the use of CEWs. This list should not be interpreted as precluding agencies from including additional provisions should the needs of their departments and communities so require.

In addition, before making CEWs available to its officers, law enforcement agencies should engage in a process to obtain community or non-law enforcement feedback on appropriate and inappropriate uses of CEWs.

### **Definition of CEW**

1. CEWs should be identified as less-lethal, as opposed to less-than-lethal.
2. CEW policies should define what a CEW is, distinguishing between "probe" and "drive stun" modes, and identify what types of CEWs department personnel are permitted to carry.

### **Special Populations**

3. Special consideration should be given to deploying CEWs against members of special populations, which should include people an officer has reason to believe are:
  - a. Cognitively impaired such that they are unable to comply with an officer's instructions.
  - b. Operating a motor vehicle.
  - c. Standing in an elevated area, near water, or near flammable materials.
  - d. Restrained.
  - e. Minors.
  - f. Pregnant.
  - g. Elderly.
  - h. Inflicted with a heart condition.

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

### **Deployment Standards**

4. Officers may deploy a CEW in response to actively resistant subjects, if there is reason to believe using another compliance technique will result in a greater risk

of injury to the officer, the subject, or a third party, and in response to assaultive subjects when lethal force does not appear to be objectively reasonable.

5. Neither an officer, a subject, or a third party has to actually suffer an injury before an officer is permitted to use a CEW and officers are not required to use alternatives that increase the danger to themselves or the public.
6. When it is safe to do so, officers should attempt to deescalate situations by their presence or through the use of verbal persuasion.
7. When it is safe to do so, officers should provide a warning prior to deploying a CEW.
8. Officers should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
9. CEWs shall not be used in a punitive or coercive manner and shall not be used to awaken, escort, or gain compliance from passively resistance subjects. The act of fleeing or destroying evidence, in and of itself, does not justify the use of CEWs.

#### **Post Deployment Procedures**

10. Medical attention should be offered to all individuals against whom a CEW has been deployed.
11. Emergency medical services shall be contacted if a subject:
  - a. Suffers an obvious injury.
  - b. Does not appear to recover properly and promptly after deployment.
  - c. Is a member of a special population.
  - d. Has been subjected to three or more CEW deployments or a continuous deployment exceeds 15 seconds.
  - e. 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.
12. Officers should complete a use of force after deploying a CEW or displaying a CEW for compliance purposes.
13. All use of force reports shall be reviewed by the officer's supervisor. The department shall conduct a use of force review in the following circumstances:
  - a. The department receives a complaint of excessive use of force.
  - b. The supervisor recommends conducting a use of force review.
  - c. The encounter resulted in death or serious bodily injury.

- d. The individual is exposed to the CEW is a member of a special population.
  - e. An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.
  - f. Upon request, a suspect subjected to a CEW deployment shall be kept informed of the procedural status and final result of the review.
14. Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council the total number of CEW deployments during the previous year and how many deployments resulted in a use of force review. The Council shall make this information available on its website.

### **Training Standards**

15. Training for officers authorized to carry a CEW shall be conducted annually.
16. Training shall also incorporate, at a minimum:
- a. Instruction on the use of force continuum.
  - b. Techniques to avoid or deescalate confrontations.
  - c. The underlying technology and operation of CEWs.
  - d. The physiological effects upon an individual against whom such an CEW is deployed.
  - e. 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.
  - f. Scenario-based training.
  - g. Proper removal of CEW probes.
  - h. The potential medical needs of a subject who has been subjected to an CEW deployment.
  - i. The post-deployment reporting requirements.
  - j. Instruction on interacting with individuals experiencing a mental health crisis, as recommended by the Vermont Criminal Justice Training Council.
17. 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.
18. Training shall not be restricted solely to training conducted by the manufacturer of the CEW.