



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD05 Statewide Policy on Police Use of Force
Effective April 5, 2023

INTRODUCTION

This is a statewide use-of-force policy created pursuant to Executive Order 03-20. This policy is a guide and shall not be construed as creating any substantive or procedural rights enforceable at law by any party in any civil, criminal, or administrative matter. It only applies in internal agency or Criminal Justice Council proceedings, as appropriate. This policy shall not be construed as creating a higher legal standard of care with respect to third party claims. This policy and its appendices are subject to the considerations in this introduction as well as the definitions that follow, and shall be construed consistent with any law governing the use of force, including 20 VSA § 2368.

Every law-enforcement officer in Vermont is committed to upholding the Constitution, as well as the laws of the United States and Vermont, while defending the civil rights and dignity of all persons. Whenever possible, police seek to accomplish lawful objectives through cooperation with the public and with minimal reliance on physical force to overcome resistance.

There are times when use of force against a citizen is unavoidable. In these cases, the decision to use force should not be undertaken lightly and the facts and circumstances of each case must be evaluated carefully and thoroughly. Many times, this analysis must be made in a split second under tense and rapidly evolving circumstances.

While force is used in response to a subject's behavior, officers should recognize that their own conduct can contribute to the need to use force. Whenever feasible and safe for all involved, officers should seek to use deescalation techniques, which include effective communication skills and use of available resources to reduce the need to use force.

Nothing in this policy should be construed to require officers to assume unreasonable risks in the performance of their duties. The safety of the officer(s) and the public is paramount. Officers who fail to use timely and adequate force when it is necessary may endanger themselves, the community, and fellow officers. Conversely, officers who use unreasonable force degrade the community's confidence in the police and expose themselves and the agency to legal risks.

POLICY STATEMENT

This agency believes in the sanctity of every human life and in the value of deescalation and effective communication. When force is necessary to bring an event or incident under control, officers will use only objectively reasonable force to accomplish lawful objectives.

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I. DEFINITIONS

Active resistance – A subject using physical activity to resist or take affirmative action to defeat an officer’s ability to take them into custody or to seize them, but the subject’s actions would not lead a reasonable officer to perceive a risk of physical injury to themselves, the subject, or a third person. Examples of active resistance include pulling away, escaping or fleeing, struggling, and not complying on physical contact.

Passive resistance – A subject who takes no affirmative action to defeat police efforts to make an arrest but who does not respond to verbal commands and may refuse to move by sitting down, acting as “dead weight” or similar.

Active aggression – Behavior that an objectively reasonable officer would believe 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.

Deadly force – Any use of force that creates a substantial risk of causing death or serious bodily injury.¹ Also referred to as lethal force.

¹ H.145 language (a)(2)

Deescalation – Actions used by officers, when safe and feasible without compromising law-enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of gaining voluntary compliance from a subject. This generally refers to the act of moving from a state of high tension to a state of reduced tension. Common deescalation techniques include deliberately slowing the progression of law-enforcement actions, using barriers, cover, and distance, as well as communicating in a calm, clear manner, using active listening skills and asking open ended questions. When appropriate and available, officers should consider calling in and relying on resources, such as crisis teams or embedded social workers, to assist in deescalating a situation.

Force – Physical coercion employed by a law-enforcement officer to compel a person’s compliance with the officer’s instructions.² For the purpose of this policy, this includes all law-enforcement actions beyond compliant handcuffing.

Imminent threat of death or serious bodily injury – Based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury to the law-enforcement officer or another person. An imminent threat is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of harm, but is one that, from appearances, must be immediately addressed and confronted.³

Intervene – To come between, whether physically or verbally, to prevent or alter a result or course of events.

Law-enforcement officer – Shall have the same meaning as 20 VSA 2351a,⁴ used interchangeably with “officer.”

Necessary – When a reasonable officer with the same information and in the same situation would conclude that no reasonably effective alternative appears to exist.

Objectively reasonable – Whether the decision by a law-enforcement officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances. A law-enforcement officer’s failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable. The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions about the amount of force that is necessary in a particular situation, in circumstances that are tense, uncertain, dynamic and rapidly evolving.

Factors to be considered in determining the objective reasonableness of force include, but are not limited to:

- The seriousness of the crime or suspected offense;

² H.145 language (a)(3)

³ H.145 language (a)(4)

⁴ H.145 language (a)(5)

- The level of threat or resistance presented by the subject(s) (e.g. proximity to weapons, potential for escape, availability of other resources or officer backup);
- Whether the subject was posing an immediate threat to officers or a danger to the community;
- The potential for injury to citizens, officers or subjects (e.g. levels of exhaustion, relative size, strength, skill level, age of suspect versus officer as well as number of officers versus subject(s)).

Chokehold – The use of any maneuver on a person that employs a lateral vascular neck restraint, carotid restraint, or other action that applies any pressure to the throat, windpipe, or neck in a manner that limits the person’s breathing or blood flow.⁵

Proportional – To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

Totality of the circumstances – The conduct and decisions of the law-enforcement officer leading up to the use of force and all facts known to the law-enforcement officer at the time, including the conduct of the person or persons involved.⁶

II. CONSIDERATIONS PRIOR TO FORCE BEING USED

The authority of law enforcement to use physical force is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and with sanctity for every human life. Every person has a right to be free from excessive force by officers acting under authority of the State.⁷ The decision by a law-enforcement officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by law-enforcement officers, in order to ensure that officers use force consistent with law and with agency policies.⁸ Agencies shall provide officers with training, clear policy guidelines and supervision on use of force consistent with law and policy.

Use of force is intended only to control behaviors and situations while accomplishing a lawful purpose. It is never intended to be punitive. Officers must constantly reassess the totality of the circumstances in any encounter where force is necessary to gain compliance from an individual.

⁵ H.145 language (a)(1)

⁶ H.145 language (a)(6)

⁷ H.145 language (b)(3)

⁸ H.145 language (b)(4)

A law-enforcement officer shall use only the force objectively reasonable, necessary, and proportional to effect an arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime, or to achieve any other lawful law-enforcement objective.⁹ Whenever feasible, officers shall allow individuals reasonable time to submit to arrest or detention before force is used.

When possible, officers shall use deescalation tactics. This includes taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation, reduce the likelihood that force will be necessary and increase the likelihood of cooperation from the person. The goal of deescalation is to reduce the immediacy of a threat so that more time, options, and resources can be called upon to resolve the situation without force or with a reduction in the amount of force necessary. This commitment to deescalation means that officers should not knowingly create exigency or take actions that may increase the likelihood of force becoming necessary.

Deescalation may include the use of such techniques as scene management; calm, respectful and clear communication; use of warnings; verbal persuasion; deliberately slowing the progression of law-enforcement actions; creating more space between the officer and person; using cover or barriers; and team tactics. Even as a use-of-force encounter is happening, deescalation must be reevaluated so that if the level of resistance offered by the subject goes down, so should the officer's response.

Special situations: Appendix D provides guidelines for interacting with persons experiencing mental impairment. When a law-enforcement officer knows that a subject's conduct is the result of a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any.¹⁰ This is especially important when responding to calls for service that are non-criminal in nature such as a welfare check or a known mental health crisis.

Police use of force is in response to behaviors, and the underlying cause of those behaviors may not always be apparent during a police-citizen encounter. Some people with mental and physical impairments may be unable to comply with police requests for reasons beyond their control. Intoxicated or otherwise impaired individuals may also have a compromised ability to understand or comply with commands from police. When officers have knowledge of these disabilities or conditions, they should factor this knowledge into their response to these individuals, so long as it is safe to do so. When time allows during interactions with such persons, officers should emphasize deescalation as well as the ability to use time and physical distance to reduce the likelihood of force being necessary.

III. LESS-LETHAL FORCE

⁹ H.145 language (b)(2)

¹⁰ H.145 (b)(5)

The dynamics of all encounters are unique. It is impossible to attempt to categorize and define the levels of force appropriate in any given situation or set of variables. When an officer determines that use of force is necessary and appropriate, the officer shall utilize objectively reasonable force. Officers should modulate their use of force as resistance changes. In determining whether a particular use of force is objectively reasonable, the officer must consider:

- The seriousness of the offense the officer believes the subject is involved in;
- Whether or not the subject poses an immediate physical threat to the officer or others;
- The degree of the threat posed by the subject;
- Whether the subject is actively resisting or attempting to evade arrest/detention by flight;
- Whether the totality of the circumstances justifies the officer's response.

Agencies shall provide officers with a range of force options and appropriate training or certification on these tools or techniques. Not all agencies will have the same force options. Officers may only carry tools/weapons that are approved by the agency and for which they have been trained. Officers must comply with all training requirements of the Vermont Criminal Justice Council. Agencies must provide policy guidance on the use of agency-approved tools or weapons. Improvised tools as described in section C below are not subject to the approval and training in this paragraph.

Officers are responsible for visually inspecting their issued equipment prior to each shift and testing any equipment consistent with training and manufacturer's recommendations. Any equipment that the officer knows is not functioning properly shall not be used. When an officer meets resistance in the performance of lawful duties, reasonable attempts to inform the subject of the reason the officer is taking relevant actions should be made. To the extent feasible, persuasion and deescalation should be used and officers should take reasonable steps to provide accessible, effective communication.

When a subject is not compliant, response to resistance can be addressed by "empty-hand" techniques or, in some circumstances, by using tools designed to bring a situation under control. Examples of empty-hand techniques include:

- A. **Officer Presence/Verbal Commands/Persuasion:** While not a use of force, officer presence and communication can be an effective way to control a situation. Officers should use effective communication skills when practical. Persuasion may occur by a show of authority either by a uniform presence or obvious identification as a police officer. Verbal and non-verbal commands should be given to direct and let the subject know what is expected of them. Officers should document their verbal orders regarding arrest, investigative detention, or protective custody, verbal warnings regarding non-compliance and the results. The subject should be informed as to the reason for detention as soon as practical.

The option of officer presence and verbal commands should not be construed to suggest that an officer risk losing control of a situation, or potentially endanger the safety of themselves or others, where the use of escalated force is the proper choice.

- B. **Control/Restraint (including soft empty-handed control techniques):** Officers may use a variety of techniques in accordance with their training to gain compliance of passively or actively resistant subjects including but not limited to techniques using their hands, elbows, arms, legs and bodies.

Common tools used in police use of force include:

- C. **Aerosol Agents:** Aerosol Agents are designed to respond to various threat levels and may be utilized to address subjects who are actively resisting. When an aerosol agent has been used an officer shall, as soon as practical, provide the subject with the Administrative Warning form (See Appendix B) in preparation for providing care for the individual contaminated by the product. Decontamination should occur as soon as practical following the application of an aerosolized agent.

Oleoresin Capsicum (OC) 10% solution is an example of an aerosol agent used by some departments. It may be issued in one of several delivery systems including individual “fog” spray, or individual “stream” spray, or a crowd control “fog” system. The crowd control “fog” system may be used in special circumstances and must be authorized by the Officer in Charge.

- D. **Conducted Energy Weapon (CEW):** See statewide policy on CEW use. **In addition to the statewide policy, officers must carry a CEW in a “cross draw” manner that is over the midline of their body toward their non-firearm side or on their nonfirearm side in a “support hand draw” manner.**
- E. **Police Batons:** A fixed or expandable impact and control weapon. The baton is designed to respond to various threat levels. Since the levels of force used in response to threats differ, the officer must evaluate the level of the threat to determine the appropriate techniques to be employed. Batons can be used in accordance with approved techniques and target areas as a tool for control and restraint techniques, impact techniques and as an instrument to assist in the movement of individuals or groups of individuals. There may be exigent circumstances that prevent the use of a baton but require the use of an impact device due to the level and immediacy of a threat. In such circumstances, an officer may utilize alternate techniques or devices, as good judgment would deem appropriate, such as the use of arms and legs, flashlight, clipboard, or other such method.

Additionally, under circumstances that present an *imminent risk of serious bodily injury or death*, that from appearances must be immediately addressed and confronted, improvised weapons such as pens, knives carried by officers to cut ligatures and seat belts, and other such tools or instruments could be used.

- F. **Use of police canines (K-9):** Canines can be used in numerous ways that are not considered a use of force such as search and rescue or evidence searches. When used as a force option to protect the handler and/or others or to apprehend a person, canines are generally considered to be commensurate to an impact tool. An example of using canines

at a lower level of force is a sit watch to monitor subjects who have been detained. See agency policy on use of police canines for more information.

G. Less Lethal Impact Munitions (LLIMs) or impact projectiles: LLIMs are designed to function as extended range impact weapons and their use is justified whenever use of an impact technique is appropriate. The intended role of less lethal munitions is to immobilize resistant persons at safe distances to prevent injury to officers or the public. LLIMs are discharged only by specially trained officers called “Grenadiers.”

1. LLIMs may be used to prevent the escape of suspects under appropriate circumstances. In these cases, the severity of the threat posed by the continued freedom of the suspect must be carefully weighed.
2. LLIMs are also effective in crowd control and riot situations. When their use is anticipated in this capacity, the Grenadier will obtain clearance from the Officer in Charge prior to deploying one or more LLIMs. (NOTE: Crowd control policy further informs this area of operations. No use-of-force action, including LLIMs, shall be used during peaceful protests and demonstrations.)
3. The decision to use LLIMs should never be done at the risk of officers’ safety or that of the public. Officers should not assume unreasonable risks in deploying LLIMs against a suspect threatening to use deadly force.
4. If a suspect is threatening to use deadly force and LLIMs offer an opportunity to resolve the incident without use of deadly force, LLIMs may be deployed if:
 - a. The scene is contained and there are not active attempts of serious bodily injury; and
 - b. There is adequate staff on scene to supplement the use of LLIMs with deadly force options should LLIMs fail to control the suspect and result in further deterioration of the incident.
5. LLIMs may be used against wild and domestic animals to drive them away or to deter an attack. Where an animal poses a threat of bodily injury or must be euthanized, conventional firearms should be used.

H. Firearms (Lethal Force): see section 4 below.

I. Factors in Choosing the Level of Force Deployed: Circumstances that may be considered in the officer’s assessment of physical threat and the appropriate use of force include, but are not limited to, the following:

1. Severity of the offense or significance of the need to apprehend the subject;
2. Age;
3. Size;
4. Skill level (whether they possess knowledge of martial arts, advanced fighting techniques, etc.);
5. Number of suspects;
6. Whether the suspect is armed or reported to be armed;
7. Actual proximity to weapons;
8. Prior experience with the suspect(s);

9. Location of the encounter;
10. Background or peripheral hazards;
11. The subject's response to commands/instructions;
12. Availability of cover for the officer(s);
13. Physical condition and position of the officer and subject(s) – are there injuries, is the officer on the ground or in a compromised position;
14. Time considerations – when possible officers should seek to use additional time to their advantage to reduce the likelihood of having to use force through planning. Other time considerations include the action/reaction lag time, as well as the uncertainty of any response or instrument instantly stopping a threat.
15. When a law-enforcement officer knows that a subject's conduct is the result of a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any.¹¹

Officers are not required to use or consider alternatives that increase danger to themselves or to others. Nothing in this policy requires officers to assume unreasonable risks. In assessing the appropriate use of force, the safety of the public and the officer(s) is paramount.

All tools/devices intended for police use of force should be securely carried in their approved holders when performing uniform patrol functions. Tools should only be removed from their holders when their use is anticipated, for inspection or testing, or for storage in secure areas such as prior to entering interview rooms, booking facilities or while fingerprinting.

IV. LETHAL FORCE

Lethal force is used to stop an action that could reasonably result in death or serious bodily injury to a person. Agencies must specify what types of firearms, ammunition or other lethal force tools are authorized for use by officers (see Appendix XV). Agencies shall also provide guidance on care, safe handling, storage and inspections of all lethal force tools.

A. **Use of Force Authorization:** An officer is justified in using deadly force upon another person only when, based on the totality of the circumstances, such force is objectively reasonable and necessary to:

1. Defend against an imminent threat of death or serious bodily injury to the officer or to another person; or
2. Apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.¹²

¹¹ H.145 language (b)(5)

¹² H.145 language (c)(1 A & 1 B)

The use of deadly force is necessary when given the totality of the circumstances, an objectively reasonable law-enforcement officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the officer or to another person.¹³

A law-enforcement officer shall cease the use of deadly force as soon as the subject is under the officer's control or no longer poses an imminent threat of death or serious bodily injury to the officer or to another person.¹⁴

Even when lethal force is permissible, officers should assess whether its use creates a danger to third parties that outweighs the likely benefits of its use. For example, background or peripheral environments should be considered.

In the event an officer uses force that results in the death or serious bodily injury of a person, the procedure found in Appendix A "*Lethal force post-incident procedures and statewide policy on review of BWC recordings following lethal force incidents*" shall apply.

B. Verbal warning: When feasible, an officer shall, prior to the use of force, make reasonable efforts to identify himself or herself as a law-enforcement officer and to warn that deadly force may be used.¹⁵

C. Lethal force restrictions:

1. Officers shall not use deadly force against a person based on the danger that person poses to himself or herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.¹⁶ Put more simply, officers shall refrain from using deadly force against a person who is only posing a threat to his or her own life and no other.
2. Chokeholds: A law-enforcement officer shall not use a chokehold on a person unless deadly force is justified pursuant to 20 VSA § 2368 (c)(1 – 4).¹⁷
3. Warning shots: Are strictly prohibited.
4. Discharging a Firearm and Moving Vehicles: An officer will not discharge a firearm at or from a moving vehicle unless: a person in the vehicle is threatening the officer or another person with lethal force other than the vehicle; or, the vehicle is operated to deliberately strike a person(s) and all other means of defense (including moving out of the path of the vehicle) have been exhausted or are not practical.
5. Unholstering Firearms: Firearms should only be drawn when an officer has reason to fear for their safety or the safety of others (see section 7 (A), below), and at no other

¹³ H.145 language (c)(2)

¹⁴ H.145 language (c)(3)

¹⁵ H.145 language (c)(5)

¹⁶ H.145 language (c)(4)

¹⁷ H.145 language (c)(6)

time in any public place, except for humane destruction of an animal described below.

6. Dangerous/Injured Animals: Firearms may be utilized to euthanize a dangerous animal or one so badly injured that humanity requires its removal from further suffering when no other disposition is reasonably practical.
7. Alcohol or Drugs: Officers will not use any Department issued or approved firearm while under the influence of alcohol or regulated drugs not otherwise prescribed by a medical professional.

V. DUTY TO INTERVENE

All officers have an affirmative duty to intervene whenever they witness another officer using a chokehold or using excessive force.¹⁸ In addition, officers shall report any instance of excessive force or use of a chokehold to a supervisor prior to the end of the shift during which it occurred.

VI. DUTY OF CARE

Whenever a person in an officer's care or custody sustains an injury, becomes unconscious, displays a further altered mental status, or states that s/he is injured, the officer must provide, timely summon, or obtain appropriate medical attention. This applies whether the officer used force or not, and whether the person's condition preceded custody. Officers will provide care commensurate with their training and experience and officers will quickly summon emergency medical assistance when needed.

Additionally, any time a person has been sprayed with an aerosolized agent that causes irritation, s/he will be decontaminated as soon as practical. Officers will read the OC administrative warning form to the person being decontaminated. (See Appendix B)

VII. REPORTING & SUPERVISORY REVIEW

- A. **Reporting** – Whenever an officer uses force beyond compliant handcuffing, they will complete a Use of Force Report (See Appendix C) and identify all relevant supporting documentation such as recordings, witness statements, etc., within 72 hours, except in the following circumstances:
 1. The officer is injured or otherwise unable to complete the report, in which case the officer shall provide the necessary information verbally to a supervisor as soon as practical.
 2. When lethal force is used, or whenever the actions of an officer result in death or serious bodily injury to a person, the officer will not complete a Use of Force Report. Instead, an administrative investigation will be completed. The administrative investigation team will complete the data required in the Use of Force Report.
 3. In cases where multiple officers use force in excess of compliant handcuffing during an incident, only one officer will author a Use of Force Report which clearly names

¹⁸ H.145 (b)(7)

all officers who used force. Each officer who used force will complete a supplemental report and all reports will be included as supporting documentation when the Use of Force Report is submitted.

Pointing the muzzle of a firearm at or in the direction of a person is considered a use of force. Officers shall not point the muzzle of a firearm at or in the direction of a person absent articulable facts that the situation may escalate to the point where use of lethal force would be justified. Drawing or maintaining a firearm at a ready position may be considered as a use of force if it is done during an encounter with a subject(s) or within view of the public. There is a clear distinction between escalating the use of force by unholstering a firearm during an encounter with others, versus unholstering a firearm during a building search, execution of a search warrant or any other activity in which only law-enforcement personnel are present.

Use of Force Reports shall contain details of the citizen's actions and the officer's responses. Officers should take reasonable steps to gather and preserve any electronic or physical evidence, including witness statements, regarding use of force incidents.

B. Supervisory review procedure – A supervisor will review the Use of Force Report and all supporting documentation. At a minimum, supervisory review includes:

1. Ensuring that the information submitted is complete and all required data is present.
2. Determining if the use of force was objectively reasonable and consistent with this policy. The supervisor shall make a notation indicating their approval or disapproval of the use of force being reasonable.
3. Identifying any need for training, performance counseling or other administrative action.
4. If necessary, consulting with the officer or returning the report for more information.
5. Supervisory review of whether the decision by an officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances. A law-enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable.¹⁹
6. The home agency CEO shall make a referral to the Vermont Criminal Justice Council pursuant to 20 VSA §2401 (2)(C) anytime a finding of excessive use of force is made.
7. The home agency CEO shall make a report to appropriate authorities if the review uncovers evidence that a crime has been committed.

VIII. ADMINISTRATIVE INVESTIGATION

The Vermont law-enforcement community recognizes the enormous responsibility that comes with the authority to use force. As guardians of our communities, the police must ensure that all uses of force, but especially those resulting in death or serious bodily injury, are thoroughly reviewed.

¹⁹ H.145 language (b)(1)

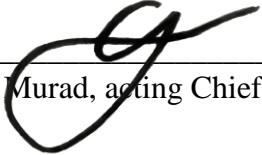
Anytime an officer employs lethal force or takes action that results in death or serious bodily injury to a person, the agency shall conduct an administrative investigation. This investigation is separate from any criminal investigation that may occur. The agency may employ outside assistance to conduct the administrative review. The purpose of the review is to document the incident, complete required Use of Force report(s), determine if the incident is within policy, identify areas for improvement, and determine if there are any training or policy implications. This investigation may result in remedial training, recommendations for discipline or commendation, or recommendations for policy revision. (See Appendix A for more information)

IX. TRAINING

At a minimum, officers must comply with all certification and in-service training standards of the Vermont Criminal Justice Council. For the purpose of annual certification, only use-of-force and tactics training conducted by instructors certified by the Vermont Criminal Justice Council is acceptable. All officers will receive a copy of and training on use-of-force policies at least annually and all training will be documented. In addition, all officers shall be trained on ways to avoid confrontations, deescalate conflict and recognize during a physical confrontation when deescalation must occur.

If an agency considers sending officers to additional use-of-force or tactics training, the CEO should carefully review the content and philosophy of the training to ensure that it is consistent with Vermont law and this policy. Agencies are cautioned that standards for police use of force vary widely across the country and considerable scrutiny should be given to other trainings. Material from outside resources may not be introduced into the use-of-force training curricula for Vermont law-enforcement officers unless the additional content has been reviewed by the VCJC Use of Force Committee and approved by the VCJC.

Required by the State of Vermont on April 05, 2023.



Jon Murad, acting Chief of Police

April 05, 2023
Effective Date

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REFERENCES:

“8 Can’t Wait” from Campaign Zero

An Introduction to Vermont Criminal Law, Edition XIV revised 2018

Burlington, VT Department Directive 05 “Use of Force” revised June 17, 2020

Camden County, NJ Police Department policy “Use of Force” revised 08/21/2019

Federal Executive Order #13929 issued June 16, 2020

Final Report of the Major Cities Chiefs Association Police Reform Working Group January 2021

National Consensus Policy on Use of Force 2020

Police Executive Research Forum’s Guiding Principles on Use of Force

Seattle, WA Police Department Manual, Title 8 “Use of Force”

South Burlington Police Department PR-302 “Use of Force”

United Nations Code of Conduct on Use of Force

Use of Force Policies: Dispelling the Myths by Lexipol

VT Act 165 & VT H.145 spring 2021

VT League of Cities & Towns policy “Response to Resistance” revised 2020

VT State Police DIR-701, 702, 703 Use of Force, Reporting & Training



**BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD05 Appendix A: Lethal Force Post-incident Procedures and
Statewide Policy on Review of Body Worn Camera Recordings
Following Lethal Force Incidents
Published by the State of Vermont, April 5, 2023**

INTRODUCTION:

Impartial and thorough investigation of officer involved shootings and other serious use of force incidents is essential to ensure police accountability, transparency and to maintain public trust. The following procedure is to be followed whenever an officer is involved in a lethal force incident (see definition below).

Among other things, this document describes the transition from an officer(s) being the investigator to that officer(s) becoming the subject of parallel investigations (administrative and potential criminal) in the wake of a lethal force incident. It also provides clear direction on the use of BWC recordings in the wake of a lethal force incident.

DEFINITIONS:

Chief Executive Officer (CEO): Means the person in control of a police agency, normally the Chief, Colonel or Sheriff.

Lethal force incident: Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes any action that results in death or serious bodily injury to a person. Hereinafter referred to as “incident”.

Public Safety Statement: A statement given at the scene of a lethal force incident, or as soon as practical, that allows the on-scene investigation to continue once the involved officer(s) leaves the area. It is a brief statement provided to the on-scene supervisor. The statement should include initial information such as type of force used; location of injured or dead person(s); description of any outstanding subject(s) including direction and mode of travel, known weapons, clothing description, etc.; description and location of any known victims, witnesses or evidence; and, any other information necessary to ensure officer and public safety and assist in the apprehension of outstanding suspects.

PROCEDURE:

When an incident covered by this policy occurs:

- A. Officers should take actions necessary to render the scene safe.
- B. When necessary or requested by subject(s) involved, officers shall immediately summon emergency medical services and immediately provide appropriate medical attention.

- C. The ranking officer on scene shall assume incident command, and immediately request the response of a supervisor. Upon arrival, the supervisor shall take control of the incident scene.
- D. The incident location should be secured for purposes of investigation and evidence preservation.
- E. The involved officer(s) should provide a Public Safety Statement prior to leaving the scene when practical. The Public Safety Statement should be made as contemporaneously to the event as possible.
- F. The involved officer(s) should be removed from the scene to a secure location or a medical treatment facility if necessary. An officer or other support person should be assigned to stay with the involved officer(s). If available, a Peer Officer Support Team (POST) member or similar crisis response staff should be assigned this task. The support person should avoid conversation about the incident and instead focus on the officer's health and well-being.
- G. To maintain the integrity of the investigation those involved should not discuss the incident amongst themselves. This excludes communication with family, legal counsel, mental health personnel, medical personnel or union representation. Employees should be encouraged to refrain from watching or listening to the news, social media or podcasts regarding the incident in which they were involved.
- H. Appropriate personnel should be contacted, including but not limited to the CEO, the VT State Police Major Crime Unit, the State's Attorney's Office and POST members or counselors as necessary.
- I. At the direction of the Major Crime Unit, the involved officer(s) shall be photographed, and any injuries documented prior to the end of the shift. All BWC or other recordings of the incident shall be preserved as evidence by the home agency. The home agency will be asked to provide all video, audio, phone and radio transmission recordings of the entire incident to the Major Crimes Unit. Additionally, the officer(s)' firearm or other tools used in the incident will be collected and preserved as evidence. The CEO will determine if and when a replacement firearm will be issued to the involved officer(s).
- J. When practical, the involved officer may walk through the scene to assist Major Crimes Unit with his/her location at the time lethal force was used and/or leading up to lethal force.
- K. Involved officers shall not be allowed to view their body-worn camera footage prior to being interviewed by the Major Crime Unit, nor will they be permitted to review any other recordings of the incident or have them described by others. (See below for additional detail)

VERMONT STATE POLICE INVESTIGATION:

When a Vermont law enforcement agency is involved in a lethal force incident, there are multiple priorities that must be considered. First and foremost, the agency must ensure public safety by cooperating with any investigation that seeks to identify person(s) who violate State or Federal law. Further, the agency has an obligation to its community to be as transparent and accountable as possible. Agencies also have an obligation to their employees who have the right to be treated fairly and in accordance with applicable collective bargaining agreements. There are times in the wake of a lethal force incident when the officer(s) becomes the focus of a criminal investigation to assess compliance with the law.

Officers involved in lethal force incidents are afforded the same constitutional rights as any person under criminal investigation. It is preferable for transparency that officers participate in the Major Crime Unit's investigative process.

The following procedure is the statewide practice for Major Crime Unit review of lethal force incidents:

1. Officer(s) provides a public safety statement at the scene.
2. Officer(s) do not review BWC or other recordings of the incident, nor are they given an account of any recordings by anyone.
3. Officer and their attorney meet with investigators to provide an initial statement unaided by recordings or other information surrounding the incident.
4. Following this statement, the officer and their attorney may review the officer's BWC or cruiser camera footage and or other video that would show the officer's perspective at the time force was used.
5. The officer and their attorney may then provide investigators with additional information.

Discrepancies between an officer's unaided and aided statements following an incident are expected. The science of memory in the wake of a stressful or traumatic event is extensive and points to numerous physiological phenomena during acutely stressful situations (e.g. auditory exclusion and tunnel vision) being common causes of discrepancies.

ADMINISTRATIVE INVESTIGATION:

Whenever an officer uses lethal force, the home agency will initiate a parallel administrative investigation. The CEO of the home agency may request an independent review or investigation by an outside entity. Even if an outside entity is used, the administrative investigation is different from a potential criminal investigation in that the involved officer(s) is/are compelled to participate in the administrative investigation process as a condition of employment. The administrative investigation will be conducted in compliance with 20 VSA §2401(4) and 2402 and any other applicable law or regulation of the Vermont Criminal Justice Council.

In the event that an outside law-enforcement agency with jurisdiction (normally the VSP Major Crime Unit) initiates an investigation into the incident for the purpose of determining if there is

criminal liability, the administrative investigation should occur after the criminal investigation and decisions by the Attorney General's Office and the State's Attorney's Office are complete.

The administrative investigator will interview the involved officer(s) and witnesses, and review all available evidence, information and statements. The administrative investigator may use information obtained as part of the criminal investigation but may not provide any information from the administrative investigation to criminal investigators or prosecutors. All applicable collective bargaining agreements will be followed during an administrative investigation.

The officer shall be kept informed of the progress of the administrative investigation and upon completion, notified in writing of the outcome.

The CEO or their designee shall notify the State's Attorney, relevant municipal/state legal counsel, and any duly appointed police oversight body (in executive session) of the administrative investigation's outcome. If the investigation concludes a necessity to report to the VCJC pursuant to 20 VSA §2401, it shall be done without delay. A guide to reporting officer misconduct can be found here: <https://vcjc.vermont.gov/content/act-56-referenceguide>.

RECOMMENDATIONS PRIOR TO RETURN TO DUTY:

The officer(s) should be placed on administrative leave or assigned to administrative duties with no enforcement responsibilities pending completion of the criminal investigation and decision about prosecution by both the Attorney General's Office and the State's Attorney's Office.²⁰

It is strongly recommended that the CEO direct the officer to obtain psychological follow-up for post-incident trauma and that the agency pays for such services. With prior approval from the CEO, an officer may seek psychological follow-up from a licensed professional of their choice. At least an initial psychological follow-up should be completed before the officer is reassigned to duty.

RELEASE OF BWC OR OTHER RECORDINGS IN THE WAKE OF A LETHAL FORCE INCIDENT:

Recordings, or portions thereof, taken during the course of these significant incidents do become public pursuant to public records law. In the wake of an incident, ensuring due process for every person involved is essential. The question of releasing recording is not *if*, but *when*. Following lethal force incidents, it is not uncommon for multiple agencies to possess copies of BWC or other recordings. For instance, the home agency, the Vermont State Police and the State's Attorney's Office or Attorney General's Office may all have copies of the relevant recordings. This can create confusion, duplication of effort and expense as well as inconsistency when presented with public information requests for release of the footage. Because multiple copies of

²⁰ Keeping an officer on administrative duty may not be feasible in some agencies. The CEO should carefully evaluate the circumstances and consult with the State's Attorney and Attorney General's Office prior to returning the officer to duties that may involve enforcing laws/ordinances or using force.

digital recordings will exist, the following guidance is intended to identify the agency with the superordinate interest at certain stages post-incident.

When an outside agency (usually VSP) conducts a criminal investigation, the investigating agency will provide the home agency with a letter requesting preservation of all evidentiary items and describing the investigative process. Recordings are considered evidence in a criminal investigation. While the criminal investigation is ongoing, VSP (or other outside agency) is in control of the record²¹ and, in consultation with prosecutors, will control release of recordings until the investigation is complete and the case has been reviewed by both the Attorney General's Office and the State's Attorney's Office.

1. If the VSP investigation results in criminal charges, the prosecuting agency shall be in control of the record and control release until such charges are resolved.
2. If the VSP investigation does not result in criminal charges, the home agency resumes its controlling role as the keeper of the record.

This procedure is intended to provide clarity to involved agencies, members of the public and media and to avoid confusion and unnecessary duplication of effort to process requests for recordings. Nothing in this guidance is intended to shield recordings from public examination. There are numerous factors that impact the release of body-worn camera or other recordings of a serious incident. It is not possible to create a definitive timeline for the release of recordings given the number of legal, investigative, operational, and external factors that bear on events on a case by case basis. Footage should be released as soon as practical in consultation with investigators, prosecutors, and organizational leaders. Whenever possible, release will occur within 30 days of the incident.

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²¹ 1 VSA 317 (c)(5)



Appendix B – Administrative Warning for Use of Aerosol Agents

When an aerosol agent has been used an officer shall, as soon as practical, provide the subject with the Administrative Warning below in preparation for providing care for the individual contaminated by the product. Decontamination should occur as soon as practical following the application of an aerosolized agent.

Name: _____ Date: _____ Incident #: _____

You have been contaminated with an aerosol agent (insert the name of the product), a natural product derived from cayenne peppers. This aerosol agent is non-toxic and the effects will wear off in a short time.

The effects of being exposed may complicate other medical conditions, including, but not limited to:

1. Overdoses;
2. High levels of drugs like cocaine, amphetamines, barbiturates, PCP, opiates, heroin, prescription drugs, or alcohol;
3. Medical conditions relating to heart problems;
4. Pregnancy.

I am going to ask you five questions for your own safety. Not answering my questions, withholding information, or giving false or misleading answers could delay medical treatment and may seriously jeopardize your health and safety.

Do you understand everything I have told you? ___ YES ___ NO ___ Refused to answer

1. Are you currently under the influence of cocaine, amphetamines, barbiturates, PCP, opiates, heroin, prescription drugs or alcohol? ___ YES ___ NO ___ Refused to answer
2. Are you, or could you be pregnant? ___ YES ___ NO ___ Refused to answer
3. Do you have heart problems, lung problems, diabetes, high blood pressure, allergies or any other serious medical condition? ___ YES ___ NO ___ Refused to answer
4. Do you have a pacemaker? ___ YES ___ NO ___ Refused to answer
5. Do you wish to be medically evaluated? ___ YES ___ NO ___ Refused to answer

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Appendix C – Minimum Requirements for Use-of-force Reporting

Whenever an officer uses force beyond compliant handcuffing, they will complete a Use of Force Report and identify all relevant supporting documentation such as recordings, witness statements, etc. At a minimum, agencies will collect data on the following fields:

1. Name, DOB, gender, race, address, and contact information for the person or persons on whom force was used.
2. Name/rank/radio or badge number of the officer(s) involved.
3. Date/time/location of the use of force.
4. Incident number and call type.
5. Description of the incident location to include whether it was indoors/outdoors, lighting conditions, and weather conditions.
6. Reason for the use of force such as: to effect an arrest, to defend self, to defend another, to effect an investigative detention, etc.
7. Description of the subject's behavior that necessitated the use of force.
8. Description of the level of resistance offered by the subject such as: passive resistance, active resistance, or assaultive.
9. Description of the force used by the officer(s) such as: empty hand controls or strikes, aerosol agent, baton (strikes or control/restraint techniques), display or use of CEW*, firearm, etc. This description should include all officer actions taken beyond compliant handcuffing, the intended target area, the area affected and a description of whether each action was effective to gain compliance. If relevant, the make/model/serial number of the tool used must be recorded.
10. Description of any injuries to the subject or officer, including where and by whom medical evaluation (if any) was provided, transport method to treatment, and photographs of injuries. A description and photos of any injuries should be obtained when feasible, even if the subject refuses medical attention.
11. Identification of other officers or agencies present when force was used.
12. Identification of any known witnesses.
13. A narrative of the incident including identification of any supplemental information such as medical records, recordings, whether the subject(s) is a member of a special population, if any community resources such as mental health professionals were consulted, etc.
14. Name of the supervisor(s) who reviewed the use of force report and an indication of whether the use of force was within or outside of policy.

*If a CEW is used, the following information should be documented:

- a. Type of use (deployed from distance or drive stun) and number of cartridges and/or cycles applied;
- b. Clothing of the subject and whether contact probes penetrated the subject's skin;
- c. Whether CEW use was effective;
- d. Taser and cartridge(s) serial numbers.

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**BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD05 Appendix D: Use-of-force Guidelines for Interacting with
Persons Known To Be Experiencing Mental Impairment
Published by the State of Vermont, October 1, 2021**

I. PURPOSE

These guidelines are an extension of the Statewide Use of Force policy and are intended to assist Vermont law enforcement officers when they encounter persons known to be experiencing, or perceived to be experiencing, mental impairment to bring safe and effective resolution to the situation.

II. INTRODUCTION

Act 27 addresses standards for law enforcement use of force. Specifically, 20 VSA § 2368 (b)(1) states that a law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether the use of force was objectively reasonable. Officers should make reasonable efforts to deescalate the situation and if force is necessary, use only the force that is objectively reasonable, necessary and proportional to resolve the situation.

III. MENTAL IMPAIRMENT

- A. **Definition.** For purposes of these guidelines, mental impairment is defined as a diminishment in an individual's cognitive, emotional or behavioral functioning as a result of physiological or psychosocial factors. A person may experience mental impairment for a variety of reasons, including as a result of a mental illness, drug or alcohol use or a physical illness such as a traumatic brain injury or a diabetic emergency.
- B. **Signs that someone may be experiencing mental impairment.** Signs that someone may be experiencing mental impairment include, but are not limited to:
- A person experiencing mental impairment may be distracted by auditory, visual or other stimulus and unable to comply with directions from law enforcement or to listen effectively.
 - Appearance of heightened emotion or the opposite, i.e., flat affect/no emotions.
 - Atypical aggression or displaying an unusually high energy level.
 - Person may appear to be reacting to external or internal stimuli that is not able to be perceived by the officer (voices, smells, seeing something the officer doesn't).
 - Disorganized behavior or atypical behavior like walking in traffic, not having clothes on or doing things that are unexpected given the context/environment.
 - Incoherent speech, delayed speech, unprompted vocalizations or providing responses that do not match the questions asked.
 - Sensitivity to auditory or sensory stimulation, covering their ears, turning away.

- Rocking back and forth or other self-soothing mechanisms.
- Non-compliance with officer’s instructions in a manner that indicates an inability to comprehend or follow instructions rather than outright defiance. For example, a person may try to retreat away out of fear or appear to “freeze up.”

C. Possible reactions to uses of force by a person experiencing mental impairment.

These are generalized statements and do not apply to all persons experiencing mental impairment. The person may have unexpected strength and tolerance to pain. This information may be useful when determining how many officers should be present and whether or not a hands-on approach will be successful or merely cause the officer(s) to have to escalate the level of force. The person may be vulnerable to ill effects of a CEW or certain restraints because of pre-existing or medication-induced conditions (if possible, check with family members or health care providers about a subject’s pre-existing conditions before deploying force).

IV. GUIDING PRINCIPLES

No two situations are alike. While every encounter is unique, there are some fundamental principles that should be upheld in every situation involving a person known to be experiencing or perceived to be experiencing mental impairment. First, acknowledging the sanctity of human life—including the lives of the subject(s), the officer(s), and the general public—is central to the police mission to protect and serve. In addition, the ability for law enforcement officers to display patience, humanity and genuine compassion in these situations will lead to better outcomes and increase public confidence. Next, law enforcement must go beyond a “what is justified” mindset to striving for what is the best possible outcome with the least amount of harm to all involved. This includes trying to limit the amount of trauma experienced by the subject, the subject’s family, and the community. Lastly, law-enforcement officers must be self-aware and not create the exigency that requires a use of force.

V. LEGAL CONSIDERATIONS

There are specific state and federal laws as well as case law that apply to law enforcement use of force against persons law-enforcement officers know or perceive to be experiencing mental impairment.

- A. **Vermont Use of Force Law.** Vermont’s recently enacted statewide use of force law provides that when a law enforcement officer knows that a subject’s conduct is the result of a mental impairment, the officer must take that information into account in determining the amount of force appropriate to use on the subject, if any.²²

Vermont’s statewide use-of-force statute also provides that a law-enforcement officer shall not use deadly force against a person based on the danger that person poses to himself or herself if an objectively reasonable officer would believe the person does not

²² 20 V.S.A. §2368, subdivision (b)(5) (Added 2021, No 27, eff. October 1, 2021.)

pose an imminent threat of death or serious bodily injury to the law-enforcement officer or to another person.²³

For example, if a person with a gun is threatening to kill himself, it would be unlawful for a law-enforcement officer to use deadly force against that person if an objectively reasonable officer would not believe that the person poses an imminent threat of death or serious bodily injury to others, including the law-enforcement officer.

B. Accommodations for Individuals with Known or Apparent Disabilities. When feasible, law-enforcement officers should seek to reasonably accommodate individuals with known or apparent disabilities, including when considering the use of force against such individuals. Reasonable accommodations are specific to each situation. Examples of accommodations that may be reasonable include:

- Recognizing that an individual may be overwhelmed and removing distractions from the scene.
- Obtaining relevant information from family members, friends, or others at the scene who know the individual and the individual's history.
- Asking an adult member of the individual's family to participate in transport.
- Speaking slowly, simply, and briefly.
- Limiting the number of people who speak to the individual.
- Maintaining a comfortable distance from the individual.
- Engage in non-threatening communications.
- Use the passage of time to defuse a situation.
- Avoid physical contact.
- Call a nearby mental health counselor or peer support specialist.

C. Case law. A subject's mental impairment is one of among many factors that a court will consider in determining whether a law-enforcement officer's use of force was objectively reasonable.²⁴ Other factors include the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers, and whether the subject is actively resisting arrest or attempting to evade arrest by flight.²⁵

Thus, use of force against an individual who has committed no crime, poses no threat to the community and whom the officer knows or reasonably should know is experiencing mental impairment is not evaluated in the same way as use of force to apprehend a person suspected of serious criminal wrongdoing or who poses a threat to the community.²⁶

²³ 20 V.S.A. §2368, subdivision (c)(4) (Added 2021, No 27, eff. October 1, 2021.)

²⁴ *Brunette v. City of Burlington*, Case No. 2:15-cv-00061, at p. 40 (D. Vt. Aug. 30, 2018); *Chamberlain v. City of White Plains*, 960 F.3d 100, 106 fn. 9, 108, and 114 (2d Cir. 2020)

²⁵ *Graham v. Connor*, 490 U.S. 386, 395 (1989).

²⁶ *Chamberlain v. City of White Plains*, 960 F.3d 100 (2d Cir. 2020); *Gray v Cummings*, 917 F.3d 1, 11 (1st Cir. 2019); *King v. Hendricks County Comm'rs*, 954 F.3d 981, 984 (7th Cir. 2020); *Vos v. City of Newport Beach*, 892 F.3d 1024, 2034 (9th Cir. 2018).

VI. PROCEDURES

A. **Alternatives to be considered.** Gaining control is not always necessary if the person is not harming themselves or others. The following suggestions are meant to emphasize the importance of understanding the role of law enforcement in a given situation. If no crime has been committed and the police are serving in a caretaking function, it is essential that the officer make an independent assessment of the situation.

- Even though police were called to the scene, does this constitute an emergency or an appropriate use of police resources? Absent an articulable fear of danger to a person, officers should consider if there are other community partners that might be better suited to handle this situation.
- Even though a person may be experiencing mental impairment does that mean police have to intervene or take the person into custody? Is it a crisis? Is there danger to self or others? Is there an emergent need to take action rather than summon other resources or make a referral to resources?
- Although a person may have a mental illness, this does not necessarily mean they are in need of or want mental health care.

B. **Identify the situation – planning/preparation.** When time is available—such as during the response to such an incident—time can be used effectively to assist in a successful resolution. Either the responding officer, or in some cases, the dispatcher, should begin to assess the circumstances by gathering as much information as is available. Useful information can be gleaned by considering the following preparation steps:

Before arrival to the scene

- Who called the police and what prompted the call? What does the caller know about the subject? A family member with knowledge of the subject's condition and past history may be able to provide more reliable information than a stranger who can only report behaviors happening in real time.
- If there have been prior instances of the person needing assistance, does the caller know what helped?
- Dispatch should ask the caller if there are weapons involved, who is on scene, and what the physical environment is.
- Officers should be familiar with the resources available in the area and enlist assistance as necessary because local resources may have knowledge of the individual and there may be a plan in place for this person.
- Check prior involvements with the person—is there information that points to a mental health impairment? Could this help explain some of the conduct being reported?
- Check CAD/RMS or other resources to see if there are contacts listed or family members or acquaintances who may be useful in the encounter. Information from prior encounters may provide ways to connect with the person.

Upon arrival at the scene

- Upon arrival and initial assessment of the situation, the officer should ask, “do I need to take immediate action?” If the answer is yes, nothing in this appendix prevents an officer from doing so. If not, slow everything down.
- Officers should consider whether summoning a trained crisis negotiator or mental health clinician would be appropriate.

C. **Response guidelines – while in the encounter.** Once on scene and able to assess the totality of the circumstances, officers may be able to use some of the following suggestions to facilitate a safe outcome. Time, containment, communication, self-regulation and utilization of community resources are effective tools to work toward peaceful resolution.

Containment

- Keep distance from the person whenever able, both for officer safety reasons and to avoid making the person feel trapped.
- Try to limit the number of other influences who may be escalating the situation unknowingly (other persons on scene).

Time

- Slow down the pace of events and try to establish rapport. Try to create a non-threatening environment where conversation can occur.
- Allow for the possibility that a successful resolution may look different than a typical police response. Expect that this will take longer than usual and do not rush to problem solving. Be open to alternative resolutions and collaboration with other stakeholders.

Self-regulation

- Self-regulation – controlling your own level of stress and conveying calm. Officers should be mindful to not escalate things by their own behavior.
- Make a conscious choice to shift from enforcement mode to peaceful resolution mode. The safety of all persons trumps the need for the officer to control every movement. Be respectful.
- Avoid whispering or laughing. Validate the person’s concerns and perspective of distress whether or not it is something you personally would find distressing.
- Officers should continually re-assess the purpose of their presence on scene and what the desired outcome is. Focus on keeping the person and situation calm.
- Be nice. Treat the person as a fellow human and provide the level of service that you would want if this was your loved one.

Communication

- Utilize a contact officer and a cover officer. The cover officer should ensure the environment is safe and allow the contact officer to focus on the subject. The contact officer should be the only one to talk to the subject. The contact officer should continually assess their demeanor and intensity to try and de-escalate the situation. Consider changing contact officers or changing roles among responders if things are not going well or if the contact officer loses their patience.

- Command presence is unlikely to be effective in an encounter with a person experiencing mental impairment. Shouting or making threats is often counterproductive. Maintain your professionalism and calm demeanor. Do not use profanity or raise your voice. Some persons experiencing certain mental impairments may experience hyper-sensitive hearing such that a whisper may sound like a shout.
- Avoid directives such as “calm down” or “relax”. Consider using non-adversarial phrases such as “I see you are upset. Please tell me about it” or “What can I do to help you?” Assure the person that you are there to help and they are not in trouble (or that the trouble can be overcome).
- Make only one request at a time or ask only one question. Ask open ended questions. Listen carefully to the responses and see if there is useful information to develop rapport or identify needs. Repeat back what they have said to you, paraphrase and check for understanding.
- Be aware of your non-verbal cues – facial expressions, body language, tone of voice and eye contact can be effective to help de-escalate a volatile situation.
- If an officer takes an action, assessing whether it had the desired effect or not will help inform next steps.

Community resources

- Utilize community resources such as social workers, CRISIS clinicians, military resources (if the subject is a veteran), peer support specialists or other community members with special knowledge or a connection to the subject and allow them to inform elements of the response or take the lead as appropriate.
- Offer alternative resources as appropriate—if you gain information that the person is concerned about domestic violence or substance use, offer to connect them to community resources that do not focus on mental health.

VII. SPECIAL SITUATIONS

- A. **Welfare checks.** When called to check the welfare of a person, the primary objective is to help and do no harm. Most welfare checks do not involve an allegation of criminal behavior and that changes the calculus of what is reasonable. The desired outcome is to get the subject whatever help they need without unnecessary harm or trauma being inflicted through the encounter.

Dispatcher/call taker

- The call taker/dispatcher should try to ascertain as much information as possible about the situation, the subject of concern and the caller.
- Determine the caller’s basis of knowledge of the subject.

Law enforcement independent assessment

- The officer needs to make an independent assessment of the situation and whether police intervention is needed. Consider speaking to the complainant prior to responding. Is an in-person response required?

Upon arrival

- On arrival, state who you are and why you are there. Try to reassure the person that you are there to help and determine that they are safe. Provide information about what would assist in resolving the concern.
- Try to establish communication, even if through a closed door.
- Officers should determine whether there are reasonable grounds to believe that the person is a person in need of treatment and presents an immediate risk of serious injury to self or others if not restrained. If yes, the officer should consider taking the person into temporary custody and apply to the court, without delay, for a warrant for emergency examination. If no, the officer should consider making referrals to available resources or asking community resources to follow up with the subject..

- B. **Warrantless entry – considerations.** It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. However, officers may render emergency assistance to occupants of private property who are seriously injured or threatened with such injury. The mere possibility of danger is insufficient. And, a person’s mental illness does not alone create an exigent circumstance.

The core question is whether the facts would lead a reasonable officer to believe that there was an urgent need to render aid or take action. A warrantless search is no longer permissible once the exigency ends. The exigent circumstances rule does not apply where the police, without a warrant or any legally sound basis for warrantless entry, threaten that they will enter without permission unless admitted.

If police are going to make forced entry to the residence or a room, strong consideration should be given to announcing the intention to do so and allow the person an opportunity to open the door. Again, officers should not create the exigency that then requires immediate, forced entry.

- C. **Warrants for emergency examination.** Law enforcement officers are periodically requested to take a person into custody pursuant to a warrant for emergency examination (EE). These guidelines should provide strategies for these encounters. Officers are reminded to make reasonable accommodations during service of EE warrants so long as it is feasible under the circumstances.

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BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD05 Appendix E: Police Use of Military Equipment
Published by the State of Vermont, October 1, 2021

UNDER CONSTRUCTION by the Vermont Criminal Justice Council's
Military Equipment Acquisition Working Group
(still pending as of April 5, 2023)



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD05 Appendix F: Firearms
Reviewed and published April 5, 2023

- CONTENTS:**
- I. Firearms Proficiency
 - II. Duty Weapons, Handguns
 - III. Shotguns
 - IV. Patrol Rifles
 - V. Officer-owned Rifles
 - VI. Officer-owned Handguns
 - VII. Firearms Safety
 - VIII. Firearms Inspections
-

I. FIREARMS PROFICIENCY

- A. As required by VSA Title 20, Chapter 151 §2358 and Rule 13 of the Vermont Criminal Justice Training Council Rules & Regulations, Burlington Police Department (BPD) officers will receive annual firearms training and will demonstrate proficiency with any/all approved weapon(s) that the officer is authorized to use.
- B. Training in use of force will only be conducted by instructors certified by the Vermont Criminal Justice Training Council. All instruction in use of force will be documented and reported to the Administrative Deputy Chief.
- C. In the event an officer fails to qualify with his/her duty weapon in accordance with the Vermont Criminal Justice Training Council Firearms Standards (Rule 13), they shall be given onsite remedial training by a firearms instructor and provided with two more attempts to qualify during the training day. If the officer fails to qualify on the second attempt, the officer will be given onsite remedial training by a different firearms instructor. If the officer fails to qualify after the third attempt he/she will not be given another attempt to qualify on that day, however he/she will continue to participate in the rest of the scheduled training. If an officer fails to qualify the firearms instructors will notify the Firearms Supervisor and Deputy Chiefs of the failure to qualify, suspected reason for failure, and remedial actions taken during the training day. The firearms instructor will also complete and file an outline with the Firearms Supervisor and Training Unit of the remedial training conducted.
- D. If the officer fails to qualify before his/her regularly scheduled shift, the officer will not be authorized to carry his/her duty weapon and will be assigned to administrative duty until he/she qualifies and demonstrates proficiency.
- E. The Training Unit, in conjunction with the BPD's firearms instructors, will arrange a remedial training plan for the officer to ensure that annual qualification is achieved.

Whenever remedial training is required or needed, a firearms instructor will be present and conduct the training. After completion of the remedial training plan, the officer will be given three more attempts to qualify. If the officer fails to qualify after these three attempts (six total), the firearms instructors will notify the Firearms Supervisor and Deputy Chiefs of the failure to qualify, suspected reason for continued failure and remedial actions taken during the training day. The firearms instructor will also complete and file an outline with the Firearms Supervisor and Training Unit of the onsite remedial training conducted. Following the continued failure to qualify the officer shall be assigned to administrative duty pending further review by the Chief of Police.

II. DUTY WEAPONS, HANDGUNS

- A. While on duty, all BPD officers will carry only those handguns and ammunition that are issued by the BPD.
- B. Duty weapons will be 9mm Glock pistols. All duty weapons will be “factory” approved.
- C. Only BPD-approved ammunition may be used in any weapon carried on duty, and the ammunition must be factory fresh (new).
- D. Any modifications or accessories that permanently modify the BPD weapon must have the prior written approval of the Firearms Committee and the Chief of Police. Any temporary modification or accessories added to the BPD weapon must be approved by the Firearms Supervisor and installed by a Department Armorer.
- E. The Administrative Services Bureau will maintain all BPD firearms records.
- F. Prior to being authorized to carry a weapon on duty, officers must qualify with the weapon under BPD standards and as required by 20 VSA §2355(a)(4) and §2358, and Rule 9 of the Vermont Criminal Justice Training Council Rules & Regulations. Before being qualified to carry a weapon, the officer must demonstrate knowledge of the weapon as to parts, field stripping, cleaning and safe handling techniques. The officer must also be able to demonstrate the ability to clear a level 1, 2, and 3 malfunction.
- G. All weapons should be inspected by the Department Armorer or Firearms Instructor prior to use on duty and will be kept serviceable by the carrying officer as follows:
 - 1. The firearm will be cleaned after training use, before the next tour of duty.
 - 2. The firearm will be kept clean from dust, lint and other particles that tend to collect on the weapon through daily carrying.
 - 3. The firearm will be kept properly lubricated.
 - 4. When on duty the firearm will be fully loaded with a round in the chamber.
- H. All duty leather will be of similar type and style as is currently issued by the BPD. Uniformed officers are required to carry a double magazine pouch with two extra magazines. Plainclothes officers are required to carry at least one extra magazine.

- I. Officers on patrol will carry two BPD-issued pistol magazines in an approved magazine carrier (in total, officers are to carry no more than three pistol magazines on their person).
- J. All officers, while outside police headquarters during regular work hours, shall carry a firearm and be equipped to reload the weapon as designated above. The affected officer's Deputy Chief may authorize exceptions to this requirement. Officers in plainclothes who are carrying a firearm that is visible should display a badge and/or identification simultaneously to the extent possible.

III. SHOTGUNS

- A. Shotguns are an integral part of the field officer's equipment and may be deployed at the officer's discretion using the standards as set forth in DD05.03 "Lethal Force" and this Appendix.
- B. The Officer in Charge (OIC) shall:
 - 1. Ensure that shotguns are signed out and inspected.
 - 2. Ensure that shotguns are returned empty with the safety on, action open and undamaged prior to placing in storage.
 - 3. Notify the Administrative Services Bureau of damage or malfunction.
 - 4. Conduct periodic familiarization of the shotgun with officers under their immediate command.
- C. If an officer chooses to carry a shotgun while on patrol the officer shall:
 - 1. Inspect and perform a safety and function check of the shotgun at the beginning of each shift, and sign the shotgun out on the equipment inventory sheet before each tour of duty.
 - 2. Report any malfunction of a BPD shotgun to the OIC.
 - 3. Secure the shotgun in a locked rack within the police vehicle.
 - 4. Secure the shotgun in the equipment requisition room of USB at the end of each tour of duty empty, with the action open and with the safety on. Notify OIC of the return of the weapon.
- D. Department Armorer shall:
 - 1. Inspect and maintain all BPD weapons. They shall ensure that all BPD shotguns are fired no less than once annually.
 - 2. All repairs shall be made by a Department Armorer and he/she shall maintain current record of all maintenance performed.
- E. Cruiser Carry of Shotgun:

1. A loaded BPD shotgun carried in a police vehicle shall contain five rounds of .00 buckshot in the magazine, action closed, and the safety shall be in the “ON” position. A shotgun shall not be carried in a police vehicle with a round of ammunition in the chamber.
2. Shotgun slugs shall also be available for duty use.
3. Shotguns while being carried by an officer in a non-tactical situation shall be carried with the muzzle pointing up and the height of the top of the muzzle should be above the head of the tallest person within the general area.
4. The loading and unloading of BPD shotguns shall be done outside of Police Headquarters. Shotguns stored in reserve shall be maintained in the equipment room unloaded, action open and the safety shall be in the “ON” position.

IV. PATROL RIFLES

- A. The AR-15 patrol rifle, in configurations approved by the Firearms Committee, is the primary patrol rifle available for use in the field as an assigned rifle to an individual officer or assigned daily. Only BPD-approved ammunition shall be used as recommended by the Federal Bureau of Investigation.
- B. The Sig Sauer MPX SBR, in configurations approved by the Firearms Committee, is also available for use in the field as assigned at the direction of a supervisor. Only BPD-approved ammunition shall be used as recommended by the Federal Bureau of Investigation.
- C. Shared rifles will be available to officers not issued a rifle. Shared rifles will be sighted by the BPD firearms instructors annually. Officers will sign out rifles at the beginning and return them at the end of each shift.
- D. Issued rifles will be provided to a designated group of individual officers for long term use and are not transferable unless authorized. Issued rifles may be subject to approved modifications only as specified below.
- E. Officers carrying rifles are required to qualify annually as specified by the firearms committee.
- F. The OIC shall:
 1. Ensure that officers assigned or issued a patrol rifle have them during their shift are accounted for and inspected.
 2. Notify the Administrative Services Bureau and Firearms Supervisor of damage or malfunction.
- G. Officers assigned or issued a patrol rifle are required to have them in the field and available while on patrol. Officers may seek permission from the OIC, under special circumstances not to carry the rifle with them while on patrol. The request will be noted on the OIC daily log.

1. Inspect and perform a safety and function check of the rifle in approved area at the beginning of each shift.
2. Report any malfunction of a BPD patrol rifle to the OIC.
3. Secure the rifle in a locked rack within the police vehicle or in a hard or soft sided case in the trunk of the vehicle. The vehicle must be locked at all times.
4. Secure the rifle in its case in their department locker or in designated secure locations at the end of each tour of duty. All ammunition and magazines removed, chamber cleared and safety on.
5. With prior written approval from a BPD Firearms Supervisor or Deputy Chief an officer may train with his/her issued rifle at an official "rifle" range while off duty (i.e. one of the local fish and game clubs).

H. Cruiser-carrying of the patrol rifle and Sig Sauer MPX SBR:

1. A loaded BPD rifle carried in a police vehicle shall contain a magazine-loaded two (2) rounds below the manufacturer's stated capacity (e.g. 28 rounds in a 30-round magazine). The bolt will be forward, the chamber empty and the dust cover closed. The safety selector will be set in the ON position. A rifle shall not routinely be carried in a police vehicle with a chambered round. Officers shall charge the weapon when they deploy it from the vehicle for possible use. Following deployment, as soon as it is prudent, they will download any chambered rounds before returning the weapon to the rack and/or case in the vehicle. When clearing the rifle of a chambered round the rifle will be pointed in a direction that ensures minimal risk of damage or injury in the event of an accidental firing.
2. Rifles will be transported by officers in non-tactical situations with the muzzle up or slung with the muzzle down.

I. Department Armorer shall inspect and maintain all BPD weapons annually. They shall ensure all BPD patrol rifles are fired no less than once annually.

J. All repairs shall be made by a Department Armorer or other qualified sources, approved by a Department Armorer. A record shall be maintained of all maintenance performed.

K. Officers issued a patrol rifle or using their authorized personally-owned rifle will be permitted to purchase, at their own expense, approved non-magnified sights (e.g., EOTech, Aimpoint, or Vortex). Officers can also add a stand-alone magnifier as long as the magnifier can be immediately disengaged from the sight system so that the sight can be used without magnification. (An example of this type of magnifier is the EOTech 3x spring-loaded magnifier.)

L. With the approval of the Firearms Supervisor, officers may be authorized to use 1x variable low power optic with a front objective lens no larger than 2 inches (50mm). These optics must allow a true one-power on the low end of its designated range and while also providing the officer with the ability to manually adjust the magnifier to engage threats at greater distances on the high end of its designated range. Examples of

these types of variable powered optics are the Vortex Viper PST 1-4x24, the Votrex Strike Eagle 1-6x24 or 1-8x24, the Trijicon AccuPower 1-4x24, the Burris MTAC 1-4x24, or the Eotech Vudu 1-6x24. The officer shall complete all annual training with the sight in place prior to using it while on patrol. At no time will the BPD be responsible for lost or damage to sights or magnifiers that are personally owned.

- M. Officers issued a patrol rifle may, at their own expense, be allowed to add an approved fore-end pistol grip. The officer shall complete all annual training with the grip in place prior to using it while on patrol. At no time will the BPD be responsible for lost or damaged grips that are personally owned.

V. OFFICER-OWNED RIFLES

- A. Officers who have completed their probationary period may be allowed to carry a personally-owned rifle while on duty.
 - 1. Officer-owned rifles will be presented and approved by the firearms committee and/or rifle instructors prior to use on duty.
 - 2. The serial number of the officer owned rifle will be checked and recorded once a calendar year during rifle training.
- B. Officer-owned rifles must meet the following requirements:
 - 1. Rifles will be of the AR-15 designation and chambered to fire the NATO 5.56mm/.223 caliber ammunition and must be made to mil-spec with no modifications so that rifle function is identical to BPD-owned AR-15 rifles.
 - a) Piston-driven AR-15 rifle systems may also be used in place of direct impingement.
- C. The only ammunition approved for on-duty carry will be issued by the BPD.
- D. Officers using an external vest carrier may carry two visible rifle magazines on their person. This will not restrict the carrying of additional magazines out of view within pockets or on special response vests that are not the normal Class C uniform.
- E. Training
 - 1. Officers will ONLY be allowed to carry a personally owned AR-15 rifle on duty upon completion of a BPD approved training course and qualification. This training must be conducted by BPD instructors.
 - 2. Officers who fail to meet the annual qualification requirement will not be allowed to carry a rifle (personal or BPD-owned) on duty until such time as the qualification is completed.
- G. Officer responsibilities:

1. Officers will be responsible for care and maintenance of the rifles and their approved attachments and accessories. Any repairs to the rifle are required to be completed by an authorized AR-15 armorer.
 - a. Officer-owned weapons will be inspected by a Department Armorer at a minimum of once a calendar year, and an armorer may inspect officer-owned weapons at any other time without notice.
 - b. Any rifle not found to be in good working order must be immediately taken out of service and the officer will not be permitted to carry the rifle until such time as it is repaired.
 - c. If the rifle cannot be repaired by a Department Armorer, it is the officer's responsibility to have the rifle repaired by the manufacturer.

H. Storage and use:

1. Officers approved to carry their owned rifle will carry that rifle with them every shift.
2. If an officer is unable to carry his or her owned rifle on a shift, the officer will immediately notify the on-duty OIC or relevant supervisor.
3. While on duty, officer-owned rifles must be carried "cruiser ready" and in the same manner as BPD-owned rifles per this Appendix.

I. On-duty discharge:

1. If an officer-owned rifle is discharged in the line of duty, that weapon will be submitted for evidentiary reasons as part of the investigation.

J. Off-duty officers are responsible for ensuring the proper operation of any personally owned rifle and compliance with all applicable firearms laws; the BPD shall not be liable for any claim or injury associated with a personally owned rifle when the officer is not on duty.

K. The BPD reserves the right to rescind an officer's approval to carry a personally owned rifle for any reason at any time.

L. Officers may use sound suppressors on officer-owned duty rifles. Suppressors must not alter the firing mechanisms or discharge function of the rifle in any material way. Any officer who wishes to use a suppressor on duty must have the make and model of the suppressor approved by the firearms supervisor. The firearms supervisor maintains a list of currently approved suppressors. Before any officer uses an approved suppressor on duty, the officer MUST qualify with the device during the yearly duty-rifle qualification course.

M. All relevant BPD directives shall apply to personally owned rifles.

VI. OFFICER-OWNED HANDGUNS

A. Officer-Owned Handgun

1. Officers who have completed their probationary period may be allowed to carry a personally-owned handgun while on duty for the express purpose of utilizing Miniature Red Dot Sights (MRDS). MRDS aid in maintaining a constant focus on targets. This can significantly improve threat awareness, help prevent mistake-of-fact shootings, and aid in more precise round placement over traditional iron sights. The lights have also been known to provide a deescalatory effect when subjects see the dot. If an officer wishes to use a MRDS on duty, he or she must use an officer-owned handgun and officer-owned MRDS, each purchased at the officer's expense.
 - a. Officer-owned handguns must be presented to and approved by the firearms supervisor and/or firearms instructor.
 - b. The serial number of the officer-owned handgun will be checked and recorded once each calendar year during handgun training.
2. All officer-owned handguns will be one of two models, either Glock G17 MOS or Glock G19 MOS, chambered for 9mm, and will be "factory" approved. No other handguns are authorized.
3. Any modifications to the officer-owned handgun must be approved by the firearms supervisor and installed by a Department Armorer.

VII. FIREARMS SAFETY

- A. The Department does not require the carrying of a firearm while off-duty. If an officer chooses to carry a firearm other than the BPD-issued firearm off-duty, the officer is encouraged to demonstrate and document proficiency with the firearm.
- B. Except for general maintenance, storage or authorized training, officers will not draw or exhibit any firearm in public unless circumstances create a reasonable belief that it may be necessary to lawfully use the weapon in conformance with other sections of this policy.
- C. An officers will not point or direct a firearm at a person unless circumstances create reasonable belief that it may be necessary to lawfully use the weapon in conformance with other sections of BPD directives. Such pointing is a use of force and must be documented.
- D. An unintentional discharge barrel will be available for loading and unloading of weapons. The muzzle of the weapon will be pointed into the unintentional discharge barrel when chambering or ejecting a live round.
- E. The BPD encourages storing BPD-approved weapons securely at Headquarters when off duty. Wherever an officer chooses to store her/his weapon it must be secured in such a way as to reasonably insure that no unauthorized person will have access to or gain control of the weapon. The BPD encourages officers to store their weapon unloaded.
- F. Officers will exercise all customary safety precautions and obey all appropriate rules or directives while practicing on the range.

- G. Officers shall keep their firearms in clean, in working condition with special care taken to clean and lubricate the weapon after firing.
- H. No alterations in the mechanical action or functions of any weapon carried on duty shall be made unless by the Department Armorer for that weapon.
- I. Any unintentional firearms discharges of a department owned/approved weapon while on or off duty or any unintentional firearms discharges while inside the BPD or special assignment locations (CUSI/DEA) 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 unintentional discharge unless the Chief or his/her designee determines that mitigating circumstances exist which prohibits expeditious completion of the report. In such cases, the report shall be completed as soon as is practical once the mitigating circumstance(s) has been resolved. If the officer is off duty, the officer must notify his/her immediate supervisor who will notify the appropriate Deputy Chief. If deemed necessary by the Chief of Police, a review of the circumstances will be conducted by the firearms group or a designee of the Chief of Police. Upon completion of the review, the firearms group along with the training unit will complete a remedial training plan for the involved officer at the direction of the Chief of Police or his/her designee.

VIII. FIREARMS INSPECTIONS

- A. Every department approved duty weapon will be inspected annually during firearms qualifications. Weapon shall be visually inspected by a certified firearms instructor to insure that they are in proper working order. Additionally, firearms instructors may conduct periodic weapons inspections at roll call.
- B. Written documentation shall be required for each inspection stating the date of the inspection as well as the serial number of each weapon and the name of the employee authorized to carry it. Copies of the firearms inspection report shall be maintained in the Office of Training and Recruitment.



Jon Murad, Chief of Police (acting)

April 5, 2023
Effective Date

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**BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD05 Appendix G: Conducted Electrical Weapons (CEWs)
Reviewed and published June 17, 2020**

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I. PURPOSE

The purpose of this directive is to define the parameters in which properly authorized officers of the Burlington Police Department (BPD) may use Conducted Electrical Weapons (CEWs).

II. POLICY

When properly used, Conducted Electrical Weapons (CEWs) can be an effective and efficient law enforcement tool that can reduce injuries to suspects, bystanders, and law enforcement officers. 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 the BPD's policy to clearly delineate the use of the CEW to remain in line with BPD training guidelines, CEW training guidelines, and Vermont Statute Title 20 VSA 151 Section 2367. (Internal Security and Public Safety, Vermont Criminal Justice Training Council, Statewide policy; electronic control devices; reporting.)

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 that, upon impact, deliver an electrical pulse designed to incapacitate a subject temporarily. 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 “Electronic control devices” that are defined at 20 VSA § 2367(a)(1) as “device[s] 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.”

- B. **Special populations.** Members of special populations include subjects an officer has reason to believe are:
- Cognitively impaired such that they are unable to comply with an officer’s instructions.
 - Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or to follow directions.
 - Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer’s directions.
 - Under 18 years of age.
 - Pregnant.
 - Over 65 years of age.
 - 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:
- Operating a motor vehicle.
 - Standing in an elevated area, near water, or near flammable materials (including but not limited to alcohol-based chemical sprays).
 - Restrained.
- D. **Special consideration.** A consideration of: (i) 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 (ii) 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 the subject into custody or to seize the subject, 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 oneself to an object does not constitute active resistance.
- F. **Active Aggression.** Behavior that creates an imminent risk of physical injury to a subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include but are not limited to an attack on an officer consisting of strikes, wrestling, undirected strikes with injury potential, kicks,

shoves, or punches. Examples may also include words or behavior such as pre-assault cues that 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.

IV. CEW USE AND DEPLOYMENT PROCEDURE

- A. Only officers who complete training on the use of CEWs containing the minimum elements set forth in Section 4 of this policy, as approved by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
- B. 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.
- C. When it is safe to do so, BPD officers will display the CEW and provide a verbal warning prior to deploying a CEW.
- D. 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.
 2. If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.
 3. To deter vicious or aggressive animals that threaten the safety of the officer or others.
- E. Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.
- F. An officer should attempt to avoid deployment to a subject's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
1. When targeting a subject from the front, the preferred target area is a horizontal line approximately two (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.
 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.
- G. Officers should use the minimum number of cycles necessary to take a suspect into custody or mitigate their assaultive behavior.

- H. 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.
- I. When it is safe to do so, officers should 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.
- J. 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.
- K. 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 a 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.

V. POST-DEPLOYMENT PROCEDURE

- A. 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.
- B. 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:
 - 1. The probes embedded in a sensitive area such as the face, neck, throat, groin, female breast, or stomach of a pregnant woman.
 - 2. 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:
 - Suffers an obvious injury.
 - Does not appear to recover properly and promptly after deployment.
 - Is a member of a special population.
 - Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.
 - Has been subjected to a deployment to his or her chest.

- 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.
- E. If a subject refuses additional medical attention, that refusal should be documented.
- F. When an officer has reason to believe the officer is responding to a situation that may necessitate emergency medical services, the officer shall make reasonable efforts to summon such services in advance.
- G. 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 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:
- The date, time, and location of the incident.
 - The officer(s) involved in the incident, identifying which officer(s) used CEWs.
 - The type of CEW deployment, i.e., display, drive stun, or probe mode.
 - 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.
 - A list of other known witnesses.
 - The number of CEW cycles used, the duration of each cycle, and the duration between cycles.
 - The level and description of resistance encountered.
 - Whether CEW use was effective.
 - The type of crime/incident in which the subject was allegedly involved.
 - The approximate range at which the CEW was used.
 - The point of impact.
 - Whether law enforcement used or attempted to use any other types of force.
 - The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.
 - The type of injuries, if any, sustained by any of the involved persons including the officer(s).
 - When possible, photographs of the CEW probe entry sites.
- H. 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.
- I. 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.

- J. 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.
- K. All use-of-force reports and departmental memorandum required under this policy shall be reviewed by the officer's supervisor. The BPD will conduct a use-of-force review in the following situations:
 - The BPD receives a complaint of excessive use of force.
 - The supervisor recommends conducting a use-of-force review.
 - The encounter resulted in death or serious bodily injury.
 - The individual exposed to the CEW is a member of a special population.
 - An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.
- L. Upon request, the subject of a CEW deployment, or his/her next of kin, shall be kept informed of the procedural status and final result of the review.
- M. Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council all incidents involving the use of a CEW in a form to be determined by the Council.

VI. TRAINING REQUIREMENTS

- A. Training for officers authorized to carry CEWs shall be conducted annually.
- B. 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.
- C. Training shall emphasize that CEWs may be less-lethal weapons, but are not non-lethal nor less-than-lethal weapons.
- D. Training shall also incorporate, at a minimum:
 - Instruction on the use-of-force continuum.
 - Techniques to avoid or deescalate confrontations.
 - The underlying technology and operation of CEWs.
 - The physiological effects upon an individual against whom such a CEW is deployed.
 - 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.
 - Scenario-based training.
 - Proper removal of CEW probes.
 - The potential medical needs of a subject who has been subjected to a CEW deployment.
 - The post-deployment reporting requirements.

- 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.

E. 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. Departments requiring or allowing its officers to undergo a CEW deployment 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.

VII. MEASUREMENT AND CALIBRATION

A. CEWs shall be calibrated to ensure the electrical output of the device is within manufacturer's specifications under the following circumstances:

- 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.
- Annually, only if measurement and calibration equipment is available in the state.
- 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.

B. CEWs that are self-calibrating are not subject to these provisions unless a law-enforcement agency requires calibration pursuant to its own policies and procedures or there are reasonable grounds to believe that the self-calibration is not functional.

C. 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.

VIII. REVIEW OF POLICY

Vermont's Law Enforcement Advisory Board shall review this policy annually.

Reviewed and adopted by the Burlington Police Commission on June 16, 2020.



Jon Murad, Chief of Police (acting)

June 30, 2020
Effective Date

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