

**ATTORNEY GENERAL SUPPLEMENTAL POLICY ON
CONDUCTED ENERGY DEVICES [as of March 3, 2016]¹**

*Effective on October 7, 2010, as
Clarified on May 3, 2012,
Revised on June 20, 2012,
Clarified on July 13, 2012,
Revised on June 3, 2014,
Revised on March 3, 2016.*

I. Scope

The following supplemental policy governs the use of conducted energy devices. The original policy concerning these devices that had been issued on November 23, 2009 was revised and replaced in 2010 based upon the recommendations of the County Prosecutors, the New Jersey Association of Chiefs of Police, and other law enforcement professionals. Those professionals expressed concern that the original policy was too restrictive both in terms of the number of officers who might be authorized to carry and use a conducted energy device, and the circumstances when the device might be deployed. In some instances, the original policy would have prohibited the use of a conducted energy device even though an officer would be allowed to use *deadly* force. The revised supplemental policy issued on October 7, 2010, developed in consultation with State, county and local law enforcement executives, brought the rules governing the use of conducted energy devices more closely in line with the policy governing the use of less lethal ammunition (dated March 19, 2008). Under the 2010 revisions to the supplemental policy, conducted energy devices, like less-lethal ammunition, are considered to be a form of “enhanced” mechanical force.

The following revised supplemental policy, developed in consultation with community leaders in addition to law enforcement executives, addresses the practical problems that have arisen because the previous policy required officers to speculate on the degree of injury that a person might cause when he or she actively resists a lawful arrest. Under the policy issued in 2010, an officer could not fire/discharge a CED against a person who was actively resisting arrest (e.g., striking, kicking, or biting) unless the officer reasonably believed that the suspect’s resistance would cause death or serious bodily injury to the officer. Under New Jersey law, the term “serious bodily injury” is defined to mean “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function on any bodily member or organ.” N.J.S.A. 2C:11-1(a). (Note that bodily injury involving the temporary loss of any one of the five senses (e.g., unconsciousness) constitutes only “significant” bodily injury, not serious bodily injury. See N.J.S.A. 2C:11-1(d)). Accordingly, the threat of being temporarily stunned by the suspect during a fistfight would not necessarily satisfy the standard for firing/discharging a CED.)

¹ This compilation incorporates all the Attorney General’s amendments and clarifications to the Supplemental Policy on Conducted Energy Devices (October 7, 2010, May 3, 2012, June 20, 2012, July 13, 2012, June 3, 2014, and March 3, 2016). It also incorporates the June 4, 2014 Memorandum from the Director of the Division of Criminal Justice, issued pursuant to authority granted by the Attorney General. This compilation is not intended to supersede these amendments and clarifications, but rather serves as a guide for ease of reference for law enforcement.

The revised policy now closely follows New Jersey statutory law defining the offense of resisting arrest, see N.J.S.A. 2C:29-2, which upgrades the disorderly persons offense to an indictable crime if the suspect “uses or threatens to use physical force or violence against the law enforcement officer or another,” or “uses any other means to create a substantial risk of causing physical injury to the public servant or another.” This approach re-affirms and strengthens New Jersey’s policy of prohibiting the use of a CED for pain compliance or in response to passive resistance. By incorporating the statutory criteria for upgrading the resisting-arrest offense, the revised policy makes clear that a CED may be discharged only in response to active resistance (e.g., fighting) that poses a substantial risk of physical injury to the arresting officer, a victim, or innocent bystander.

The term “conducted energy device” is defined in Section III of this policy. These weapons fall under the broader category of "stun guns," as that term is defined in the New Jersey Code of Criminal Justice. Specifically, N.J.S.A. 2C:39-1(t) provides that the term stun gun means “any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person.”

Pursuant to N.J.S.A. 2C:39-3(h), any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree. N.J.S.A. 2C:39-3(g)(1) further provides in pertinent part that, “[n]othing in subsection h. (generally prohibiting the knowing possession of stun guns) shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General.” This supplemental policy shall constitute an exemption from the provisions of N.J.S.A. 2C:39-3(h) for any law enforcement officer authorized pursuant to this policy to deploy or use a conducted energy device during an actual law enforcement operation, and for any officer who is participating in a training program pursuant to this policy.

II. Policy

1. It is the general policy of the State of New Jersey that law enforcement officers should only use the degree or intensity of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time force is used. The reasonableness of force must be judged from the perspective of a reasonable law enforcement officer on the scene at the time of the incident. The Attorney General’s Use of Force Policy (rev. 2000) formally recognizes five distinct types of force: constructive authority, physical contact, physical force, mechanical force, and deadly force. The Attorney General’s supplemental policy on less lethal ammunition (2008) essentially established a distinct level of force, known as enhanced mechanical force, which, according to the Report to the Attorney General on Less-Lethal Ammunition (February 13, 2008) submitted by the Attorney General’s Advisory Group to Study Less-Lethal Force, is “an intermediate force option between mechanical force and deadly force, requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than that required for the use of deadly force.”
2. The Attorney General’s Use of Force Policy (rev. 2000) provides that deadly force may only be used when an officer reasonably believes that such force is *immediately* necessary to protect an officer or another person from imminent danger of death or

serious bodily injury. (Emphasis added to highlight one of the key distinctions between the standard for using deadly force and the standard for using enhanced mechanical force, such as less-lethal ammunition. The latter type of force does not require that the threat of death or serious bodily injury be imminent or immediate.) Deadly force may not be used against persons whose conduct is injurious only to themselves. (This restriction also distinguishes the standard for using deadly force from the standard for using less-lethal ammunition, which may be used to prevent a person from killing or seriously injuring him/herself.)

3. The risks and benefits associated with the use of a conducted energy device are in many respects comparable to the risks and benefits associated with the use of less-lethal ammunition. In certain situations, a conducted energy device may reduce the risk of death or injury to police officers, to innocent bystanders and victims, and also to the persons who are subject to arrest and against whom this form of less lethal force would be directed. The device may thus allow officers to resolve a confrontation without it escalating to a level where deadly force is required. Accordingly, this policy allows law enforcement agencies the ability to use these devices as a less lethal alternative, while limiting the circumstances when a conducted energy device may be deployed. These restrictions are in most instances comparable to the current restrictions imposed on the use of less-lethal ammunition, but are adapted in this supplemental policy to address the unique characteristics, practical utility, and potential for abuse of conducted energy devices. In certain circumstances, such as when a conducted energy device is directed against a person who is restrained by handcuffs, or when the device is used in “drive stun mode” (*i.e.*, held in direct physical contact with the suspect rather than being fired from a distance), this policy imposes additional restrictions that are comparable to those that apply to the use of deadly force.
4. While conducted energy devices are designed and intended to be used as less lethal weapons, these devices can result in serious bodily injury or death. The risk of causing immediate or long-term injury depends on many factors, including but not limited to the terrain on which the targeted person is standing, given the risk that the device might cause the person to fall uncontrollably. Officers equipped with conducted energy devices must at all times recognize the seriousness and potential lethality of these weapons. Accordingly, this supplemental policy establishes strict requirements for carrying, displaying, and using these devices. The rules set forth in this supplemental policy, including procedural safeguards such as the provisions of this policy that require that a digital video record be made and preserved of all incidents where a conducted energy device is fired or discharged, and requiring a thorough investigation and report to the Attorney General of every such incident, are designed to ensure that conducted energy devices are used during actual operations only when and in the manner expressly authorized by this supplemental policy.
5. This policy limits the circumstances when a conducted energy device may be deployed, and prohibits use of these weapons in certain circumstances and for certain purposes. For example, a conducted energy device may not be fired or discharged

against a person who is exhibiting only passive resistance to an officer's order to move from or to a place, to get onto the ground, or to exit a vehicle. Rather, under this supplemental policy, the device may only be used when it is reasonably necessary to temporarily incapacitate a physically combative person in order to prevent the person from causing death or serious bodily injury to him/herself, the officer, or another person, or to prevent the escape of a violent offender.

6. Any firing or discharge of a conducted energy device against a person, except as authorized by this supplemental policy, is prohibited. Any intentional misuse or reckless abuse of any such device will not be tolerated and will result in administrative discipline, criminal prosecution, or both.

III. Definitions

“Conducted energy device” means any device approved by the Attorney General that is capable of firing darts/electrodes that transmit an electrical charge or current intended to temporarily disable a person.

“Fire” means to cause the darts/electrodes of a conducted energy device to be ejected from the main body of the device and to come into contact with a person for the purpose of transmitting an electrical charge or current against the person.

“Discharge” means to cause an electrical charge or current to be directed at a person in contact with the darts/electrodes of a conducted energy device.

“Drive stun mode” means to discharge a conducted energy device where the main body of the device is in direct contact with the person against whom the charge or current is transmitted.

“Spark display” means a non-contact demonstration of a conducted energy device's ability to discharge electricity that is done as an exercise of constructive authority to convince an individual to submit to custody.

IV. Authorized Officers

1. The chief executive of a law enforcement agency shall determine the number of officers who are authorized to carry and use a conducted energy device.
2. An officer shall not carry or use a conducted energy device during an actual operation unless the officer has been expressly authorized in writing by the chief executive of the department, considering the officer's experience and demonstrated judgment, and the officer has successfully completed a training course approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The chief executive of the department shall have the continuing responsibility to ensure that all officers authorized to carry or use a conducted energy device remain qualified by experience, demonstrated judgment, and training and Police Training Commission-approved qualification and re-qualification procedures to be equipped

with these weapons, and the chief executive may at any time limit, suspend, or revoke the authority of an officer to carry or use a conducted energy device.

3. A law enforcement officer authorized to carry and use a conducted energy device pursuant to this supplemental policy shall be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun provided by his or her department.

**V. Authorization to Use Conducted Energy Devices
[Amended March 3, 2016]**

1. An officer authorized to use a conducted energy device pursuant to this supplemental policy may fire and/or discharge the device during an actual operation only where:
 - a.
 - i) the officer believes such force is reasonably necessary to prevent the person against whom the device is targeted from causing death or serious bodily injury to him/herself, an officer, or any other person; or
 - ii) the person against whom the device is targeted is armed with an object that the officer reasonably believes could be used as a deadly weapon, and the person refuses the officer's command to put down or surrender the object after having been given a reasonable opportunity to do so; or
 - iii) the officer believes such force is reasonably necessary to prevent the immediate flight of an individual whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily injury; or
 - iv) the person against whom the device is targeted resists a lawful arrest by using or threatening to use physical force or violence against the officer or another in a manner and to a degree that the officer reasonably believes creates a substantial risk of causing bodily injury to the officer, a victim, or a bystander; and
 - b. the individual will not voluntarily submit to custody after having been given a reasonable opportunity to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force.
2. An officer shall not direct an electrical charge or current against a person who has already received an electrical charge from a conducted energy device unless the person, despite the initial discharge, continues to pose a substantial risk of causing bodily injury to him/herself, an officer, or any other person. The person shall be given a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands before being subjected to a second or subsequent discharge, unless the person's conduct after the initial discharge creates a risk of bodily injury that is so immediate that any delay in applying a second or subsequent

discharge would likely result in bodily injury. The person's refusal to comply with law enforcement commands after having been given a reasonable opportunity to do so shall not be a basis for a second or subsequent discharge unless the person continues to refuse to put down or surrender an object that the officer reasonably believes could be used as a deadly weapon, or unless the person continues to use or threaten to use physical force or violence against the officer, or another, in a manner and to a degree that reasonably creates a substantial risk of causing bodily injury to the officer or another. Furthermore, the person's attempt instinctively to reduce the leverage of a wristlock, hammerlock, or other pain compliance hold applied by the officer while attempting to apply handcuffs, or the person's bracing or pulling against an officer's attempt to pull/move him or her, shall not be a basis for discharging the device unless such resistance reasonably creates a substantial risk of causing bodily injury to the officer.

In the event that a second or subsequent discharge is authorized and necessary, unless the officer is equipped with and activates a body worn camera as defined in Attorney General Law Enforcement Directive No. 2015-1 so that the circumstances justifying a second or subsequent discharge are recorded by the body worn camera, the officer shall, when feasible, point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying any such second or subsequent discharge.

3. An officer shall not direct an electrical charge or current against a person who is restrained by handcuffs unless:
 - a. the officer reasonably believes based on the suspect's conduct while handcuffed that such force is immediately necessary to protect the officer, the suspect, or another person from imminent danger of death or serious bodily injury; and,
 - b. the use of physical or mechanical force (*e.g.*, a baton or pepper spray) is not immediately available to be employed, has been tried and failed to stop the imminent threat of death or serious bodily injury, reasonably appears to be unlikely to stop the imminent threat if tried, or would be too dangerous to the officer or an innocent person to employ.

In the event that a conducted energy device is discharged against a person who is restrained by handcuffs, unless the officer is equipped with and activates a body worn camera as defined in Attorney General Law Enforcement Directive No. 2015-1 so that the circumstances justifying the discharge are recorded by the body worn camera, the officer shall point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying the discharge.

4. An officer shall not use a conducted energy device in drive stun mode unless the officer reasonably believes based on the suspect's conduct that discharging the device in drive stun mode is immediately necessary to protect the officer, the suspect, or another person from imminent danger of death or serious bodily injury.
5. A law enforcement officer shall not be required to exhaust the option of using a conducted energy device before using lethal ammunition in any circumstance where deadly force would be justified and authorized pursuant to the Attorney General's Use of Force Policy.

**VI. Unauthorized Uses of Conducted Energy Devices
[Amended March 3, 2016]**

The following uses are prohibited:

1. A conducted energy device shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment.
2. A conducted energy device shall not be fired or discharged against a person who is exhibiting only passive resistance to an officer's command to move from or to a place, to get onto the ground, or to exit a vehicle. A conducted energy device shall not be fired or discharged against a person, for example, who is attempting instinctively to reduce the leverage of a wristlock, hammerlock, or other pain-compliance hold applied by an officer, or who is bracing or pulling against an officer's attempt to pull/move him or her.
3. A conducted energy device shall not be fired or discharged for the sole purpose of preventing a person from committing property damage.
4. A conducted energy device shall not be fired or discharged against the operator of a moving vehicle unless the use of deadly force against the operator would be authorized.
5. Two or more conducted energy devices shall not be discharged upon a person at the same time.

**VII. Training and Qualification
[Amended June 3, 2014, June 4, 2014 and March 3, 2016]²**

² Paragraphs 4, 5 and 6 of Section VII were first announced in the June 3, 2014 Directive Revising the Attorney General's Policy on Conducted Energy Devices. They have been added verbatim to section VII of this document. Paragraphs 7 and 8 of section VII were first announced in a June 4, 2014 Memorandum from the Director of the Division of Criminal Justice. They also have been added verbatim to section VII of this document.

1. No officer shall be authorized to carry or use a conducted energy device during an actual operation until having completed a training course and qualification procedure approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The training program shall include a component on techniques to de-escalate a confrontation with a person from a different culture or background. The training program also shall include a component on how to interact with an emotionally disturbed person, how to recognize mental illness, and techniques to de-escalate a psychiatric crisis to prevent injury and death.³
2. A person participating in a training course approved by the Police Training Commission shall during such training be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun.
3. All law enforcement officers authorized to carry and use a conducted energy device pursuant to this supplemental policy shall qualify, and thereafter re-qualify annually, in a training course and qualification procedure approved by the Police Training Commission.⁴
4. The number of certified Conducted Energy Device (CED) Instructors authorized for each County Prosecutor's Office, the Division of Criminal Justice, the New Jersey State Police and the Division of Parole shall be determined at the discretion of the Director of the Division of Criminal Justice. Requests to increase the number of Certified CED Instructors, and requests to use municipal police officers and/or county sheriff's officers to assist in this function, may be granted upon written application to, and at the discretion of, the Director of the Division of Criminal Justice. Such written requests must set forth the basis for the request. Training for those authorized to use CEDs shall be consistent with the requirements of Section VII-Training and Qualification.⁵

³ The March 3, 2016 Directive Revising the Attorney General's Supplemental Policy on CEDs requires the Division of Criminal Justice to develop, within 120 days of its effective date, a supplemental training program to explain the provisions of the Directive and the revisions made to the Supplemental Policy by the 2016 Directive. This program shall be made available to all officers authorized to carry CEDs and incorporated into the training course and qualification procedure established pursuant to Section VII. Officers are not authorized to discharge the CED pursuant to new paragraphs (ii) or (iv) of Section V of this document until they have completed this supplemental training. However, officers are still authorized to discharge the CED under paragraphs (i) and (iii) of Section V of this document prior to completing the supplemental training. See Sections 3 and 5 of the 2016 Directive.

⁴ The 2010 Attorney General Policy on Conducted Energy Devices originally directed semi-annual re-qualifications. This mandate was amended to require annual re-qualifications by paragraph 3 of the June 3, 2014 Directive Revising the Attorney General's Policy on Conducted Energy Devices.

⁵ In a June 4, 2014 Memorandum from the Director of the Division of Criminal Justice to County Prosecutors, the Superintendent of State Police, the Chairman of the State Parole Board and County Sheriffs, the Director authorized the expansion of the pool of Certified CED Instructors for each above listed agencies to five (5) Instructors. This number may be further increased upon application to the

5. Each County Prosecutor's Office, the Division of Criminal Justice, the New Jersey State Police and the Division of Parole will identify and replace any Certified CED Instructor lost for any reason, including retirement, reassignment, change of employment, disability, disciplinary action, etc., within sixty (60) days of such loss, upon written notification to the Director of the Division of Criminal Justice by the County Prosecutor, Superintendent of State Police, or Chairman of the State Parole Board.
6. Each county, agency or department may use a CED application on a Firearms Training Simulator (FATS), or similar device equipped to do so, for purpose of CED training and re-qualification (but not initial qualification), provided that CED operators must re-qualify on the actual device selected by their department or agency at least once every two years to maintain their certification. The use of a Firearms Training Simulator (FATS), or similar device must be done under the supervision of a Certified CED Instructor. (Please note: Use of a Firearms Training Simulator (FATS), or similar device may not be permitted by the CED manufacturer for purposes of manufacturer re-qualification or manufacturer re-certification.)
7. Municipal police officers and/or county sheriff's officers may be designated as Certified CED Instructors only if they receive the approval and designation of "CED Task Force Officer" from their respective County Prosecutor's Office. This designation may be for CED training purposes only. Only a Certified CED Instructor may conduct initial CED Operator Training and qualification. Each respective County Prosecutor's Office shall maintain a list of all Certified County CED Instructors.
8. For purposes of re-qualification only, upon approval and designation of the respective County Prosecutor's Office, municipal police officers and/or county sheriff's officers may be trained as a "CED Re-Qualification Instructor" to administer CED re-qualification. Training of any CED Re-Qualification Instructor shall be consistent with the training requirements for Certified CED Instructors. Each respective County Prosecutor's Office shall maintain a list of all CED Re-Qualification Instructors.

VIII. Deployment Technique
[Amended March 3, 2016]

1. An officer issued a conducted energy device shall determine and record on an appropriate log, prior to field deployment, that the device, including the video recording function, is functional, provided, however, that if the officer is equipped with a body worn camera as defined in Attorney General Law Enforcement Directive No. 2015-1 that will be used to record the circumstances of the firing/discharge of the conducted energy device in lieu of an internal video camera, the officer shall determine and record on an appropriate log that the body worn camera is functional.

Director as described in paragraph 4 of Section VII above.

2. When feasible, the officer should warn the person against whom the conducted energy device is directed that the officer intends to fire the weapon. If a second or subsequent discharge is authorized by this supplemental policy, the officer, when feasible, should warn the person that the officer intends to discharge the device again. It shall not be necessary for an officer to warn the person of the impending firing/discharge of the device, or to provide the person with an opportunity to submit to law enforcement authority before firing/discharging the device, if the person's conduct is creating a risk of death or serious bodily injury that is so immediate that any delay in firing/discharging the device would likely result in death or serious bodily injury (*e.g.*, where the person is actively engaged in committing an aggravated assault, or is actively engaged in an attempt to commit suicide or an act of self mutilation).
3. An officer shall not unholster a conducted energy device during an actual operation unless the officer reasonably believes that it may be necessary for the officer to use the conducted energy device. An officer shall not exhibit a conducted energy device to a person or conduct a spark display during an actual operation unless the officer reasonably believes that display of the device and/or a demonstration of its ability to discharge electricity as an exercise of constructive authority would help to establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety. An officer may also unholster and/or exhibit a conducted energy device or conduct a spark display if another officer on the scene has unholstered and/or exhibited a firearm in accordance with the Attorney General's Use of Force Policy.
4. An officer may, through verbal commands, threaten to use a conducted energy device, so long as the officer's purpose is limited to creating an apprehension that the device will be used if necessary.
5. An officer should not fire a conducted energy device if there is a substantial risk that the electrode/darts will strike an innocent person unless firing the device in such circumstances is reasonably necessary to protect the innocent person(s) from being killed or seriously injured by the person against whom the conducted energy device is targeted.
6. To ensure officer safety, when feasible, at least one law enforcement officer other than the one deploying the conducted energy device should be present, be armed with lethal ammunition, and be prepared to deploy deadly force in the event that the use of a conducted energy device for any reason fails to incapacitate the suspect and prevent him or her from causing death or serious bodily injury to the officer equipped with the device, or any other person.
7. During the deployment of a conducted energy device, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.

8. An officer trained and authorized to carry a conducted energy device should be aware of any targeting recommendations made by the manufacturer.
9. A conducted energy device may be used in conjunction with a distraction device, water-based chemical agent, or less-lethal ammunition. If the individual has already received an electrical charge from a conducted energy device, officers should, when feasible, provide the person a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands, considering the physiological effects of the discharge, before deploying a distraction device, chemical agent, or less-lethal ammunition.
10. A conducted energy device shall not be directed against a person who is situated on an elevated surface (*e.g.*, a ledge, scaffold, near a precipice, etc.) unless reasonable efforts have been made to prevent or minimize a fall-related injury (*e.g.*, deploying a safety net).
11. A conducted energy device shall not be used in, on, or immediately adjacent to a body of water in which the targeted person could fall during any stage of the application of the electrical current generated or transmitted by the device.
12. A conducted energy device shall not be used in any environment where an officer knows or has reason to believe that a potentially flammable, volatile, or explosive material is present that might be ignited by an open spark, including but not limited to pepper spray with a volatile propellant, gasoline, natural gas, or propane.⁶
13. While officers must at all times respect the seriousness and potential lethality of a conducted energy device, an officer should use particular care when considering whether to use a conducted energy device against an individual who is particularly vulnerable due to age (either elderly or young) or due to a known or reasonably apparent medical condition (*e.g.*, a pregnant female).

IX. Handling of Injured Suspects [Amended May 3, 2012]⁷

⁶ On June 12, 2012 the Attorney General issued a Directive to Prevent Concurrent or Sequential Use of a Flammable Aerosol Spray Device and a CED. This Directive required all law enforcement agencies to immediately remove from service any aerosol spray devices that emit a flammable substance to eliminate the possibility that the electric spark from a CED dart/electrode could inadvertently ignite a flammable substance contained in some oleoresin capsicum (OC) sprays or similar aerosol spray devices, thereby resulting in injury or death. This June 12, 2012 Directive remains in full force and effect.

⁷ The 2010 Attorney General Policy on Conducted Energy Devices originally included a provision requiring that all subjects against whom a CED was directed be transported to a medical facility if they suffered bodily injury or requested medical attention. The May 3, 2012 Clarification of the Attorney General Policy on Conducted Energy Devices deleted and replaced that language with the more comprehensive list of factors presently listed in Section IX, all of which require that the subject be transported to a medical facility. That clarification was subsequently revised in July 2013 to delete a

Subjects against whom a conducted energy device has been directed shall be transported to a medical facility for examination if any of the following circumstances exist:

1. The subject requests medical attention;
2. The subject had been rendered unconscious or unresponsive;
3. The subject after being subjected to a discharge does not appear to have recovered normally, as described in CED training;
4. The subject has exhibited signs of excited delirium, as described in CED training, prior to, during, or after the discharge of the CED;
5. The subject has suffered bodily injury requiring medical attention as a result of a fall, or otherwise reasonably appears to be in need of medical attention;
6. The subject was exposed to three or more discharges from a CED during the encounter;
7. The subject has been exposed to a continuous discharge lasting 15 seconds or longer;
8. No one present at the scene is qualified or authorized to remove the CED darts/electrodes from the subject's person;
9. An officer trained and authorized to remove darts/electrodes experiences difficulty in removing a dart/electrode; or
10. Any part of a CED dart/electrode has broken off and remains imbedded.

An officer is authorized to remove a CED dart/electrode from a subject only if the officer has received training on dart/electrode removal, provided, however, that an officer is not authorized to remove a CED dart/electrode from any part of the person's head or neck, or where the dart/electrode is located in the area of the subject's genitalia, or female breast. In the absence of exigent circumstances requiring immediate action, a CED dart/electrode may only be removed from these areas of the subject's body by qualified medical personnel.

X. Reporting and Evaluation
[Amended May 3, 2012 and July 13, 2012]⁸

reference to emergency medical technicians (EMTs), the removal of a CED dart/electrode is beyond their approved scope of practice under N.J.A.C. 8:40A-10.1 (Basic EMTs) and N.J.A.C. 8:41A-5.1 (Paramedic EMTs).

⁸ The 2010 Attorney General Policy on Conducted Energy Devices required all law enforcement agencies to report to the appropriate County Prosecutor regarding CED discharges. As the New Jersey

1. In all instances when a conducted energy device is fired or discharged⁹ during an actual operation, the law enforcement officer who employed such force shall complete:
 - a. Any reports made necessary by the nature of the underlying incident, and,
 - b. A use of force report as required by the Attorney General's Use of Force Policy.
 - c. A Conducted Energy Device Report.¹⁰
2. a. **Municipal and County Law Enforcement Officers.** In all instances when a conducted energy device is fired at or discharged upon a person by a municipal or county law enforcement officer, a higher-ranking supervisor shall investigate the circumstances and outcome of the device's use. The investigating supervisor shall report on the incident to the chief executive of the department, providing the chief executive information on all relevant circumstances, deployment, and outcome, including whether the deployment avoided injury to an officer and avoided the need to use deadly force. Upon receipt, the chief executive shall issue a finding on whether the firing and all discharges complied with the Attorney General's Supplemental Policy on Conducted Energy Devices. The chief executive shall forward the report to the County Prosecutor within 3 business days of the firing/discharge, unless

State Police and other state law enforcement agencies typically report directly to the Division of Criminal Justice on use of force issues, the July 13, 2012 Clarification of CED Incident Reporting Procedures for State-level Law Enforcement Agencies directed that the State Police and other state law enforcement agencies continue to investigate CED discharges in the same manner as required by the 2010 Policy, but forward their reports and findings directly to the Director of the Division of Criminal Justice. The Director will then perform the review functions that otherwise would have been performed by the County Prosecutor, in addition to the review and reporting functions already required of the Director by the 2010 Policy. The July 13, 2012 clarification is reflected in this document.

⁹ The 2010 Attorney General Policy on Conducted Energy Devices included a CED "spark display" in Section X(1) as a law enforcement action requiring the officer to complete the enumerated reports. The May 3, 2012 Clarification of the Attorney General Policy on Conducted Energy Devices described an officer's authority to conduct a spark display, clarified that a spark display does not constitute a use of force as that concept is defined by the Attorney General's General Use of Force Policy issued in 2000, and eliminated the requirement that an officer file the enumerated reports following a CED "spark display." Note that the May 3, 2012 Clarification of the Attorney General Policy on Conducted Energy Devices does not eliminate the requirement to file any reports otherwise made necessary by the nature of the underlying incident, nor does it eliminate the requirement to file a use of force report if any type of force is otherwise utilized during the underlying incident.

¹⁰ The title of this report has been changed to the Conducted Energy Device Deployment Review Report. See paragraph 4 of the June 4, 2014 Memorandum issued by the Director of the Division of Criminal Justice.

the County Prosecutor grants the chief executive's request for a reasonable extension of time within which to forward the report for good cause shown.

- b. State Law Enforcement Officers. In all instances when a conducted energy device is fired at or discharged upon a person by a state law enforcement officer, a higher-ranking supervisor shall investigate the circumstances and outcome of the device's use. The investigating supervisor shall report on the incident to the chief executive of the department, providing the chief executive information on all relevant circumstances, deployment, and outcome, including whether the deployment avoided injury to an officer and avoided the need to use deadly force. Upon receipt, the Superintendent or chief executive shall issue a finding on whether the firing and all discharges complied with the Attorney General's Supplemental Policy on Conducted Energy Devices. The Superintendent or chief executive shall forward the report to the Director of the Division of Criminal Justice within 3 business days of the firing/discharge, unless the Director grants the Superintendent or chief executive's request for a reasonable extension of time within which to forward the report for good cause shown.
- 3. a. Municipal and County Law Enforcement Officers. In all cases involving municipal and county law enforcement officers, the County Prosecutor shall review all reports detailing conducted energy device firings/discharges occurring within his or her jurisdiction. The Prosecutor shall within 7 days of the device's firing/discharge forward to the Director of the Division of Criminal Justice the investigation report(s) prepared by the chief executive of the department, along with a memorandum or letter indicating whether the Prosecutor concurs or disagrees with the findings of the chief executive of the department as to the propriety of the firing/discharge(s). A Prosecutor may request a reasonable extension of time within which to report to the Director of the Division of Criminal Justice when the Prosecutor believes that an incident requires further investigation to determine whether the firing/discharge(s) complied with this supplemental policy. The Prosecutor may conduct any such further investigation, or may direct the chief executive of the department to do so. The Director of the Division of Criminal Justice shall report to the Attorney General on the propriety of the firing/discharge(s).
 - b. State Law Enforcement Officers. In all cases involving state law enforcement officers, the Director of the Division of Criminal Justice shall review all reports detailing conducted energy device firings/discharges. The Director or his designee shall within 7 days of the device's firing/discharge prepare a memorandum or letter indicating whether the Director concurs or disagrees with the findings of the Superintendent or chief executive of the department as to the propriety of the firing/discharge(s). The Director may delay the issuance of the memorandum or letter when the Director believes that an incident requires further investigation to determine whether the

firing/discharge(s) complied with this supplemental policy. The Director may conduct any such further investigation, or may direct the Superintendent or chief executive of the department to do so. The Director of the Division of Criminal Justice shall report to the Attorney General on the propriety of the firing/discharge(s).

4. In all instances when a conducted energy device is fired at or discharged upon a person, a superior officer designated by the chief of the department employing the officer who fired or discharged the device shall take custody of and secure the device. The superior officer shall safeguard the digital information in that device concerning the incident. The chief executive officer of each department that employs the use of conducted energy devices shall issue a rule, regulation, standing operating procedure or other appropriate order to establish a system to ensure that the internal digital recording systems of these devices are maintained, and that the data contained therein cannot be tampered with, and cannot be accessed or erased except by duly authorized supervisors. After the information is safeguarded, the device may be returned to deployment consistent with the department's policies. The information stored in the device concerning the use of force incident (*i.e.*, *e.g.*, data concerning the time the weapon was fired, the time of all electrical discharges, and video recordings of the firing of the weapon and all electrical discharges) shall be preserved and reported on in the report of the incident prepared pursuant to paragraph 2 of this Section.

XI. Approved Conducted Energy Devices [Amended March 3, 2016]

The New Jersey State Police, in consultation with the Division of Criminal Justice, shall develop a list of specifications and characteristics of conducted energy devices that may be deployed and used pursuant to this supplemental policy. Those specifications will include the following requirements:

1. The device must be capable of making a date- and time-stamped digital record of each occurrence when the darts/electrodes are fired, and of each occurrence when an electrical current is discharged.
2. The device must be capable of making a digital video recording of each such firing and electrical discharge, where the focus of the internal camera is centered on the person against whom the conducted energy device was targeted, except that an agency is authorized to purchase and deploy a conducted energy device that does not have the capability of making a digital video recording provided that such device may only be carried and used by an officer who is equipped with a body worn camera as defined in Attorney General Law Enforcement Directive No. 2015-1, and further provided that, notwithstanding any other provision of this supplemental policy, such device shall not be fired or discharged during an actual operation unless the officer has activated the body worn camera. Nothing herein shall be construed to preclude the officer from firing or discharging the device in the event that the officer's body worn camera malfunctions unforeseeably, or if the exigency of the situation made it

unsafe or infeasible for the officer to activate the body worn camera before firing the device.

3. The device must safeguard all such digital data and video recordings to ensure that they can be accessed or erased only by appropriate supervisory personnel in accordance with rules, regulations, standing operating procedures or orders promulgated pursuant to this supplemental policy.

The list of specifications and characteristics shall be submitted to the Attorney General for approval and dissemination. No law enforcement agency shall purchase, possess, deploy, fire, or discharge any conducted energy device pursuant to this supplemental policy unless the device satisfies the specifications and characteristics approved by the Attorney General. The private ownership or possession of a conducted energy device or any other form of stun gun is strictly prohibited and is subject to criminal prosecution.

XII. Sanctions for Non-Compliance

If the Attorney General or designee has reason to believe that a law enforcement agency or officer is not complying with or adequately enforcing the provisions of this supplemental policy, the Attorney General may temporarily or permanently suspend or revoke the authority of the department, or any officer, to possess or use conducted energy devices, may initiate disciplinary or criminal prosecution proceedings, and may take such other actions as the Attorney General in his/her sole discretion deems appropriate to ensure compliance with this supplemental policy.