



**To:** Members of the Senate Government Operations Committee  
**FROM:** Allen Gilbert, executive director, ACLU of Vermont  
**DATE:** April 29, 2014  
**SUBJECT:** H. 225, Taser bill, suggested revisions

The ACLU continues to believe that the Taser deployment standard that will best prevent misuse of these powerful weapons is the new language for (a)(2)(A) that we sent to the committee on April 22:

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.

We have reviewed the suggested Police Executive Research Forum deployment language and, while we do not believe it is stringent enough, we do believe it is much better than the current language in the bill.

I contacted Mike Leonesio, the former Oakland, California, police officer you heard from who now consults with departments on policy issues, for his opinion on the PERF language. He feels it is good. But he said some small revisions will make clear that the U.S. Supreme Court's standard in its *Graham v. Conner* decision is to be followed. Mr. Leonesio suggested the following language (revisions to the PERF language are noted in underlines and strike-throughs):

Officers may deploy an electronic control device only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the objectively reasonable officer's judgment, ~~is likely to result in injuries to themselves or others~~ presents an immediate threat to the safety of themselves or others; ECDs ~~should~~ shall not be used against a passive subject.

I ask that you consider Mr. Leonesio's suggested revisions.

I also ask that you consider language in the first section of the bill to make clear that the deployment standard is a floor and not a ceiling – in other words, that departments may adopt a stricter deployment standard if they so choose. This can be accomplished by revising the second sentence of the first section:

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, including the Taser deployment standard in (2)(A) or a standard more stringent.

Regarding the other suggestions the ACLU made to the committee on April 22, we continue to believe:

- Regular measurement of the weapon's electrical discharge be required.
- Camera use when a Taser is deployed (displayed or shot) be mandated.
- Civilian review of Taser incidents is necessary.

Our original suggestion for civilian review was that the Vermont Human Rights Commission receive incident reports. We have consulted with Disability Rights Vermont and the HRC and believe it is more appropriate for DRVT to assume this review function.

Thank you for the careful attention you have given this bill and the opportunities you have offered for testimony.