

ALBERTA SOLICITOR GENERAL AND PUBLIC SECURITY



Provincial Guidelines for the Use of Conducted Energy Weapons

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Provincial Guidelines for the Use of Conducted Energy Weapons

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Provincial Guidelines for the Use of Conducted Energy Weapons

1) Purpose

The purpose of these provincial guidelines is to provide direction on the use of conducted energy weapons (CEW) that stresses the lawful use of these devices and aids in the reduction of risk to public safety when force is required. The guidelines are issued within the framework of the Alberta Provincial Policing Standards as a supplement to the provincial policing (operations) standard OP 9 Use of Force. Standard OP 9 and all associated guidelines provide direction to all Alberta police on the use of all types of force including less lethal weapons.

2) Approved Conducted Energy Weapons

- a) The Solicitor General and Minister of Public Security approves the use of two models of CEW: Taser® International models M26 and X26. The general device specifications published by Taser® International are:
 - i) M26: Approximate maximum output — 50,000 volts/26 watts/1.76 joules. Delivered into load — 5,000 volts/10 watts/0.5 joules
 - ii) X26: Approximate maximum output — 50,000 volts/7 watts/0.36 joules. Delivered into load — 1200 volts/1.3 watts/0.07 joules

3) Application

- a) The Provincial Guidelines for the Use of Conducted Energy Weapons shall apply to all police services in Alberta that employ CEWs as a use of force option.
- b) Peace officers, as defined under the *Peace Office Act*, are prohibited from using CEWs, unless authority to use CEWs is expressly granted on their employer's Authorization to Employ Peace Officers, and on their peace officer's appointment. Auxiliary police officers are considered peace officers and are not eligible to carry/use CEWs.

4) Definitions

- a) Approved testing facility: An electronic testing laboratory that has been approved by the Alberta Solicitor General and Public Security to test the electrical output of CEWs. Approval shall be granted only to those facilities that comply with the province's requirements to test the electrical output of CEWs. The requirements shall be listed in detail in the Alberta CEW and Less Lethal Testing Program Policies and Procedures. The requirements will include but are not limited to:
 - i) Licensing as a prohibited weapon testing facility under the *Canadian Firearms Act*,
 - ii) Use of the nationally sanctioned CEW output test protocol; and
 - iii) Accreditation in accordance with the CEW Testing Program policies and procedures.

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- b) **Competent:** Able to lawfully and effectively apply knowledge and skills in an operational environment, demonstrated through field deployment and/or re-qualification training.
- c) **Conducted Energy Weapon (CEW):** A less lethal weapon that delivers a temporarily debilitating electrical charge into a subject. The electrical voltage and current is delivered in a form that is sufficient to disrupt a subject's ability to control their voluntary nervous system, which temporarily denies them the ability to control skeletal muscles used for movement, such as arms and legs¹.
- d) **Excessive Force:** Where force is used when none is needed; use of more force than is reasonable; or, the use of any force, or any level of force, that continues after the necessity for it has ended. Excessive force may be divided into two categories focused on intent: abuse of force and improper use of force.
 - i) **Abuse of Force:** To knowingly apply force when the intent is cruel or punitive.
 - ii) **Improper Use of Force:** Mistakes may result from errors in individual training, decision making and/or organization practices that result in undesired uses of force.
- e) **Expert:** A person who has a great deal of knowledge, skill, training, or experience, in a topic. He or she is able to not only apply the skills and knowledge effectively in an operational and training environment, but is also able to analyze behaviours and situations, identify strengths and problems, with the goal of improved performance and reduced risk at the individual and organization level. When used in the context of a use of force instructor, a pass mark in the use of force instructor training course/re-qualification shall demonstrate this status.
- f) **Force:** Action taken by police officers, or their agents, in the lawful performance of their duty, to compel, by physical compulsion or constraint, to gain control of persons who pose a risk to society. To achieve, or win by strength, in a struggle with persons who can lawfully be arrested, apprehended, or prevented from a course of action. The person using force must be either required, or authorized by law, to do anything in relation to the administration, or enforcement, of the law.
- g) **Force Options:** Any visual, verbal or physical actions made by police officers and/or their agents to gain lawful control of a subject(s). Force options extend from communication to physical interaction, to intermediate weapons, to deadly force (firearm).
- h) **Injury:**
 - i) **Primary Injury (CEW):** Immediate or delayed consequence, resulting directly from an electrical current flow in the subject and/or wounds resulting from CEW darts.
 - ii) **Secondary Injury (CEW):** Physical trauma indirectly associated with CEW use, such as injuries from falls.

¹ Taser International, 2007; Police Executive Research Forum, October 2005.

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- iii) **Serious Injury:** Physical harm requiring admission to hospital and includes injuries such as lacerations, abrasions, fracture to a limb, rib, vertebrae, or the skull; blunt force injuries (contusions/concussion) to brain or internal organs; burns of the first or second degree to a significant portion of the body or any allegations of sexual assault.
- iv) **Grievous Injury:** Pursuant to Canadian case law, *R. v. Bottell* (1981) 60 CCC (2)(b) 211 (BCCA), grievous bodily harm means “serious hurt or pain”. This would include physical harm that, either at the time of the actual injury, or at a later time, involves a substantial risk of death; a substantial risk of serious permanent disfigurement; a substantial risk of protracted loss or impairment of the function of any part or organ of the body; breaks or fractures of the femur or spinal column; or burns of the third degree to any portion of the body, or of a second degree to a major portion of the body.
- i) **Less Lethal Force:** Techniques and devices explicitly designed to incapacitate people while minimizing fatalities or permanent injury and undesired damage to property and the environment². In some circumstances, less lethal force may provide an option to the use of weapons designed to be lethal in nature (firearm).
- j) **Reasonable Force:** A level and duration of force appropriate to the risk posed by a subject's actions and responses, threat level, and is time and context appropriate, when shown that reasonable grounds to use force existed. This definition encompasses the use of only as much force as is necessary to achieve a lawful purpose.
- k) **Reasonable Officer Response (ROR) Model:** Force decision making guidance developed to reflect the intent of the laws guiding the use of force in the *Criminal Code of Canada*. Police officers are guided by section 25, other relevant *Criminal Code* sections, and the case law interpreting those sections. At the centre of the ROR model, is the objective reasonableness test used by the courts to determine whether the force used in a specific situation was reasonable:
 - i) Given the facts and circumstances perceived by the officer, he/she will use a reasonable amount of force in order to maintain or bring an incident under control. The courts have ruled that when considering force they shall consider three types of factors including (these lists are not exhaustive):
 - (1) **Officer Factors:** age, gender, physical stature, fatigue/injuries, training, force options and other equipment available, knowledge of subject, distance from the subject;
 - (2) **Subject Factors:** age, gender, physical stature, fatigue/injuries, training, experience, fitness, nature and severity of crime, history, mental state, intoxication (alcohol and drugs), proximity to weapons, verbal and non verbal threat cues, flight risk, presence of audience/peers, immediate/imminent threat to police, public, themselves; and
 - (3) **Environmental Factors:** location of incident (confined space, isolation), light levels, weather,

² Lewer & Davison, (March 11, 2004) Bradford Non-Lethal Weapons Presentation, Geneva Forum, from http://www.brad.ac.uk/acad/nlw/research_reports/docs/BNLWRP_GenevaForum_Mar04.pdf

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footing, height above ground, ability to reduce or eliminate physical threats using cover and /or distance.

- I) Use of Force Training Aid: A graphical representation of the various elements involved in the process by which a police officer assesses a situation and acts in a reasonable manner to ensure officer and public safety. The model assists officers and the public to understand why and in what manner an officer may respond to a person or situation with force. As an aid to training, the model promotes continuous critical assessment and evaluation of each situation and assists officers to understand and make use of a variety of force options to respond to potentially violent situations³.

5) Statement of Principles

Whenever force is used by any person in Canada it shall be used in compliance with the *Criminal Code of Canada* and the *Canadian Charter of Rights and Freedoms*. Section 25 of the *Criminal Code of Canada* (CCC) provides the legal framework in which the authority and justification for the use of force by police officers is interpreted. These guidelines have been issued to assist police agencies in the development of policies and procedures that will reduce the level of risk associated with the use of force in general and CEWs specifically.

6) Use of Conducted Energy Weapons

- a) Only CEW models approved by the Solicitor General and Minister of Public Security shall be used.
- b) In accordance with Section 25 of the *Criminal Code*, the appropriate use of a CEW requires a balance be achieved between the safety of police, the safety of the subjects they face, bystanders, and public expectations of acceptable police behaviour. Before deploying a CEW, a police officer must consider the availability of other reasonable use of force options and make a determination that a CEW is the proper level of force required.
- c) The totality of circumstances warranting the use of a CEW as a use of force option includes but is not limited to the following:
 - i) While in the lawful execution of their duties, police officers may use a CEW if the officer subjectively believes that the subject will likely cause injury to the police officer, subject, or bystander. Further, the use of the CEW must also be objectively reasonable in light of Environmental Factors, Subject Factors, and Officer Factors. At all times, the force used must be reasonable;
 - ii) CEW use will be subjectively and objectively reasonable as an alternative to direct physical contact with a subject when, due to the Environmental Factors, Subject Factors, and Officer Factors involved, there is a real likelihood of injury to the officer, subject, or bystanders;
 - iii) The flight of a subject by itself would not satisfy the objective reasonable test. Environmental, Subject (i.e. nature of the offense) and Officer Factors, must always be considered; and

³ Canadian Association of Chiefs of Police (2000) National Use of Force Framework, Ottawa

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- iv) Careful consideration must be given prior to the use of a CEW on a subject restrained by handcuffs or any other restraint. After considering Environmental, Subject and Officer Factors, its use is restricted to exigent circumstances where it is required to prevent any or further injury to a police officer, subject, or a bystander.
- d) Police agencies shall have written policy that reportable CEW deployment constitutes, at a minimum:
 - i) Displaying a CEW to gain compliance;
 - ii) Use of the CEW in contact stun mode;
 - iii) Use of CEW in probe mode; and
 - iv) Accidental discharge, other than into a designated loading station.
 - e) Police agencies shall have a written policy that requires a member to notify their immediate supervisor and submit a use of force report as soon as possible when they deploy a CEW using contact mode or probe mode.
 - f) Police agencies shall have written policy that details safe handling procedures for CEWs in accordance with approved training and manufacture's recommendations.
 - g) Police agencies shall have a written policy that directs a member and/or CEW Program Coordinator to perform pre-shift CEW maintenance that includes, at a minimum:
 - i) Check electrical contacts on the weapon and the cartridge for damage or obstructions;
 - ii) Check expiration date of cartridges;
 - iii) Check central information display and confirm battery charge; and
 - iv) Conduct a spark test in accordance with manufacturer instructions.
 - h) Police agencies shall have a written policy that directs their CEW Program Coordinator to:
 - i) Review and act on any changes to police agency policy or updated manufacturer product information that would directly affect maintenance and/or use of the device; and
 - ii) Maintain a serial number specific record of maintenance activities for the device and record in it any findings and/or member actions specific to that device.
 - i) Police agencies shall have policies addressing pre-CEW deployment and post-CEW deployment procedures aimed at reducing or mitigating the risk of serious injury to a subject, bystander, or police officer and include, at a minimum:
 - i) Actions to be taken when a subject's behavior, or police information, indicates that a subject or bystander may have an increased risk of serious injury if exposed to a use of force. This includes emotional or psychological illnesses, physical health risks, and environmental risks,

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such as the presence of flammable substances, or likelihood of falls;

- ii) Where possible the police agency shall collect subject and environmental risk information prior to dispatching a police unit and provide that information to the member(s) dispatched to the incident as soon as possible;
 - iii) Approved procedures to remove and dispose of CEW probes;
 - iv) Situations where only medical personnel shall remove probes;
 - v) Documentation of probe and stun contact points on subject body; and
 - vi) Procedures to obtain emergency medical service to support section 5 paragraph i), i-iv.
- j) All CEWs in police agency inventory shall be submitted for output testing at a testing facility approved by the Alberta Solicitor General and Public Security. Only those devices that test within the manufacturers specified operating parameter range shall be used for training or operations. The Law Enforcement Standards and Oversight Branch shall review and approve all test results before any device is deployed for training or operational use.
- k) Output testing shall be conducted in accordance with the following schedule:
- i) Ongoing: All devices in agency inventory shall be tested every 12 months;
 - ii) New devices: All new devices shall be tested before being deployed for operational or training use;
 - iii) Device tested out of tolerance: All devices identified as out of tolerance on any parameter that have been submitted for repair or replacement shall be retested prior to being returned to operational or training use; and
 - iv) Grievous injury/fatality: Any device that has been used in an incident that concludes in serious or grievous injuries or a fatality where the injuries or fatality can be reasonably linked to the electrical output of the device.

7) Supervision

Effective supervision at both the unit and organization level is necessary to ensure the standards of behaviour set by policies and procedures are achieved and maintained. Supervision involves two critical tasks: first, the supervisor must monitor the performance of individuals and units to ensure that individual and unit behaviour is in compliance with the agency policies and procedures, and when necessary, immediately corrects discrepancies; second, the supervisor must monitor the agency's policies and procedures to ensure they are effectively producing the desired behaviour.

- a) The police agency shall have policies and procedures governing the suspension of a police officer's use of a CEW that include, at a minimum:

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- i) Lapsed re-qualification, failure to re-qualify as required, and proven improper use of a CEW;
 - ii) The consequences of each type of suspension;
 - iii) If appropriate, a clear and documented internal process for reinstating a member's CEW use, which may include retaking CEW training, successful completion of re-qualification, or successful completion of remedial training; and
 - iv) Suspected or proven abuse of CEWs shall result in the immediate suspension of a police officer's use of CEWs.
- b) Police agencies shall have policies and procedures describing supervisory duties with regard to requirements for monitoring the maintenance and operational use of CEWs, including:
- i) Monitor the CEW training status of the qualified members they supervise;
 - ii) Actions a supervisor shall take when a reportable CEW use occurs;
 - iii) Actions a supervisor shall take to ensure all primary and secondary injuries a suspect may suffer in incidents involving the use of a CEW are recorded, including injuries related to probe penetration and contact stun use; and
 - iv) Actions a supervisor shall take when incidents are identified involving suspected excessive force (abuse or improper use).
- c) Police agencies shall have policies and procedures to ensure that the agency:
- i) Maintains an accurate inventory of all devices including the current location of each device and its operational status;
 - ii) Establishes and monitors a record management system for the maintenance history and output test results for each device by serial number;
 - iii) Establishes and monitors a system to:
 - (1) Track all agency CEW policy updates and manufacturer product notifications and updates; and
 - (2) Quickly notify all CEW users of all agency CEW policy updates and product notifications and updates and track user acknowledgement of receipt and, if required, their actions.
- d) Police agencies shall conduct random CEW record verification checks every quarter year to include:
- i) Randomly select 10% of devices in agency (minimum of 10 devices). Or check all devices in agency if device inventory is 10 or fewer; and
 - ii) Cross-check download data with usage reports and maintenance records.

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- e) Establishes and monitors a use of force reporting system in accordance with the Provincial Guidelines for the Use of Force.
- f) Police agencies shall submit a use of force (CEW) summary report to the Law Enforcement Standards and Audits Unit every quarter year in accordance with the Provincial Guidelines for the Use of Force.

8) Training

Training provides police with the knowledge and skills necessary for effective policing. Changes in society and technology demand changes in the knowledge and skills required for policing. These changes require members receive ongoing training. Police agencies shall establish minimum training course requirements for members authorized to employ a CEW operationally; for those members who supervise members who employ a CEW; and those members authorized to instruct on CEW training courses.

- a) Police agencies shall ensure all use of force training and related training received by their members is documented and meets the training guidance provided by the Provincial Guidelines for the Use of Force, Provincial Guidelines for the use of Conducted Energy Weapons and the RCMP and Alberta Association of Chiefs of Police use of force training programs.
- b) Police agencies shall ensure police officers employing CEWs operationally are competent in:
 - i) Requirements of the *Criminal Code of Canada* and the case law as it applies to the operational use of CEW;
 - ii) Alberta Provincial Guidelines for the Use of Force and the Provincial Guidelines for the use of Conducted Energy Weapons;
 - iii) Agency CEW policy and procedure;
 - iv) Agency and manufacturer's recommended safe handling and use procedures; and
 - v) Recognizing subject behaviors and environmental cues that may increase a subject/bystander risk of injury and may require advanced medical monitoring and/or treatment (e.g. excited delirium, pregnancy, cardio-pulmonary risk, flammable substances, risk from fall).
- c) Police agencies shall ensure that police officers employing CEWs operationally receive documented recertification every two years at minimum.
- d) Supervisors of police officers employing CEWs operationally shall be competent in:
 - i) Requirements of the *Criminal Code of Canada* and the case law as it applies to the use of force;
 - ii) Alberta Provincial Guidelines for the Use of Force and the Provincial Guidelines for the Use of Conducted Energy Weapons;
 - iii) Agency policy and procedures for the use of force and CEW;
 - iv) Agency and manufacturer's recommended safe handling and use procedures;

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- v) Recognizing subject behaviors and environmental cues that may increase a subject/bystander risk of injury and may require advanced medical monitoring and/or treatment (e.g. excited delirium, pregnancy, cardio-pulmonary risk, flammable substances, risk from fall);
- vi) Training on how to monitor their units for and report on:
 - (1) Instances of excessive force; and
 - (2) Individual member performance in use of force incidents.
- e) Police agencies shall ensure supervisors receive documented recertification every two years at minimum.
- f) Trainers and instructors shall be knowledgeable and competent in:
 - i) Requirements of the *Criminal Code of Canada* and case law related to the use of force and its implications for CEW training and operational use;
 - ii) Alberta Provincial Guidelines for the Use of Force and the Provincial Guidelines for the Use of Conducted Energy Weapons;
 - iii) Agency policy and procedures for the use of force and CEW;
 - iv) Agency and manufacturer's recommended safe handling and use procedures;
 - v) Recognizing subject behaviors and environmental cues that may increase a subject/bystander risk of injury and may require advanced medical monitoring and/or treatment (e.g. excited delirium, pregnancy, cardio-pulmonary risk, flammable substances, risk from fall).
- g) Police agencies shall ensure CEW trainers/instructors receive documented recertification every two years at minimum.
- h) Police agencies shall regularly review and analyze all aspects of CEW training, including basic training, re-certification and remedial training, to ensure it is current, relevant and consistent with best practices.
- i) Police agencies shall employ data gathered through the use of force reporting system to evaluate CEW use at individual, unit and agency levels to identify any operational/use trends; assess equipment and deployment successes.