

**ATTORNEY GENERAL'S ADVISORY GROUP  
TO STUDY LESS-LETHAL FORCE**

**REPORT TO THE ATTORNEY GENERAL  
ON LESS-LETHAL AMMUNITION**

**FEBRUARY 13, 2008**

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**REPORT ON LESS-LETHAL AMMUNITION**

The Attorney General's Advisory Group to Study Less-Lethal Force has been asked to make specific recommendations on whether and under what circumstances law enforcement officers in New Jersey should be permitted to use less-lethal ammunition, such as rubber bullets, bean bags and other non-penetrating impact projectiles shot from a firearm. Pursuant to the Attorney General's request, the Advisory Group reviewed policies and practices in other jurisdictions, and convened a public hearing on November 27, 2007 to hear testimony from law enforcement professionals and a representative from the mental health services community. The witnesses at the public hearing were unanimous in stating that in appropriate circumstances, less-lethal ammunition can save lives and also enhance officer safety.

We agree that police officers in this State need the equipment and training to help them control and de-escalate potentially violent confrontations without having to use deadly force whenever possible. We therefore recommend that the Attorney General's Use of Force Policy be revised to authorize the use of less-lethal ammunition. The attached proposed supplemental policy would provide clear and concise guidance to law enforcement officers on when and under what circumstances the use of less-lethal ammunition would be appropriate. The proposed policy only addresses the use of less-lethal impact projectiles ejected from a firearm; it does not address the use of other forms of less-lethal force, such as electrical discharge devices (*e.g.*, "stun-guns" as defined in N.J.S.A. 2C:39-1(t)). The Advisory Group will hold a public hearing and make recommendations on the use of other forms of less-lethal force in a future report.

In order to recommend an appropriate standard and criteria for determining whether the use of less-lethal ammunition is authorized, we considered how less-lethal ammunition compares to other force options. The Attorney General's current Use of Force Policy recognizes five distinct types of force as follows: 1) **constructive authority** (*e.g.*, verbal commands, warnings, pointing a firearm at a suspect, etc.); 2) **physical contact** (*e.g.*, guiding a subject into a police vehicle; holding the subject's arms while transporting; handcuffing a suspect, etc.); 3) **physical force** (wrestling the subject to the ground; using wrist locks or arm locks; striking the subject with the officer's hands or feet, etc.); 4) **mechanical force** (the use of some device or substance, other than a firearm, to overcome a subject's resistance, including, for example, the use of a baton or other object, a canine, or chemical or natural agent spraying); and, 5) **deadly force** (force

creating a substantial risk of causing death or serious bodily injury such as by purposely firing a firearm in the direction of another person or at a vehicle). [Attorney General's Use of Force Policy (Rev. June 2000), Definitions A-E]. The Attorney General's Use of Force Policy spells out when police are authorized to use physical, mechanical and deadly force.

Less-lethal ammunition, which is sometimes also referred to as less-lethal impact projectiles, has been defined by our Legislature to mean ammunition that is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body. It also means ammunition that is designed to gain access to a building or structure (such as by disabling a door lock) and that is used for that purpose. N.J.S.A. 2C:3-11(f). While there are a number of different brands and types of less-lethal impact projectiles on the market, the common feature is that these projectiles are fired from shotguns or rifles just like regular, lethal ammunition, but are designed not to penetrate the targeted subject's body by reason of the impact projectile's shape, surface area, hardness and velocity at impact.

Some law enforcement professionals believe that less-lethal impact projectiles should be treated as a type of mechanical force, as that term is used in the Attorney General's Use of Force Policy, because like a police baton, the stunning effect is achieved by blunt force when the impact projectile strikes the body of the targeted suspect. Under the current Attorney General Use of Force Policy, a law enforcement officer may use either physical or mechanical force:

when the officer reasonably believes it is immediately necessary at the time:

- a. to overcome resistance directed at the officer or others; or
- b. to protect the officer, or a third party, from unlawful force; or
- c. to protect property; or
- d. to effect other lawful objectives, such as to make an arrest. [Attorney General's Use of Force Policy, § I(A)(1)]

The Advisory Group believes that the above-quoted standard presently used to justify the use of physical or mechanical force would not provide sufficient guidance to law enforcement officers on when it would be appropriate to use less-lethal ammunition. The Advisory Group heard testimony during the public hearing suggesting that less-lethal ammunition should be distinguished from other types of mechanical force, such as a nightstick or pepper spray, and might be considered to be part of a new subcategory of force that could be described as "enhanced mechanical force." That suggestion recognizes that while less-lethal

ammunition is designed so as not to penetrate the body, these projectiles can certainly cause death or serious bodily injury depending on factors that in some circumstances may be beyond the officer's practical ability to control (*e.g.*, the target's erratic movements, which may make it difficult to avoid unintentionally and fatally striking the person in the head, neck or spine).

Unlike certain other types of mechanical force, such as a police baton, the blunt force of a less-lethal impact projectile is applied by police from a distance. This makes less-lethal impact projectiles safer to use, from an officer's perspective, because the officer is not in direct contact or close proximity to the subject. At the same time, however, less-lethal ammunition generally affords less control than a baton or other types of mechanical force in terms of the amount of force that ultimately strikes the subject, since the velocity of the projectile coming out of the barrel is fixed. These projectiles also provide an officer with less control than a baton in terms of the exact location on the subject's body where the strike occurs, since the targeting of these projectiles may not be as accurate as regular, aerodynamic ammunition, and because the suspect may turn or bend before the impact projectile strikes. Unlike a baton, there is no way to hold back on the blow, reducing the velocity of the projectile and the force of the strike. Nor is it possible to redirect the intended strike point once the trigger is pulled.

Considering these distinguishing circumstances, the Advisory Group believes that the use of less-lethal ammunition might not be appropriate in all circumstances where physical or mechanical force would be justified under the current Attorney General Use of Force Guidelines. We therefore recommend a new standard of justification that is tailored to the unique characteristics of less-lethal impact projectiles.

Specifically, the Advisory Group recommends that officers be permitted to fire less-lethal ammunition at a person only when such force is reasonably necessary to prevent that person from causing death or serious bodily injury to him/herself, an officer, or any other person. In other words, less-lethal ammunition should be used only to address the threat of physical injury posed by the person who is to be struck by a less-lethal impact projectile. The proposed policy would not permit less-lethal ammunition to be used to prevent a person from committing property damage. Nor should this ammunition be used to control crowds, or to prevent the escape of a fleeing suspect, except in circumstances where such force is reasonably necessary to prevent the targeted person from causing death or serious bodily injury to an officer, the suspect him/herself, or another person.

The proposed standard for using less-lethal ammunition is distinguished from the current policy concerning deadly force in two key respects. First, under current law and policy, deadly force may only be used when immediately necessary to protect an officer or another person from imminent danger of death or serious bodily injury. See Use of Force Policy, §I(B)(1). In contrast, the proposed policy regarding less-lethal ammunition would not require that the risk of death or serious injury be imminent.

The proposed standard contemplates a situation where the risk of death or serious bodily injury is reasonably foreseeable, but the circumstances creating the risk have not yet come to fruition. One example would be where officers confront a suspect who is armed with a knife and refuses to disarm. In these circumstances, the risk of resultant injury is real and entirely foreseeable, but might not be imminent until the officers were within striking distance of the non-firearm weapon. While deadly force would not be authorized before the suspect poses an imminent risk to officers, under the attached proposed policy, the use of less-lethal ammunition would be permitted.

This critical distinction between imminent and non-imminent risks might also apply in the case of a fleeing suspect. Under the Attorney General's Use of Force policy, deadly force may only be used to prevent an escape if the officer has probable cause to believe that the fleeing suspect committed an offense in which the suspect caused or attempted to cause death or serious bodily harm, and the suspect will pose an imminent danger of death or serious bodily harm should the escape succeed. Use of Force Policy, §I(B). In contrast, less-lethal ammunition might be used to prevent an escape where the risk that the targeted suspect might kill or seriously injure another person is reasonably foreseeable, but may not be imminent because no potential victim is as yet in harm's way.

Secondly, the current Use of Force Policy expressly provides that deadly force may not be used against persons whose conduct is injurious only to themselves. Use of Force Policy, §I(C)3. This restriction on the use of deadly force might apply, for example, where a person is threatening to commit suicide. The proposed policy regarding less-lethal ammunition would authorize officers to use impact projectiles against a person who is threatening or actively engaged in suicidal or other self-destructive behavior.

In sum, under the proposed supplemental policy, there would be circumstances where less-lethal ammunition could be used when deadly force would not be authorized, and in this sense, less-lethal ammunition would become 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.

Importantly, the Advisory Group recommends that the Attorney General's supplemental policy make clear that a law enforcement officer would not be required to exhaust the option of using less-lethal ammunition before using lethal ammunition in any circumstance where deadly force would be justified. A police officer faced with a split-second decision of this kind should not be second guessed as to whether he or she might have used another force option to resolve a violent confrontation. Rather, the question whether the use of deadly force is appropriate should be answered based solely on whether at the time that deadly force is used, the circumstances known to the officer satisfy the lethal force standard established in the Attorney General's Use of Force Policy.

In addition to prescribing a substantive standard for when less-lethal ammunition may be used, the Advisory Group also recommends procedural limitations designed to ensure that this type of force is used appropriately. Specifically, the Advisory Group recommends that less-lethal ammunition may only be deployed and used by those officers who have been expressly authorized in writing by the chief executive of their department. In granting such authority, the chief executive would be required to consider the officer's experience and demonstrated judgement.

Furthermore, no officer would be permitted to deploy or use less-lethal ammunition unless he or she had completed a training course approved by the Police Training Commission in the proper use and deployment of less-lethal ammunition. Thereafter, the officer would be required to requalify twice a year by participating in a training course and qualification procedure approved by the Police Training Commission.

The Advisory Group cannot overstate the importance of comprehensive, practical training. We further recommend that the Police Training Commission-approved training course include instruction on how law enforcement officers should deal with persons who reasonably appear to be suffering from mental illness. While police officers cannot be expected to make split-second, on-the-scene evaluations with the skill and comprehensiveness of mental health professionals, they can be instructed on how to recognize basic indications of mental illness, and how to interact with individuals in a manner that enhances the chances for resolving a confrontation peaceably (such as by not screaming commands at a mentally ill person, which can have unintended consequences and make the situation worse). Such training would underscore the goal of providing police with safe and effective alternatives to the use of deadly force when appropriate.



To ensure accountability and make certain that less-lethal ammunition is used only in appropriate circumstances, the proposed policy requires a police officer to make a report whenever he or she uses a less-lethal impact projectile. Furthermore, in order to monitor and evaluate the effectiveness and utility of this force option, for a two-year period, police departments would be required to report to the Attorney General and the appropriate County Prosecutor on whether the use of less-lethal impact projectiles successfully resolved the confrontation, and whether this force option made it unnecessary for the police to have to resort to the use of deadly force.

February 13, 2008

**PROPOSED ATTORNEY GENERAL POLICY ON LESS-LETHAL  
AMMUNITION (LESS-LETHAL IMPACT PROJECTILES)**

**I. SCOPE**

This supplemental policy is the product of the Attorney General's Advisory Group to Study the Use of Less-Lethal Force. The following Policy applies to the use of less-lethal ammunition, as defined in N.J.S.A. 2C:3-11(f), that is ejected from a firearm. It does not address the use of other forms of less-lethal force, including electrical discharge devices (e.g., a "stun gun" as defined in N.J.S.A. 2C:39-1(t)).

**II. Policy Considerations**

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.

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 action is immediately necessary to protect an officer or another person from imminent danger of death or serious bodily injury. Deadly force may not be used against persons whose conduct is injurious only to themselves.

3. There may be circumstances when an officer is confronting a combative, armed or violent person where deadly force is not immediately necessary. In some of those situations, the ability to use less-lethal ammunition may provide a law enforcement officer with the means to resolve the confrontation before it escalates into one where deadly force becomes necessary.

4. While less-lethal ammunition is designed so as not to penetrate the body, these impact projectiles can cause death or serious bodily injury. The risk of causing such injury depends on many factors, some of which are beyond an officer's practical ability to control. A target's volatile movements, for example, may increase the chance that the person will unintentionally be struck in the head, neck, or spine.

5. This policy supplements the Attorney General's Use of Force Policy by providing express criteria for the use of less-lethal ammunition. The Attorney General's Use of Force Policy is hereby superceded only to the extent that any of its provisions are inconsistent with the provisions of this supplemental policy. This policy does not supercede or in any way affect any departmental policy that regulates the use of oleoresin capsicum, tear gas or other chemical agent, a distraction device (*e.g.*, a "flash bang"), or the use of a straight or side-handle baton, and does not constitute authorization by the Attorney General to possess or use a stun gun pursuant to N.J.S.A. 2C:39-3g. The authority to deploy and use tear gas or other chemical agents or a distraction device delivered by means of a projectile launched from a firearm shall continue to be governed by the standards applicable to mechanical force under the Attorney General's Use of Force Policy, and such authority is not affected by this supplemental policy, provided that the projectile is not targeted to directly strike a person.

### **III. Definitions**

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. It also means ammunition that is designed to gain access to a building or structure and that is used for that purpose. N.J.S.A. 2C:3-11(f).

#### **IV. Approved Less-Lethal Ammunition**

The New Jersey State Police in consultation with the Division of Criminal Justice shall compile a list of less-lethal ammunition approved by the Attorney General for use by law enforcement officers in the State. The use of less-lethal ammunition not included within this list is not authorized for use in actual operations. The list shall indicate whether the specific less-lethal ammunition may be used against a person, or is only authorized for use to penetrate or gain access to a building pursuant to Section V (5) of this policy. The list shall also indicate the minimum and maximum distance at which the specific ammunition may be directed against a person pursuant to Section IX (A).

#### **V. Authorization to Use Less-Lethal Ammunition**

1. Less-lethal ammunition may be directed against a person only when such force is reasonably necessary to prevent the person from causing death or serious bodily injury to him/herself, an officer, or any other person.

2. A law enforcement officer shall not be required to exhaust the option of using less-lethal ammunition 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.

3. Less-lethal ammunition may be directed at a building or structure to break a window, fracture a lock, or otherwise aid police in gaining access to the building or structure.

4. A threat to use less-lethal ammunition, by the production of a firearm dedicated for the use of less-lethal ammunition or otherwise, so long as the officer's purpose is limited to creating an apprehension that less-lethal ammunition will be used if necessary, does not constitute the use of less-lethal ammunition.

## **VI. Examples of Authorized Use of Less-Lethal Ammunition**

Examples of situations where the use of less-lethal ammunition might be authorized and appropriate include but are not limited to the following circumstances:

A. A person is armed, or appears to be armed, with a potentially deadly weapon and refuses to comply with an officer's order to disarm.

B. A person is threatening or actively engaged in suicidal or other self-destructive behavior, and the use of less-lethal ammunition is necessary to prevent the person from causing death or serious injury to him/herself.

## **VII. Examples Where Less-Lethal Ammunition is Not Authorized**

1. Less-lethal ammunition shall not be used to prevent the escape of a fleeing suspect except in circumstances where such force is reasonably necessary to prevent the person from causing death or serious bodily injury to an officer or other person should the escape succeed.

2. Less-lethal ammunition shall not be used in a crowd control situation except in circumstances where such force is reasonably necessary to prevent a person against whom the less-lethal ammunition is directed from causing death or serious bodily injury to an officer or other person.

3. Less-lethal ammunition shall not be used to prevent a person from committing property damage.

## **VIII. Authorized Officers**

A. An officer shall not use less-lethal ammunition during an actual operation unless:

1. The officer has been expressly authorized in writing by the chief executive of the department to use less-lethal

ammunition, considering the officer's experience and demonstrated judgment; and

2. The officer has successfully completed a training course approved by the Police Training Commission in the proper use and deployment of less-lethal ammunition. The training program shall include a discussion of target areas on the suspect's body with a view toward minimizing the risk that the use of less-lethal ammunition will cause death or serious bodily injury. The training program shall also include a component on how to interact with a person who reasonably appears to an officer to be suffering from a mental illness.

B. All law enforcement officers authorized to use less-lethal ammunition 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.

#### **IX. Dedicated Weapons**

Weapons used for the deployment of less-lethal 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 necessary to protect the life of a law enforcement officer or others.

#### **X. Deployment Techniques**

A. Less-lethal impact projectiles shall not be used at a lesser or greater distance than that specified for each approved product pursuant to Section IV.

B. When it can be reasonably done without increasing the danger to officers or others, other law enforcement officers involved in an incident where less-lethal ammunition is deployed should be advised of the deployment prior to the discharge of the weapon so

as to minimize the possibility that the firing of less-lethal ammunition would provoke other officers to fire their weapons.

C. During the deployment of less-lethal ammunition, the deploying officer and officer-in-charge shall continually evaluate the options selected against changing circumstances.

D. When feasible, multiple tactics should be used to overwhelm the suspect. Less-lethal ammunition may be used in conjunction with a distraction device or chemical agent.

E. A weapon loaded with less-lethal ammunition shall be treated with the same care and caution as a weapon loaded with lethal ammunition.

#### **XI. Handling of Injured Suspects**

Subjects who are struck by less-lethal ammunition shall be transported to a medical facility for examination if they suffer bodily injury or request medical attention.

#### **XII. Reporting and Evaluation**

A. In all instances when less-lethal ammunition is used, each law enforcement officer who employed such force shall complete:

1) Any reports made necessary by the nature of the underlying incident, and,

2) A use of force report as required by the Attorney General's Use of Force Policy.

B. In order to monitor and evaluate the effectiveness and utility of less-lethal ammunition, for a period of 24 months following the effective date of this supplemental policy, the department employing an officer who fires a less-lethal impact projectile shall report to the County Prosecutor and Attorney General on whether the use of less-lethal ammunition was effective, and whether it reasonably appears that the use of the less-lethal

impact projectile made it unnecessary to resort to the use of lethal ammunition. These reports to the County Prosecutor and Attorney General shall be in a manner as prescribed by the Director of the Division of Criminal Justice, and shall be in addition to any reports required pursuant to subsection A of this section.

# Proposal