

Law Enforcement Advisory Board Meeting  
Minutes of Meeting  
December 23, 2013

- Rick Gauthier called the meeting to order at 1:15 pm with Board members: Paco Aumand, Jim Leene, Cindy Maguire, Michael O'Neil, Colonel Thomas L'Esperance, Karen Horn (via conference call) and non-board members Glen Button, Drew Bloom, Evan Meenan, Allen Gilbert, Laura Ziegler, Michael Saboune, Robert Appel, Michael Henry, Barry Kade, Daniel Stein, Morgan Brown, Major Walter Goodell and Suellen Royea present. The agenda for the meeting and minutes from the subcommittee meeting held on December 13, 2013 were distributed. For the record, it was noted that the Board members present included: Tom L'Esperance, Michael O'Neil, Jim Leene, Cindy Maguire, Rick Gauthier, Paco Aumand and Karen Horn.
- **Review Minutes from November 12, 2013 Meeting:** Board members reviewed the minutes from the subcommittee on December 13, 2013. Paco Aumand noted the minutes of the 13<sup>th</sup> were for the subcommittee and did not require the Board's approval. Paco made a motion to approve the November 12, 2013 minutes. Cindy Maguire seconded the motion. The motion carried.
- **Review of the Model CEW Working Group Findings:** Rick Gauthier asked Cindy Maguire to summarize the working group findings. Cindy Maguire reported the subcommittee held its last meeting on December 13, 2013 to review the draft and comments received. She noted that twenty-nine (29) people commented during the comment period and their comments were forwarded to the full Board. Additional comments were received at the subcommittee meeting, which included comments from Allen Gilbert which were also forwarded to the Board. Cindy reviewed that this work started in June when the Attorney General asked the Board to consider developing a policy. She also gave an overview of the process used, testimony received, and those that assisted and were on the subcommittee and noted that a draft policy was circulated in November. She noted that the subcommittee recommended soliciting input from entities such as ACLU and Disability Rights of Vermont. The subcommittee met on December 13, 2013, where additional comments were made. Ken Stethem was an individual that indicated he developed a device to monitor the output of these devices. She explained that the subcommittee decided that Conducted Electrical Weapons (CEW) seemed to be the most appropriate term, some concepts received more discussion than others, and some comments seemed to be around language changes. The subcommittee did not make any changes to the draft so that the full Board could have both the current draft and comments available. Cindy Maguire stated that there was discussion about extending the process for additional public comment and to gain more technical information. She mentioned potentially inviting in Taser and one or more entities that can capture measurement. Cindy Maguire noted that by her not mentioning any specific comments raised it was not intended to be a slight or to say that the Board would not consider all comments. The subcommittee does recommend that the full Board

engage in further discussion. Paco Aumand understood the work the subcommittee did, but asked how we got here. Cindy Maguire answered that the Attorney General sent a letter asking the Board to consider developing a policy. She noted that it may have been prompted as a result of an incident in Vermont as well as two bills being introduced in the Legislature. She noted that the Attorney General held a public forum last spring. Paco Aumand noted that was how he understood the request as well and added that the LEAB can cooperate and discuss issues and that it also has a responsibility to review policies and procedures; this topic fit in with their responsibilities.

- **Public Comments:** Rick Gauthier noted there was a list of individuals that would like to comment and suggested to take their comments. Barry Kade asked for the Board to have some discussion and then move to the public comments. Rick Gauthier responded that he wanted to take this opportunity to give the Board members an opportunity to hear all the comments. Robert Appel asked what the process would be going forward. Cindy Maguire responded that she had expected to make a recommendation to the full Board based on the comments at the last subcommittee meeting. Laura Ziegler noted that Ken Stethem sent a letter and asked it be read. Cindy Maguire read the letter received today from Ken Stethem (see attached copy). Daniel Stein asked if this Board reports to the Legislature and Governor. Rick Gauthier responded that this Board creates a report every year. Cindy Maguire clarified the Mr. Stein's question to be if the LEAB accepts any policy, does it become law. She explained that some materials do and some do not. It is likely that the Legislature will look at the work done. Laura Ziegler asked if the LEAB comments on impending legislation. Cindy Maguire responded that the Board is comprised of many departments of law enforcement. Paco Aumand noted that in his history as a previous Chair and currently the Vice-Chair of the Board that he has been asked to testify a couple of years ago on the preservation of evidence responsibilities, but generally he waited until we are called. Rick Gauthier added that most of the time we are called to talk about the contents of the LEAB's annual report. Cindy Maguire followed up that the Legislature would be more apt to call individual departments. Morgan Brown recommended starting with public comments as requested earlier.
- **Alan Gilbert:** Mr. Gilbert wanted to share comments he receives and noted that he sent more comments in this morning, which were emailed to full Board. He noted that today's letter reviewed the main points on the policy. He expressed that he has spent the last couple of days answering how we got here and what is the process moving forward. He summarized that there were three (3) different things being dealt with: the training and use of tasers, general use of force, and the process of statewide policies and oversight of law enforcement. He thought that any one of those things is a handful. It is difficult for people to know how things work. It is one of the few professions that is not centralized and is hard for people on the outside to understand what does or doesn't happen in law enforcement. Some of the flaws of the system

that should make this system work, we bear the brunt of. He guessed that when the LEAB was created, it may have been to get law enforcement to work more collaboratively. He thought that the Board may be as confused as everyone. The charge is not clear on who should be receiving the report/draft policy and what may happen to it, and wondered if the Attorney General will report to the Legislature. It is unclear and is a nonfunctioning system that does not work. He was not sure the product the Board has from the subcommittee is the best product. It was put together right after the Attorney General office decided not to bring any charges in the incident. The Attorney General made a good faith effort to bring some groups together and took comments and suggested to read that report, to will see why the Board was asked came up with developing a policy. Looking back at how this developed, he was not surprised no one is sure what to do next and what happens. He felt that the only way things like this get resolved is to go to the Legislature and that there should be a better way. His specific comments about the policy are in the letter received today.

**Laura Ziegler:** Ms. Ziegler echoed Allen's comments and could not see how you can give the many issues given by the public due consideration without more deliberation. She was concerned with the active resistance as a standard for deployment and did not feel it sets the standard for deployment for unwarranted use. Ms. Ziegler shared her first hand experience with a deployment and suggested to hold public comments outside of the normal working day for so those that work could attend.

**Robert Appel:** Mr. Appel noted that he is a retired state employee and these issues are near and dear to his heart. He commended the LEAB and Attorney General for looking at this issue. The case out of Brattleboro confirmed that we need to be better than that and to respond better. He echoed both Allen and Laura's comments and spoke around the structure noting there are approximately seventy-four (74) law enforcement agencies in Vermont with policies are all over the place. He noted there is a wide range of law enforcement agencies and development of protocol and standards; some set by the Academy, some from a law enforcement perspective. He noted that he has heard comments from the public, that if they have a child with a serious mental health problem, they will not call law enforcement for help. Now dealing with a policy about Taser. He felt the policy is limp with use of force; it is in the policy, but it does not state how the State of Vermont feels about use of force. Not sure how to do one without the other. Mr. Appel noted that he has reviewed policies and that the VT League of Cities and Towns has a policy. He reinforced some of the comments he made that were echoed by other public commentators and included:

- the use of "imminent" and "immediate," need to be careful;
- Section 2.2 references to de-escalation, he noted that police are trained to control situations and mental health professionals are trained to de-escalate situations. He understands the need for law enforcement to be equipped to do their jobs and we need

to rethink the mental health calls to make it safer for families to call when there are problems;

- more emphasis in the policy around active versus resistance. He described a meeting that took place in Burlington where OC spray was deployed against people resisting officers. He suggested resolving the internal conflict around deployment for non-compliance;
- Section 3.4.2 says to prevent suicide or self harm, he suggests immediate should be added;
- Mr. Appel noted that tasers could be purchased with a video chip and suggested the policy state that no tasers be issued without a means to record the event;
- Under the number of cycles, the way he reads the policy it should be read to allow stun gun mode, which would be more dangerous. Should be careful using that degree of force;
- Would remove whenever possible regarding taking pictures;
- should preserve the evidence;
- CEW certification training regarding bullet 2, why can't we be sure that these officers are trained and it should be tightened up; and
- same page talks about act 80 training includes life experience and suggests we do the same with taser training and include someone with a mental health crisis.

Mr. Appel appreciated the time and attention to this issue. There is good work that has been done, but more work needs to be done.

**Mike Henry:** Trooper Henry responded to some of the points by noting that the policy notes where possible photos are taken as photos are not taken if consent is not given. Mr. Appel suggested to add "when" to the language. Trooper Henry explained how the drive stun mode works and shared that most officers have a Watchguard system on them. He also noted that law enforcement officers want to respond before being shot.

**Barry Kade:** Mr. Kade felt that the process began with what he feels is a scam of how it was sold to law enforcement and how it was presented to the public. He does not know of any incident where an officer would use a taser instead of a gun. They are not saving lives and are not being used as a less lethal method. Mr. Kade noted that he attended the Attorney General's forum and made comments, but was not asked to comment to this group as a person who had expressed an interest. He noted that these meetings and the subcommittee meetings were not being warned. He did find it was noticed on the Library site, but not on the LEAB's website. Two comments at the subcommittee were about measurement and Mr. Erick Esselstyn witnessing situations that were resolved without violence. He suggests that if tasers are going to be certified for use in Vermont, that every officer should be certified in skills to de-escalate

situations before use of tasers. He felt certification will result in very little controversy and the certification of measurement, would result in very few uses of the tasers and they ultimately would be phased out.

**Daniel Stein:** Mr. Stein noted that his comments are his personal views and would not be spending time on the language used. He spoke that whenever this situation comes up, he always refers to the work the Montpelier Task Force did which included law enforcement that did and did not support tasers, individuals being tased, and after 6 months of meetings and crafting a forty-four (44) page report, the committee voted against the taser. It came down to the realization that the use of force that would be respectful was going to be at the threshold of when an officer would use a gun. Taser was a device with a different purpose. Mr. Stein felt that the work they did should be a mandatory reading for those making these decisions. Tasers are a design of weakness. He believes police are not weak, and it takes a lot to put yourself out there, but law enforcement should be trained to de-escalate situations without use of force. The ability to do your job is diminished with these devices. The device is designed to take you away from the job. The laws that decide that anyone who decides to do something is a criminal, for instance the recent decriminalization of marijuana, should not have been seen as a criminal. Need to look at how we get to the point of when a taser is deployed. Those people need to be included. Already seen this process has kept people in the dark about the process and keeping information from them. More public involvement is needed, especially everyone that feels that the taser affects them and is afraid of law enforcement. There are a lot of other skills and tools that law enforcement can use that can equip them to de-escalate a situation. The long term effects of the taser are undocumented and unknown.

**Morgan Brown:** Mr. Brown noted that he provided comments for the record by submitting several things to Cindy Maguire but wanted to emphasize a couple of things. He wondered why the State would adopt a marketing term; less lethal, just because there is the perception this weapon is less lethal, non-lethal, or less-than lethal. He felt that to the vulnerable people, often those that get hit by these, they are susceptible to bodily injury or death. He suggested to call these weapons or call them lethal weapons, or potentially lethal. Regarding the Act 80 training, he felt that the mental health crisis training does not go far enough. He suggested that officers need more extensive training, something along the line of CIT training, 40 hours. Mr. Brown noted that he sent Cindy Maguire the report and study where it shows training works. Why would we deprive officers of the skills and knowledge they need? If officers are going to take a hit in training, please advise them that they are at risk of injury. He noted there is information available on-line. He asked that if injury could occur in a controlled environment, what about in a non-controlled environment to someone like himself. He shared that has scoliosis and a restructured spine; if he is hit in the back, he will incur more injuries. He stated that Tasers are more often used on persons not posing any risk, including non-compliance, and it is not

acceptable. Need to do something about it and should have real policies that deal with it. We ask police officers to do hard work/stressful work and feels that we should be supporting them and train them better so they are not in situations. The State is facing a huge liability right now with cases like MacAdam Mason. This policy will not stop cases like that from happening again. Police officers need to have more training and in a better place for when they are called out. Need to put something in the policy that police officers are not social workers. The assumption that seems to be operating and has a problem with when officers are called to mental health situation there is an assumption. If I step up I'm not stepping up to fight; if you relax, I might relax. He thanked the Board for allowing him to give comment.

Mr. Kade noted that you don't need permission to take pictures, just to publish them. Ms. Ziegler also noted that if you are going to use the standard of refusal, it needs to be recorded. Mr. Brown also noted that he felt there was a problem with intensity, because unless an officer has been hit by a taser, how do they know? What he is hearing is that it is painful. Rick Gauthier asked to bring back comments to policy. Mr. Morgan concluded that he disagrees and that it is painful.

Public comment closed.

Rick Gauthier noted that seen the model policy, review the public comments and hear the comments of today.

Cindy thanked everyone who commented today, at the subcommittee meeting and at the forum last spring. What she thinks is positive is that we can sit in a room like this and talk about this. We are all here for the same purpose, safety for the public and safety for police officers. It is a difficult subject and very difficult situation in Vermont and across the nation. Colonel Tom L'Esperance spoke that he has listened and respects the comments and agrees training is a helpful solution, but noted that it is hard for us to impose our will on local agencies about how to create policy and procedures. A law enforcement officer in Montpelier may have backup sooner than an officer in the Northeast Kingdom. He will have troopers testify about their stories and experience as he thinks it is important to hear the other side. He added that he will have the experts talk about their experience, as well. Creating a sound policy is the right direction. It is just how we do it. He shared that training in Vermont is done together at all levels and in some states it not as centralized. He also noted there is a ton of work to be done and putting a burden on mental health to show up when law enforcement is called upon is an undue burden. He noted that law enforcement has worked 220 calls and in some areas the task force in place areas is supported and works well. There are many times, though, when it is the mental health experts that need us. Law enforcement is collectively working with mental health. He looks forward to more input.

**Comment [CM1]:** The Col gave a date on this – I think since October 2013 – December – but should ck with the Col.

Cindy Maguire made a motion that the Board schedule a series of public hearings to obtain further information that will be helpful in crafting a statewide CEW policy. In addition to inviting members of the public, she moved that the Board invite one or more representatives from TASER, AEGIS (or a similarly situated company), representatives from Vermont's Mental Health Community, the Vermont Police Academy, law enforcement and any other individuals or entities that the Board determines would be helpful to this conversation and to policy development. She also moved that the Board schedule and/or conduct these hearings so as to maximize public accessibility to the hearings. Paco Aumand seconded the motion. This motion was followed by a friendly amendment from Vice Chair Paco Aumand, who moved that the following language be added: unless otherwise directed by the Legislature. A vote followed and the motion with the amendment was unanimously passed.

Paco Aumand suggested crafting a way of moving forward with that recommendation and to create a structure. He requested to leave this meeting with a possible date for the next meeting. Karen Horn suggested being clear on why the LEAB is holding the hearing and the authority of the LEAB to take up this issue so people understand when they attend. Paco agreed with Karen and read Section C of 24 V.S.A. § 1939, the statute that created the LEAB. Cindy Maguire noted that Mondays are a down day for Legislature and suggested to select some days in January and task the Chair/Vice-Chair to contact entities, law enforcement and trainers from the Training Academy to attend. She also suggested looking at holding some of these meetings in the evenings and in Montpelier or other locations that may be more accessible. Rick Gauthier suggested January 27, 2014 and Cindy Maguire suggested January 13, 2014, if possible. Barry Kade asked what would happen to the draft document. Robert Appel asked if draft would be attached to the annual report. January 13, 2014 was decided for the first meeting. Paco Aumand explained how the annual reports are drafted. He suggested that the proposed policy and the key elements be part of the appendixes and our narrative talk about the process the subcommittee used, the public comments received, which provided a basis for the motion made and the action item will be the meetings we will be holding starting on January 13, 2014. Cindy Maguire agreed and noted that all the information the Board received, the Legislature will receive as well, and we have made a motion to have public meetings. Robert Appel suggested highlighting the top points. Paco Aumand noted he would like to see more testimony. Cindy Maguire offered that the Attorney General Office would continue to assist in pulling the comments and other information together and would send a written summary of the process to date to the Chair so it could be included in the annual report. Morgan Brown appreciated not killing a forest, but asked that any public documents be available on-line. He noted that the LEAB website did not even post the agenda and asked for any public comments that have been submitted to be online and available as well; it makes it easier for people to

comment and know what is being reviewed. Paco Aumand noted we would use the LEAB website. Mr. Brown suggested to also post the information on the Attorney General's website.

Paco Aumand made a motion to adjourn. Cindy Maguire seconded the motion. Motion carried. Meeting adjourned at 3:00 pm.

The meeting reopened at 3:01 pm due to a question on the status of the motion. Cindy Maguire moved that the Board schedule a series of public hearings to obtain further information that will be helpful in crafting a statewide CEW policy. In addition to inviting members of the public, she moved that the Board invite one or more representatives from TASER, AEGIS (or a similarly situated company), representatives from Vermont's Mental Health Community, the Vermont Police Academy, law enforcement and any other individuals or entities that the Board determines would be helpful to this conversation and to policy development. She also moved that the Board schedule and/or conduct these hearings so as to maximize public accessibility to the hearings and included the friendly amendment from Vice Chair Paco Aumand unless otherwise directed by the legislature.

A vote followed and the motion with the amendment was unanimously passed. Colonel Tom L'Esperance seconded the motion. Motion carried.

A motion to adjourn was made by Paco Aumand and seconded by Colonel L'Esperance. Motion carried. Meeting adjourned at 3:03 pm.