

# 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.