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October 7, 2010

TO: All County Prosecutors

All Law Enforcement Chief Executives

All County Sheriffs

Colonel Joseph R. Fuentes
Superintendent, New Jersey State Police

Stephen J. Taylor
Director, Division of Criminal Justice

SUBJECT: Revised Supplemental Policy on Conducted Energy Devices (approved and effective October 7, 2010)

I am pleased to issue a Revised Supplemental Policy on the use of conducted energy devices (CEDs). The new policy, a copy of which is attached, takes effect immediately and replaces the original conducted energy device policy that had been issued on November 23, 2009. I am also attaching a document that succinctly explains some of the more significant changes that have been made to the original CED policy.

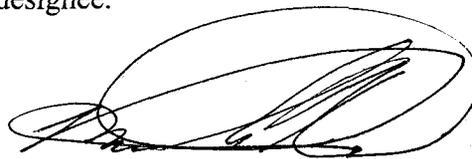
Many law enforcement professionals had expressed concern that the original policy was too restrictive in that it had imposed arbitrary limits on the number, rank, and duty assignment of police officers who might be allowed to carry and use a conducted energy device. A number of law enforcement professionals had also expressed concern that the original policy prohibited officers from using a conducted energy device in certain circumstances where this less-lethal weapon might help to resolve a confrontation before it becomes necessary for an officer to resort to deadly force. In some instances, the original policy would have prohibited the use of a conducted energy device even though an officer would be authorized to use *lethal* force.



As you know, this past summer, I asked the Division of Criminal Justice to reach out to the law enforcement community to solicit specific comments and recommendations on how to improve this aspect of New Jersey's use of force policy. I am very thankful for all of the thoughtful comments that we received. A clear consensus emerged on what needed to be done to improve the original conducted energy device policy, and these recommendations are reflected in the attached revised supplemental policy.

It is important to note that the revised policy continues to impose significant restrictions on the use of these weapons by police officers. For example, a conducted energy device may not be used against a person who is only passively resisting law enforcement commands. Rather, this weapon may only be fired against a person when necessary to prevent the targeted person from causing death or serious bodily injury to him/herself, an officer, or another person, or to prevent the escape of a person for whom there is probable cause to arrest for a crime in which the suspect caused or attempted to cause death or serious bodily injury. Aside from establishing strict substantive standards for when a law enforcement officer is authorized to fire or discharge a CED, the attached revised policy continues to impose strict *procedural* safeguards, including a requirement that a digital video recording be made of every instance where the device is discharged. Furthermore, the revised policy continues to require police departments to conduct a prompt, thorough investigation after every discharge of a conducted energy device. The findings of these investigations must be reviewed by the County Prosecutor, and then forwarded to me.

Once again, I am grateful for the input that my office received from the law enforcement community on this important public and officer safety initiative. I remain convinced that collaboration and consultation produces the best results, and in this instance, I think that we have come up with a fair and balanced use of force policy that will, ultimately, provide police officers with a practical alternative to using deadly force in appropriate situations. Any questions concerning the implementation of the revised CED policy should be directed to Division of Criminal Justice Director Stephen J. Taylor, or his designee.



Paula T. Dow
Attorney General

Dated: October 7, 2010

- c. First Assistant Attorney General Phillip H. Kwon
Carolyn Murray, Counsel to the Attorney General

REVISED ATTORNEY GENERAL POLICY ON CONDUCTED ENERGY DEVICES

Approved and Effective on October 7, 2010

I. Scope

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

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

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

II. Policy

1. It is the general policy of the State of New Jersey that law enforcement officers should only use the degree or intensity of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time force is used. The reasonableness of force must be judged from the perspective of a reasonable law enforcement officer on the scene at the time of the incident. The Attorney General's Use of Force Policy (rev. 2000) formally recognizes five distinct types of force: constructive authority, physical contact, physical force, mechanical force, and deadly force. The Attorney General's supplemental policy on less lethal ammunition (2008) essentially established a distinct level of force, known as enhanced mechanical force, which, according to the Report to the Attorney General on Less-Lethal Ammunition (February 13, 2008) submitted by the Attorney General's Advisory Group to Study Less-Lethal Force, is "an intermediate force option between mechanical force and deadly force, requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than that required for the use of deadly force."
2. The Attorney General's Use of Force Policy (rev. 2000) provides that deadly force may only be used when an officer reasonably believes that such force is *immediately* necessary to protect an officer or another person from *imminent* danger of death or serious bodily injury. (Emphasis added to highlight one of the key distinctions between the standard for using deadly force and the standard for using enhanced mechanical force, such as less-lethal ammunition. The latter type of force does not require that the threat of death or serious bodily injury be imminent or immediate.) Deadly force may not be used against persons whose conduct is injurious only to themselves. (This restriction also distinguishes the standard for using deadly force from the standard for using less-lethal ammunition, which may be used to prevent a person from killing or seriously injuring him/herself.)
3. The risks and benefits associated with the use of a conducted energy device are in many respects comparable to the risks and benefits associated with the use of less-lethal ammunition. In certain situations, a conducted energy device may reduce the risk of death or injury to police officers, to innocent bystanders

and victims, and also to the persons who are subject to arrest and against whom this form of less lethal force would be directed. The device may thus allow officers to resolve a confrontation without it escalating to a level where deadly force is required. Accordingly, this policy allows law enforcement agencies the ability to use these devices as a less lethal alternative, while limiting the circumstances when a conducted energy device may be deployed. These restrictions are in most instances comparable to the current restrictions imposed on the use of less-lethal ammunition, but are adapted in this supplemental policy to address the unique characteristics, practical utility, and potential for abuse of conducted energy devices. In certain circumstances, such as when a conducted energy device is directed against a person who is restrained by handcuffs, or when the device is used in "drive stun mode" (*i.e.*, held in direct physical contact with the suspect rather than being fired from a distance), this policy imposes additional restrictions that are comparable to those that apply to the use of deadly force.

4. While conducted energy devices are designed and intended to be used as less lethal weapons, these devices can result in serious bodily injury, or death. The risk of causing immediate or long-term injury depends on many factors, including but not limited to the terrain on which the targeted person is standing, given the risk that the device might cause the person to fall uncontrollably. Officers equipped with conducted energy devices must at all times recognize the seriousness and potential lethality of these weapons. Accordingly, this supplemental policy establishes strict requirements for carrying, displaying, and using these devices. The rules set forth in this supplemental policy, including procedural safeguards such as the provisions of this policy that require that a digital video record be made and preserved of all incidents where a conducted energy device is fired or discharged, and requiring a thorough investigation and report to the Attorney General of every such incident, are designed to ensure that conducted energy devices are used during actual operations only when and in the manner expressly authorized by this supplemental policy.
5. This policy limits the circumstances when a conducted energy device may be deployed, and prohibits use of these weapons in certain circumstances and for certain purposes. For example, a conducted energy device may not be fired or discharged against a person who is exhibiting only passive resistance to an officer's

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

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

III. Definitions

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

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

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

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

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

IV. Authorized Officers

1. The chief executive of a law enforcement agency shall determine the number of officers who are authorized to carry and use a conducted energy device.
2. An officer shall not carry or use a conducted energy device during an actual operation unless the officer has been expressly authorized in writing by the chief executive of the department, considering the officer's experience and demonstrated judgment, and the officer has successfully completed a training course approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The chief executive of the department shall have the continuing responsibility to ensure that all officers authorized to carry or use a conducted energy device remain qualified by experience, demonstrated judgment, and training and Police Training Commission-approved qualification and re-qualification procedures to be equipped with these weapons, and the chief executive may at any time limit, suspend, or revoke the authority of an officer to carry or use a conducted energy device.
3. A law enforcement officer authorized to carry and use a conducted energy device pursuant to this supplemental policy shall be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun provided by his or her department.

V. Authorization to Use Conducted Energy Devices

1. An officer authorized to use a conducted energy device pursuant to this supplemental policy may fire and/or discharge the device during an actual operation only where:
 - a. i) the officer believes such force is reasonably necessary to prevent the person against whom the device is targeted from causing death or serious bodily injury to him/herself, an officer, or any other person;
or,

- ii) the officer believes such force is reasonably necessary to prevent the immediate flight of an individual whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily injury; and
 - b. the individual will not voluntarily submit to custody after having been given a reasonable opportunity to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force to prevent the individual from causing death or serious bodily injury to him/herself or any other person.
- 2. An officer shall not direct an electrical charge or current against a person who has already received an electrical charge from a conducted energy device unless the person, despite the initial discharge, continues to pose a threat of causing death or serious bodily injury to him/herself, an officer, or any other person. The person shall be given a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands before being subjected to a second or subsequent discharge, unless the person's conduct after the initial discharge creates a risk of death or serious bodily injury that is so immediate that any delay in applying a second or subsequent discharge would likely result in death or serious bodily injury.

In the event that a second or subsequent discharge is authorized and necessary, the officer shall, when feasible, point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying any such second or subsequent discharge.

- 3. An officer shall not direct an electrical charge or current against a person who is restrained by handcuffs unless:
 - a) the officer reasonably believes based on the suspect's conduct while handcuffed that such force is immediately necessary to protect the officer, the suspect, or another

person from imminent danger of death or serious bodily injury; and,

b) the use of physical or mechanical force (*e.g.*, a baton or pepper spray) is not immediately available to be employed, has been tried and failed to stop the imminent threat of death or serious bodily injury, reasonably appears to be unlikely to stop the imminent threat if tried, or would be too dangerous to the officer or an innocent person to employ.

In the event that a conducted energy device is discharged against a person who is restrained by handcuffs, the officer shall point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying the discharge.

4. An officer shall not use a conducted energy device in drive stun mode unless the officer reasonably believes based on the suspect's conduct that discharging the device in drive stun mode is immediately necessary to protect the officer, the suspect, or another person from imminent danger of death or serious bodily injury.

5. A law enforcement officer shall not be required to exhaust the option of using a conducted energy device before using lethal ammunition in any circumstance where deadly force would be justified and authorized pursuant to the Attorney General's Use of Force Policy.

VI. Unauthorized uses of Conducted Energy Devices

The following uses are prohibited:

1. A conducted energy device shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment.

2. A conducted energy device shall not be fired or discharged against a person who is exhibiting only passive resistance to an officer's command to move from or to a place, to get onto the ground, or to exit a vehicle.
3. A conducted energy device shall not be fired or discharged to prevent a person from committing property damage.
4. A conducted energy device shall not be fired or discharged against the operator of a moving vehicle.
5. Two or more conducted energy devices shall not be discharged upon a person at the same time.

VII. Training and Qualification

1. No officer shall be authorized to carry or use a conducted energy device during an actual operation until having completed a training course and qualification procedure approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The training program shall include a component on how to interact with an emotionally disturbed person, how to recognize mental illness, and techniques to de-escalate a psychiatric crisis to prevent injury or death.
2. A person participating in a training course approved by the Police Training Commission shall during such training be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun.
3. All law enforcement officers authorized to carry and use a conducted energy device pursuant to this supplemental policy shall qualify, and thereafter re-qualify semi-annually, in a training course and qualification procedure approved by the Police Training Commission.

VIII. Deployment Techniques

1. An officer issued a conducted energy device shall determine and record on an appropriate log, prior to field deployment, that the device, including the video recording function, is functional.
2. When feasible, the officer should warn the person against whom the conducted energy device is directed that the officer intends to fire the weapon. If a second or subsequent discharge is authorized by this supplemental policy, the officer, when feasible, should warn the person that the officer intends to discharge the device again. It shall not be necessary for an officer to warn the person of the impending firing/discharge of the device, or to provide the person with an opportunity to submit to law enforcement authority before firing/discharging the device, if the person's conduct is creating a risk of death or serious bodily injury that is so immediate that any delay in firing/discharging the device would likely result in death or serious bodily injury (*e.g.*, where the person is actively engaged in committing an aggravated assault, or is actively engaged in an attempt to commit suicide or an act of self mutilation).
3. An officer shall not unholster a conducted energy device during an actual operation unless the officer reasonably believes that it may be necessary for the officer to use the conducted energy device. An officer shall not exhibit a conducted energy device to a person or conduct a spark display during an actual operation unless the officer reasonably believes that display of the device and/or a demonstration of its ability to discharge electricity as an exercise of constructive authority would help to establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety. An officer may also unholster and/or exhibit a conducted energy device or conduct a spark display if another officer on the scene has unholstered and/or exhibited a firearm in accordance with the Attorney General's Use of Force Policy.
4. An officer may, through verbal commands, threaten to use a conducted energy device, so long as the officer's purpose is limited to creating an apprehension that the device will be used if necessary.
5. An officer should not fire a conducted energy device if there is a substantial risk that the electrode/darts will strike an innocent person unless firing the device in such circumstances is

reasonably necessary to protect the innocent person(s) from being killed or seriously injured by the person against whom the conducted energy device is targeted.

6. To ensure officer safety, when feasible, at least one law enforcement officer other than the one deploying the conducted energy device should be present, be armed with lethal ammunition, and be prepared to deploy deadly force in the event that the use of a conducted energy device for any reason fails to incapacitate the suspect and prevent him or her from causing death or serious bodily injury to the officer equipped with the device, or any other person.
7. During the deployment of a conducted energy device, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.
8. An officer trained and authorized to carry a conducted energy device should be aware of any targeting recommendations made by the manufacturer.
9. A conducted energy device may be used in conjunction with a distraction device, water-based chemical agent, or less-lethal ammunition. If the individual has already received an electrical charge from a conducted energy device, officers should, when feasible, provide the person a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands, considering the physiological effects of the discharge, before deploying a distraction device, chemical agent, or less-lethal ammunition.
10. A conducted energy device shall not be directed against a person who is situated on an elevated surface (*e.g.*, a ledge, scaffold, near a precipice, etc.) unless reasonable efforts have been made to prevent or minimize a fall-related injury (*e.g.*, deploying a safety net).
11. A conducted energy device shall not be used in, on, or immediately adjacent to a body of water in which the targeted person could fall during any stage of the application of the electrical current generated or transmitted by the device.
12. A conducted energy device shall not be used in any environment where an officer knows or has reason to believe that a potentially flammable, volatile, or explosive material is present that might be ignited by an open spark, including but

not limited to pepper spray with a volatile propellant, gasoline, natural gas, or propane.

13. While officers must at all times respect the seriousness and potential lethality of a conducted energy device, an officer should use particular care when considering whether to use a conducted energy device against a individual who is particularly vulnerable due to age (either elderly or young) or due to a known or reasonably apparent medical condition (e.g., a pregnant female).

IX. Handling of Injured Suspects

Subjects against whom a conducted energy device has been directed shall be transported to a medical facility for examination if they suffer bodily injury or request medical attention.

X. Reporting and Evaluation

1. In all instances when a conducted energy device is fired or discharged, or where a spark display is conducted during an actual operation, the law enforcement officer who employed such force shall complete:

- a. Any reports made necessary by the nature of the underlying incident, and,
- b. A use of force report as required by the Attorney General's Use of Force Policy.
- c. A Conducted Energy Device Report.

2. In all instances when a conducted energy device is fired at or discharged upon a person, a higher-ranking supervisor shall investigate the circumstances and outcome of the device's use. The investigating supervisor shall report on the incident to the chief executive of the department, providing the chief executive information on all relevant circumstances, deployment, and outcome, including whether the deployment avoided injury to an officer and avoided the need to use deadly force. Upon receipt, the chief executive shall issue a finding on whether the firing and all discharges complied with the Attorney

General's Supplemental Policy on Conducted Energy Devices. The chief executive shall forward the report to the County Prosecutor within 3 business days of the firing/discharge, unless the County Prosecutor grants the chief executive's request for a reasonable extension of time within which to forward the report for good cause shown.

3. The County Prosecutor shall review all reports detailing conducted energy device firings/discharges occurring within his or her jurisdiction. The Prosecutor shall within 7 days of the device's firing/discharge forward to the Director of the Division of Criminal Justice the investigation report(s) prepared by the chief executive of the department, along with a memorandum or letter indicating whether the Prosecutor concurs or disagrees with the findings of the chief executive of the department as to the propriety of the firing/discharge(s). A Prosecutor may request a reasonable extension of time within which to report to the Director of the Division of Criminal Justice when the Prosecutor believes that an incident requires further investigation to determine whether the firing/discharge(s) complied with this supplemental policy. The Prosecutor may conduct any such further investigation, or may direct the chief executive of the department to do so. The Director of the Division of Criminal Justice shall report to the Attorney General on the propriety of the firing/discharge(s).

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

XI. Approved Conducted Energy Devices

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

1. The device must be capable of making a date- and time-stamped digital record of each occurrence when the darts/electrodes are fired, and of each occurrence when an electrical current is discharged.
2. The device must be capable of making a digital video recording of each such firing and electrical discharge, where the focus of the internal camera is centered on the person against whom the conducted energy device was targeted.
3. The device must safeguard all such digital data and video recordings to ensure that they can be accessed or erased only by appropriate supervisory personnel in accordance with rules, regulations, standing operating procedures or orders promulgated pursuant to this supplemental policy.

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

XII. Sanctions for Non-Compliance

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

discretion deems appropriate to ensure compliance with this supplemental policy.