

Revisions to H. 225 (as passed House) suggested by American Civil Liberties Union of Vermont:

§ 2367. STATEWIDE POLICY; ELECTRONIC CONTROL DEVICES;

REPORTING

(a) On or before January 1, 2015, the Law Enforcement Advisory Board shall establish a statewide policy on the use of and training requirements for electronic control devices. On or before January 1, 2016, every State, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall adopt this policy. The policy shall include the following provisions:

(1) Electronic control devices are less-lethal alternatives to lethal force. “Less-lethal” does not mean “non-lethal,” only that use of an electronic control device is less likely to result in death than use of a firearm.

(2)(A) Officers may deploy an electronic control device if necessary to reduce an immediate threat of serious injury or expected death to the subject, officer, or others.

~~(i) in response to an actively resistant subject, if there is reason to believe that using another compliance technique will result in a greater risk of injury to the officer, the subject, or a third party; and~~

~~(ii) in response to an assaultive subject when lethal force does not appear to be objectively reasonable.~~

(B) Neither an officer, a subject, or a third party has to actually 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 themselves or the public.

(C) When it is safe to do so, officers shall attempt to deescalate situations by their presence or through the use of verbal persuasion, and shall provide a warning prior to deploying an electronic control device.

(D) It is the responsibility of the law enforcement agency's head, or designee, that all ECDs used in active service are calibrated to the manufacturer's specifications. Only properly functioning ECDs shall be carried for use. ECDs that are not properly functioning shall be taken out of service and sent for repair. Prior to the start of each shift, an officer authorized to carry an ECD shall conduct a spark test of the ECD to ensure that the weapon's circuitry is functioning.

(3) 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 resist~~ance~~ing subjects. The act of fleeing or destroying evidence, in and of itself, does not justify the use of an electronic control device.

(4) 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.

(5) The use of electronic control devices shall include recognition of the potential additional risks that can result from situations in which subjects have cognitive disabilities or are in emotional crises that interfere with the ability to understand consequences of action. Special consideration should be given to whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of one of these special populations while still preserving the safety of that person, third parties, and the responding officer.

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

(7) A video-audio recording device shall be used at all times when an ECD is deployed.

Use of the video-audio recording device shall meet standards set by the International Association of Chiefs of Police.

(b) 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.

(c) 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).

(d) 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.

(e) Every State, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers 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. The Criminal Justice Training Council shall provide to the Vermont Human Rights Commission copies of all information submitted to the Council regarding ECD incidents. The Commission itself, or through a panel created by the Commission, shall have subpoena power to call witnesses and gather evidence relating to specific incidents. The Commission, or a panel it may create, may issue determinations whether use of an ECD violated agency or state policy, and whether any misuse violated an individual's constitutional rights.

(f) 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, constable, police officer, state’s attorney, capitol police officer, state game warden, state police officer, or certified law enforcement officer of the Department of Motor Vehicles, the Agency of Natural Resources, or the Department of Liquor Control.

Sec. 2. REPORTS

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

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

(c) On March 15, 2016, and annually thereafter, the Criminal Justice Training Council shall report to the House and Senate Committees on Government Operations and 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.

