

Stowe Police Department

General Order: 2.03.2 Conducted Electrical Weapon	Related General Orders: 2.01 Use of Force/Response To Resistance 2.02 Response To Resistance Reporting
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.	
Applicable Vermont Statutes:	
Issued By: Donald B. Hull, Chief of Police	
Date Implemented: 09/12/2012	Date Revised: 04/14/2015. 01/14/2016

I. PURPOSE:

1. To set forth guidelines and regulations for Conducted Electrical Weapon (CEW) authorized by the Stowe Police Department, and to ensure proper training and qualification procedures for all personnel.
2. To outline general guidelines for the carrying and use of CEW by Stowe Police Department personnel.

II. POLICY:

1. It is the policy of the Stowe Police Department to equip and train its officers so they may perform their duties in a safe and responsible manner.
2. The use of CEW shall be in accordance with General Order 2.01 Use of Force.

III. DEFINITIONS:

Active Aggression: Behavior that creates an imminent risk of physical injury to the subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include an attack on an officer, strikes, wrestling, undirected strikes with injury potential, kicking, shoving, punching, and other words or behavior indicating that such actions are imminent.

Active Resistance: A subject using physical activity to resist or takes an affirmative action to defeat an officer's ability to take him/her into custody or to seize him/her, but the subject's

actions would not lead a reasonable officer to perceive a risk of physical injury to him/herself, the subject, or a third person. Examples of active resistance include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance. Refusing to move upon verbal direction or chaining oneself to an object does not constitute active resistance.

Authorized Weapons: Weapons that meet Department specifications and officers are permitted to carry; and for which officers successfully complete proficiency and safety training.

Conducted Electrical Weapon (“CEW”): A less-lethal law enforcement device that delivers an electrical pulse to the body of a subject in either a “drive stun” or “probe” mode. When used in “probe mode” the device discharges two probes that remain connected to the CEW via wire and which upon impact deliver an electrical pulse designed to temporarily incapacitate that subject. When used in “drive stun” mode, the device makes direct contact with and delivers an electrical pulse to the body of a subject, but does not result in the same temporary incapacitation of a subject as when used in “probe” mode. CEWs include “Electronic control devices” which are defined at 20 V.S.A. § 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”

Critical Incident: A deployment of a CEW that results in serious bodily injury or death of the subject.

Deadly Force: Any physical force that can reasonably be expected to cause death or serious physical injury.

Force: Any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of a firearm, use of chemical spray, chokeholds or hard hand control, taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with minimal or no resistance. Use of force is lawful if it is objectively reasonable under the circumstances, and the minimum amount of force that is necessary to effect an arrest, or protect the officer or other person, is used.

Great Bodily Harm/Serious Physical Injury: Serious bodily injury that creates a substantial risk of death, causes serious or permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.

Imminent Threat: An officer’s reasonable perception of impending danger, death, or serious injury from any action or outcome that may occur during an encounter. A subject may pose an imminent or impending danger even if he or she is not pointing a weapon at the officer but has, for example, a weapon within reach, is running for cover carrying a weapon, or running to a

place where the officer has reason to believe a weapon is available.

Level of Control: The amount of force that an officer uses to gain control over a subject.

Level of Resistance: The amount of force used by a subject to resist compliance with the lawful order or action of an officer.

Non-Deadly: Any force used by an officer that would not reasonably be expected to cause death.

Non-Verbal and Verbal Non-Compliance: When a subject expresses his/her intentions not to comply with an officer's directive through verbal and non-verbal means. An officer may encounter statements ranging from pleading to physical threats. Such statements may also include physical gestures, stances, and subconscious mannerisms.

Objectively Reasonable Force: The degree of force used in effecting an arrest, investigatory stop, or other seizure is evaluated by using an objective, reasonable police officer standard. The reasonableness of each particular use of force will be judged from the perspective of a reasonable officer on the scene, based on the facts and circumstances known to and confronting the officer at the time. (See, *Graham v. Connor*, 490 US 388 (1989.)) In determining the appropriate level of force to be used, officers shall evaluate each situation in light of the unique facts and circumstances of each case. Those factors include, but are not limited to, the seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the risk or apparent attempt by the subject to escape; and whether the subject was posing an imminent threat to officers or others.

Passive Resistance: When a subject does not cooperate with an officer's commands, but does not take action to prevent being taken into custody. For example, a protestor who lies down in front of a doorway and must be carried away upon arrest.

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.

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).

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 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.

Verbal Commands: The use of advice, persuasion, and/or warnings prior to resorting to actual physical force. In an arrest situation officers shall, when feasible, give the arrestee simple directions with which the arrestee is encouraged to comply. Verbal commands are the most desirable method of dealing with an arrest situation.

IV. PROCEDURE:

GENERAL

1. Sworn personnel of the department who are authorized to carry CEW shall exercise the utmost care and caution in the use.
2. Sworn personnel may carry only approved CEW within the provisions of Department policy and any applicable State or Federal law.
3. It shall be prohibited for any member to appear in public in an intoxicated condition while carrying any weapon. No member shall carry any weapon under the influence of any intoxicant.
4. Carrying any Department weapon while on suspension or during a leave of absence, where the officers' official commission is suspended, is prohibited.
5. Officers will not point a CEW at a person unless circumstances create a strong reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this procedure.

9. Officers will secure and store their CEW, both on and off duty, in such a manner as to prevent unauthorized persons from gaining control over the weapon. All officers are responsible for the security of any CEW assigned to them.
10. Officers will immediately report any loss or theft, of a CEW, to the Department.
11. Each annual CEW qualification will include a review of the Department's Use of Force General Order.
12. The Chief of Police, any Sergeant and/or CEW instructor may conduct inspections of all departments CEW's any time.

Conducted Electrical Weapon (CEW)

1. CEW is considered to be a less-lethal weapon.
2. The CEW will be carried by authorized/certified officers while on duty.
3. Only officers who complete training on the use of CEWs containing the minimum elements set forth in this General Order and any training required and approved by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
4. CEW must be worn on the weak-side in either a weak-hand draw or cross-draw position.
5. 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.
6. Flight from an officer, standing alone, is not a justification for the use of an CEW. Officers should consider the nature of the offense suspected, the level of suspicion with respect to the person fleeing, and the risk of danger to others if the person is not apprehended immediately as well as the ground surface where the subject will foreseeable land.
7. When it is safe to do so, officers should display and provide a warning prior to deploying a CEW.
8. A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable. Model policies as well as courts have noted that giving a subject, who is assaultive toward the officer, a warning may enhance the danger to the officer and the subject by giving the subject time to avoid the deployment.
9. Officers should warn other officers that a deployment is about to occur.

10. Officers may only deploy CEWs in the following circumstances:

A. In response to either:

- a. A subject exhibiting active aggression.
- b. A subject actively resisting in a manner that, in the officer's judgment, is likely to result in injury to the subject, the officer, or third persons.
- c. If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.
- d. To deter vicious or aggressive animals that threaten the safety of the officer or others.

11. The device should not be used on a handcuffed person to force compliance unless the subject poses a threat to the officer through physical conduct or active resistance cannot otherwise be controlled.

12. Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.

13. 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.

14. 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.

15. Officers having reason to believe they are dealing with a member of a special population or are dealing with special circumstances shall give special consideration to deploying an CEW. Officers having reason to believe they are dealing with an individual with a psychiatric disability shall consider consulting with the area designated mental health agency.

16. A contributing factor to serious injury or death is the level of a subject's exhaustion. Studies recommend that when an officer believes that control of a subject will be necessary and met with resistance, deployment of the Electronic Control Device should be considered early on in the event so that the person has not reached a level of exhaustion prior to the Electronic Control Device's use.

17. Officers must be trained concerning the ability of electrical charge to act as an ignition for combustible materials. (Note: Officers have been seriously injured and or killed after deploying an Electronic Control Device in the presence of open natural gas during suicidal person call).

18. An officer should attempt to avoid deployment to a suspect's head, neck, upper chest, genitals, female breast, and stomach of a pregnant woman.
19. When targeting a subject from the front, the preferred target area is a horizontal line approximately 2 inches lower than the sternum and below. An ideal probe deployment from the front will "split the hemispheres" having one probe strike a subject above the belt line and the other probe striking the subject in the thigh or leg thereby activating the hip flexor.
20. 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.
21. Officers should use the minimum number of cycles necessary to take a suspect into custody or mitigate their assaultive behavior.
22. Alternative tactics should be utilized where the officer has prior information that the subject suffers from a disability which would increase the danger to that person by using the Electronic Restraint Device unless deadly force would be justified. i.e. A person at the scene tells an officer that the subject has a heart condition.
23. Officers who are aware that a female subject is pregnant shall not use the Electronic Control Device unless deadly force would be justified. Officers should also consider the particular subject and any vulnerabilities they may have such as: juveniles, persons who are small in stature, and the elderly.
24. 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.
25. Electronic Control Devices shall not be used against a person who is in physical control of a vehicle in motion unless deadly force would be justified based on an existing imminent threat.
26. Officers should consider the location and environment of the subject. i.e. Is the subject at the top of a stairwell such that when incapacitated by the Electronic Control Device they fall down the stairs causing a collateral injury. Officers shall avoid using Electronic Control Device in cases where the subject is elevated i.e. roof, fire escape, tree, bridge, stairwell, etc. etc. such that the secondary impact may cause serious injury.
27. Officers should be aware that a subject's heavy clothing may impact the effectiveness of the Electronic Control Device.

Post Deployment Procedure

1. Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration. Once restrained, the subject should be moved into a recovery position that facilitates breathing.
2. As soon as practicable after CEW deployment, the CEW probes shall be removed from the subject. The probes shall be treated as a biohazard. In the following cases, officers should wait for EMS to remove the probes:
 - A. The probes embedded in a sensitive area such as the face, neck, throat, groin, hands, female breast, or stomach of a pregnant woman.
 - B. The officer encounters problems when attempting to remove the probe.
 - C. Medical attention at a medical facility shall be offered to all individuals subjected to a CEW deployment.
3. Emergency medical services shall be contacted if a subject:
 - A. Suffers an obvious injury.
 - B. Does not appear to recover properly and promptly after deployment.
 - C. Is a member of a special population.
 - D. Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.
 - E. Has been subjected to a deployment to his or her chest.
 - F. Exhibits signs of extreme uncontrolled agitation or hyperactivity prior to the CEW exposure or the subject was involved in a lengthy struggle or fight prior to the CEW exposure.
4. If a subject refuses additional medical attention, that refusal should be documented.
5. When an officer has reason to believe (s)he is responding to a situation that may necessitate emergency medical services, (s)he shall make reasonable efforts to summon such services in advance.
6. Photographs of the CEW probe entry sites shall be taken.

7. The department shall also collect the download data, cartridges, probes, and wires from the CEW that was deployed and shall maintain them as evidence. The download shall occur as soon as reasonably practical after the CEW is deployed.
8. When possible, in instances in which more than one CEW has been deployed, a sampling of the AFID tags should also be collected and maintained them as evidence.
9. Accidental discharges that do not connect with any living thing shall be documented in a departmental memorandum explaining in detail how the discharge occurred within 48 hours of the alleged accidental discharge and submitted to the Chief of Police through the chain of command.
10. 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. The Council shall make this information available on its website.

Training Requirements

1. Training for officers authorized to carry CEWs shall be conducted annually.
2. Training shall not be restricted solely to training conducted by the manufacturer of the CEW. However, training shall include the recommendation by manufacturers for the reduction of risk of injury to subjects, including situations where a subject's physical susceptibilities are known. Training will also include any training required and approved by the Vermont Criminal Justice Training Council.
3. Training shall emphasize that CEWs may be less-lethal, but are not non or less-than lethal.
4. Training shall also incorporate, at a minimum:
 - A. Techniques to avoid or deescalate confrontations.
 - B. The underlying technology and operation of CEWs.
 - C. The physiological effects upon an individual against whom such a CEW is deployed.
 - D. 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.
 - E. Scenario-based training.
 - F. Proper removal of CEW probes.

- G. The potential medical needs of a subject who has been subjected to a CEW deployment.
- H. The post-deployment reporting requirements.
- I. Instruction on interacting with individuals experiencing a mental health crisis, emotional crisis or other type of crisis, as recommended by the Vermont Criminal Justice Training Council.

5. 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. Stowe Police Departments does not require, but will allow if an officer if he/she chooses. If the officer is 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.

6. Only those officers demonstrating proficiency in the use of agency authorized weapons will be allowed to carry such weapons.

7. Training will be conducted by certified instructors.

8. As part of the annual in-service training, the Use of Force General Order and the Use of Force Reporting General Order will be reviewed.

CARE OF CEW's

1. All Less-Than-Lethal weapons shall be cared for in a manner as prescribed by the manufacturer and as instructed by the instructor

INVENTORY/LOG

1. The Department CEW Instructor(s) and Training Sergeant shall maintain a log of all Department Conducted Electronic Weapons (CEW's).

2. Information will include:

- Manufacturer of Weapon
- Model of Weapon
- Serial number
- Cartridge Numbers
- Officer Issued (Name)

3. A copy of the Department CEW log shall be kept with the Department Training Sergeant and with the Chief of Police.

USE OF FORCE – RESPONSE TO RESISTANCE REPORTING

1. All Use of Force-Response to Resistance procedures and reporting forms must be completed as out-lined in General Order 2.02 Use of Force-Response to Resistance Reporting

V. DISCIPLINE:

1. Any violation of this policy may be grounds for disciplinary action consistent with any applicable collective bargaining agreement, statute, Department policy or Town policy.