



Use of Conducted Electrical Weapons	Related Policies: Response to Resistance/Use of Force, Duty to Intervene
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable State Statutes: 20 V.S.A. § 2367(a)(1)	
Date Adopted: December 14, 2020	Date Reviewed:

I. PURPOSE:

This policy directs officers in the proper use of Conducted Electrical Weapons (CEW). This CEW policy is designed to supplement rather than replace the existing Use of Force/Response to Resistance policy of the Bennington Police Department (BPD).

II. POLICY:

The policy of BPD is to protect and serve all citizens while at the same time respecting the rights of suspects and balancing the need for officer safety in response to resistance events. It is the policy of the BPD that officers will use only reasonable force to bring an incident or event under control. Reasonable force is only that force which is necessary to accomplish lawful objectives. All responses to resistance must be objectively reasonable.

When properly used, CEWs can be an effective and efficient law enforcement tool that can reduce injuries to suspects, bystanders, and law enforcement officers.

III. DEFINITIONS

A. 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. CEWs include "Electrical control devices" which are defined at 20 V.S.A. § 2367(a)(1) as "device[s] primary 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."

B. Special populations: Members of special populations include subjects an officer has reason to believe are:

- a. Cognitively impaired such that they are unable to comply with an officer's instructions.
- b. Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or follow directions.
- c. Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer's directions.
- d. Under 18 years of age.
- e. Pregnant.
- f. Over 65 years of age.
- g. Physically infirm, subject to or diagnosed with a heart condition, or epilepsy, or a seizure disorder.

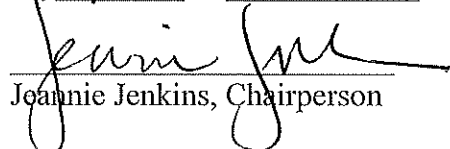
C. Special Circumstances: Special circumstances include situations where an officer has reason to believe the subject is:

- a. Operating a motor vehicle.
- b. Standing in an elevated area, near water, or near flammable materials (including, but not limited to alcohol-based chemical sprays).
- c. Restrained.

- D. Special consideration:** A consideration of:
- a. The potential additional risk of harm posed by deploying a CEW against a member of a special population or a subject in special circumstances; and
 - b. Whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population or a subject in special circumstances while still preserving the safety of that person, third parties, and the responding officer(s).
- E. Active Resistance:** A subject using 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 of active resistance include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance. Refusing to move upon verbal direction or chaining one's self to an object does not constitute active resistance.
- F. Active Aggression:** Behavior that creates an imminent risk of physical injury to an officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury.
- a. Examples include, but are not limited to, an attack from a subject on an officer consisting of strikes, wrestling, undirected strikes with injury potential, kicks, shoves, or punches.
 - b. Examples may also include words or behavior such as pre-assault cues that clearly indicate that such an attack or actions are imminent.
- G. Critical Incident:** A deployment of a CEW that results in serious bodily injury or death of the subject.
- H. Objectively Reasonable:** The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances that the officer using the force is presented with.
- I. De-escalation:** Force can often be avoided through the use of de-escalation techniques and other non- dynamic law enforcement tools such as police presence, containment, and communication. When feasible, officers will use de-escalation and other techniques to reduce the immediacy of threats to peoples' safety and stabilize incidents. Whenever possible, officers will seek to slow things down. Not every situation or subject can be de-escalated. Conversely, officer behavior can escalate a situation. Officers should not intentionally escalate situations unnecessarily.

- J. Duty of Care:** Officers have an affirmative duty to care for persons in their custody. Officers and supervisors are responsible for providing or obtaining appropriate medical attention to any person in their custody who is injured or complains of injury. This pertains whether injuries preceded custody, occurred during apprehension, or were sustained during custody. Additionally, officers have an affirmative duty to provide or obtain medical attention for members of the public who are injured as a result of police involved actions.
- K. Positional asphyxia:** Officers restraining a subject should be cognizant of and avoid position asphyxia. The BPD prohibits prolonged face-down prone restraint.

This policy is adopted by the Select Board of the Town of Bennington, Vermont, this day 12 of October, 2021 and is effective until amended or repealed


Joannie Jenkins, Chairperson

A. CEW USE AND DEPLOYMENT PROCEDURES:

1. Only officers who complete training on the use of CEWs containing the minimum elements set forth in C (Training Requirements) of this policy, as approved by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
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. When it is safe to do so, law enforcement should display and provide a warning prior to deploying a CEW.
4. Officers may only deploy CEWs in the following circumstances:
 1. In response to either:
 - a. A subject exhibiting active aggression.
 - b. A subject actively resisting in a manner that, in the officer's judgment, is likely to result in injury to the subject, the officer, or third persons.
 - c. If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.
 - d. To deter vicious or aggressive animals that threatens the safety of the officer or others.
5. Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.

6. An officer should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
 - a. 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.
 - b. 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.
7. Officers shall use the minimum number of cycles necessary to take a suspect into custody or mitigate their assaultive behavior
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.
9. When it is safe to do so, officers shall attempt to deescalate situations. However, officers are not required to use alternatives to a CEW that increases the danger to the officer, another person or the public.
10. Officers should avoid deploying more than one CEW on a single subject at the same time unless 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.
11. Officers having reason to believe they are dealing with a member of a special population or are dealing with special circumstances shall give special consideration to deploying an CEW. Officers having reason to believe they are dealing with an individual with a psychiatric disability shall consider consulting with the area designated mental health agency.

B. POST DEPLOYMENT PROCEDURE

1. Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration. Once restrained, the subject should be moved into a recovery position that facilitates breathing.
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:
 - a. The probes embedded in a sensitive area such as the face, neck, throat, groin, female breast, or stomach of a pregnant woman.
 - b. The officer encounters problems when attempting to remove the probe.

- c. Medical attention shall be offered to all individuals subjected to a CEW deployment.
- d. Emergency medical services shall be contacted if a subject.
 - 1. Suffers an obvious injury
 - 2. Does not appear to recover properly and promptly after deployment.
 - 3. Is a member of a special population.
 - 4. Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.
 - 5. Has been subjected to a deployment to his or her chest.
 - 6. 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.
- 3. If a subject refuses additional medical attention, that refusal should be documented.
- 4. 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.
- 5. With the exception of the required spark test and accidental discharges that do not connect with any living being, each time a CEW is deployed and/or displayed it shall be documented in a response to active resistance within 24 hours of the deployment unless otherwise authorized by a supervisor. This response to active resistance report shall contain the following, at a minimum:
 - a. The date, time, and location of the incident.
 - b. The officer(s) involved in the incident, identifying which officer(s) used CEWs.
 - c. The type of CEW deployment, i.e., display, drive stun, or probe mode.
 - d. Identifying and descriptive information for the subject, including any information indicating if the subject was a member of a special population or encountered during an incident involving special circumstances. If law enforcement consulted with any mental health agencies that fact should be noted.
- 6. A list of other known witnesses.
 - e. The number of CEW cycles used, the duration of each cycle, and the duration between cycles.
 - f. The level and description of resistance encountered.
 - g. Whether CEW use was effective.

- h. The type of crime/incident the suspect was involved in.
 - i. The approximate range at which the CEW was used.
 - j. The point of impact.
 - k. Whether law enforcement used or attempted to use any other types of force.
 - l. The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.
 - m. The type of injuries, if any, sustained by any of the involved persons including the officer(s).
 - n. When possible, photographs of the CEW probe entry sites.
7. 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.
8. 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.
9. Accidental discharges that do not connect with any living thing shall be documented in a departmental memorandum explaining in detail how the discharge occurred within 48 hours of the alleged accidental discharge unless otherwise authorized by a supervisor.
10. All use response to active resistance 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:
- a. The department receives a complaint of excessive use of force.
 - b. The supervisor recommends conducting a use of force review.
 - c. The encounter resulted in death or serious bodily injury.
 - d. The individual exposed to the CEW is a member of a special population.
 - e. An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.
11. Upon request, a suspect subjected to a CEW deployment, or his/her next of kin, shall be kept informed of the procedural status and final result of the review.

12. Annually each law enforcement agency shall report to the Vermont Criminal Justice Council all incidents involving the use of a CEW in a form to be determined by the Council. The Council shall make this information available on its website. The form is attached to this policy.

C. TRAINING REQUIREMENTS


1. Training for officers authorized to carry CEWs shall be conducted annually.
2. Training shall not be restricted solely to training conducted by the manufacturer of the CEW. However, training shall include the recommendation by manufacturers for the reduction of risk of injury to subjects, including situations where a subject's physical susceptibilities are known.
3. Training shall emphasize that CEWs may be less-lethal, but are not non or less-than lethal.
4. Training shall also incorporate, at a minimum:
 - a. Instruction on the use of force continuum.
 - b. Techniques to avoid or deescalate confrontations.
 - c. The underlying technology and operation of CEWs.
 - d. The physiological effects upon an individual against whom such a CEW is deployed.
 - e. 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.
 - f. Scenario-based training.
 - g. Proper removal of CEW probes.
 - h. The potential medical needs of a subject who has been subjected to a CEW deployment.
 - i. The post-deployment reporting requirements.
 - j. Instruction on interacting with individuals experiencing a mental health crisis, emotional crisis or other type of crisis, as recommended by the Vermont Criminal Justice Training Council.

5. The Bennington Police Department shall 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. If the Bennington Police Department requires or allows its officers to undergo a CEW deployment they shall, beforehand, provide a thorough explanation of the potential injuries an officer could incur as a result of the deployment even within a controlled training environment.

D. MEASUREMENT AND CALIBRATION

1. CEWs shall be calibrated to ensure the electrical output of the device is within manufacturer's specifications under the following circumstances:
 - a. Upon receipt by a law enforcement agency and prior to use in the field, only if measurement and calibration equipment is available in the state;
 - b. Annually, only if measurement and calibration equipment is available in the state; and,
 - c. After a critical incident, regardless of whether there is measurement and calibration equipment available in the state or the unit needs to be sent back to the manufacturer for testing.
2. Exception – CEWs that are self-calibrating are not subject to these provisions or there are reasonable grounds to believe that the self-calibration is not functional.
3. If a CEW's electrical output is determined to be outside of manufacturer's specifications it shall not be used in the field until it has been found to have output within manufacturer's specifications.

The policies and procedures outlined above are hereby adopted by the Chief of Police of the Town of Bennington, Vermont this 12 day of OCTOBER, 2021 and is effective as of this date until amended or repealed.



Paul J. Doucette, Chief of Police