

Law Enforcement Advisory Board Meeting  
DPS Headquarters, 3<sup>rd</sup> Floor Conference Room, Waterbury VT  
Minutes of Meeting  
May 14, 2014

- Chairman Rick Gauthier called the meeting to order at 1:01 pm with the following present: Rick Gauthier, VT Police Academy Director; Suellen Royea, Criminal Justice Services; Drew Bloom, Dept. of Motor Vehicles; Glen Button, Dept. of Motor Vehicles; John Treadwell, Attorney General's Office; James Leene, U. S. Attorney General's Office; Major Bill Sheets, Vermont State Police; Paco Aumand, DPS Deputy Commissioner; and guests: Alan Gilbert, ACLU; and Dr. Adler via Skype.
- The meeting started with a Skype conversation with Dr. Andy Adler regarding measurement of CEWs. Dr. Adler shared the history of Canada's interest in measurement and calibration. An industry police was created in 2000 by a group that included Dr. Adler, industry representatives, and academy researchers, which is still in use. During Dr. Adler's overview, Keith Clark, Tom Hanley, Jamie Feehan, Ken Stethem, and Karen Horn joined the meeting. Dr. Adler noted that he has collected a lot of information through lots of tests and presented his information to Taser in 2012. At the completion of Dr. Adler's overview, introductions around the room included: Keith Clark, Major Sheets, Drew Bloom, Tom Hanley, Rick Gauthier, Jim Leene, Karen Horn, John Treadwell, Glen Button, Alan Gilbert, Paco Aumand, Suellen Royea, Ken Stethem and Jamie Feehan from Primmer, Piper, Eggleston and Cramer PC representing Taser. The conversation continued with questions for Dr. Adler. Some of the questions and answers included:
  1. When it comes to testing, what are we looking for? Dr. Adler answered that testing should include that the product does what the manufacturer says it does and meets operational standards. Currently, the test recommendation is primarily against the manufacturer standards and one additional standard from IEC that the maximum charge should be below a certain level.
  2. Are all the standards tested separately? Dr. Adler answered correct. Your test equipment must meet the capability level. There are some test labs that will go to the police agency and some labs that require the weapon to be sent to them. For minimum technical standards testing, they recommend three (3) 5 second trigger pulls.
  3. How often do you recommend testing? Dr. Adler noted they avoided the issue, but their results have shown that Taser weapons manufactured in the last 4 years have much less variability than earlier weapons.
  4. The charge may not be out of spec, but the timing is off? Dr. Adler explained that the weapon provides pulses. If the timing is too slow, it does not have the ability to affect the muscle control.
  5. How often does that happen? Dr. Adler noted it depends on the age and serial number of the weapon. In the last 2 years, he has not seen a weapon out of spec upon delivery. Of the weapons built previous to 4 years ago, about 2-5% depending on the age of the weapon were out of spec.

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6. If this is the most common error you have seen, what other errors have you seen? Dr. Adler answered there was some concern about over charge, but he has only seen an over charge 10 times.
7. Can you give a more concrete recommendation on weapons manufactured in the last 4 years need for testing? Dr. Adler hesitated to answer but recommended a fraction of those to be tested, and then probably a fraction of those tested every 1-2 years.
8. What kind of equipment do you use for testing? Dr. Adler described that he uses a laptop with analysis software that is connected to a scope system. (Lt. Mike Henry & Michael Leonesio arrived at 1:23 pm.)
9. What, in particular, should agencies be looking for in the readings/measurements? Dr. Adler suggested peak current voltage, peak interval, peak charge, charge, timing between pulses (pulse rate), and the monitoring charge.
10. Do you have a recommendation about testing after a discharge? Dr. Adler's opinion was that the key question is did that particular weapon behave as usual or unusually. Key in his mind is the length of time the weapon is used. Research shows there are no bad outcomes on healthy unstressed individuals. He explained that a Taser could become part of a poor outcome when an individual's situation causes a huge amount of stress and is Tased; the Taser has the ability to synchronize with the heart and cause labored breathing. Taser is an additional stressor in a stressful situation, in his opinion.
11. Is there anything more you think we should know as we proceed? Dr. Adler noted that, although he could not disclose specific information, the manufacturer of the Taser X26 weapons will be switching to new technology.

Dr. Adler was thanked for his time and Rick Gauthier will reach out for serial numbers and other information. The Skype call ended at 1:34 pm. (Glen Button left the meeting.)

- John Treadwell started to review the Legislation and draft policy handouts. Mr. Stethem asked to demonstrate his testing equipment. While he left to get his equipment, Lt. Henry was asked to find a Vermont State Police X26 weapon, specific questions to ask Mr. Stethem were discussed, and handouts were reviewed. Mr. Stethem set up his equipment and described the system. He walked through the software process and demonstrated a 5-second fire test using a weapon he brought; the testing device showed the weapon measured was out of spec. Mr. Stethem was asked for a copy of the report, which he indicated he would email to Rick Gauthier. A second weapon, one of Vermont State Police's X26 weapons, was tested. Mr. Stethem noted that it captured the whole 5 seconds and not just the last 8 pulses and that the testing device showed that weapon was also out of spec. There was some confusion and discussion about the last 8 pulses versus all 90 pulses, the two weapons tested being "out of spec", and the data collected and manufacturer specifications. Mr. Leonesio described specifications and gave an overview of his experience and interest in the measurement of CEWs. It was noted that he testified by phone for the Senate Gov Ops Committee. He offered his assistance. Mr. Stethem

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was asked to demonstrate the testing device Version 1.7, but he refused noting there was a bug. Some concerns were expressed about the testing devices. Mr. Stethem noted that the devices were not ready for the field, but that he wants to work with our group. When asked where these devices are being tested, Mr. Stethem noted Canada. There was some discussion about what agencies are testing/using Mr. Stethem's testing devices. When pressed, Mr. Stethem noted that the RCMP will have a Version 1.7 with an RJ45 connection. It was noted that the discussion was moving too far into sales and shared that it would be up to agencies to reach out for sales inquiries. The Committee's job is to guide agencies.

Mr. Leonesio was asked about the testing his company does and other police agencies in the Country that have the capability to test these weapons. He shared that his lab collects everything and adjust the mathematical calculations if the manufacturer's specifications change. His lab is the only lab in the county and usually provides forensic testing. Some history about how the program worked in Oakland was given by Mr. Leonesio. He noted that Taser set them up for testing and then over the course of time, they expanded the system as they were looking for more information. He suggested testing be done once a year, when a death occurs, or if there was an unexplained outcome. When asked what unit of the agency the testing fell under, Mr. Leonesio noted it was under the Training Unit as the Forensic Lab and Firearms Unit did not want the program. There was some review about standards. Mr. Leonesio estimated that International Standards for these weapons should be available in November. The next step, which NIST is seeing a need for, will be for safety and ethical testing. Mr. Leonesio further noted that with the data collected, they were able to start to look at trends and see which weapons needed to be replaced. He applauded the group for what they are trying to do. A question was asked about if Oakland had a use/training program and if they had a problem with them being used. Mr. Leonesio answered that he found 95 weapons in trunks of cars. Training and the Use of Force and Report policy were completely rewritten. Weapons performing at a higher level were briefly reviewed. He shared his views on training. A question was asked if those materials were available online. Mr. Leonesio noted they were not but offered to help in any way. Another question was asked if Oakland Police Department was still testing. Mr. Leonesio noted that he was not able to locate a replacement when he retired and officers would drive to his home for testing and a report. It was noted that there is time for further study and this can be done in steps. Mr. Leonesio offered a site visit of his facility and noted that agencies in Texas, Illinois, Washington State, Utah, and Canada utilize his testing services. Mr. Stethem noted that he understood Sheriff Clark's concern about vendors and suggested to measure and talk with the RCMP. Mr. Stethem left the meeting around 3:00 pm.

- John Treadwell reviewed the current draft (from December) and H.225 as passed and identified areas that we need to address (highlighted in the draft). Topics compared/reviewed included:

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- Section 1.1, definition of CEW: the legislature decided on a different term and definition which will have to be modified in the draft policy. Also, will need to create a more universal definition of drive mode. Tom Hanley noted we have more information in our definition and Sheriff Clark suggested to add "and/or known as" to the term.
- Section 1.6, special populations: provision B7 on page 3 of the legislation identifies certain groups and is not parallel to the list of special population that we identified, which will need to be modified in the draft policy. It was noted that one issue raised was that we included populations that were not population but circumstances. John Treadwell offered to update the language and bring it back to the group.
- Page 3 Section 2.2 of the draft policy indicated when possible to attempt to de-escalate situations, but the legislation does not include this provision.
- Section 2.4 of the draft policy includes descriptions of levels of resistance an officer may face and examples of force. A question was asked if it really needed to be included. John Treadwell did not know if it adds much given each agency will have its own use of force policy. He thought we might have to define a couple of terms. The general consensus was in agreement.
- Page 5, Section 3.3 (recommendation of a warning) and Section 3.4 (the actual standard for use) of the draft policy are set forth in Section B2 of the legislation, where the Legislature created three (3) standards for when it is appropriate to deploy a CEW. John Treadwell recommended rewriting Sections 3.4.1 and 3.4.2 of the draft policy to address those circumstances. Section 3.4.3 of the draft policy is reflected in Section B8 of the legislation, but John Treadwell questioned if Section 3.4.3 of the draft policy should be more mandatory. He offered to draft something.
- Section 3.5 of the draft policy is parallel to Section B3 of the legislation; however, John Treadwell suggested using some of the language the legislature offered. Keith Clark thought it would protect the officers and should be incorporated.
- Section 4.13 on page 8 of the draft policy, report requirement, is parallel to Subdivision F on the bottom of page 4 of the legislation regarding reporting. It was noted there is a difference between LEAB and Training Council. John Treadwell thought that the agencies report to the VCJTC and then the LEAB could include it in our annual report.
- Alan Gilbert asked how Subsection 6 on Page 3 of the legislation will be met. The general consensus was that it would be met through training that the council comes up with and would include those circumstances. A question from Mr. Leonesio about how the draft policy and individual agency policies are reconciled to case law was asked. Some discussion was held around policy standard for when Tasers can be deployed, immediate versus imminent and legal standard.

John Treadwell will draft the changes and email the updated draft to the members.

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- Sheriff Clark suggested that if a report is received from Mr. Stethem that it is compared to any report Lt. Henry receives from Taser. A question was asked about what we are trying to do with testing. It was noted that other techniques/weapons are not tested and that the goal is to make sure the device works with minimum testing.
- Tom Hanley made a motion to adjourn. The motion was seconded by Jim Leene. Meeting adjourned at 3:23 pm.

H.225

An act relating to a statewide policy on the use of and training requirements for electronic control devices

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 20 V.S.A. § 2367 is added to read:

**§ 2367. STATEWIDE POLICY; ELECTRONIC CONTROL DEVICES;**

**REPORTING**

(a) As used in this section:

(1) “Electronic control device” means a device 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.

(2) “Law enforcement officer” means a sheriff, deputy sheriff, police officer, capitol police officer, State game warden, State Police officer, constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title, and a certified law enforcement officer employed by a State branch, agency, or department, including the Department of Motor Vehicles, the Agency of Natural Resources, the Office of the Attorney General, the Department of State’s Attorney, the Secretary of State, and the Department of Liquor Control.

(b) On or before January 1, 2015, the Law Enforcement Advisory Board shall establish a statewide policy on the use of and training requirements for

the use of electronic control devices. On or before January 1, 2016, every State, local, county, and municipal law enforcement agency and every constable who is not employed by a law enforcement agency shall adopt this policy. If a law enforcement agency or officer that is required to adopt a policy pursuant to this subsection fails to do so on or before January 1, 2016, that agency or officer shall be deemed to have adopted, and shall follow and enforce, the model policy established by the Law Enforcement Advisory Board. The policy shall include the following provisions:

- (1) Electronic control devices are less-lethal, but not necessarily non-lethal, alternatives to lethal force.
- (2) Officers may deploy an electronic control device only:
  - (A) against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer's judgment, is likely to result in injuries to others or themselves; or
  - (B) if, without further action or intervention by the officer, injuries to the subject or others will likely occur.
- (3) Neither an officer, a subject, or a third party has actually to suffer an injury before an officer is permitted to use an electronic control device, and officers are not required to use alternatives that increase the danger to the public or themselves.

(4) When it is safe to do so, officers shall attempt to de-escalate situations and shall provide a warning prior to deploying an electronic control device.

(5) Electronic control devices shall not be used in a punitive or coercive manner and shall not be used to awaken, escort, or gain compliance from passively resisting subjects. The act of fleeing or of destroying evidence, in and of itself, does not justify the use of an electronic control device.

(6) The use of electronic control devices shall comply with all recommendations by manufacturers for the reduction of risk of injury to subjects, including situations where a subject's physical susceptibilities are known.

(7) Electronic control devices shall be used in a manner that recognizes the potential additional risks that can result from situations:

(A) involving persons who are in an emotional crisis that may interfere with their ability to understand the consequences of their actions or to follow directions;

(B) involving persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer's directions; and

(C) involving higher risk populations that may be more susceptible to injury as a result of electronic control devices.

(8) Electronic control devices shall not be used on animals unless necessary to deter vicious or aggressive behavior that threatens the safety of officers or others.

(c) The Criminal Justice Training Council shall adopt rules and develop training to ensure that the policies and standards of this section are met. The Criminal Justice Training Council shall ensure that a law enforcement officer receives appropriate and sufficient training before becoming authorized to carry or use an electronic control device.

(d) On or before June 30, 2017, every State, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall ensure that all officers have completed the training established in 2004 Acts and Resolves No. 80, Sec. 13(a), and every constable who is not employed by a law enforcement agency shall have completed this training.

(e) The Criminal Justice Training Council shall coordinate training initiatives with the Department of Mental Health related to law enforcement interventions, training for joint law enforcement and mental health crisis team responses, and enhanced capacity for mental health emergency responses.

(f) 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.

(g) The Law Enforcement Advisory Board shall:

(1) study and make recommendations as to whether officers authorized to carry electronic control devices should be required to wear body cameras;

(2) establish a policy on the calibration and testing of electronic control devices;

(3) on or before January 15, 2015, report to the House and Senate Committees on Government Operations and on Judiciary concerning the recommendations and policy developed pursuant to subdivisions (1) and (2) of this subsection; and

(4) on or before April 15, 2015, ensure that all electronic control devices carried or used by law enforcement officers are in compliance with the policy established pursuant to subdivision (2) of this subsection.

Sec. 2. REPORTS

(a) On or before January 15, 2015, the Criminal Justice Training Council shall report to the House and Senate Committees on Government Operations and on Judiciary on the progress made implementing the rules, training, and certification standards required by this act.

(b) On or before January 15, 2015, the Department of Mental Health shall report to the House and Senate Committees on Government Operations and on Judiciary on the adequacy of resources to support the requirements of this act.

(c) On or before March 15, 2016, and annually thereafter, the Criminal Justice Training Council shall report to the House and Senate Committees on Government Operations and on Judiciary all incidents involving the use of an electronic control device, a review of compliance with standards, the adequacy of training and certification requirements, and the adequacy of funding for mental health collaboration.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

**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.

Level of Resistance	Type of Force
<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.	<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.
<u>Passive Resistance:</u>  A subject refuses, with little or no physical activity, to appropriately respond to the officer.  Examples include subjects who offer	<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>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><b>Active Resistance:</b></p> <p>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.</p> <p>Examples include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance.</p>	<p><b>Compliance Techniques:</b></p> <p>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><b>Assaultive – Risk of Physical Injury Perceived:</b></p> <p>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.</p> <p>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><b>Defensive Tactics:</b></p> <p>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.</p> <p>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><b>Assaultive – Serious Physical Injury or Death Expected:</b></p> <p>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.</p> <p><b>OR</b></p> <p>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><b>Deadly Force:</b></p> <p>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. Assultive 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 impeded in a sensitive area such as the face, neck, throat, groin, female breast, or stomach of a pregnant woman.
  - 4.2.2. The officer encounters problems when attempting to remove the probe.
- 4.3. Medical attention at a medical facility shall be offered to all individuals subjected to a CEW deployment.
- 4.4. Emergency medical services shall be contacted if a subject:
  - 4.4.1. Suffers an obvious injury.
  - 4.4.2. Does not appear to recover properly and promptly after deployment.
  - 4.4.3. Is a member of a special population.
  - 4.4.4. Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.
  - 4.4.5. Exhibits signs of extreme uncontrolled agitation or hyperactivity prior to the CEW exposure or the subject was involved in a lengthy struggle or fight prior to the CEW exposure.
- 4.5. If a subject refuses additional medical attention, that refusal should be documented.
- 4.6. When an officer has reason to believe (s)he is responding to a situation that may necessitate emergency medical services, (s)he shall make reasonable efforts to summon such services in advance.

- 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.