



COLCHESTER POLICE DEPARTMENT

		SUBJECT: Use of Force	
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SPECIAL INSTRUCTIONS: Includes Appendices		Replaces GO # 15 dated 10/01/2021	
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ATTACHMENTS: Appendices A, B, C, and D			

INTRODUCTION:

This is a statewide use of force policy created pursuant to Vermont 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 V.S.A. § 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 de-escalation 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:

The Colchester Police Department believes in the sanctity of every human life and in the value of de-escalation 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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SECTION 1: DEFINITIONS

- A. 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.
- B. 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.
- C. 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.

- D. 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.
- E. De-escalation** - 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 de-escalation 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 de-escalating a situation.
- F. 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.
- G. 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
- H. Intervene** – To come between, whether physically or verbally, to prevent or alter a result or course of events.
- I. Law enforcement officer** – Shall have the same meaning as 20 VSA 2351a⁴, used interchangeably with “officer.”
- J. Necessary** - When a reasonable officer with the same information and in the same situation would conclude that no reasonably effective alternative appears to exist.
- K. 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

¹ H.145 language (a)(2)

² H.145 language (a)(3)

³ H.145 language (a)(4)

⁴ H.145 language (a)(5)

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;
 - 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)).

L. Chokehold— means 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

M. 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.

N. Totality of the circumstances – means 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

SECTION 2: 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

⁵ H.145language (a)(1)

⁶ H.145language (a)(6)

⁷ H.145language (b)(3)

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 re-assess the totality of the circumstances in any encounter where force is necessary to gain compliance from an individual.

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 de-escalation 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 de-escalation 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 de-escalation means that officers should not knowingly create exigency or take actions that may increase the likelihood of force becoming necessary.

De-escalation 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, de-escalation must be re-evaluated 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

⁸ H.145 language (b)(4)

⁹ H.145 language (b)(2)

¹⁰ H.145 (b)(5)

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 de-escalation as well as the ability to use time and physical distance to reduce the likelihood of force being necessary.

SECTION 3: LESS LETHAL FORCE

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:

- A. The seriousness of the offense the officer believes the subject is involved in;
- B. Whether or not the subject poses an immediate physical threat to the officer or others;
 - a. The degree of the threat posed by the subject;
 - b. Whether the subject is actively resisting or attempting to evade arrest/detention by flight;
 - c. 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 B (d) 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 de-escalation 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, 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 authorized by CPD sworn personnel use of force include:

- a. **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 the aerosol spray used by the Colchester Police Department. 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.
- b. **Conducted Energy Weapon (CEW):** *See CPD General Order 15A on CEW use.* 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 non-firearm side in a "support hand draw" manner.
- c. **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.

- d. 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.
- e. **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 CPD General Order # 20 for more detail.
- f. **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.”
 - i. 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.
 - ii. 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.)
 - iii. 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.
 - iv. 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.
- v. 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.

g. Firearms (Lethal Force): See Section 4 below.

h. 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:

- i. Severity of the offense or significance of the need to apprehend the subject;
- ii. Age;
- iii. Size;
- iv. Skill level (whether they possess knowledge of martial arts, advanced fighting techniques, etc.);
- v. Number of suspects;
- vi. Whether the suspect is armed or reported to be armed;
- vii. Actual proximity to weapons;
- viii. Prior experience with the suspect(s);
- ix. Location of the encounter;
- x. Background or peripheral hazards;
- xi. The subject's response to commands/instructions;
- xii. Availability of cover for the officer(s);
- xiii. Physical condition and position of the officer and subject(s) – are there injuries, is the officer on the ground or in a compromised position;
- xiv. 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. 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.

¹¹ H.145 language (b)(5)

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.

SECTION 4: LETHAL FORCE

General: 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.

Agencies shall also provide guidance on care, safe handling, storage and inspections of all lethal force tools.

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

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.

¹² H.145 language (c)(1 A & 1 B)

¹³ H.145 language (c)(2)

¹⁴ H.145 language (c)(3)

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

Lethal force restrictions:

- A. Officers shall not use deadly force against a person based on the danger that person poses to themselves, 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 their own life and no other.
- B. Chokeholds: A law enforcement officer shall not use a chokehold on a person unless deadly force is justified pursuant to 20 V.S.A. § 2368 (c) (1 – 4).¹⁷
- C. Warning shots: Are strictly prohibited.
- D. 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.
- E. 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 (B.) below), and at no other time in any public place, except for humane destruction of an animal described below.
- F. 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.
- G. 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.

SECTION 5: 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.

¹⁵ H.145language (c)(5)

¹⁶ H.145language (c)(4)

¹⁷ H.145 language ((c)(6)

¹⁸ H.145(b)(7)

SECTION 6: 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)

SECTION 7: 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:
 - i. 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.
 - ii. 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.
 - iii. 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 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.
- B. 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.

- C. 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.
- D. Supervisory review procedure – A supervisor will review the Use of Force Report and all supporting documentation. At a minimum, supervisory review includes:
 - i. Ensuring that the information submitted is complete and all required data is present.
 - ii. 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.
 - iii. Identifying any need for training, performance counseling or other administrative action.
 - iv. If necessary, consulting with the officer or returning the report for more information.
 - v. 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
 - vi. The Chief of Police shall make a referral to the Vermont Criminal Justice Council pursuant to 20 V.S.A. §2401 (2)(C) anytime a finding of excessive use of force is made.
 - vii. The Chief of Police shall make a report to appropriate authorities if the review uncovers evidence that a crime has been committed.

SECTION 8: 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.

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 to determine if there are any training or policy implications.

¹⁹ H.145language (b)(1)

This investigation may result in remedial training, recommendations for discipline or commendation, or recommendations for policy revision. [See Appendix A for more information]

SECTION 9: 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, de-escalate conflict and recognize during a physical confrontation when de-escalation 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.

##

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



COLCHESTER POLICE DEPARTMENT

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POLICY: This policy sets forth recommended minimum standards for training officers on using Conducted Electrical Weapons (CEWs), the circumstances under which officers should use CEWs, and the procedures officers should follow after using CEWs. Although this policy contains provisions and principles 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. The use of a CEW is a use of force that is governed by this policy as well as the Statewide Use of Force Policy found in CPD General Order 15.

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- V. Measurement & Calibration

I. DEFINITIONS:

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

- B. Special populations: Members of special populations include persons an officer has reason to believe are:
 - 1. Cognitively impaired such that they are unable to comply with an officer's instructions.
 - 2. Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or follow directions.
 - 3. Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer's directions.
 - 4. Under 18 years of age.
 - 5. Pregnant.
 - 6. Over 65 years of age.
 - 7. Physically infirm, subject to or diagnosed with a heart condition, or epilepsy or a seizure disorder.
- C. Special circumstances: include situations where an officer has reason to believe the subject is:
 - 1. Operating a motor vehicle.
 - 2. Standing in an elevated area, near water, or near flammable materials (including but not limited to alcohol-based chemical sprays).
 - 3. 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. Critical Incident: A deployment of a CEW that results in serious bodily injury or death of the subject.

II. CEW USE & DEPLOYMENT PROCEDURES

- 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 Council, shall be authorized to carry CEWs.
 - a. 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 non-firearm side in a "support hand draw" manner.
- 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, law enforcement should display and provide a warning prior to deploying a CEW.
- D. Officers may only deploy CEWs in response to the following circumstances:
 - 1. A subject exhibiting active aggression as defined in G.O. #15.
 - 2. 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.
 - 3. If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.
 - 4. 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 suspect'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 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.

III. POST DEPLOYMENT PROCEDURES

- 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 medical personnel 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 at a medical facility shall be **offered** to all individuals subjected to a CEW deployment. Further, Emergency medical services **shall be contacted** if:
 - 1. A subject suffers an obvious injury
 - 2. Does not appear to recover properly and promptly after deployment
 - 3. If the person is a member of a special population
 - 4. Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds
 - 5. Has been subjected to a deployment to his or her chest
 - 6. Exhibits signs of extreme uncontrolled agitation or hyperactivity prior to the CEW exposure or the subject was involved in a lengthy struggle or fight prior to the CEW exposure.
- D. If a subject refuses additional medical attention, that refusal should be documented.
- E. 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.
- F. With the exception of the required spark test, training 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 prior to the end of the officer's shift unless otherwise authorized by a supervisor. This use of force report shall contain the following, at a minimum:
 - 1. The date, time, and location of the incident
 - 2. The officer(s) involved in the incident, identifying which officer(s) used CEWs.
 - 3. The type of CEW deployment, i.e., display, drive stun, or probe mode.

4. Identifying and descriptive information for the subject, including any information indicating if the person is a member of a special population or was encountered during an incident involving special circumstances. If law enforcement consulted with any mental health agencies that fact should be noted.
 5. A list of other known witnesses.
 6. The number of CEW cycles used, the duration of each cycle, and the duration between cycles.
 7. The level and description of resistance encountered.
 8. Whether CEW use was effective.
 9. The type of crime/incident the suspect was involved in.
 10. The approximate range at which the CEW was used.
 11. The point of impact.
 12. Whether law enforcement used or attempted to use any other types of force.
 13. The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.
 14. The type of injuries, if any, sustained by any of the involved persons including the officer(s).
 15. When possible, photographs of the CEW probe entry sites.
- G. The department shall also collect the download data, cartridges, AFIDs, 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. 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.
- H. 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.
- I. All use of force reports and departmental memorandum required under this policy shall be reviewed by the officer's supervisor. The department shall conduct an administrative review of the use of force in the following situations:
1. The department receives a complaint of excessive use of force.
 2. The supervisor recommends conducting an admin review.
 3. The encounter resulted in death or serious bodily injury.
 4. The individual exposed to the CEW is a member of a special population.
 5. An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.
- J. Upon request, a suspect subjected to a CEW deployment, or his/her next of kin, shall be kept informed of the procedural status and final result of the review.

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

IV. TRAINING REQUIREMENTS

- A. Training for officers authorized to carry CEWs shall be conducted annually. 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.
- B. Training shall emphasize that CEWs may be less-lethal, but are not non or less-than lethal.
- C. Training shall also incorporate, at a minimum:
1. Instruction on the use of force continuum.
 2. Techniques to avoid or deescalate confrontations.
 3. The underlying technology and operation of CEWs and the physiological effects upon an individual against whom such a CEW is deployed.
 4. 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.
 5. Scenario-based training.
 6. Proper removal of CEW probes.
 7. The potential medical needs of a subject who has been subjected to a CEW deployment.
 8. The post-deployment reporting requirements.
 9. 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.
 10. 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.

V. MEASUREMENT & CALIBRATION

- A. CEWs shall be calibrated at the factory prior to shipping to ensure the electrical output of the device is within manufacturer's specifications. They should also be calibrated under the following circumstances:
 - 1. 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;
 - 2. Annually, only if measurement and calibration equipment is available in the state; and,
 - 3. 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. Exception – 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.

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COLCHESTER POLICE DEPARTMENT

SUBJECT: Use of Force – Administrative Warning for Use of Aerosol Agents

EFFECTIVE DATE: 04/22/2024

NUMBER: General Order # 15 Appendix B

SPECIAL INSTRUCTIONS: Includes attached warning page

Replaces GO # 15 Appendix B dated 10/01/2021

REEVALUATION DATE: as needed

APPROVED: *FAITH 122*

NO. PAGES: 1

ATTACHMENTS: CPD General Order 15, Administrative Warning Form

PROCEDURE:

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.

See attached for Warning page -

COLCHESTER POLICE DEPARTMENT
OC ADMINISTRATIVE WARNING
General Order 15 Appendix B



Detainee Name _____

Incident #: _____

Instructions:

Read the following form to the detainee that has been exposed to O/C (Oleoresin Capsicum). If the detainee shows excessive discomfort, difficulty breathing, or prolonged symptoms of exposure, seek medical attention regardless of the answers obtained below. Use the responses you obtain as additional information to decide on medical attention for the detainee.

You have been contaminated with an aerosol agent, Oleoresin Capsicum (OC), 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

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

Officer Signature

Date



COLCHESTER POLICE DEPARTMENT

		SUBJECT: Use of Force – Reporting Minimum Requirements	
EFFECTIVE DATE: 04/22/2024	NUMBER:	General Order # 15 Appendix C	
SPECIAL INSTRUCTIONS: N/A	Replaces GO # 15 Appendix C dated 10/01/2021		
REEVALUATION DATE: as needed	APPROVED: <i>AC/NE</i> 182	NO. PAGES: 2	
ATTACHMENTS: CPD General Order # 15			

PROCEDURE:

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 info of the person or persons force was used on.
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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COLCHESTER POLICE DEPARTMENT

SUBJECT: Use of Force – Guidelines for Interacting with Persons Known to be Experiencing or Perceived to be Experiencing Mental Impairment

EFFECTIVE DATE: 04/22/2024	NUMBER: General Order # 15 Appendix D
SPECIAL INSTRUCTIONS: N/A	Replaces GO # 15 Appendix D dated 10/01/2021
REEVALUATION DATE: as needed	APPROVED: <i>ACT 102</i> NO. PAGES: 9
ATTACHMENTS: CPD General Order # 15	

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 V.S.A. § 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 de-escalate 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

- i. Signs that someone may be experiencing mental impairment include, but are not limited to:

1. 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.
2. Appearance of heightened emotion or the opposite – flat affect/no emotions.
3. Atypical aggression or displaying an unusually high energy level.
4. 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).
5. Disorganized behavior or atypical behavior like walking in traffic, not having clothes on or doing things that are unexpected given the context/environment.
6. Incoherent speech, delayed speech, unprompted vocalizations or providing responses that do not match the questions asked.
7. Sensitivity to auditory or sensory stimulation, covering their ears, turning away.
8. Rocking back and forth or other self-soothing mechanisms.
9. 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 their level of force.

The person may be vulnerable to ill effects of Taser 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, their 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.¹

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 pose an imminent threat of death or serious bodily injury to the law enforcement officer or to another person.²

For example, if a person with a gun is threatening to kill themselves, 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:

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

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

- i. Recognizing that an individual may be overwhelmed and removing distractions from the scene.
- ii. Obtaining relevant information from family members, friends or others at the scene who know the individual and their history.
- iii. Asking an adult member of the individual's family to participate in transport.
- iv. Speaking slowly, simply, and briefly.
- v. Limiting the number of people who speak to the individual.
- vi. Maintaining a comfortable distance from the individual.
- vii. Engage in non-threatening communications.
- viii. Use the passage of time to defuse a situation.
- ix. Avoid physical contact.
- x. 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.³ 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.⁴

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.⁵

³ *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)

⁴ *Graham v. Connor*, 490 U.S. 386, 395 (1989).

⁵ *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:

i. BEFORE ARRIVAL TO THE SCENE

1. 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.
2. If there have been prior instances of the person needing assistance, does the caller know what helped?
3. Dispatch should ask the caller if there are weapons involved, who is on scene and what the physical environment is.
4. 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.

5. 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?
6. 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.

ii. ***UPON ARRIVAL AT THE SCENE***

1. 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**.
2. 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.

i. ***CONTAINMENT***

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

ii. ***TIME***

1. Slow down the pace of events and try to establish rapport. Try to create a non-threatening environment where conversation can occur.
2. 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.

iii. ***SELF-REGULATION***

1. Self-regulation – controlling your own level of stress and conveying calm. Officers should be mindful to not escalate things by their own behavior.

2. 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.
3. 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.
4. 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.

iv. *COMMUNICATION*

1. 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.
2. 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.
3. 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).
4. 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.
5. 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.
6. If an officer takes an action, assessing whether it had the desired effect or not will help inform next steps.

v. *COMMUNITY RESOURCES*

1. 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.
2. 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.

i. *DISPATCHER/CALL TAKER*

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

ii. *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?

iii. *UPON ARRIVAL*

1. 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.
2. Try to establish communication, even if through a closed door.
3. **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.**

iv. 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.

v. WARRANTS FOR EMERGENCY EVALUATION

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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COLCHESTER POLICE DEPARTMENT

SUBJECT: Use of Force – CPD Miscellaneous	
EFFECTIVE DATE: 04/22/2024	NUMBER: General Order # 15 Appendix E
SPECIAL INSTRUCTIONS: N/A	Replaces GO # 15 Appendix E dated 10/01/2021
REEVALUATION DATE: as needed	APPROVED: <i>ACTM 182</i> NO. PAGES: 7
ATTACHMENTS: CPD General Order # 15	

I. PURPOSE

These guidelines are an extension of the Statewide Use of Force Policy as outlined in General Order # 15 and is specific to the Colchester Police Department.

II. DEFINITIONS

A. Use of Force Committee – Colchester Police Department members who are certified as instructors by the Vermont Criminal Justice Council or other qualified source in the techniques and/or use of specific devices as outlined in this order and approved by the Chief of Police. A member of the Command Staff (Lieutenant or Deputy Chief) will also be a member of this committee. This committee shall include instructors in both lethal and non-lethal force. Subcommittees may be formed with instructors in their respective disciplines. The committee shall:

- i. Meet at least semi-annually. Select a chair from the members,
- ii. Select any subcommittees that may be desired.
- iii. Choose a Lead Firearm Instructor (See B. below)
- iv. When requested by command staff, review Use of Force reports and provide input.
- v. Assist the Chief of Police with any force related issues.

B. Lead Firearms Instructor

A member of the Colchester Police Department that is qualified through the Vermont Criminal Justice Training Council as a Firearms Instructor. The Lead Firearms Instructor will be approved by the Chief of Police from a recommendation of the Use of Force Committee. The Lead Firearms Instructor will:

- i. Plan and approve the course of fire for a minimum of four firearm training sessions (1 day, 1 night mandatory attendance).

- ii. Submit to the Command Staff member designated by the Chief of Police as responsible for training, records of all firearm trainings.
- iii. Maintain an inventory of all department firearms.
- iv. Make recommendations to the Chief of Police on the choice of duty ammunition for the department.
- v. Make recommendations to the Chief of Police on requests from members for back up firearms and the use of personally owned rifles while on-duty.

III. EQUIPMENT

A. Currently authorized less-lethal force equipment includes:

- 1. Aerosol spray: Oleoresin capsicum spray (concentration to be approved by the Chief of Police.
- 2. Conducted Electrical Weapon: Taser Model 7.
- 3. Restraint devices: handcuffs, leg restraints and flex cuffs
- 4. Control/Restraint/Impact tools: Officers 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, knees, arms, legs and bodies as well as tools such as straight batons or PR-24 or PR-21 side handle batons (fixed or expandable).
- 5. Specialty Impact Munitions (SIMs): 12 gauge shotgun dedicated and appropriately marked as SIMs delivery system weapon and less lethal ammunition (rubber balls, bean bag, etc.) as recommended by the Use of Force Committee and approved by the Chief of Police; and Pepperball Technologies OC delivery system with authorized projectiles.

A. Firearms/Cruiser Ready Department Weapons

a. DUTY WEAPONS

- i. While on duty, all Officers of the Department will carry only those firearms and ammunition that are issued or approved by the Department.
 - 1. Duty weapons will be either 9mm or .45 caliber Glock. All duty weapons will be “factory” approved. No modifications or repairs may be made to Department owned weapons unless the modification/repair is approved and made by a Firearms Instructor.
 - 2. The Firearms Committee may make recommendations for additions or modifications to any approved Department or personally owned firearms. These additions/modifications may include but are not limited to suppressors, magnified optics, and/or weapon mounted laser sight. Such recommendation(s) shall be submitted to the Chief of Police for his/her approval.
 - 3. Only Department approved ammunition may be used in any weapon carried on duty, and the ammunition must be factory fresh (new).
 - 4. Prior to being authorized to carry a weapon on duty, Officers must qualify with the weapon under Department standards and as required by

the Vermont Criminal Justice Council Rules & Regulations. Before being qualified to carry a weapon, the Officer must demonstrate knowledge of the weapon as to parts, fieldstripping, cleaning and safe handling techniques. They must also be able to demonstrate level 1 and 2 malfunction clearing.

5. 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:
 - a. The firearm will be cleaned after training use, as directed by the Firearms Instructor Sub-committee.
 - b. The firearm will be kept clean from dust, lint and other particles that tend to collect on the weapon through daily carrying.
 - c. The firearm will be kept properly lubricated.
 - d. When on duty the firearm will be fully loaded with a round in the chamber.
 - e. Uniformed Officers are required to carry a double magazine pouch with two extra magazines. Plain-clothes Officers are required to carry at least one extra magazine.
 - f. Officers in plain clothes who are carrying a firearm that is visible should display a badge and/or identification simultaneously to the extent possible.
6. At least annually the Firearms Sub-committee shall inspect all firearms owned or approved by the Department. In the case of shotguns and rifles, a Firearms Instructor shall fire each at least annually to ensure proper functioning.

b. SHOTGUNS

- i. Shotguns are an integral part of the field officer's equipment and may be deployed at the officer's discretion utilizing the standards as set forth in this General Order.
 1. A loaded Department shotgun carried in a police vehicle shall contain four rounds of .00 buckshot in the magazine, action closed and the safety shall be in the "ON" position. A shotgun shall not routinely 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 or slung with the muzzle pointing toward the ground.
 4. The loading and unloading of Department shotguns shall occur only in designated areas. Shotguns stored in reserve shall be maintained in the equipment vault unloaded, action open and the safety shall be in the "ON" position.
- ii. Prior to the start of each shift the officer shall:
 1. Ensure the shotgun is present and in cruiser carry mode, perform a safety check and securely lock it in the police vehicle.
 2. Notify the Firearms Instructor Group of damage or malfunction and take out of service.

c. PATROL RIFLES

- i. The AR-15 patrol rifle or a .223 caliber rifle, in configurations approved by the Firearms Committee, is the patrol rifle available for use in the field. Only ammunition approved by the Chief of Police will be used.
- ii. Department owned rifles will be issued to a specific police cruiser. The only time a rifle should be removed from a cruiser (other than when its use is anticipated) is if an officer has a personally owned department approved rifle. At the end of the officer's shift, he/she must replace the Department owned rifle in the cruiser.
- iii. Issued rifles will be provided to individual detectives and administrators for long term use and are not transferable unless authorized. Issued rifles may be subject to approved modifications only as specified below.
- iv. Officers carrying rifles are required to qualify annually as specified by the Lead Firearm Instructor.
- v. At the start of each shift, officers shall inspect and perform a safety check on the rifle in their assigned vehicle.
 1. Any malfunction of a department patrol rifle or personally owned patrol rifle used in the performance of duty shall report same to the Firearms Sub-committee.
 2. 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.
 3. Cruiser-carrying of the patrol rifle:
 - a. A loaded department rifle carried in a police vehicle shall contain two coupled magazines loaded to capacity. 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.
 - b. Rifles will be transported by officers in non-tactical situations with the muzzle up or slung with the muzzle down.
- vi. A member may gain approval to carry and use a personally owned rifle through the following method:
 1. Submit a request to the Lead Firearms Instructor.
 2. The rifle must be from a brand name manufacturer (Ex. Ruger, Sig Sauer, etc); a barrel length between 14 and 20 inches; barrel twist of 1:7 and capable of firing both 5.56 NATO and .223 Remington ammunition.
 3. Members may apply to the Lead Firearm Instructor for permission to utilize a short barrel rifle (SBR) on their personally owned rifle. The

barrel length of any SBR shall be no less than 10 inches. The applying officer will be responsible for obtaining any required federal tax stamp or other permits from federal and/or state authorities and providing copies to the Lead Firearm Instructor.

4. Individually purchased patrol rifles should only use department issued ammunition for training and duty carry. This ammunition needs to be stored in separate magazines and left at the PD while not on duty, unless you have a take home patrol car. This is to ensure that other non-departmental ammunition does not get mixed into the magazines.
5. Sighting systems: At minimum, rifle must have iron sights. Officers should be allowed to use an electronic red dot such as EOTech, Aimpoint, Trijicon, or Vortex.
6. Custom work/features: Individually owned rifles should come from a single manufacturer as a stock item to be approved. This excludes a rifle made from parts purchased in catalogs and gun shows etc. for duty use.
7. Personally owned weapons shall be made available for inspection by the Department's armorer, and will be inspected on a regular basis with PD owned rifles. Any cost of repair will be the burden of the rifle's owner, and repair will be made by a certified armorer.
8. A complete record of personally owned rifles and accessories shall be kept by the Lead Firearms Instructor.
9. Officers who use personally owned rifles must attend required training and qualifications and meet standards with that rifle.

IV. BACK-UP FIREARM

- A. Officers may elect to carry a back-up firearm while on duty. This weapon must meet the following conditions:
 - i. Semi-automatic striker fired handgun. Accepted calibers are .380, 9mm, .40, .45 ACP. The weapon and ammunition must be approved by the Lead Firearms Instructor and the Chief of Police before being allowed to be carried.
 - ii. The weapon must be carried in a concealed location by the officer (uniform or plain clothes) in a holster that is approved by the Lead Firearms Instructor and the Chief of Police.
 - iii. The officer must qualify with the back-up weapon at least on an annual basis. The qualification will require the officer to use the weapon from the point of carry.
 - iv. The cost of the weapon, holster, and all ammunition, (training and carry) must be borne by the officer. Shoe and boot allowance may be used with approval of the Chief of Police or his/her designee.
 - v. Ammunition for back-up weapons will only be as specified by the Lead Firearms Instructor and approved by the Chief of Police.

V. .22 CALIBER RIFLE

- A. The Department maintains a .22 caliber rifle for the humane destruction of animals. This rifle is stored unloaded at headquarters in a locked vault. It is available for use as needed and should be returned to the vault as soon as practical after its use.

VI. FIREARMS SAFETY

- A. 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.
- B. Officers will not point or direct their 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 this policy.
- C. 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.
- D. The Department encourages storing Department approved or owned 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 Department encourages officers to store their weapon unloaded.
- E. Officers will exercise all customary safety precautions and obey all appropriate rules or directives while practicing on the range.
- F. Officers shall keep their firearms clean, in working condition with special care taken to clean and lubricate (as appropriate) the weapon after firing.
- G. 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.

VII. OFF-DUTY CARRY

- A. The Department does not require or encourage the carrying of a firearm while off-duty. It is the member's choice to carry off duty. The Department strongly encourages officers who carry a weapon off duty (other than their department issued weapon) to qualify with this weapon no less than annually. The Department shall not bear any expense for this qualification. The latter should not be construed in any way as an endorsement of off-duty carry.
- B. Officers are authorized to carry their department issued sidearm and ammunition while off duty when using a safe, secure holster in good condition, which has been approved

by the Chief of Police and the department firearm instructor(s), and carried in such a manner as to prevent loss, accidental discharge, or theft.

- C. Officers shall carry with them their issued department identification wherever carrying their issued side arm off duty.
- D. Officers shall not carry off duty any authorized firearm while consuming alcoholic beverages or while under the influence of intoxicants or drugs.

VIII. TRAINING

- A. Officers will receive a copy of this General Order. This General Order shall be reviewed at least annually by all sworn members. All officers shall be issued copies of and instructed in this policy prior to being authorized to carry any weapon or tool.
- B. Officers shall receive training annually and demonstrate proficiency in the use of less lethal force equipment and techniques and firearms authorized by this order. Training shall be conducted by certified instructors recognized by the Vermont Criminal Justice Council and/or the manufacturer of the weapon system.
- C. Officers are prohibited from carrying or using any less lethal force equipment when they have not received training.
- D. Officers are prohibited from carrying or using any authorized firearms including any approved modifications or additions that they have not demonstrated proficiency in its use.
- E. Officers shall qualify at least twice each year with all firearms they are authorized to carry.
- F. Officers who fail to pass a mandatory firearms qualification shall receive additional training from the department firearms instructor(s). A second qualification shall be held as soon as is reasonably possibly at the direction of a department firearms instructor. Failure to pass or maintain proficiency will result in a remedial training plan being developed to ensure that qualification is achieved. If the officer fails to qualify before his/her shift following the expiration of his/her last qualification, the officer shall be assigned to administrative duty until he/she demonstrates proficiency by qualifying.
- G. A Command Level staff member designated by the Chief of Police shall maintain records of firearms training for all sworn personnel which shall include: Range dates, locations, curriculum and exercises; all official documentation of firearms training including individual officers' training sheets.

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