

**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
<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 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.**