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September 15, 2009

TO: All County Prosecutors

All Law Enforcement Chief Executives

Colonel R. Fuentes
Superintendent, New Jersey State Police

Deborah Gramiccioni
Director, Division of Criminal Justice

SUBJECT: Policy on the Use of Conducted Energy Devices by Law Enforcement Personnel

Please find enclosed the newly approved policy on the use of conducted energy devices by law enforcement personnel. This supplemental policy is based on the recommendations of the Attorney General's Advisory Group to Study the Use of Less-lethal Force.

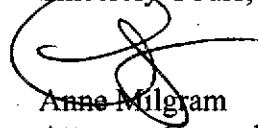
Conducted energy devices provide a valuable tool to be used in limited circumstances by law enforcement personnel where significant force is required. The policy permits the use of conducted energy devices by a limited number of specially trained officers. These officers may use the devices when confronted by an emotionally disturbed person conducting himself in a manner that the officer reasonably believes is likely to result in serious bodily injury to himself, the officer, or others. Use of the devices in conformance with these guidelines will assist law enforcement personnel by providing a significant addition to their continuum of force.

The policy specifically prohibits use of the devices: as "pain compliance devices," to prevent a person from committing property damage, to prevent a person from fleeing the scene, on persons restrained by handcuffs, and on persons in a motor vehicle. The policy requires semi-annual retraining by officers authorized to deploy the devices. It additionally requires the procurement of only those devices that store critical data, such as a digital video recording and a time/date stamp, on every instance in which the device is discharged.



Implementation of this policy provides greater safety to the public as well as law enforcement personnel, and ensures accountability for the use of these devices. Any questions concerning the implementation of this new policy should be addressed to Criminal Justice Director Deborah L. Gramiccioni, or her designee.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Anne Milgram', written over the printed name.

Anne Milgram
Attorney General

C: Ricardo Solano
First Assistant Attorney General

ATTORNEY GENERAL POLICY ON CONDUCTED ENERGY DEVICES

I. Scope

This supplemental policy is based on the work of the Attorney General's Advisory Group to Study the Use of Less-lethal Force. The following policy applies to the use of conducted energy devices, as 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 Section VIII of this policy to deploy or use a conducted energy device, or any officer while participating in a training program pursuant to Section VIII of 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.
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. Conducted energy devices are serious and potentially deadly weapons. In some limited situations, they may reduce the risk of injuries to

officers, to persons subject to arrest, and to innocent bystanders. They may also allow officers to resolve a confrontation without it escalating to a level where deadly force is required. This policy defines the issuance, use, and reporting requirements for these weapons to ensure that they are used consistent with public safety, in lieu of deadly force, and in furtherance of these limited and specific objectives.

4. The policy limits the issuance and deployment of conducted energy devices in order to emphasize the limited contexts in which an officer should use the weapon. An officer armed with a firearm recognizes that the discharge of the weapon is likely to cause death. Accordingly, in most instances, an officer will resolve a situation without the use of a firearm. This policy limits the use of the devices to ensure that officers recognize the lethality and seriousness of the weapons, deploy them consistent with that lethality, and use the weapons only where appropriate.
5. In limited and controlled environments, and under certain situations, conducted energy devices may be appropriate weapons for law enforcement officers to use against an emotionally disturbed person, as that term is defined in Section III below.
6. This policy supplements the Attorney General's Use of Force Policy. It provides express criteria for the firing and discharge of conducted energy devices by law enforcement officers.
7. This policy establishes procedural safeguards and reporting requirements to ensure that the devices are used consistent with and in furtherance of the objectives of their authorization.
8. The policy prohibits use of these weapons in certain circumstances, namely, (1) as a "pain compliance" device (i.e., for the purpose of overcoming a person's refusal to comply with an officer's order to move from or to a place, to get onto the ground, or to exit a vehicle); (2) on individuals restrained by handcuffs; (3) against a person in a moving vehicle; and (4) in any instance not authorized by this policy.
9. Any firing or discharge of a conducted energy device against a person except as authorized by this supplemental policy is strictly 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 fires darts, *i.e.*, electrodes that are attached by wire to the main body of the device held by a law enforcement officer, and that through these electrodes emits an electrical charge or current intended to temporarily disable a person.

“Emotionally disturbed person” (“EDP”) is a person who appears to be mentally ill or temporarily deranged and is conducting himself or herself in a manner that a police officer reasonably believes is likely to result in serious bodily injury to himself, the officer, or others

“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 darts/electrodes have not been ejected from the main body of the device, so that the device is in direct contact with the person against whom the charge or current is transmitted.

IV. Authorized Officers

1. No officers shall carry or be authorized to use a conducted energy device absent express written authorization by the department's chief executive.
2. A chief executive of a law enforcement agency shall limit authorization to carry or use a conducted energy device only to one officer of a supervisory rank in any municipality that has 25,000 or less residents; two officers of a supervisory rank in any municipality that has between 25,001 and 50,000 residents; three officers of a supervisory rank in any municipality that has between 50,001 and 75,000 residents; or four officers of a supervisory rank in any municipality that has more than 75,000 residents. In addition, the chief executive of a law enforcement agency may authorize any officer, regardless of rank, who is a member of a duly authorized and trained

SWAT or other emergency response squad or unit to carry or use a conducted energy device, consistent with this policy.

3. The chief executive of a law enforcement agency shall not authorize any officer to fire or discharge a conducted energy device until the officer has successfully completed a training course approved by the Police Training Commission in the proper use and deployment of conducted energy devices.
4. Any 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.
5. A law enforcement officer authorized to fire or discharge a conducted energy device during an actual operation 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 conducted energy device pursuant to this policy may discharge the device only where:
 - a. the officer reasonably believes that the individual is an emotionally disturbed person; and,
 - b. the individual is armed with a weapon and the officer reasonably believes that the individual poses an immediate threat of serious bodily injury to him/herself, an officer, or any other person; and,
 - c. the individual will not voluntarily submit to custody; and,
 - d. the officers have isolated and contained the individual. An individual is isolated when sufficiently separated from non-subjects, e.g., onlookers, crowd, etc., to allow the officer to use the weapon safely. An individual is contained when law enforcement has confined the incident to the smallest possible area by limiting the ability of the subject, for example, to run around or grab hostages.
2. Provided that the use of the conducted energy device would comply with the requirements of Paragraph V(1), a conducted energy device

may only be discharged upon the authorization of the highest-ranking police supervisor at the scene. Where the officer authorized to carry or use a conducted energy device is the highest-ranking officer at the scene, no additional authorization is required.

3. A member of an authorized and trained SWAT team or emergency response unit may discharge a conducted energy device consistent with Paragraph V(1) upon authorization of the team or unit supervisor. If the officer has responded to the scene but not deployed as part of an authorized and trained SWAT team or emergency response unit, the officer may discharge a conducted energy device consistent with Paragraph V(1) only upon authorization of the highest-ranking supervisor at the scene.
4. A law enforcement 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 has been given a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands and the person continues to pose an immediate threat of serious bodily injury to him/herself, an officer, or any other person.
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 expressly prohibited:

1. A conducted energy device shall not be fired or discharged in drive stun mode.
2. A conducted energy device shall not be used as a pain compliance device.
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 to prevent a person from fleeing the scene.

5. A conducted energy device shall not be fired or discharged against a person who is restrained by handcuffs.
6. A conducted energy device shall not be fired or discharged against an individual in a moving vehicle.
7. Two or more conducted energy devices shall not be discharged upon a person at the same time.

VI. Training and Qualification

1. No officer shall be authorized to carry or use a conducted energy device 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.
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 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.

IX. Deployment Techniques

1. When feasible, the officer should warn the person against whom the conducted energy device is directed that the officer intends to use the weapon. The same applies where the individual has already received an electrical charge from a conducted energy device.
2. To provide for officer safety, 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 protect an officer or other person from imminent danger of death or serious bodily injury.

3. During the deployment of a conducted energy device, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.
4. 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 provide the person a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands before deploying a distraction device, chemical agent, or less-lethal ammunition.
5. 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).
6. The officer should use particular care when considering whether to use a conducted energy device against a individual that is particularly vulnerable due to age (either elderly or young) or medical condition (*e.g.*, pregnant).

X. 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.

XI. Reporting and Evaluation

1. In all instances when a conducted energy device is fired or discharged, 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 outcomes of the device deployment. The investigating supervisor shall not be the same officer who authorized the discharge or discharged the device. The investigating supervisor shall report on the incident to the chief executive of the department, providing the chief executive of the agency information on circumstances, deployment, and outcome, including whether the deployment avoided injury to officer and the use of deadly force. Upon receipt, the chief executive shall issue a finding whether the discharge complied with the Attorney General's Policy on Conducted Energy Devices. The chief executive shall forward the report to the County Prosecutor within 3 business days of device discharge.

3. The County Prosecutor will review all reports detailing conducted energy device discharges, indicate their finding and recommendations as to the propriety of the discharge, and report their findings to the Attorney General within 7 days of device discharge. A Prosecutor may request a reasonable extension when the Prosecutor believes that an incident requires further investigation to determine whether the discharge complied with this Policy.

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 recordation systems of these devices are maintained, and that the data contained therein cannot be tampered with, and cannot be accessed 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 a report of the incident prepared by the chief or his or her designee, and, along with the use of force report prepared by the officer who fired the weapon, shall be provided to the County Prosecutor or Attorney General for review. The County Prosecutor, or the Attorney General, may at any time supersede any investigation of the use of force incident conducted by the department.

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 uniform and strict compliance with this supplemental policy.