



*State of New Jersey*

PHILIP D. MURPHY  
*Governor*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
PO Box 080  
TRENTON, NJ 08625-0080

GURBIR S. GREWAL  
*Attorney General*

SHEILA Y. OLIVER  
*Lt. Governor*

**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2020-13**

**TO:** All Law Enforcement Chief Executives and County Prosecutors

**FROM:** Gurbir S. Grewal, Attorney General

**DATE:** December 21, 2020

**SUBJECT: Directive Revising Use of Force Policy and Procedures**

New Jersey’s law enforcement officers are entrusted with protecting public safety and, in some instances, are authorized to use force—including deadly force—to fulfill that responsibility. Law enforcement agency use of force policies are designed to give clear guidance to officers on the limited circumstances in which the exercise of that exceptional power is appropriate. Both officers and community members alike benefit when such policies are evidence-based and provide as much clarity as possible. While no policy document can anticipate all of the unique situations that a law enforcement officer may encounter, careful development, training, and enforcement of such policies can help ensure that state-sanctioned force is only used as a last resort, when necessary to accomplish legitimate law enforcement objectives.

Although law enforcement agencies typically maintain their own individual policies regarding the use of force, in New Jersey all such policies must be consistent with the Attorney General Directive Establishing the Use of Force Policy and Procedures (“Use of Force Policy” or “Policy”), which applies statewide. While agency policies may be more restrictive, they cannot permit the use of force where the Policy prohibits it.

Today, I am issuing a comprehensive revision to the Policy—the first time it has been updated since 2000. Given the need to ensure that officers are appropriately trained on its parameters before it is fully implemented, the effective date of the Policy shall be December 31, 2021.

I first announced in December 2019 that the Office of Public Integrity & Accountability (OPIA) within the Attorney General’s Office would revisit the Use of Force Policy as part of our



efforts to overhaul and standardize use of force data collection across the state. At the time, media reporting suggested disparities and inconsistencies in how force was being used and reported by New Jersey law enforcement. The need to revise this Policy took on added urgency in the wake of the killing of George Floyd this past May. That tragic incident was roundly and rightfully decried for its injustice by stakeholders across the country and in New Jersey, including, and especially, our law enforcement leaders. It also prompted many states and localities to conduct wholesale reviews of their policing policies and practices to ensure they accord with modern best practices, and are in line with community expectations about the reasonable and appropriate use of force by law enforcement.

In New Jersey, that hard work has been underway for many years. Together, we have been working in partnership with stakeholders across the state to develop and implement a variety of initiatives—collectively known as the “Excellence in Policing Initiative”—that both standardize and build upon the incredible policing already being done in New Jersey. Drawing upon the experience and relationships we have gained, I established a robust and comprehensive process for gathering input and expertise on potential reforms to the Use of Force Policy we are announcing today.

First, we established a working group with deep expertise in law enforcement to provide comprehensive input on what components of the prior policy have worked well and which needed to be reexamined. This group included police chiefs, experts in police training and in investigating police misconduct, policing policy experts, county prosecutors, and assistant prosecutors. Subcommittees focusing on discrete aspects of the policy developed recommendations, which were then shared and evaluated by the full working group.

Second, we solicited feedback from the public through many different channels. We established a public comment portal that was open for several months, through which over a thousand residents and organizations submitted their views on the policy, potential revisions, and other thoughts on policing and the criminal justice system more generally. Every one of New Jersey’s 21 County Prosecutors held live listening sessions open to the community and chronicled the input they received. Representatives from my office also attended each of these sessions, and I personally participated in multiple town halls, hearing directly from citizens about their ideas and concerns.

Third, we engaged with numerous community groups and advocacy organizations throughout the state, who expressed their concerns with the existing policy and lent their expertise as we developed revisions.<sup>1</sup>

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<sup>1</sup> One particular area of concern which was raised, but not fully resolved, was the use of canines by police. Notably, the Use of Force Policy incorporates some new limitations on their use. It prohibits their use against those who are resisting arrest, but do not pose a threat to an officer or someone else. It also prohibits the visible presence of canines for crowd control purposes at peaceful demonstrations and their deployment against a crowd, except to respond to a threat of death or serious bodily injury to a member of the public or to an officer. Canines may continue to be used for explosive detection or similar security sweeps at such gatherings. There is, however, additional work to be done and information to be gathered about the use of canines, including from the Use of Force Portal. Today, I

Fourth, we undertook a sweeping examination of best practices and ideas regarding use of force from around the country, analyzing numerous use of force policies from other jurisdictions, academic research, media investigations, reports by government agencies involved in policing reform, and other policy documents produced by experts in the field.

The Use of Force Policy is the result of this careful and comprehensive process—quite possibly the only such statewide effort of its kind. It reflects the collective commitment of New Jersey law enforcement to be guided by the evidence and a recognition that policies to improve professionalism in policing further public safety, rather than undermine it.

Revisions to this Policy will not, alone, solve all problems of excessive force or police accountability. Nor will this Policy by itself rebuild trust between law enforcement and communities where it has frayed. I am mindful of the difficulties in changing culture in law enforcement or in any organization, and that is why this Policy is only one component of our overall push towards excellence in policing—a broader strategy to enhance police accountability, transparency and professionalism. At the same time, we must also remind ourselves that systemic injustices in the criminal justice system are part and parcel of broader, longstanding societal inequities that must also be remedied.

Nevertheless, I am certain that the Use of Force Policy and our other work will serve as a model for how jurisdictions across the country can modernize practices so as to better sustain the lives of all of our citizens, civilians, and law enforcement officers alike.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the state in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement or adopt policies consistent with the revised Use of Force Policy, including the Policy's addenda, appended to this Directive. This Directive repeals and supersedes the provisions of the following Attorney General Directives:

- Attorney General Use of Force Policy, last revised June 2000;
- New Jersey Vehicular Pursuit Policy, last revised July 2009;
- Attorney General Directive 2016-3, a Directive Revising the Supplemental Policy on Conducted Energy Devices, and all prior guidance on Conducted Energy Devices;
- Attorney General Supplemental Policy on Less-Lethal Ammunition, issued March 2008; and
- Attorney General Approved List of Less-Lethal Ammunition, December 2010.

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am separately directing OPIA to continue its work with law enforcement and community stakeholders and provide further recommendations to me by March 31, 2021.

## **I. Summary of the Use of Force Policy**

Although officers are necessarily granted the authority to use force to accomplish lawful objectives, force must only be used as a last resort. The Fourth Amendment further requires that an officer's use of force be "objectively reasonable." *Graham v. Connor*, 490 U.S. 386 (1989). This provision, however, provides a constitutional "floor" for officer use of force that all officers must meet. The Use of Force Policy sets standards that go beyond the minimum constitutional requirements set forth in *Graham*.

This Policy is premised on seven core principles that guide every law enforcement interaction and are designed to ensure that law enforcement officers preserve the sanctity of life, as well as the dignity, rights and liberties of the public at every turn. It requires, whenever feasible, that officers use "critical decision-making" and de-escalation techniques to reduce the amount of force used or avoid it altogether. Force is only authorized when necessary as a last resort and requires that the amount of force used always be reasonable and proportional to further a lawful law enforcement objective. The Use of Force Policy also provides more detailed guidelines for officers to use in the face of situations that may require the use of force. In addition, it establishes a robust duty for all officers to intervene to prevent or stop improper uses of force.

Officers face dynamic, quickly evolving, and potentially dangerous situations that require split-second decisions. Therefore, officers who act in good faith consistent with the Use of Force Policy will be strongly supported in any subsequent review of their conduct regarding their use of force. However, those who do not follow the Policy may face administrative action, or disciplinary action—up to and including termination—and, depending on the conduct, criminal consequences.

As detailed herein, to ensure adherence to the Use of Force Policy, every use of force must be reported on the Attorney General's Use of Force Reporting Portal within 24 hours, and undergo a meaningful command-level review. In addition, each law enforcement chief executive must annually review the overall use of force by their department to ensure compliance with the Policy and necessary reporting to their respective County Prosecutor's Office.

Finally, strict adherence to the Policy will ensure a mutually respectful relationship between the public and law enforcement, allowing law enforcement to effectively do their jobs as guardians of public safety. If the public understands that officers prioritize de-escalation and only when necessary as a last resort, use force with restraint and in an even-handed, non-discriminatory manner, they will be more likely to support law enforcement and comply with their lawful requests. This, in turn, will reduce the number of instances in which force is needed and improve both public and officer safety.

**II. Other Provisions**

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General’s authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of both this Directive and the Use of Force Policy shall be severable. If any phrase, clause, sentence or provision of either this Directive or the Use of Force Policy is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive or the Use of Force Policy shall be addressed to the Director of the Office of Public Integrity & Accountability, or their designee.
- D. ***Effective date and training deadline.*** This Directive shall take effect on December 31, 2021. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General. The Use of Force Policy appended to this Directive supersedes all prior versions of the Use of Force Policy and other relevant policies and directives. All state, county, and local law enforcement agencies shall ensure that sworn personnel employed by their agencies complete the training mandated by the Attorney General pursuant to this Directive and Policy before December 31, 2021.



Gurbir S. Grewal  
Attorney General

ATTEST:



Thomas J. Eicher  
Director  
Office of Public Integrity & Accountability

Dated: December 21, 2020

# USE OF FORCE POLICY

Office of the Attorney General | State of New Jersey

December 2020  
Version

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# Core Principles

## 1 The Sanctity of Human Life and Serving the Community.

In serving the community, law enforcement officers (hereinafter “officers”) shall make every effort to preserve and protect human life and the safety of all persons. Officers shall respect and uphold the dignity of all persons at all times in a non-discriminatory manner.

## 2 Force as a Last Resort and Duty to De-Escalate.

Force shall only be used as a last resort when necessary to accomplish lawful objectives that cannot reasonably be achieved through verbal commands, critical decision making, tactical deployment or de-escalation techniques. Force shall never be used as a retaliatory or punitive measure.

## 3 Duty to Use Only Objectively Reasonable, Necessary, and Proportional Force.

Officers shall use the least amount of force that is objectively reasonable, necessary and proportional to safely achieve the legitimate law enforcement objective under the circumstances.

## 4 Duty to Use Deadly Force Only as an Absolute Last Resort and Duty to Avoid Actions Which Create a Substantial Risk of Death or Serious Bodily Injury.

Deadly force shall only be used as an absolute last resort and in strict compliance with this Policy. Other actions by law enforcement that create a substantial risk of death or serious bodily injury must be avoided or employed only under the strictest of conditions.

## 5 Duty to Intervene and Report.

Every officer, regardless of rank, title, seniority, or status, has an affirmative duty to take steps to prevent any use of force that is illegal, excessive, or otherwise inconsistent with such policies, regulations, and laws, if possible, before a fellow officer uses excessive, illegal, or otherwise inappropriate force. Every officer has a duty to immediately report any improper use of force.

## 6 Duty to Render Medical Assistance.

After any use of force, and when the environment is safe, officers shall promptly render medical assistance to any injured person consistent with the officer’s training and shall promptly request emergency medical assistance for that person, if needed or requested. Officers also have a duty to monitor individuals for potential medical intervention after any officer uses force.

## 7 Duty to Report and Review Uses of Force.

Every use of force must be reported and receive a meaningful command level review as set forth in a written department policy that includes review by the law enforcement executive. The law enforcement executive shall also conduct an annual review and analysis of the overall use of force by the department.



## Definitions

**Active Assailant.** A person who is using or imminently threatening the use of force, with or without a weapon, in an aggressive manner that poses a substantial risk of causing bodily injury to an officer or another person. A threatening assailant becomes an active assailant when the threat becomes imminent.

**Active Resistor.** A person who is uncooperative, fails to comply with directions from an officer, and instead actively attempts to avoid physical control. This type of resistance includes, but is not limited to, evasive movement of the arm, flailing arms, tensing arms beneath the body to avoid handcuffing, and flight.

**Bodily Injury.** Physical pain or temporary disfigurement, or any impairment of physical condition. Bodily harm and bodily injury have the same definition for the purposes of this Policy. See N.J.S.A. 2C:11-1(a); N.J.S.A. 2C:3-11(e).

**Civil Disturbance.** An assembly of persons engaged in or creating an immediate threat of collective violence, destruction of property, looting, or other criminal acts. Such a gathering may also be referred to as a riot.

**Chokehold.** A technique that involves applying direct pressure to a person's trachea (windpipe) or airway (front of the neck) with the effect of reducing the intake of air. This includes a carotid restraint or any lateral neck restraint, where direct pressure is applied to the carotid artery restricting the flow of blood to the brain causing temporary loss of consciousness.

**Conducted Energy Device (CED).** A CED 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.

**Constructive Authority.** Constructive authority is not considered a use of force because it does not involve physical contact with the subject. Rather, constructive authority involves the use of the officer's authority to exert control over a subject. Examples include verbal commands, gestures, warnings, and unholstering a weapon. Pointing a firearm at a subject is an example of constructive authority to be used only in appropriate circumstances outlined in Section 3.4 of this Policy.

**Cooperative Person.** A person who responds to and complies with an officer's directions.

**Critical Decision-Making Model.** The Critical Decision-Making Model is an organized way of making decisions about how an officer will act in any situation, including those that may involve potential uses of force.

**De-escalation.** De-escalation refers to the action of communicating verbally or non-verbally in an attempt to reduce, stabilize, or eliminate the immediacy of a threat. De-escalation may also be

used to create the time needed to position additional resources to resolve the situation with the least amount of force necessary.

**Deadly Force.** Force that an officer uses with the purpose of causing, or that a reasonable officer knows creates a substantial risk of causing death or serious bodily injury. Discharging a firearm, constitutes deadly force, unless the discharge occurred during the course of a law enforcement training exercise, routine target practice at a firing range, a lawful animal hunt, or the humane killing of an injured animal. A threat to cause death or serious bodily injury by the display of a weapon or otherwise, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

**Enhanced Mechanical Force.** An intermediate force option between mechanical force and deadly force, generally 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. Unlike deadly force, enhanced mechanical force does not require an imminent threat of death or serious bodily injury. Examples include conducted energy devices and less-lethal devices and ammunition.

**Feasible.** Reasonably capable of being accomplished or carried out, given the totality of the circumstances, in a manner that maintains the safety of the public and officers.

**Imminent Danger.** Threatened actions or outcomes that are immediately likely to occur during an encounter absent action by the officer. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the officer, but is carrying a weapon and running for cover to gain a tactical advantage.

**Law Enforcement Executive.** A law enforcement agency's highest-ranking sworn law enforcement officer, typically the chief of police. In situations where the highest-ranking officer is recused from a matter, then "law enforcement executive" refers to the next highest-ranking officer without a conflict.

**Law Enforcement Officer.** Any person who is employed as a sworn member of any state, county, or municipal law enforcement agency, department, or division of those governments who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State. The term law enforcement officer shall include sworn members of the New Jersey State Police, the Division of Criminal Justice and the Juvenile Justice Commission. It shall include State Correctional Police Officers pursuant to N.J.S.A. 2A:154-4, County Correctional Police Officers pursuant to N.J.S.A. 2A:154-3, Special Law Enforcement Officers of all classes pursuant to N.J.S.A. 40A:14-146.8 et seq., Humane Law Enforcement Officers appointed pursuant to N.J.S.A. 4:22-14.1 or 4:22-14.4, Auxiliary Police Officers appointed pursuant to N.J.S.A. App.A:9-45(c), and Constables appointed pursuant to N.J.S.A. 40A:9-120.

**Mechanical Force.** Mechanical force involves the use of a device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the officer's authority. Examples include use of an asp, baton, or other object, oleoresin capsicum (OC) spray or the physical apprehension by canines.

**Passive Resistor.** A person who is non-compliant in that they fail to comply in a non-movement way with verbal or other direction from an officer.

**Peaceful Demonstration.** A nonviolent assembly of persons organized primarily to engage in free speech activity. These may be scheduled events that allow for law enforcement planning or spontaneous. They include, but are not limited to, marches, protests, and other assemblies intended to attract attention.

**Physical Contact.** Physical contact involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting, routinely handcuffing a subject, and maneuvering or securing a subject for a frisk. Physical contact alone does not constitute force.

**Physical Force.** Physical force involves contact with a subject beyond that which is generally used to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the officer's authority, or to protect persons or property. Examples include taking a resisting subject to the ground, using wrist or arm locks, striking the subject with the hands or feet, or other similar methods of hand-to-hand confrontation, such as certain pain compliance techniques.

**Positional Asphyxiation.** Positional asphyxiation is insufficient intake of oxygen as a result of body position that interferes with the subject's ability to breathe. It can occur during the process of subduing and restraining a person by placing the person in a posture that prevents or impedes the mechanism of normal breathing. If the person cannot escape from the position, death may occur very rapidly. Restraint in the prone position presents a significant risk of asphyxia, particularly when a person is handcuffed and left in a face-down position. As soon as handcuffed and restrained, a person should be raised immediately to a seated or standing position that does not impede the mechanism of normal breathing.

**Proportional Force.** The minimum amount of force, of both type (e.g., physical, mechanical, enhanced mechanical, or deadly) and intensity, that is necessary to control a situation and achieve a legitimate law enforcement objective. The law permits officers to overcome unlawful force or resistance; thus, the term proportional force is not intended to mean a type and intensity of force that is exactly equal to the type and intensity of force being used by the subject. The term proportional force is intended to highlight that the level of force a law enforcement officer utilizes shall be no more than is necessary to overcome the unlawful force or resistance being confronted by the officer.

**Reasonable Belief.** A reasonable belief is an objective assessment based upon an evaluation of how a reasonable officer with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the officer at the scene.

**Serious Bodily Injury.** Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. Serious bodily injury and serious bodily harm have the same definition the purposes of this Policy. See N.J.S.A. 2C:11-1(b); N.J.S.A. 2C:3-11(d).

**Strategic Redeployment.** Repositioning by an officer to increase space and time to react to a subject. It includes gaining time to de-escalate by withdrawing from the immediate vicinity of the subject if doing so will not create a threat to the safety of the public or the officer in doing so.

**Tactical Communication.** Verbal communication techniques that are designed to avoid or minimize the use of force. Such techniques include giving clear, simple instructions or directions, using active listening techniques to engage the suspect, and explaining the consequences of failure to comply with directions or instructions, including that force may be used.

**Tactical Positioning.** Making advantageous uses of position, distance, and cover to reduce the risk of injury to an officer and avoid or reduce the need to use force.

**Threatening Assailant.** A person who is threatening the use of force against an officer or another person, with or without a weapon, in an aggressive manner that may cause bodily injury. Examples may include a person armed with a weapon who fails to disarm, and an unarmed person who advances on an officer or any other person in a threatening manner thereby reducing the officer's time to react, putting the officer in reasonable fear of a physical attack.

**Time as a Tactic.** A method to avoid forcing an immediate resolution to a situation if it can be safely done, including establishing a zone of safety around a person that creates an opportunity for an assessment and action, when feasible, thereby decreasing the need to resort to force.

## Core Principle One

**The Sanctity of Human Life and Serving the Community.** In serving the community, officers shall make every effort to preserve and protect human life and the safety of all persons. Officers shall also respect and uphold the dignity of all persons at all times in a non-discriminatory manner.

- 1.1** A respectful and cooperative relationship with the community is essential for effective law enforcement. That relationship can be undermined when force is used unnecessarily or unequally.
- 1.2** Every officer shall respect the sanctity of human life and the dignity of every person, and act to preserve every life, whenever possible, and avoid unnecessary injury to members of the public or themselves.
- 1.3** In carrying out their duties as guardians of public safety, officers shall at all times treat every person equally without regard to the individual's actual or perceived race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability, nationality, familial status, or any other protected characteristic under N.J.S.A. 10:5-1 et seq.

## Core Principle Two

**Force as a Last Resort and Duty to De-Escalate.** Force shall only be used as a last resort when necessary to accomplish lawful objectives that cannot reasonably be achieved through verbal commands, critical decision making, tactical deployment or de-escalation techniques. Force shall never be used as a retaliatory or punitive measure.

- 2.1 Authority to use force.** Officers are granted the unique authority to use force for lawful purposes, including, but not limited to, the following:
- (a) effectuating a lawful arrest or detention;
  - (b) carrying out a lawful search;
  - (c) overcoming resistance directed at the officer or others;
  - (d) preventing physical harm to the officer or to another person (including intervening in a suicide or other attempt of self-inflicted injury);
  - (e) protecting the officer or a third party from unlawful force; or
  - (f) preventing property damage or loss.
- 2.2 Prohibitions on certain force.** Officers may not use or threaten to use force for any following reasons:
- (a) to punish a person or to retaliate against them for past conduct;
  - (b) as a lesson to prevent a person from resisting or fleeing in the future; or
  - (c) to resolve a situation more quickly, unless delay would risk the safety of the person involved, officers, or others, or would significantly interfere with other legitimate law enforcement objectives.
- 2.3 Force as a last resort.** Officers shall exhaust all other reasonable means to gain compliance before resorting to force, if feasible. Thus, if a safe alternative would achieve law enforcement's objective, force shall not be used. Officers shall, therefore, use verbal commands, critical decision making, tactical deployment and de-escalation techniques to gain voluntary compliance, when feasible. Importantly, officers shall never engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes necessary.
- 2.4 Critical decision making.** Critical decision-making and tactical deployment techniques include tactical communication and tactical positioning, such as strategic redeployment and time as a tactic. Critical decision-making and tactics require officers to do the following:
- (a) begin critical assessment and planning prior to arriving at the scene;

- (b) collect available information;
- (c) assess situations, threats, and risks;
- (d) identify options for conflict resolution;
- (e) determine the best course of action; and
- (f) act, review, and re-assess the situation as it evolves.

**2.5 De-escalation.** De-escalation is the action of communicating verbally or non-verbally in an attempt to reduce, stabilize, or eliminate the immediacy of a threat. De-escalation may also be used to create the time needed to allow the situation to resolve itself or to position additional resources to resolve the situation with the least amount of force necessary. Officers should employ de-escalation techniques when feasible, which include, but are not limited to, the following:

- (a) communication techniques to calm an agitated subject (e.g., regulating tone and pitch, such as speaking slowly in a calm voice);
- (b) techniques to promote rational decision making, such as ensuring that only one officer addresses the person and the other officers remain detached as safety permits as to not escalate the situation; and splitting up individuals at the scene who may be arguing;
- (c) active listening techniques, such as sharing the officer's name, asking the subject their name, and exhibiting a genuine willingness to listen;
- (d) slowing down the pace of the incident by taking deep breaths, slowing speech, and/or applying strategic or critical thinking;
- (e) using calming gestures and facial expressions (e.g., arms extended with palms out and avoid angry expressions);
- (f) practicing procedural-justice techniques, such as explaining the officer's actions and responding to questions;
- (g) verbal persuasion and advisements (e.g., explaining, without threats, how the person would benefit from cooperation, and the subject's rights or what the officer wants the subject to do); and
- (h) avoiding the unnecessary display of weapons, including firearms, Conducted Energy Devices (CEDs), batons, or OC Spray.

**2.6 Warning and opportunity to comply.** Officers should generally not use force immediately when encountering noncompliance with verbal directions. Instead, whenever feasible, before using force, officers shall:

- (a) provide clear instructions and warnings;
- (b) attempt to determine whether the person has a special need, mental condition, physical limitation, developmental disability, or language barrier (See Section 2.7);
- (c) state the consequences of refusing to comply with a mandatory directive, including that force will be used unless the person complies; and
- (d) give the suspect a reasonable opportunity to comply.

**2.7 Dealing with persons in a behavioral or mental health crisis or other factors affecting compliance.** Officers should consider an individual’s mental, physical, developmental, intellectual disability, or other conditions, such as age of the suspect, that affect the person’s ability to communicate or comply. This includes, when feasible, considering the following factors related to the individual:

- (a) behavioral or mental health crisis;
- (b) drug interaction;
- (c) medical condition;
- (d) mental impairment;
- (e) physical limitation;
- (f) developmental disability, including autism spectrum disorder;
- (g) cognitive impairment or intellectual disability;
- (h) hearing loss or impairment;
- (i) communication disorder, including speech impairment;
- (j) language barrier;
- (k) visual impairment;
- (l) age; or
- (m) other factors beyond the individual’s control.

**2.8** Whenever an officer determines that one of the above listed factors exists and is influencing the person’s failure to comply with an officer’s command, when feasible, the officer shall consider whether specific techniques or resources would help resolve the situation without the need to utilize force. Techniques for responding include, but are not limited to, the following:

- (a) obtaining information about the person from available sources including family members, caregivers or others who know the individual;
- (b) decreasing exposure to the potential threat by moving to a safer position. This may involve creating distance, seeking cover, tactical repositioning, concealment, and/or placing barriers between an uncooperative person and the officer;
- (c) slowing down the pace of the incident by the officer slowing their speech, taking deep breaths, and/or applying strategic and critical thinking;
- (d) keeping the non-compliant person confined to a limited area and calling for a supervisor, back-up officers, and specially-trained resources to assist in resolving the incident. These specially-trained resources may include Crisis Intervention Team-trained officers, behavioral or mental health care providers, negotiators, qualified bi-lingual officers, or officers equipped with less-lethal devices;
- (e) using time as a de-escalation strategy, thereby creating an opportunity to calm the non-compliant person;
- (f) using simplified speech and shorter verbal directions or instructions;
- (g) eliminating or reducing sensory distractions (bright flashing lights, sirens, or other loud noises); and



(h) any reasonable strategy that lessens the emotional anger, frustration, combativeness of a subject or others who may be present may be appropriate.

**2.9** Importantly, officers should not default to attempting to resolve the incident immediately if slowing down the pace is viable and can be accomplished without creating an immediate threat to the public or placing officers in unreasonable danger.

## Core Principle Three

### Duty to Use Only Objectively Reasonable, Necessary, and Proportional Force.

Officers shall use the least amount of force that is objectively reasonable, necessary, and proportional to safely achieve the legitimate law enforcement objective under the circumstances.

- 3.1 Limitations on use of force.** In situations where officers are justified in using force, officers shall use only that degree of force that is reasonable, necessary, and proportional considering the totality of the circumstances, including the subject's mental and physical condition, the nature of the offense, and most importantly the level of resistance or threat known to the officer at the time.
- 3.2 Considerations when using force.** The decision to use force and the appropriate amount of force requires careful attention to the facts and circumstances of each incident. The officer must, as time permits and is feasible, consider the following non-exhaustive list of factors when determining whether and how much force to apply:
- (a) immediacy and severity of the threat to officers or the public;
  - (b) the conduct of the individual being confronted, as reasonably perceived by the officer at the time;
  - (c) characteristics of the officer and subject (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects);
  - (d) the effects of drugs or alcohol;
  - (e) the individual's mental state or capacity;
  - (f) the proximity of weapons or dangerous improvised devices;
  - (g) the degree to which the subject has been effectively restrained and their ability to resist despite being restrained;
  - (h) the availability of other options and possible effectiveness;
  - (i) the seriousness of the suspected offense or reason for contact with the individual. For example, in dealing with minor offenses, such as motor vehicle or and local ordinance violations practicing procedural-justice techniques, such as explaining the officer's actions and responding to questions before resorting to force, is particularly important;
  - (j) the officer's training and experience; and
  - (k) the potential for injury to officers, suspects, and the public.
- 3.2.1** It is important to note that law enforcement encounters are never static and rapidly evolve. Thus, officers must continuously assess the effectiveness, proportionality, and necessity of their actions, including their tactical positioning, in order to decrease the likelihood of force being needed for self-protection. Officers may increase the time

available to evaluate the threat by positioning an object between themselves and the subject, being aware of their surroundings, and waiting for backup, when it is available.

**3.3 Level of Resistance.** The level of resistance that an officer encounters is a key factor in determining the appropriate amount of force that may be used in response. Although it is not possible to determine in advance what the appropriate level of force is for every encounter, one factor that is consistent is the amount of resistance the officer is facing at the time. The less resistance an officer faces, the less force the officer should use. Consistent with training, the following general rules apply in determining the appropriate level of force:

- (a) *Cooperative Person.* When dealing with a cooperative person, officers may rely on police presence and/or verbal control techniques, but should not use force.
- (b) *Passive Resistor.* When dealing with a passive resistor, officers may rely on police presence, verbal control techniques, holding techniques, lifting/carrying, wrist locks and other manual pain compliance techniques. Greater force, such as strikes, punches, CEDs, or less lethal devices shall not be used.
- (c) *Active Resistor.* When dealing with an active resistor, in addition to the options available for passive resistors, officers may use physical strikes with hands or feet, OC spray, batons or asps applied with non-impact pressure, and taking the person to the ground. As more fully detailed in Section 4.2, intentional strikes to the head or face, which are only allowed in an act of self-defense, are not permitted when dealing with an active resistor. Police canines shall not be utilized against an active resistor.
- (d) *Threatening Assailant.* In general, when dealing with a threatening assailant, officers may use all types of force options other than deadly force. This includes striking with batons or asps, less lethal ammunition, and CEDs. Although a range of force options is generally available, the officer shall only use force that is proportional to the threat faced. Any strikes to the head or neck with a baton or asp are considered deadly force and can only be used when deadly force is allowed.
- (e) *Active Assailant.* In general, when dealing with an active assailant, officers have all force options available, though deadly force shall only be used as a last resort in accordance with Core Principle Five of this Policy.

**3.3.1** An individual's status evolves from a resistor to an assailant when they use force, threaten to use force, or otherwise act in an aggressive manner that increases the likelihood that they may cause physical injury to an officer or to another person. However, flight from an officer does not, on its own, qualify a person as an assailant. When dealing with an individual who poses a threat to the officer, the individual could be considered either a threatening assailant or an active assailant. To determine the individual's status for appropriate officer response, the officer must assess whether the threat poses an

imminent danger. If the threat is imminent, then that individual is considered an active assailant and all use of force options are available with deadly force being an absolute last resort in accordance with Core Principle Five of this Policy.

3.3.2 Officers face a dynamic environment in which interactions with individuals can escalate very quickly from one level of resistance to another. For example, a passive resistor may become an active assailant in an instant. In responding to the level of resistance, the officer may use the level of force that corresponds to the level of resistance the officer is facing, and need not use lesser levels of force that will not address the threat that the officer faces at the time. If the individual's resistance diminishes, the officer shall immediately reduce the level of force used against the individual. If the individual stops resisting entirely, the officer must immediately cease using force.

3.4 **Displaying of Firearms.** Special requirements must be met before an officer may display a firearm. Unholstering or pointing a firearm are tactics that should be used with great caution. The presence of an officer's firearm, under the right circumstances, can discourage resistance and ensure officer safety in potentially dangerous situations without the need to resort to force. At the same time, however, unnecessarily or prematurely drawing a firearm could limit an officer's options in controlling a situation, could create greater anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm.

(a) *Pointing a firearm.* Consistent with training, officers may point a firearm at a person only when circumstances create a reasonable belief that it may be necessary for the officer to use deadly force. When the officer no longer reasonably believes that deadly force may be necessary, the officer shall, as soon as practicable, secure or holster the firearm.

(b) *Reporting the pointing of a firearm.* Pointing a firearm, though not a use of force, constitutes a seizure that must be reported as a Show of Force on the Attorney General's Use of Force Reporting Portal.

3.5 **Defensive Tactics & Pain Compliance Techniques.** Pain compliance techniques may be effective in controlling a passive or active resistor. Officers may only apply pain compliance techniques for which the officer has received department approved training and only when the officer reasonably believes that the use of such a technique is necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstances including, but not limited to, the following:

- (a) the potential for injury to the officer(s) or others if the technique is not used;
- (b) the potential risk of serious injury to the individual being controlled;
- (c) whether the pain compliance technique is effective in achieving an appropriate level of control or a different technique should be employed;
- (d) the nature of the offense involved;

- (e) the level of resistance of the individuals(s) involved;
- (f) whether immediate resolution is necessary;
- (g) the application of any pain compliance technique shall be immediately discontinued once the officer determines that compliance has been achieved or other more appropriate alternatives can reasonably be utilized; and
- (h) officers shall only use striking techniques directed at a subject's face as a means of self-defense, or in the defense of others. Striking at a subject's face using fists, elbows, knees, and feet, shall not be used as a means of pain compliance.

**3.6 Positional asphyxiation.** Officers must recognize the heightened risk of positional asphyxiation and compression asphyxiation during restraint and be alert to any actions that must be immediately taken to avoid or minimize the risk of asphyxiation. Positional asphyxia can occur when a person is restrained, handcuffed or left unattended in any position that impedes their ability to breathe normally, particularly in a prone position. If the person cannot escape from the position, death may occur very rapidly. Thus, in the course of using force officers shall be alert to the following heightened risk factors for positional asphyxiation:

- (a) alcohol or drug intoxication;
- (b) possible mental health episode or incident;
- (c) a substantially overweight individual;
- (d) possible suffering of respiratory muscle fatigue (exhaustion);
- (e) possible airway obstruction; and
- (f) unconsciousness.

**3.6.1** Officers shall take the following actions to reduce the risk of positional asphyxiation:

- (a) As soon as handcuffed and restrained, a person should be immediately rolled to the side and taken to an upright position that does not impede the mechanism of normal breathing. This requirement is especially important when the subject is handcuffed face down in the prone position;
- (b) Care should be taken not to put sustained pressure on the neck or back, as breathing can be restricted even if the person is placed in the recovery position. This includes sitting, kneeling, or standing on a person's chest, back, or neck for a prolonged period of time;
- (c) Officers shall continuously monitor the person's condition while being restrained, as death can occur suddenly and develop beyond the point of viable resuscitation within seconds;
- (d) Whenever possible during team restraint, a "Safety Officer," with the responsibility to monitor the health and welfare of the person during restraint, should be designated;
- (e) The arrested person must not be transported in the prone position; and
- (f) The arrested person should be monitored prior to, during, and at the conclusion of the transport.

3.6.2 Officers shall continually monitor the condition of the subject(s) in their custody for the following warning signs of positional asphyxiation:

- (a) verbal complaints of being unable to breathe properly, although be aware that a person suffering breathing difficulties may not be able to complain about their crisis;
- (b) visual signs that the subject is struggling or exhibiting increased effort to breathe;
- (c) gurgling/gasping sounds with foam or mucus coming from the nose or mouth;
- (d) display of a heightened level of aggression during restraint, which may be a physiological response to fighting for air, such that any increased resistance during restraint of a person should be regarded with caution;
- (e) sudden behavioral changes, such as going from being violent and noisy to passive, quiet, and tranquil, or alternatively, suddenly becoming more aggressive;
- (f) blue discoloration of facial skin (cyanosis);
- (g) swelling, redness or blood spots to the face or neck; and
- (h) any loss or a reduced level of consciousness.

**3.7 Conducted energy devices and less-lethal devices.** Conducted Energy Devices (CEDs) and other authorized less-lethal devices and ammunition are forms of Enhanced Mechanical Force which may be utilized against a Threatening Assailant or an Active Assailant, but only within the parameters outlined in this Policy and in Addendum A of this Policy. CEDs and other authorized less-lethal devices and ammunition shall not be utilized against a passive resistor or an active resistor. Officers shall always strive to use only that degree of force that is objectively reasonable, necessary and proportional considering the totality of the circumstances.

3.7.1 An officer authorized to use a CED or a less-lethal device pursuant to this Policy may fire, discharge, or utilize drive stun mode of the device during an actual operation, consistent with Addendum A, only against:

- (a) an active assailant;
- (b) a threatening assailant who 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;
- (c) a person who is attempting to cause death or serious bodily injury to themselves; or
- (d) a fleeing suspect, if clear and convincing evidence exists to believe the suspect has committed a crime in which the suspect caused or attempted to cause death or serious bodily injury.

3.7.2 Officers shall reevaluate the situation and reassess the need to use force before any second or subsequent firing or discharge or utilization of drive stun mode of the device against the same person. Any second or subsequent firing or discharge or utilization of drive stun mode of the device must be necessary and justified by the circumstances at that moment.

- 3.7.3 CEDs shall not be utilized in the following manner:
- (a) against a person in drive stun mode more than twice unless deadly force would be authorized and permitted pursuant to this Policy;
  - (b) against a handcuffed subject unless deadly force would be authorized and permitted pursuant to this Policy;
  - (c) against the operator of a moving vehicle unless deadly force would be authorized and permitted pursuant to this Policy;
  - (d) to prevent a subject from damaging property; or
  - (e) against a person simultaneously with two or more CEDs.
- 3.7.4 CEDs must be capable of making a digital recording of the encounter each time the device is utilized, unless the officer carrying the CED is equipped with a body worn camera (BWC) as defined in Attorney General Directive 2015-1. The officer shall activate the BWC prior to utilization of the CED, unless exigent circumstances make it unsafe or not feasible for the officer to do so.
- 3.7.5 CED spark displays shall be considered constructive authority, but must be reported as a Show of Force in the Attorney General’s Use of Force Reporting Portal.
- 3.7.6 Police administrators and officers authorized to utilize CEDs and other authorized less-lethal devices and ammunition are also required to adhere to the instructions contained in Addendum A to this Policy.
- 3.8 Use of force for crowd management.** The following restrictions and limitations on the use of force should be observed during peaceful demonstrations and civil disturbances. The generally applicable rules in this Policy apply to both peaceful demonstrations and civil disturbances and in all cases, weapons or other devices should be carried and deployed only by trained and authorized officers and deployed consistent with this Policy.
- 3.8.1 Prior to using force against people in a crowd, officers shall:
- (a) provide clear instructions and warnings in a manner that can be heard by persons in the crowd, such as through a bullhorn or speaker system when available;
  - (b) state the consequences of refusing to comply with a mandatory directive, including that arrests will occur and force may be used unless persons comply; and
  - (c) give a reasonable opportunity to comply.
- 3.8.2 Force shall not be used against crowds engaged in peaceful demonstrations. The visible presence or deployment of canines for crowd control purposes is prohibited in peaceful demonstrations. Canines may be used for explosive detection or similar security sweeps at such gatherings.

- 3.8.3 Force may be used against specific individuals in a crowd for lawful purposes in accordance with the other provisions of this Policy. Restrictions apply to the use of certain types of force in a crowd as follows:
- (a) OC spray:
    - (1) may be used against specific individuals who are active resisters, threatening assailants or active assailants as defined in Section 3.3 above;
    - (2) shall not be used where bystanders would be unreasonably affected; and
    - (3) shall not be used against passive resisters, or indiscriminately against groups of people.
  - (b) CEDs:
    - (1) may be used against specific individuals who are threatening assailants or active assailants as defined in Section 3.3 above;
    - (2) may be used only when the individual can be accurately targeted; and
    - (3) shall never be fired indiscriminately into crowds.
  - (c) Less-lethal ammunition:
    - (1) may be used during civil disturbances only against specific individuals who are threatening or active assailants; and
    - (2) shall not be used during a civil disturbance against groups of individuals.
- 3.8.4 Force may be used against groups of people only if authorized by the Incident Commander (IC) and only when other means of gaining compliance with lawful directives have been attempted and shown to be ineffective or are not feasible.
- 3.8.5 High-volume OC delivery systems are designed for, and may be used in, civil disturbances against groups of people engaged in unlawful acts resulting in, or creating an immediate risk of, bodily injury or significant property damage.
- 3.8.6 CS (2-chlorobenzalmalononitrile) chemical agents are primarily offensive weapons that shall be used with the utmost caution. Thus, CS:
- (a) may be deployed only by specially trained individuals who are part of a special tactical unit authorized to deploy such agents;
  - (b) may be deployed only with the specific and express approval of the IC;
  - (c) may be deployed defensively to prevent injury when lesser force options are either not available or would likely be ineffective; and
  - (d) may be deployed only after an announcement is made and when avenues of egress are available to the crowd.
- 3.8.7 Canines shall not be deployed against a crowd, except to respond to a threat of death or serious bodily injury to a member of the public or to an officer.
- 3.8.8 CN (phenacyl chloride) shall not be used in any instance.



## Core Principle Four

**Duty to Use Deadly Force Only as an Absolute Last Resort and Duty to Avoid Actions Which Create a Substantial Risk of Death or Serious Bodily Injury.** Deadly force shall only be used as an absolute last resort and in strict compliance with this Policy. Other actions by law enforcement that create a substantial risk of death or serious bodily injury must be avoided or employed only under the strictest of conditions.

**4.1 Deadly Force.** Deadly force is force that an officer uses with the purpose of causing, or that a reasonable officer knows creates a substantial risk of causing, death or serious bodily injury. Discharging a firearm constitutes deadly force, unless the discharge occurred during the course of a law enforcement training exercise, routine target practice at a firing range, a lawful animal hunt, or the humane killing of an injured animals.

**4.2 Types of deadly force.** Deadly force includes the following potentially lethal actions:

- (a) applying a chokehold, carotid artery restraint, or similar technique that involves pressure on the neck;
- (b) sitting, kneeling, or standing on a person's chest, back, or neck for a prolonged period of time;
- (c) intentionally driving a vehicle at or in the direction of a person with the intent to strike the individual; and
- (d) using a baton or other weapon to intentionally strike an individual in the head or neck area.

**4.3 Requirements to use deadly force.** Strict requirements must be met before an officer may use deadly force. There are, however, occasions when deadly force is necessary to protect officers and the public. An officer may use deadly force only when the officer reasonably believes that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily injury. Officers must adhere to the following:

- (a) as discussed in Core Principle Three, when feasible, officers shall attempt to de-escalate situations, issue verbal warnings, or use non-lethal force with the goal of resolving encounters without using deadly force;
- (b) officers shall not use deadly force if a reasonably available alternative will avert or eliminate an imminent danger of death or serious bodily injury and achieve the law enforcement purpose safely;
- (c) when feasible, prior to using deadly force the officer shall identify themselves as a law enforcement officer and give a clear verbal warning to the suspect that the officer will use deadly force; and

- (d) officers shall not use deadly force when the use of deadly force creates a substantial risk of injury to innocent persons.

**4.4 Force to apprehend a fleeing suspect.** In addition to all of the requirements in Section 4.3, an officer may only use deadly force to apprehend a fleeing suspect in the rare case when the suspect's escape would create an imminent danger of death or serious bodily injury to the officer or a member of the public if the suspect is not immediately apprehended.

**4.5 Prohibited uses of deadly force.** There are specific circumstances in which the use of deadly force is prohibited. In general, officers may not discharge their weapons or use other deadly force, as outlined above, in the following manner:

- (a) to signal for help;
- (b) to issue a warning shot;
- (c) to prevent property damage or loss;
- (d) to prevent the destruction of evidence. For example, under no circumstances shall an officer use a chokehold, or any lesser contact with the neck area, in order to prevent the destruction of evidence by ingestion; or
- (e) against a person who poses a threat only to themselves and not to others.

**4.6 Deadly force against individuals in a moving vehicle.** Strict additional requirements must be met before an officer may use deadly force against a driver or passenger of a moving vehicle. Moving vehicles create tremendous risk to officers engaged in enforcement operations, particularly officers attempting to arrest fleeing suspects. Officers must abide by the following guidelines:

- (a) during such operations, officers shall never intentionally position themselves in the path of a moving vehicle or a vehicle that is likely to move;
- (b) officers shall make every effort to move out of the path of a vehicle in order to maintain their safety;
- (c) officers shall not grab onto moving vehicles or the drivers or occupants of moving vehicles. If a vehicle begins to move while an officer is engaged with the driver or an occupant, the officer shall, if feasible, disengage from the contact with the driver or occupant to avoid being dragged, carried, or struck by the moving vehicle; and
- (d) while any firearm discharge entails some risk, discharging a firearm at a moving vehicle entails an even greater risk to innocent persons and passengers because of the risk that the fleeing suspect may lose control of the vehicle. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, an officer shall not fire at the driver or occupant of a moving vehicle, unless no other means are available at the time to avert or eliminate the danger and one of the following circumstances exists:

- (1) when there is imminent danger of death or serious bodily injury to the officer or another person, created by a person in the vehicle using means other than the vehicle, such as when shots are being fired from the vehicle; or
- (2) when the suspect is driving their vehicle toward persons other than the officer in a manner creating an imminent threat of death or serious bodily injury, such as in a terrorist attack; or
- (3) when the officer is being dragged or carried by the vehicle, cannot disengage from the vehicle, and is in imminent danger of death or serious bodily injury.

**4.7 Shooting from a moving vehicle.** Strict additional requirements must be met before an officer may shoot from a moving vehicle. Every discharge of a firearm by an officer creates risk to the public and to other responding officers. Firearms discharges from moving vehicles by law enforcement officers have proven to be inaccurate and ineffective, generally creating unacceptable levels of risk. Due to these risks, law enforcement officers shall not discharge a firearm from a moving vehicle except in the following extraordinarily rare circumstance:

- (a) when the suspect is driving a vehicle toward persons other than the officer in a manner creating an imminent threat of death or serious bodily injury, such as in a terrorist attack; and
- (b) no other means are available at that time to avert or eliminate the danger.

**4.8 Limitations on vehicular pursuits.** Vehicular pursuits present officers with difficult decisions that involve balancing the duty to enforce the law and apprehend violators with the risks created by pursuing motor vehicles, often being operated at high speeds by irresponsible drivers in densely populated areas. The decision to pursue a motor vehicle must be objectively justifiable after giving due consideration to a number of factors. Although impossible to create a policy that addresses every potential scenario, officers and supervisors shall conduct vehicular pursuits only within the parameters outlined in Addendum B of this Policy. Due to the risks to both officers and the public, supervisors are expected to exercise an enhanced level of control over vehicular pursuits.

**4.8.1** Vehicular pursuits shall only be initiated if the pursuing officer reasonably believes that:

- (a) the violator has committed, or is engaged in a conspiracy or attempt to commit, a crime of the first degree or one of the violent or serious crimes of the second degree enumerated in Addendum B; or
- (b) the violator poses an imminent threat to the safety of the public or other police officers. This determination shall be made based upon the violator's actions or operation of the vehicle prior to the initiation of the attempted motor vehicle stop. The violator's subsequent actions, including speeding or evasive driving during the pursuit itself, although often supporting the criminal charge of Eluding, N.J.S.A. 2C:29-2(b), shall not constitute an authorization to initiate or continue a pursuit.

- 4.8.2 There shall be a strong presumption against the initiation of vehicular pursuits based solely upon motor vehicle violations. Officers involved in vehicular pursuits must immediately notify both the supervisor and police communications, state the reason for the pursuit, and provide the information required by Addendum B of this Policy.
- 4.8.3 Vehicular pursuits shall be monitored by a supervisor and shall be terminated if directed to do so by a supervisor, or if the supervisor has not affirmatively authorized the continuation of the pursuit after being notified and given an opportunity to assess the situation.

## Core Principle Five

**Duty to Intervene and Report.** Every officer, regardless of rank, title, seniority, or status, has an affirmative duty to take steps to prevent any use of force that is illegal, excessive, or otherwise inconsistent with such policies, regulations, and laws, if possible, before a fellow officer uses excessive, illegal, or otherwise inappropriate force. Every officer has a duty to immediately report any improper use of force.

- 5.1** **Duty to intervene.** A law enforcement officer's duty to intervene is rooted in the commitment to protect public safety at all times. Interventions that prevent improper use of force will lead to fewer citizen complaints, fewer officer disciplinary matters, higher morale, and a healthier working environment. Preventing misconduct preserves the integrity of all officers and the law enforcement profession as a whole. Intervening to prevent improper use of force can assist fellow officers by preventing them from engaging in conduct that may be illegal, inappropriate, and in violation of this Policy.
- 5.2** Thus, all officers who observe another officer about to use force that is illegal, excessive, or otherwise inconsistent with this Policy must, if feasible, do whatever they can to interrupt the flow of events before the fellow officer engages in an improper use of force. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.
- 5.3** Officers shall use signaling, verbal intervention, or physical intervention, if necessary, to stop any improper use of force. It is important to note that the duty to intervene does not stop at one officer. It is the responsibility of all officers to ensure use-of-force compliance. If officers observe a situation where another officer is attempting to intervene in an improper use of force, officers shall assist in that effort.
- 5.4** **Duty to report illegal and inappropriate uses of force by other officers.** Any officer who observes or has knowledge of a use of force that is illegal, excessive, or otherwise inconsistent with this directive or department policies must (a) notify a supervisor as soon as possible and (b) submit an individual written report to a supervisor before reporting off duty on the day the officer becomes aware of the misconduct
- 5.5** Law enforcement agencies, supervisors, and officers are prohibited from retaliating in any form against an officer who intercedes in or reports illegal or inappropriate uses of force.
- 5.6** Every department shall establish a written policy which requires intervention and protects officers who intervene from retaliation or other negative consequences. The departmental policy shall be consistent with this Policy and all applicable laws. Reporting procedures must comply with *Internal Affairs Policy & Procedures*. See AG Directive 2020-7.

## Core Principle Six

**Duty to Render Medical Assistance.** After any use of force, and when the environment is safe, officers shall promptly render medical assistance to any injured person consistent with the officer's training and shall promptly request emergency medical assistance for that person, if needed or requested. Officers also have a duty to monitor individuals for potential medical intervention after any officer uses force.

- 6.1** An officer's duty to render medical assistance and monitor for potential medical intervention is particularly important following any use of force. When the force involves the use of OC spray, officers shall take immediate action to address the effects of the OC spray, consistent with training.
- 6.2** The duty to render medical assistance and monitor applies to all officers on scene and continues throughout any transportation and custody of the individual.
- 6.3** Officers shall pay particular attention to persons reasonably believed to be pregnant, children, the elderly, physically frail individuals, and those experiencing a mental health or substance use crisis.

## Core Principle Seven

**Duty to Report and Review Uses of Force.** Every use of force must be reported and receive a meaningful command level review as set forth in a written department policy that includes review by the law enforcement executive. The law enforcement executive shall also conduct an annual review and analysis of the overall use of force by the department.

- 7.1 Reporting.** Notification of fatal and serious bodily injury law enforcement incidents shall be made in accordance with AG Directive 2019-4. As soon as any local, county, or state law enforcement agency learns of a law enforcement incident as defined below, the agency shall immediately notify the County Prosecutor's Office for the county in which the incident occurred, who shall in turn immediately notify the Attorney General's Office of Public Integrity and Accountability (OPIA) Director or their designee.
- 7.2** Law enforcement incidents are defined as:
- (a) any use of force by an officer resulting in death;
  - (b) any use of force by an officer resulting in serious bodily injury;
  - (c) any use of deadly force (including the discharge of a firearm as defined in Section 4.1) by an officer, regardless of whether such force resulted in injury;
  - (d) the death of any civilian during an encounter with an officer; and
  - (e) the death of any civilian while in the custody of law enforcement.
- 7.3** When an officer uses force as defined in Section 3 of this Policy and the result is not fatal, the officer shall complete a report in the Use of Force Portal established by the Attorney General's Office. The report shall be completed by the officer within 24 hours of the use of force, and preferably before the end the shift in which the force was used. If the officer who used force is unable to complete the report within 24 hours, it should be completed as soon the officer is able to do so, or by a supervising officer within 48 hours, in accordance with a written policy to be established by the department or agency.
- 7.4 Review of use of force.** Thorough and meaningful review of use of force incidents is vital to ensuring a positive law enforcement and community relationship.
- 7.5 Review of each individual use of force.** Every use of force must undergo the following procedures for a meaningful command level review pursuant to a written policy established by the law enforcement executive:
- (a) The meaningful command level review of the incident shall be undertaken by at least two levels of supervisors. These levels may include the immediate supervisor,

internal affairs, training officers or command staff. At least one reviewer must be two levels or more above the officer who used force;

- (b) The review shall include an examination of all available sources of information about the incident, including any video of the incident, reports, officer or other witness statements, medical records and records of injuries;
- (c) The review shall include an analysis of whether force was used in a non-discriminatory fashion to ensure officers are treating every person equally without discrimination based on race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic;
- (d) The reviewing supervisors shall make a recommendation of what action, if any, should be undertaken, including commendation of the officer, policy changes, remedial training, administrative action, disciplinary action or, if appropriate, referral for criminal prosecution;
- (e) The law enforcement executive, or a command level officer no more than one rank below the law enforcement executive for departments with more than 100 officers, shall review each use of force investigation and approve or reject the recommendations of the supervisors who conducted the review. The law enforcement executive's decision, or the decision of the designee, shall be memorialized and retained in the use-of-force investigative file; and
- (f) After the review is completed, supervisory and/or training officers should examine and analyze the use of force incident, including any body-worn or other video evidence, with the officer as a training tool. This examination should analyze the circumstances that led to the use of force as well as the force that was used, so that the officer can gain insight into which tactics and decisions were effective and whether different tactics or decisions could have been used to improve the outcome.

**7.6 Annual review of overall department use of force.** The law enforcement executive shall also conduct an annual review of use of force incidents in their department. The review shall include, at a minimum, the following:

- (a) analytical reports from the Attorney General's Use of Force Portal;
- (b) an audit of body worn cameras and other videos on a risk-based and randomly selected basis;
- (c) any internal affairs complaints; and
- (d) an analysis of the uses of force to ensure that force is being applied without discrimination based on race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.



**7.7** Based on that thorough review, the law enforcement executive shall determine whether changes in departmental structure, policy, training, or equipment are appropriate. The law enforcement executive shall then provide a written report documenting the annual review to the County Prosecutor. Each County Prosecutor’s Office and each statewide law enforcement agency shall make its report to the OPIA.

# Use of Force Policy

## Addendum A

### Conducted Energy Devices and Other Less-Lethal Devices and Ammunition

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# 1 Scope

- 1.1** This Addendum to the Attorney General’s Use of Force Policy (Policy or Use of Force Policy) governs the use of conducted energy devices (CEDs) and other authorized less-lethal devices and ammunition. It does not address the use of oleoresin capsicum (“OC spray”), tear gas or other chemical agents, distraction devices (e.g., a “flash bang”) or the use of an asp or baton. This policy supersedes and replaces all other policies, directives, memorandums or guidance provided by the Office of the Attorney General or the Division of Criminal Justice (DCJ) on CEDs and other Less-Lethal Devices and Ammunition.
- 1.2** The terms CED, less-lethal device, and less-lethal ammunition are defined in Section 3 of this policy.
- 1.3** Any deployment of a conducted energy device or less-lethal device falls under the definition of “enhanced mechanical force” and will only be authorized if consistent with the Policy, including the provisions contained in this Addendum.

## 2 Policy

- 2.1** The Use of Force Policy formally recognizes four distinct types of force: physical force; mechanical force; enhanced mechanical force; and deadly force.
- 2.2** Enhanced Mechanical Force is an intermediate force option between mechanical force and deadly force, generally 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. Unlike deadly force, enhanced mechanical force does not require an imminent threat of death or serious bodily injury. Examples include CEDs and less-lethal devices and ammunition.
- 2.3** As with any type of force, officers shall exhaust all other reasonable means to gain compliance before resorting to enhanced mechanical force, if feasible. Thus, if a safe alternative would achieve law enforcement's objective, enhanced mechanical force shall not be used. Officers shall, therefore, use verbal commands, critical decision making, tactical deployment and de-escalation techniques to gain voluntary compliance, when feasible. Officers shall never engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes needed.
- 2.4** In situations where officers are justified in using force, officers shall use only that degree of force that is reasonable, necessary and proportional considering the totality of the circumstances, including the subject's mental and physical condition, the nature of the offense, and the level of resistance or threat known to the officer at the time.
- 2.5** The decision to use force and the appropriate amount of force requires careful attention to the facts and circumstances of each incident.
- 2.6** Any deployment of a CED or less-lethal device against a person, except as authorized by this policy, is prohibited. Any intentional misuse or reckless abuse of any such device will not be tolerated and will result in administrative action, discipline, or criminal prosecution.

## 3 Definitions

- 3.1 Attorney General’s Advisory Panel on Conducted Energy and Less-Lethal Devices.** The Attorney General will establish the Attorney General Advisory Panel for Conducted Energy and Less-Lethal Devices (Panel). The panel shall consist of subject matter experts from the New Jersey State Police, the Division of Criminal Justice, the Office of Public Integrity and Accountability, the Police Training Commission, the New Jersey State Association of Chiefs of Police, the County Prosecutors’ Office Chiefs Association, the County Prosecutors Association of New Jersey, the Sheriff’s Association of New Jersey, and other law enforcement officers and member(s) of the community appointed by the Attorney General or their designee.

The panel shall solicit and receive applications and review, test, and submit a report with recommendations to the Attorney General concerning whether a CED or less-lethal device or ammunition should be approved. Moreover, the Panel will provide specific guidance concerning when and how the device or ammunition may be deployed. Only CEDs and less-lethal devices or ammunition approved by the Attorney General or the Attorney General’s designee shall be used in the State of New Jersey by law enforcement officers. Less-lethal devices and ammunition that are approved shall only be used consistent with rules and regulations established for each device. No law enforcement agency or officer shall deploy or use a CED or less-lethal device or ammunition pursuant to this policy unless the device or ammunition satisfies the specifications and characteristics approved by the Attorney General.

The Panel shall meet at least four times a year. On a regular basis, the Panel shall publish a list of all approved conducted energy and less-lethal devices, or ammunition. All approved conducted energy and less-lethal devices, ammunition, and deployment requirements are subject to review by the Panel and are subject to removal by the Attorney General. Such review should occur once every five years.

- 3.2 Bodily Injury.** Bodily injury means physical pain, or temporary disfigurement, or any impairment of physical condition. Bodily harm and bodily injury have the same definition for the purposes of this Policy. See N.J.S.A. 2C:11-1(a); N.J.S.A. 2C:3-11(e).
- 3.3 Conducted Energy Device (CED).** A 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.
- 3.4 Deadly Force.** Deadly force means force that an officer uses with the purpose of causing, or that a reasonable officer knows creates a substantial risk of causing death or serious bodily injury. Discharging a firearm, constitutes deadly force, unless the discharge occurred during the course of a law enforcement training exercise, routine target practice at a firing range, a lawful animal hunt, or the humane killing of an injured animal. A threat to cause death or

serious bodily injury by the display of a weapon or otherwise, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

- 3.5** **Deadly Weapon.** Deadly weapon means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury, or in the manner in which it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury. See N.J.S.A. 2C:11-1(c).
- 3.6** **Discharge.** Discharge means to cause an electrical charge or current to be directed at a person in contact with the darts/electrodes of a CED.
- 3.7** **Drive stun mode.** Drive stun mode means to discharge a CED where the main body of the device is in direct contact with the person against whom the charge or current is transmitted.
- 3.8** **Fire.** Fire means to cause the darts/electrodes of a CED 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.
- 3.9** **Less-Lethal Ammunition.** Less-lethal ammunition also referred to as less-lethal impact projectiles, means ammunition approved by the Attorney General that is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body. The term shall also include ammunition approved by the Attorney General which is designed to gain access to a building or structure and is used for that purpose. See N.J.S.A. 2C:3-11(f). Specific less-lethal ammunition and platforms that are currently approved can be found at the Attorney General's Approved List of Less-Lethal Ammunition. (December, 2010). Less-lethal ammunition may include different types such as: Kinetic Less-Lethal Flexible Projectiles; Kinetic Less-Lethal Non-Flexible Projectiles; Rubber Balls and Pellets; Baton Projectiles; Pad Projectiles, commonly referred to as "bean bag rounds;" Drag Stabilized Projectiles, commonly referred to as "sock rounds;" Fin-Stabilized Projectiles; and Encapsulated Projectiles.
- 3.10** **Less-Lethal Device.** Less-lethal device means any less-lethal weapon that is reviewed by the Panel and approved by the Attorney General or the Attorney General's designee. The term does not include OC spray, asps or batons.
- 3.11** **Serious Bodily Injury.** Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. Serious bodily injury and serious bodily harm have the same definition the purposes of this Policy. See N.J.S.A. 2C:11-1(b); N.J.S.A. 2C:3-11(d).

**3.12 Spark Display.** Spark display means a non-contact demonstration of a CED’s ability to discharge electricity that is done as an exercise of constructive authority to convince an individual to submit to custody.

## 4 Authorized Officers

- 4.1** The law enforcement executive of each agency shall determine which officers, including Class II and Class III Special Law Enforcement Officers, shall be authorized to carry and use a conducted energy or a less-lethal device or ammunition. Class I Special Law Enforcement Officers shall not be authorized.
- 4.2** An officer shall not carry or use a CED or less-lethal device during an actual operation unless the officer has been expressly authorized to do so by the law enforcement executive, after the officer has successfully completed a training course approved by the Police Training Commission in the proper use and deployment of authorized conducted energy or less-lethal devices, as appropriate. The law enforcement executive shall be responsible to ensure that officers authorized to carry CEDs and less-lethal devices maintain the required certifications and qualifications.



## 5 Authorization to Use CEDs

- 5.1** An officer authorized to use a CED pursuant to this policy may fire, discharge, or utilize drive stun mode of the CED during an actual operation, only against:
- (a) an active assailant; or
  - (b) a threatening assailant who 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; or
  - (c) a person who is attempting to cause death or serious bodily injury to him/herself; or
  - (d) a fleeing suspect if clear and convincing evidence exists to believe the suspect has committed a crime in which the suspect caused or attempted to cause death or serious bodily injury.
- 5.2** Officers shall reevaluate the situation and reassess the need to use force before any second or subsequent firing or discharge or utilization of drive stun mode of the device against the same person. Any second or subsequent firing or discharge or utilization of drive stun mode of the device must be necessary and justified by the circumstances at that moment.
- 5.3** An officer shall not direct an electrical charge or current against a person who is restrained by handcuffs unless:
- (a) Deadly force would be authorized under the Use of Force Policy; and
  - (b) the use of physical or mechanical force is not feasible or would be ineffective.
- 5.4** Consistent with training, officers may point a CED at a person only when circumstances create a reasonable belief that it may be necessary for the officer to use enhanced mechanical force. When the officer no longer reasonably believes that enhanced mechanical force may be necessary, the officer shall, as soon as practicable, secure or holster the CED.
- 5.5** Unholstering, displaying, or pointing a CED shall be considered a display of constructive authority.
- 5.6** A spark display from a CED shall be considered a display of constructive authority. A spark display must be reported as a Show of Force on the Attorney General's Use of Force Reporting Portal.

## 6 Unauthorized Uses of CEDs

**6.1** The following uses of CEDs are prohibited:

- (a) A CED shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment;
- (b) A CED shall not be used against a person who is a passive resistor or an active resistor;
- (c) A CED shall not be fired or discharged for the sole purpose of preventing a person from committing property damage;
- (d) A CED shall not be deployed against the operator of a moving vehicle unless the use of deadly force against the operator of the motor vehicle would be authorized; and
- (e) Two or more CEDs shall not be discharged upon a person at the same time.

## 7 Deployment Techniques for CEDs

- 7.1** An officer issued a CED shall determine and record on an appropriate log, prior to field deployment, that the device, including the video recording function, is functional. 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 CED in lieu of an internal video camera, the officer shall determine and record on an appropriate log that the body worn camera is functional.
- 7.2** When feasible, the officer should warn the person against whom a CED is directed that the officer intends to fire the weapon.
- 7.3** An officer should not fire a CED 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 death or serious bodily injury.
- 7.4** To ensure officer safety, when feasible, at least one law enforcement officer other than the one deploying the CED should be present, be armed with lethal ammunition, and be prepared to utilize deadly force in the event that the use of a CED for any reason fails. Deadly force would only be authorized in this situation as a last resort, if otherwise permitted by the Use of Force Policy.
- 7.5** During the deployment of a CED, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.
- 7.6** An officer trained and authorized to carry a CED shall be aware of and comply with any targeting recommendations made by the manufacturer.
- 7.7** A CED may be used in conjunction with a distraction device, non-flammable chemical agent, or less-lethal ammunition. If the individual has already received an electrical charge from a CED, officers shall, 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.
- 7.8** A CED 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).
- 7.9** A CED 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.

- 7.10** A CED 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.
- 7.11** While officers must at all times respect the seriousness and potential lethality of a CED, an officer shall use particular care when considering whether to use a CED against an individual who is particularly vulnerable due to age (either elderly or young), developmental disability, or a known or reasonably apparent medical condition (e.g., a pregnant female).
- 7.12** Law enforcement agencies are not permitted to use 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 OC sprays or similar aerosol spray devices, thereby resulting in injury or death.

## 8 Handling of Injured Suspects Following CED Use

**8.1** Subjects against whom a CED has been deployed shall be transported to a medical facility for examination if any of the following circumstances exist:

- (a) the subject requests medical attention;
- (b) the subject had been rendered unconscious or unresponsive;
- (c) the subject, after being subjected to a discharge, does not appear to have recovered normally, as described in CED training;
- (d) the subject has exhibited signs of excited delirium, as described in CED training, prior to, during, or after the discharge of the CED;
- (e) the subject has suffered bodily injury requiring medical attention as a result of a fall, or otherwise reasonably appears to need medical attention;
- (f) the subject was exposed to three or more discharges from a CED during the encounter;
- (g) the subject has been exposed to a continuous discharge lasting 15 seconds or longer;
- (h) no personnel at the scene are qualified or authorized to remove the CED darts/electrodes from the subject's person;
- (i) an officer trained and authorized to remove darts/electrodes experiences difficulty in removing a dart/electrode; or
- (j) any part of a CED dart/electrode has broken off and remains imbedded.

**8.2** 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.

## 9 Approved CEDs

- 9.1** The Panel shall review and provide recommendations concerning the specifications and characteristics of CEDs that may be deployed and used pursuant to this policy. Those specifications will include the following requirements:
- (a) 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;
  - (b) 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 CED was targeted, except that an agency is authorized to purchase and deploy an approved CED 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 BWC as defined in Attorney General Law Enforcement Directive No. 2015-1, and further provided that, notwithstanding any other provision of this 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, 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; and
  - (c) 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 policy.
- 9.2** No law enforcement agency shall purchase, possess, deploy, fire, or discharge any CED pursuant to this policy unless the device has been approved by the Attorney General.

## 10 Authority to Use Less-Lethal Devices and Ammunition

- 10.1** An officer authorized to use a less-lethal device pursuant to this policy may fire or discharge the device during an actual operation, only against:
- (a) an active assailant;
  - (b) a threatening assailant who 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; or
  - (c) a person who is attempting to cause death or serious bodily injury to him/herself; or
  - (d) a fleeing suspect if clear and convincing evidence exists to believe the suspect has committed a crime in which the suspect caused or attempted to cause death or serious bodily injury.
- 10.2** Officers shall reevaluate the situation and reassess the need to use force before any second or subsequent firing or discharge of a less-lethal device against the same person. Any second or subsequent firing or discharge of a less-lethal device must be necessary and justified by the circumstances at that moment.
- 10.3** Less-lethal instruments, ammunition, or impact projectiles shall not be used at a lesser or greater distance than that specified and approved by the Attorney General.
- 10.4** When it can be reasonably accomplished without increasing the danger to officers or others, an officer about to discharge a less-lethal device should advise other law enforcement officers at the scene prior to the discharge of the less-lethal weapon. This is to minimize the possibility that the firing of a less-lethal platform or ammunition would provoke other officers to discharge their weapons.
- 10.5** Weapons used for the deployment of less than lethal platforms or ammunition shall be dedicated exclusively for that purpose. These weapons shall be clearly marked so as to distinguish them from firearms intended for the use of lethal ammunition. The use of other than less-lethal ammunition in these designated weapons is prohibited unless it is immediately necessary to protect the life of a law enforcement officer or other person, and there is no other means available.
- 10.6** During the deployment of less-lethal devices or ammunition, the deploying officer and supervisor shall, when feasible, continually evaluate the options selected against changing circumstances.
- 10.7** Acceptable less-lethal impact projectiles/ammunition will be only those which are designed for single target-specific engagement from a minimum standoff distance as approved by the Attorney General.

- 10.8** Maximum effective distance/range for deployment of specific projectiles shall not exceed the specifications approved by the Attorney General.
- 10.9** Intentionally aiming approved less-lethal impact ammunition at the head, neck, chest, or groin shall be avoided unless deadly force is justified, necessary, and appropriate.
- 10.10** No ammunition designed to be skip-fired and/or non-target specific will be deemed to be acceptable.
- 10.11** Approved less-lethal devices or ammunition shall not be used in a crowd management situation except against specific threatening assailants or active assailants, in strict compliance with Section 3.8 of the Attorney General's Use of Force Policy.
- 10.12** Less-lethal devices or ammunition shall not be used to prevent a person from causing property damage.
- 10.13** A less-lethal 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).
- 10.14** Suspects who are struck by less-lethal ammunition shall be transported to a medical facility for examination if they suffer bodily injury or request medical treatment.



# 11 Training and Qualification for CEDs and Less-Lethal Devices

- 11.1** No officer shall be authorized to carry or use a CED or less-lethal device during an actual operation until having completed a training course and qualification procedure approved by the Police Training Commission (or DCJ) in the proper use and deployment of CEDs or less-lethal 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 a person in emotional or mental health crisis, including de-escalation techniques.
- 11.2** All law enforcement officers authorized to carry and use a CED or less-lethal device pursuant to this policy shall qualify, and thereafter re-qualify annually, in a training course and qualification procedure approved by the Police Training Commission (or DCJ).
- 11.3** CED and Less-Lethal training programs in each county shall operate under the direct control of the County Prosecutor's Office. For statewide law enforcement agencies, with the approval of the Director of DCJ, the CED and Less-Lethal training programs shall operate under the control of the law enforcement executive. The number of certified CED Instructors and Less-Lethal Instructors, who shall be responsible for the initial training and qualification of officers authorized to carry a CED or Less-Lethal Device, shall be determined by the appropriate County Prosecutor or statewide law enforcement agency executive. A County Prosecutor may designate any law enforcement officer to serve as an authorized CED or Less-Lethal Instructor within the countywide program under their jurisdiction.
- 11.4** For purposes of CED and Less-Lethal 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" or "Less-Lethal Requalification Instructor" to administer re-qualification. Training of any CED or Less-Lethal Re-Qualification Instructor shall be identical to the training requirements for Certified CED Instructors or Certified Less-Lethal Instructors. Each respective County Prosecutor's Office shall maintain a list of all CED and Less-Lethal Re-Qualification Instructors. Re-Qualification Instructors shall not be authorized to conduct the initial training of officers authorized to carry a CED or Less-Lethal Device.
- 11.5** The Director of DCJ, with the approval of the Attorney General, shall have the authority to set additional training and qualification requirements for CED Instructors, Less-Lethal Instructors, and officers authorized to carry a CED or Less-Lethal device. On an annual basis, the Division shall compile and distribute a current list of all such training and qualification requirements.

## 12 Reporting and Evaluation

- 12.1** In all instances when a CED or less-lethal device is fired or discharged during an actual operation, the law enforcement officer who employed such force shall complete:
- (a) Any agency required reports made necessary by the nature of the underlying incident; and
  - (b) A report in the Attorney General's Use of Force Reporting Portal.
- 12.2** In all instances when a CED or less-lethal device is fired at or discharged upon a person by a 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 law enforcement executive, providing the law enforcement 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 law enforcement executive shall issue a report, including a finding on whether the firing and all discharges complied with the Attorney General's Use of Force Policy.
- 12.3** Review of CED and Less-Lethal Device Deployments:
- (a) For municipal and county law enforcement agencies, the law enforcement executive shall forward the report to the County Prosecutor within 10 business days of the firing/discharge, unless the County Prosecutor grants the law enforcement executive's request for a reasonable extension of time within which to forward the report, for good cause shown. The County Prosecutor shall review the matter for compliance with this Policy. If the County Prosecutor finds the firing or discharge of a CED or less-lethal device to not be in compliance with the Attorney General's Use of Force Policy, the matter shall be forwarded to the Director of the Office of Public Integrity and Accountability or their designee.
  - (b) For statewide law enforcement agencies, the law enforcement executive shall forward the report to the Director of the Division of Criminal Justice within 10 business days of the firing/discharge, unless the Director grants the law enforcement executive's request for a reasonable extension of time within which to forward the report for good cause shown. The Director shall review the matter for compliance with this Policy. If the Director finds the firing or discharge of a CED or less-lethal device to not be in compliance with the Attorney General's Use of Force Policy, the matter shall be forwarded to the Director of the Office of Public Integrity and Accountability or their designee.
- 12.4** In all instances when a CED is fired at or discharged upon a person, a superior officer designated by the law enforcement executive shall immediately take custody of and secure the device. The superior officer shall safeguard and preserve the digital information in that

device concerning the incident. The law enforcement executive of each department that utilizes CEDs 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 service consistent with the department's policies. The information stored in the device concerning the use of force incident (i.e., 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 Section 12.2 of this policy.

# Use of Force Policy

## Addendum B

### Vehicular Pursuit Policy

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# 1 Purpose of Policy

- 1.1** The primary purpose of this policy is to secure a balance between the protection of the lives and safety of the public and police officers, and law enforcement's duty to enforce the law and apprehend violators. This Policy is intended to guide the circumstances under which officers may engage in vehicular pursuits. High-speed vehicular pursuits create a substantial risk of injury and fatalities. Over 10% of vehicular pursuits end up in accidents resulting in injuries or fatalities, including to officers, innocent third parties in vehicles unrelated to the pursuit, and pedestrians.
- 1.2** The pursuit policy was last updated in 2009. The policy succeeded initially in reducing the number of pursuits, injuries, and fatalities associated with them. However, after an initial decline, the number of pursuits has been increasing steadily since 2014. Since the policy was updated there have been almost 4,200 accidents during pursuits that resulted in over 2,800 injuries, including injuries to 625 law enforcement officers, 682 victims in third party vehicles, and 52 pedestrians. In that same period, there have been 59 fatalities associated with pursuits, including an officer, four third-party drivers, and eight pedestrians.
- 1.3** In recognition of this data and the substantial human costs associated with high-speed vehicular pursuits, this Policy further restricts the circumstances under which pursuits can be undertaken. The offenses for which officers may pursue suspects has been limited to only the most serious crimes. Significantly, both auto theft and most drug offenses have been removed from the list of crimes authorizing the initiation of a pursuit. This Policy creates a strong presumption against the initiation of pursuits for traffic violations and prohibits continuation of a pursuit based on the risk created by the speed or evasive driving of the fleeing suspect during the pursuit itself. It also requires greater oversight by supervisors, and mandates that a pursuit be terminated unless a supervisor affirmatively authorizes it to be continued.
- 1.4** Deciding whether to pursue a motor vehicle is among the most critical decisions made by law enforcement officers. It is a decision which must be made quickly and under difficult, often unpredictable circumstances. In recognition of the potential risk to public and officer safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for a decision not to engage in a vehicular pursuit or to terminate an ongoing vehicular pursuit based on the risk involved, even in circumstances where this Policy would permit the commencement or continuation of the pursuit. Likewise, officers who conduct pursuits consistent with this Policy will be strongly supported by the law enforcement community in any subsequent review of such actions.

## 2 Definitions

- 2.1 Authorized Tire Deflation Device.** A device designed and intended to produce a controlled deflation of one or more tires of a pursued vehicle and capable of operation consistent with criteria established in this Policy.
- 2.2 Boxing In.** The surrounding of a violator's moving vehicle with moving pursuit vehicles which are then slowed to a stop along with the violator's vehicle.
- 2.3 Divided Highway.** A road which includes a physical barrier between traffic traveling in opposite directions.
- 2.4 Heading Off.** An attempt to terminate a pursuit by pulling ahead of, behind, or toward a violator's moving vehicle to force it to the side of the road or to otherwise come to a stop.
- 2.5 Law Enforcement Officer.** Any person who is employed as a sworn member of any State, county, or municipal law enforcement agency, department, or division of those governments who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State. The term law enforcement officer shall include sworn members of the New Jersey State Police, the Division of Criminal Justice and the Juvenile Justice Commission. It shall include State Correctional Police Officers pursuant to N.J.S.A. 2A:154-4, County Correctional Police Officers pursuant to N.J.S.A. 2A:154-3, Special Law Enforcement Officers of all classes pursuant to N.J.S.A. 40A:14-146.8 et seq., Humane Law Enforcement Officers appointed pursuant to N.J.S.A. 4:22-14.1 or 4:22-14.4, Auxiliary Police Officers appointed pursuant to N.J.S.A. App.A:9-45(c), and Constables appointed pursuant to N.J.S.A. 40A:9-120. For purposes of this policy, the terms law enforcement officer, police officer and officer shall have the same meaning.
- 2.6 Paralleling.** Street Paralleling is driving a police vehicle on a street parallel to a street on which a pursuit is occurring. Vehicle Paralleling is a deliberate offensive tactic by one or more patrol vehicles to drive alongside the pursued vehicle while it is in motion.
- 2.7 Pursuit Driving.** Pursuit driving is an active attempt by a law enforcement officer operating a motor vehicle and utilizing emergency warning lights and an audible device to apprehend one or more occupants of another moving vehicle when the officer reasonably believes that the driver of the fleeing vehicle is aware of the officer's attempt to stop the vehicle and is resisting apprehension by increasing vehicle speed, committing traffic violations or otherwise attempting to elude the officer. It shall not constitute pursuit driving if the fleeing vehicle follows all traffic regulations after the officer activates the emergency warning lights and audible device (siren).

- 2.8 Pursuit Vehicles.** A Primary Unit is the police vehicle that initiates a pursuit or any unit that assumes control of the pursuit as the lead vehicle (the first police vehicle immediately behind the fleeing suspect). A Secondary Unit is any police vehicle which becomes involved as a backup to the primary unit and follows the primary unit at a safe distance.
- 2.9 Roadblock.** A restriction or obstruction used or intended for the purpose of preventing free passage of motor vehicles on a roadway in order to effectuate the apprehension of a violator. An avenue of escape is a gap in a roadblock which requires the violator to decrease the vehicle's speed to permit the violator to bypass the roadblock. A blocking vehicle is a motor vehicle, often a law enforcement vehicle, which is placed perpendicular to a roadway or angled in such a way as to create a roadblock.
- 2.10 Supervisor.** A police officer who, by virtue of rank or assignment, is responsible for the direction or supervision of the activities of other police officers.
- 2.11 Vehicle Contact Action.** Any action undertaken by the pursuing officer intended to result in contact between the moving police vehicle and the pursued vehicle.
- 2.12 Violator.** Any person who an officer reasonably believes (1) has committed, or is engaged in a conspiracy or attempt to commit, any crime of the first degree or one of the violent or serious crimes of the second degree enumerated in Section 3.2 of this policy, or (2) poses an imminent threat to the safety of the public or other police officers, as that threat is defined in Section 3.2 of this policy, set forth below.

## 3 Deciding Whether to Pursue

**3.1** A law enforcement officer has the authority, at all times, to attempt the stop of any person suspected of having committed any criminal offense or traffic violation. When the violator does not submit to the officer's lawful authority and bring the vehicle to a stop, the officer must determine whether to pursue that violator by continuing to attempt to stop the violator utilizing pursuit driving as defined herein. The officer's decision to pursue should always be undertaken with an awareness of the degree of risk to which the officer exposes law enforcement and the community by engaging in a vehicular pursuit. The officer must always weigh the need for immediate apprehension against the risk created by the pursuit.

**3.2** A law enforcement officer may only pursue under the circumstances described in subparagraph A or subparagraph B:

(a) when the officer reasonably believes that the violator has committed, or is engaged in a conspiracy or attempt to commit, any crime of the first degree or one of the following violent or serious crimes of the second degree:

- (1) Manslaughter, N.J.S.A. 2C:11-4;
- (2) Vehicular Homicide, N.J.S.A. 2C:11-5;
- (3) Aggravated Assault, N.J.S.A. 2C:12-1(b);
- (4) Disarming a Law Enforcement Officer, N.J.S.A. 2C:12-11;
- (5) Kidnapping, N.J.S.A. 2C:13-1;
- (6) Luring/Enticing a Child, N.J.S.A. 2C:13-6;
- (7) Human Trafficking, N.J.S.A. 2C:13-8;
- (8) Sexual Assault, N.J.S.A. 2C:14-2;
- (9) Robbery, N.J.S.A. 2C:15-1;
- (10) Arson, N.J.S.A. 2C:17-1;
- (11) Burglary, N.J.S.A. 2C:18-2;
- (12) Escape, N.J.S.A. 2C:29-5.

(b) when an officer reasonably believes that the violator poses an imminent threat to the safety of the public or other officers. This determination shall be made based upon the violator's actions or operation of the vehicle prior to the initiation of the attempted motor vehicle stop. The violator's subsequent actions, including speeding or evasive driving during the pursuit itself, although often supporting the criminal charge of Eluding, N.J.S.A. 2C:29-2(b), shall not constitute an authorization to initiate or continue a pursuit.

**3.2.1** Pursuit for motor vehicle offenses is not authorized under Paragraph 3.2 unless the violator's vehicle is being operated so as to pose an imminent threat to the safety of the public or other officers and that threat is based on the violator's actions or operation of the vehicle prior to the initiation of the attempted motor vehicle stop. There shall be a strong



presumption against the initiation of vehicular pursuits based solely on motor vehicle violations. Both supervisors and officers shall ensure that only in rare cases will a vehicular pursuit be initiated or continued for motor vehicle violations.

**3.3** In the event that one of the authorization requirements is satisfied, a pursuit shall not be automatically undertaken. An officer must still consider the following factors:

- (a) likelihood of successful apprehension;
- (b) whether the identity of the violator is known so that later apprehension is possible;
- (c) degree of risk created by pursuit:
  - (1) volume, type, speed and direction of vehicular traffic;
  - (2) nature of the area (residential, commercial, school zone, open highway, etc.);
  - (3) population density and volume of pedestrian traffic;
  - (4) environmental factors, such as weather and darkness; and
  - (5) road conditions (construction, poor repair, extreme curves, intersections controlled by traffic signals or signs, ice, etc.); and
- (d) police officer characteristics:
  - (1) driving skills;
  - (2) familiarity with roads; and
  - (3) condition of police vehicle.

**3.4** The pursuing officer shall terminate the pursuit under the following circumstances:

- (a) if instructed to do so by a supervisor;
- (b) if a supervisor has not affirmatively authorized the continuation of the pursuit after being notified and given an opportunity to assess the situation;
- (c) if the officer believes that the danger to the pursuing officers or the public outweighs the necessity for immediate apprehension of the violator;
- (d) if the violator's identity is established to the point where later apprehension may be accomplished and where there is no imminent threat to the safety of the public or police officers;
- (e) if the pursued vehicle's location is no longer known or the distance between the pursuing vehicles and the violator's vehicle becomes so great that further pursuit is futile;
- (f) if there is a person injured during the pursuit and there are no police or medical personnel able to render assistance;
- (g) if there is a clear and unreasonable danger to the police officer or the public. A clear and unreasonable danger exists when the pursuit requires that the vehicle be driven at excessive speeds or in any other manner which exceeds the performance capabilities of the pursuing vehicles or police officers involved in a pursuit; or

(h) if advised of any unanticipated condition, event, or circumstance that substantially increases the risk to public safety inherent in the pursuit.

**3.5** When a vehicular pursuit is terminated, officers shall immediately cease all emergency vehicle operations, including turning off all emergency warning lights and audible devices (sirens), and disengaging from the violator's vehicle.

## 4 Role of the Pursuing Officer

- 4.1** The decision to initiate and/or continue a vehicular pursuit requires weighing the need to immediately apprehend the violator against the degree of risk to which the officer and others are exposed as a result of the pursuit.
- 4.2** Upon the initiation of a pursuit, the pursuing officer shall immediately activate all emergency lights, siren, headlights, motor vehicle recorder (MVR), if equipped, and body worn camera (BWC), if equipped.
- 4.3** Once the pursuit has been initiated, the primary unit must immediately notify communications and a supervisor, providing as much of the following information as is known:
- (a) reason for the pursuit;
  - (b) direction of travel and designation and location of the roadway;
  - (c) traffic conditions;
  - (d) presence of pedestrians;
  - (e) identification of the violator's vehicle (year, make, model, color, vehicle registration number, and other identifying characteristics);
  - (f) information on the identity of the driver, if known;
  - (g) number of occupants;
  - (h) the speed of the pursued vehicle; and
  - (i) other information that may be helpful in deciding whether to terminate the pursuit or in resolving the incident.
- 4.4** The pursuing officer shall have a continuing duty to update the supervisor and communications on the above information as the incident develops.

## 5 Vehicular Pursuit Restrictions

- 5.1** No pursuit shall be conducted under the following circumstances:
- (a) in a direction opposite to the flow of traffic on a divided highway or a one-way street;  
or
  - (b) in a police vehicle in which an individual who is not a law enforcement officer is either the driver or passenger.
- 5.2** There shall be a strong presumption against the initiation or continuation of vehicular pursuits in areas where pedestrians are located or in areas of high density vehicular traffic.
- 5.3** No more than two police vehicles (primary unit and secondary unit) shall become actively involved in a pursuit unless otherwise specifically directed by a supervisor.
- 5.4** A motorcycle officer may initiate a pursuit, but will relinquish primary unit status immediately upon the participation of a marked police vehicle.
- 5.5** An unmarked police vehicle will not participate in a vehicular pursuit unless it is equipped with an emergency light and an audible device. The unmarked car shall relinquish primary unit status immediately upon the participation of a marked police vehicle.
- 5.6** To diminish the likelihood of a pursuit, an officer intending to stop a vehicle for any violation of the law shall, when possible and without creating a threat to public safety, close the distance between the two vehicles prior to activating emergency lights and an audible device. Officers shall recognize that, while attempting to close the distance and prior to the initiation of a pursuit and the activation of emergency lights and an audible device, they are subject to all motor vehicle laws governing the right of way (e.g., N.J.S.A. 39:4-91 and -92).
- 5.7** Throughout the course of a vehicular pursuit, pursuing officers shall not attempt to overtake or pass the violator's moving vehicle.
- 5.8** During the course of a pursuit and when approaching an intersection controlled by traffic signals or signs, or any other location at which there is a substantially increased likelihood of collision, the operator of any pursuit vehicle shall, prior to entering the intersection, reduce the vehicle's speed and control the vehicle so as to avoid collision with another vehicle or pedestrian. The officer shall observe that the way is clear before cautiously proceeding through the intersection. At all other times including an attempt to close the distance prior to the initiation of a pursuit and upon the termination of a pursuit, officers shall observe the applicable laws governing the right of way at intersections and other locations.

- 5.9** Officers involved in a pursuit shall not engage in vehicle paralleling.
- 5.10** There shall be no street paralleling along the route unless the pursuit passes through a patrol's assigned area. A patrol that is parallel-street-pursuing shall not join or interfere with a pursuit and shall stop all pursuit-related activity at the boundary of its assigned area.
- 5.11** Boxing-in or heading-off a violator's moving vehicle is permitted only under extraordinary circumstances. These tactics substantially increase the risk inherent in the pursuit and shall only be employed:
- (a) at low speeds; and
  - (b) with the approval of a supervisor; or
  - (c) in response to an imminent threat to the safety of the public or a police officer.
- 5.12** Roadblocks must only be employed as a last resort in circumstances where deadly force would otherwise be justified.
- (a) the use of a roadblock must be authorized by a supervisor;
  - (b) at no time will a roadblock be established until all pursuing police vehicles are made aware of the roadblock and its location and have acknowledged this awareness;
- 5.12.1** Once a roadblock has been established and a vehicle or barricade has been positioned in the roadway, there shall be:
- (a) adequate distance to see the roadblock;
  - (b) an avenue of escape; and
  - (c) no one in the blocking vehicle(s).
- 5.13** Officers involved in a pursuit shall not engage in any vehicle contact action except as a last resort to prevent imminent death or serious injury to the officer or another person where deadly force would otherwise be justified.
- 5.14** Officers shall not discharge a firearm against the driver or passenger of a moving vehicle except in the limited situations permitted under Section 4.6 of the Attorney General's Use of Force Policy.
- 5.15** Officers shall not discharge a firearm from a moving vehicle except in the limited situations permitted under Section 4.7 of the Attorney General's Use of Force Policy.

## 6 Authorized Tire Deflation Devices

- 6.1** Law enforcement agencies may choose to utilize authorized tire deflation devices during the course of a vehicular pursuit. Agencies that choose to employ this strategy may only utilize devices authorized by this Policy. As with all operational decisions made during the conduct of a vehicular pursuit, the use of such devices is subject to the assessment of inherent risk balanced against the need to apprehend a fleeing offender.
- 6.2** To be authorized for deployment and use under the vehicular pursuit policy, the tire deflation device shall:
- (a) producing a controlled deflation of one or more tires of a pursued vehicle;
  - (b) being deployed or activated immediately before the pursued vehicle drives over it, and removed or deactivated immediately after the pursued vehicle drives over it; and
  - (c) allowing the officer to remain a safe distance from the roadway at the time of deployment or activation.
- 6.3** Prior to the deployment and use of an authorized tire deflation device, the law enforcement agency shall do the following:
- (a) modify its vehicular pursuit policy to provide for the proper use of the authorized tire deflation device; and
  - (b) train all officers in the use of the authorized tire deflation device, which training must include practical, hands-on operation of the authorized tire deflation device.
- 6.4** The following are circumstances under which an authorized tire deflation device may be deployed:
- (a) an authorized tire deflation device may be utilized only after supervisory approval;
  - (b) an authorized tire deflation device shall not be used to stop motorcycles, mopeds, or similar vehicles;
  - (c) the authorized tire deflation device should not be used in locations where specific geographic features (e.g., sharp curves, alongside of rivers, steep embankments, etc.) increase the risk of serious injury to the officer, violator, or public;
  - (d) deployment locations should have reasonably good sight distances to enable the officer to observe the pursuit and other traffic as it approaches; and
  - (e) the officer deploying the authorized tire deflation device should not attempt to overtake and pass a high-speed pursuit in order to position the device.
- 6.5** Procedures for deployment of the authorized tire deflation device:
- (a) the officer deploying the authorized tire deflation device should do so from a position of safety;

- (b) the officer deploying the authorized tire deflation device should be in position to allow sufficient time for deployment;
- (c) the supervisor must coordinate the efforts of all law enforcement units involved in the pursuit;
- (d) the communications operator shall notify all units of the location of the authorized tire deflation device deployment;
- (e) the officer operating the authorized tire deflation device should take a position of safety as the pursued vehicle approaches;
- (f) the officer shall deploy or activate the authorized tire deflation device immediately before the pursued vehicle arrives at the point where it would impact the device;
- (g) the officer shall remove or deactivate the device immediately after the pursued vehicle goes over the authorized tire deflation device; and
- (h) the officer should immediately notify communications if the pursued vehicle impacted the authorized tire deflation device, if the officer observed any signs of deflation, and the direction and operation of the pursued vehicle after the impact.

**6.6** The use of an authorized tire deflation device shall be reported on a Vehicular Pursuit Report in the Attorney General's Use of Force Reporting Portal.

## 7 Role of the Supervisor

- 7.1** Upon being notified or becoming aware of the pursuit, the supervisor shall decide as quickly as possible whether or not the pursuit shall be permitted to continue and shall broadcast that decision over the police radio channel by declaring “pursuit authorized” or “terminate pursuit.” In addition, if the supervisor decides to authorize the pursuit, the supervisor shall broadcast the underlying reason for authorizing the pursuit (e.g., “Pursuit authorized for armed robbery suspect.”).
- 7.2** The supervisor shall permit a pursuit to continue only under the following circumstances:
- (a) There is a reasonable belief that the violator has committed, or is engaged in a conspiracy or attempt to commit, any crime of the first degree or one of the violent or serious crimes of the second degree enumerated in Section 3.2 of this Policy; or
  - (b) There is a reasonable belief that violator poses an imminent threat to safety of the public or other police officers. This determination shall be made based upon the violator’s actions or operation of the vehicle prior to the initiation of the attempted motor vehicle stop. The violator’s subsequent actions, although often supporting the criminal charge of Eluding, N.J.S.A. 2C:29-2(b), shall not constitute an authorization to initiate or continue a pursuit.
- 7.3** The supervisor shall order a pursuit terminated at any time if he or she concludes that the danger to the pursuing officer(s) or the public outweighs the necessity for immediate apprehension of the violator.
- 7.4** The supervisor shall order the pursuit terminated if the suspect’s identity is established to the point where later apprehension may be accomplished and where there is no imminent threat to public safety.
- 7.5** In recognition of the overall population density and volume of vehicular traffic in this State, and the increased risk attendant to prolonged vehicular pursuits, a supervisor shall order the termination of any pursuit of protracted duration unless the supervisor determines that further pursuit is justified to respond to an imminent threat to public safety.
- 7.6** The supervisor shall ensure, for the duration of the pursuit, that this Policy and agency procedures are followed by all officers.



## 8 Role of Police Communications

- 8.1** The communications operator shall do the following during a vehicular pursuit:
- (a) immediately notify a police supervisor of a pursuit in progress if a supervisor has not already been otherwise notified;
  - (b) keep the supervisor apprised of the duration and progress of the pursuit; and
  - (c) obtain from the pursuing officer any information listed in Section 4.3 of this Policy that was not initially provided by the pursuing officer.
- 8.2** When possible, a police supervisor shall determine whether there is a need to assume control over and coordinate pursuit related communications.
- 8.3** All law enforcement agencies shall establish procedures to ensure that radio channels remain open for pursuit related transmissions and that all necessary information is made available to officers involved in the pursuit.

## 9 Reinstating Pursuits

- 9.1** Reinstatement of any previously terminated pursuit shall be undertaken consistent with the authorization criteria for originally initiating a pursuit.

## 10 Interjurisdictional Pursuits

- 10.1** The original pursuing jurisdiction shall provide timely notification of a pursuit in progress to any other jurisdiction into which the pursuit enters. Notifying another jurisdiction that a pursuit is in progress is not a request to join the pursuit. The pursuing agency shall advise if assistance is necessary. Whenever the pursuing officers are unfamiliar with the roadways and terrain of the jurisdiction into which the pursuit has entered, the pursuing agency shall, when possible, seek the assistance of, and be prepared to relinquish the pursuit to, the other agency.

## 11 Vehicular Pursuit Reporting

- 11.1** All law enforcement officers who operate law enforcement vehicles in vehicular pursuit situations shall complete a report in the Attorney General’s Use of Force Reporting Portal. The report shall be completed by the officer within 24 hours of the vehicular pursuit and preferably before the end the shift in which the pursuit occurred. If the officer involved in the pursuit is unable to complete the report within 24 hours, it should be completed as soon the officer is able to do so, or by a supervising officer within 48 hours in accordance with a written policy to be established by the department or agency.
- 11.2** Vehicular pursuits resulting in the death or serious bodily injury of any civilian shall be handled in accordance with Attorney General Law Enforcement Directive 2019-4. As soon as any local, county, or state law enforcement agency learns of a vehicular pursuit that resulted in death or serious bodily injury to a civilian, the agency shall immediately notify the County Prosecutor’s Office for the county in which the incident occurred, who shall in turn immediately notify the Attorney General’s Office of Public Integrity and Accountability (OPIA) Director or their designee.

## 12 Vehicular Pursuit Review

- 12.1** Thorough and meaningful review of vehicular pursuit incidents is vital to ensuring the safety of law enforcement officers and the public. Every vehicular pursuit must undergo the following procedures for a meaningful command-level review pursuant to a written policy established by the law enforcement executive:
- (a) The meaningful command-level review of the incident shall be undertaken by at least two levels of supervisors. These levels may include the immediate supervisor, internal affairs, training officers, or command staff. At least one reviewer must be two levels or more above the officer who engaged in the vehicular pursuit;
  - (b) The review shall include an examination of all available sources of information about the incident, including any video of the incident, recordings of 911 calls and police radio transmissions, reports, officer or other witness statements, medical records, or records of injuries;
  - (c) The reviewing supervisors shall make a recommendation of what action, if any, should be undertaken, including policy changes, remedial training, disciplinary action, administrative action, or, if appropriate, referral for criminal prosecution; and
  - (d) The law enforcement executive, or a command level officer no more than one rank below the law enforcement executive for departments with more than 100 officers, shall review each vehicular pursuit investigation and approve or reject the recommendations of the supervisors who conducted the review. The law enforcement executive's decision, or the decision of the designee, shall be memorialized and retained in the vehicular pursuit investigative file.
- 12.2** The law enforcement executive shall conduct an annual review of all vehicular pursuit incidents in their department. The review shall include, at a minimum, the following:
- (a) analytical reports from the Attorney General's Use of Force Reporting Portal;
  - (b) an audit of BWCs and other videos on a risk-based and randomly selected basis;
  - (c) any internal affairs complaints; and
  - (d) an analysis of vehicular pursuits to ensure that they are being conducted without discrimination based on race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.
- 12.3** Based on that thorough review, the law enforcement executive shall determine whether changes in departmental structure, policy, training, or equipment are appropriate. The law enforcement executive shall then provide a written report documenting the annual review to the County Prosecutor for that department. Each County Prosecutor's Office and each statewide law enforcement agency shall make its report to the Attorney General's Office of Public Integrity and Accountability (OPIA).

## 13 Training

- 13.1** The Division of Criminal Justice, by June 21, 2021, shall develop a training program to explain the requirements of this Policy as they pertain to state, county, and local law enforcement agencies and officers. Such program shall be made available through the NJ Learn System or by other electronic means.
- 13.2** All state, county, and local law enforcement agencies shall provide training to all officers regarding the provisions of this policy before December 31, 2021.
- 13.3** All officers shall attend in-service vehicular pursuit training annually.
- 13.4** Vehicular pursuit training shall consist of knowledge of applicable statutes, familiarization with statewide police pursuit policy and departmental procedures, decision making skills, and the use of an authorized tire deflation device if employed by the agency.

## 14 Individual Agency Policies

- 14.1** Nothing in this policy prohibits state, county and municipal law enforcement agencies from adopting policies that impose additional restrictions on vehicular pursuits or that impose more extensive training or reporting requirements.