



Feb. 26, 2014

Testimony by Allen Gilbert, executive director, ACLU-VT

Re: H. 225, Taser regulation bill

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My name is Allen Gilbert. I'm the executive director of the American Civil Liberties Union of Vermont. Our organization has about 2,000 members and donors. Our mission is to protect the individual rights guaranteed by the U.S. and Vermont constitutions. I'm here to speak in favor of H. 225 and to suggest a few changes.

Let me first say that I believe that all parties to this discussion – police, civil libertarians, mental health advocates, and government officials – share the goal of preventing unnecessary and even tragic incidents involving Tasers as have occurred in the past. No one wants to see innocent, at times disturbed or helpless, individuals hurt or die.

H. 225 is a major step towards achieving that goal. The ACLU feels it's important for the committee to move forward with the bill. The Law Enforcement Advisory Board is unlikely to finish soon the draft it's been working on. We continue to feel the draft needs substantial revision. Also the Board has acknowledged that it cannot institute a statewide policy without legislative authorization. A statewide policy on Taser training and use is one of the main objectives of H. 225.

The things that we feel are important to add to H. 225 are these:

- The first is to require measurement of the electrical discharge to ensure Tasers (or similar "electronic control devices") are operating within specifications. Weapons not functioning correctly can create dangerous situations for the public and police officers, and can increase liability for agencies. A "spark test," as the LEAB has included in its draft policy, is not enough to determine if a Taser is functioning correctly. That test only determines if the weapon's electrical circuits are functioning. You heard from Taser International CEO Rick Smith last week that even Taser acknowledges measurement is a good thing.
- The second is to require the use of cameras in conjunction with Tasers. Mr. Smith said that abusive use of Tasers can be cut by 60 percent if officers carrying Tasers have a body camera operating at all times. He also said an officer wearing a body cam is 2.5 times less likely to get involved in a force altercation than an officer with a Taser but without a camera.

- The third is to require local reviews, by a non-agency panel, of all Taser incidents. We recognize that H. 225 includes statewide annual reporting of Taser use. But local reporting is also needed since most police departments are overseen by their local municipality. Also, independent review, rather than internal police review, is needed to avoid the appearance, and/or reality, of bias. Reviews should include viewing of the video of the incident as well as measuring the Taser discharge to ensure the Taser was functioning within specifications. Use-of-force reports submitted by officers should, among other details, include the sex, race, age, height, weight, general physical condition, toxification status, disability status, and pregnancy status of Taser victims.
- The fourth is to add a sentence at the end of line 14 on page 2 to clarify lethal use-of-force standards. Sub-section (2) would then read, “Electronic control devices shall be limited to use under the same standards that justify the use of lethal force or that will directly reduce an imminent risk of a person’s death through self-harm. The standard justifying the use of lethal force shall be when lethal force is necessary to reduce an immediate risk of serious injury or expected death to the subject, officer, or others.” This change is necessary to comply with the standard established in the 1989 U.S. Supreme Court case, *Graham v. Connor*.

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.

Thank you for the opportunity to testify.