

# WRITTEN DIRECTIVE



<b>SUBJECT:</b>	Conducted Energy Devices
<b>ORDER TYPE:</b>	Standard Operating Procedure
<b>ISSUED DATE:</b>	August 24, 2021
<b>EFFECTIVE DATE:</b>	August 24, 2021
<b>DISTRIBUTION:</b>	All Bureaus-Sworn, SLEO II
<b>CALEA STANDARDS:</b>	4.1.4, 4.1.5

## PURPOSE

The primary purpose of this directive is to ensure officers respect the sanctity of life when making decisions regarding deployment of conducted energy devices. Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. That authority is grounded in the responsibility of officers to comply with the laws of the State of New Jersey regarding the use of force and to comply with the provisions of this directive. Equally important is law enforcement's obligation to prepare individual officers in the best way possible to exercise that authority.

In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. Use of force may never be considered routine. In exercising this authority, officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

This policy standard operating procedure supersedes and replaces all other CED policies, directives, memos or guidance provided previously.

## POLICY

As with any type of force, officers shall exhaust all other reasonable means to gain compliance before resorting to deployment of a conducted energy device, if feasible. Thus, if a safe alternative would achieve law enforcement's objective, a conducted energy device 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. 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.

The decision to use force and the appropriate amount of force requires careful attention to the facts and circumstances of each incident.

Any deployment of a conducted energy 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.

## DEFINITIONS

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

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

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

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

Constructive Authority. Constructive authority is not considered a use of force because it does not involve physical contact with the subject. Rather, constructive authority involves the use of the officer's authority to exert control over a subject. Examples include verbal commands, gestures, warnings, and unholstering a weapon.

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

Enhanced Mechanical Force. An intermediate force option between mechanical force and deadly force, generally requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than that required for the use of deadly force. Unlike deadly force, enhanced mechanical force does not require an imminent threat of death or serious bodily injury. Examples include conducted energy devices, and less-lethal devices and ammunition.

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.

Fire. 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. 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. 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. 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.

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).

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).

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.

Deadly Weapon. Deadly force 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).

## **PROCEDURES**

### **1. AUTHORIZED OFFICERS**

- 1.1. The Chief of Police shall determine which officers, including Class II and Class III Special Law Enforcement Officers, shall be authorized to carry and use a conducted energy device. Class I Special Law Enforcement Officers shall not be authorized.
- 1.2. The Chief of Police may at any time limit, suspend, or revoke the authority of an officer to carry or use a conducted energy device, including for identified deficiencies in training, qualifications, or demonstrated judgment.
- 1.3. An officer shall not carry or use a conducted energy device (CED) during an actual operation unless the officer has been expressly authorized to do so by the Chief of Police, 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 devices, as appropriate.

1.4. The supervising weapons instructor shall ensure that all officers authorized to carry or use a conducted energy device (CED) remain qualified by PTC-approved qualification and re-qualification procedures. Officers authorized to carry CEDs have a duty to maintain the required certifications and qualifications.

1.5. Officers authorized to carry a CED may do so only while on-duty.

## 2. AUTHORIZATION TO USE CONDUCTED ENERGY DEVICES

2.1. An officer authorized to use a CED pursuant to this policy may fire, discharge the CED during an actual operation, only against:

- an *active assailant*; or
- 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
- 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.

2.2. 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.

2.3. An officer shall not direct an electrical charge or current against a person who is restrained by handcuffs unless:

- Deadly force would be authorized under the department's Use of Force Policy; and
- the use of physical or mechanical force is not feasible or would be ineffective.

2.4. Consistent with training, officers may unholster, spark display and/or 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.

2.5. Unholstering, displaying, or pointing a CED shall be considered a display of constructive authority.

2.6. 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.

### 3. UNAUTHORIZED USES OF CONDUCTED ENERGY DEVICES

#### 3.1. The following uses of CEDs are prohibited:

- A conducted energy device shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment;
- A conducted energy device shall not be used against a person who is a passive resistor or an active resistor;
- A conducted energy device shall not be fired or discharged for the sole purpose of preventing a person from committing property damage;
- A conducted energy device 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;
- Two or more conducted energy devices shall not be discharged upon a person at the same time;
- Officers shall not utilize the drive stun mode of the CED unless the officer reasonably believes based on the subject's conduct that discharging the CED 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.
- Notwithstanding section 2.4 of this directive, Officers shall not utilize spark displays to disperse and/or intimidate any person, group or crowd.

### 4. GENERAL PROVISIONS

4.1. Officers issued a Taser shall determine and record on the CED Log prior to field deployment that the device, including the body worn camera video recording function, is functional.

4.2. Prior to the beginning of a shift, authorized CED operators issued a conducted energy device shall activate their body worn camera and conduct a spark test to check the CED and body worn camera for proper functioning. While conducting a spark test officers must ensure compliance with the following safety protocols:

- The CED shall be pointed in a safe direction;
- The cartridge shall *not* be removed prior to conducting a spark test;
- The officer's index finger is placed along the frame of the CED—*at no time should the officer's finger be placed inside the trigger guard during a spark test*;
- The trigger shall *not* be depressed to conduct a spark test;
- The test shall be limited to five seconds in duration.

4.3. Tasers that are not assigned for service shall be stored in the police administration building firearms vault.

4.4. Tasers shall be stored unloaded of cartridges and separated from the battery.

4.5. Tasers shall never be left unsecured. Unattended Tasers must be minimally secured within a locked safe or similar receptacle when not being worn.

- 4.6. Any Taser that malfunctions or whose digital power magazine indicates a power level less than 20%, shall not be deployed in the field. Officers must report any CED malfunctions to their on-duty supervisor immediately.
- 4.7. Malfunctioning CEDs shall not be deployed and must be placed out of service and turned over to a CED instructor for repairs.

## 5. DEPLOYMENT TECHNIQUES

- 5.1. Tasers shall be carried in an approved holster on the duty belt on the opposite side of the body from the duty handgun. When practical, Taser operators shall carry one (1) Close Quarter Live Cartridge (3.5 Degree) and one (1) Standoff Live Cartridge (3.5 Degree).
- 5.2. When feasible, the officer must warn the person against whom a CED is directed that the officer intends to fire the CED.
- 5.3. 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.
- 5.4. 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 department's Use of Force Policy.
- 5.5. During the deployment of a CED, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.
- 5.6. During the deployment of a CED, the deploying officer must consider effective targeting— for rear target deployment officers should aim for the subject's back—below the neck area; for frontal target deployment, officers should aim for lower center mass.
- 5.7. 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.
- 5.8. 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).
- 5.9. 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.

5.10. 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.

5.11. 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).

5.12. Officers 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.

## 6. HANDLING OF INJURED SUSPECTS FOLLOWING USE OF CEDs

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

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

6.2. 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.

## 7. APPROVED CONDUCTED ENERGY DEVICES (CED)

7.1. Officers assigned a conducted energy device (CED) shall only use department issued CED devices and cartridges that were specifically assigned to them. CED devices and cartridges shall be handled with care, and shall never be shared, modified or tampered with.

7.2. Department issued CED devices shall at a minimum meet the following requirements:

- 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;
- 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, except that an approved conducted energy device that does not have the capability of making a digital video recording is authorized, provided that such device may only be carried and used by an officer who is equipped with a body worn camera 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
- 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.

## 8. TRAINING AND QUALIFICATION FOR CEDs

8.1. 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 (or DCJ) in the proper use and deployment of conducted energy devices 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.

8.2. Officers authorized to carry and use a conducted energy 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).

8.3. CED training, initial qualification and requalification programs shall only be instructed by authorized CED instructors and shall operate under the direct control of the County Prosecutor's Office.

8.4. Officers seeking designation as an authorized certified CED instructor or requalification instructor must:

- Receive the expressed approval of the Chief of Police, and
- Receive the approval and designation by the County Prosecutor, and
- Meet all training and qualification requirements set by the County Prosecutor prior to conducting the initial or requalification training of any law enforcement officer authorized to carry CED devices.

8.5. Re-Qualification Instructors shall not be authorized to conduct the initial training of officers authorized to carry a CED Device.

## 9. REPORTING AND EVALUATION

9.1. In all instances when a conducted energy device (CED) is fired or discharged during an actual operation, the officer who employed such force shall complete:

- Any department required reports made necessary by the nature of the underlying incident; and
- A department Use of Force Report; and
- A report in the Attorney General's Use of Force Reporting Portal; and
- A Conducted Energy Device Deployment Review Report, and
- A department Information Report.

9.2. Investigation of CED Deployments. In all instances when a conducted energy device or less lethal device is fired at or discharged upon a person by a department officer, Internal Affairs shall be notified by the Watch Commander without unnecessary delay. Internal Affairs personnel shall respond immediately to investigate the circumstances and outcome of the device's use. Internal Affairs shall report on the incident to the Chief of Police, providing the Chief of Police 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 of Police shall issue a report, including a finding on whether the firing and all discharges complied with the Attorney General's Use of Force Policy. *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.*

9.3. The Chief of Police shall forward the report to the County Prosecutor within 10 business days of the firing/discharge, unless the County Prosecutor grants the Chief'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. *If the County Prosecutor finds the firing or discharge of a conducted energy device (CED) 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.*

9.4. In all instances when a CED is fired at or discharged upon a person, a field supervisor/commander shall immediately respond to the scene, take custody of and secure the device until it can safely be turned over to Internal Affairs personnel. The field

supervisor/commander and Internal Affairs personnel shall safeguard and preserve the digital information in that device concerning the incident. After the information is safeguarded, the device may be returned to service consistent with this policy.

## **OTHER PROVISIONS**

*All personnel are responsible for adhering to the requirements of this written directive until rescinded or amended by written order of the Chief of Police. Employees have an ongoing and continuous responsibility to seek guidance and verify their understanding of this and all directives including orders, policies, procedures, and rules. This directive shall take effect immediately and remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Chief of Police. All directives not expressly altered by this order remain in full force and effect.*

*The provisions of this directive shall be severable. If any phrase, clause, sentence or provision of this directive is declared by a court of competent jurisdiction to be invalid, the remainder of the directive shall not be affected.*

*Non-enforceability by third parties.* This Directive is issued pursuant to the Chief of Police's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice by department members. This Directive imposes limitations that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

By Order of



Gabriel Rodriguez  
Chief of Police