



NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT:
CONDUCTED ENERGY DEVICES (CEDs)

GENERAL ORDER NO.
18-10

SUPERCEDES:
G.O. 18-10 (Dated September 7, 2018)

DATED:
April 8, 2022

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I. PURPOSE

The purpose of this policy is to establish procedures for the use of conducted energy devices by members of the Newark Police Division in accordance with the New Jersey Attorney General Guideline.

II. POLICY

It is the policy of the Newark Police Division to only use the degree or intensity of force that reasonably appears necessary given the facts and circumstances perceived by a member 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.

In certain situations, a conducted energy device may reduce the risk of death or injury to members, bystanders and/or victims.

This policy gives authorized and trained members of the Newark Police Division the ability to use the devices as a less lethal alternative, while limiting the circumstances when a conducted energy device may be deployed.

III. DEFINITIONS

A. Conducted Energy Device or CED

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.

B. Discharge of Conducted Energy Device

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.

C. 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.



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D. 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.

E. Firing of Conducted Energy Device

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.

F. Member

A sworn law enforcement officer of the Newark Police Division.

G. Spark Display

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

IV. AUTHORIZED MEMBERS

The Public Safety Director 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.

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 Public Safety Director, through the Training Division, shall be responsible to ensure that officers authorized to carry CEDs and less-lethal devices maintain the required certifications and qualifications. The Public Safety Director may at any time limit, suspend, or revoke the authority of a member to use a conducted energy device.

A member authorized to carry and use a conducted energy device pursuant to the Attorney General's Directive shall be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun provided by the Newark Police Division.



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V. AUTHORIZATION TO USE CONDUCTED ENERGY DEVICES

A. Authorized Use

1. A member 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. i) an active assailant; or
 - b. ii) a person who is attempting to cause death or serious bodily injury to him/herself; or
 - c. 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
 - 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; and
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.
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.
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.



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

B. Prohibited Use

The following uses of CEDs are prohibited:

1. A CED shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment;
2. A CED shall not be used against a person who is a passive resistor or an active resistor;
3. A CED shall not be fired or discharged for the sole purpose of preventing a person from committing property damage;
4. 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
5. Two or more CEDs shall not be discharged upon a person at the same time.

VI. DEPLOYMENT TECHNIQUES

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 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.

When feasible, the officer should warn the person against whom a CED is directed that the officer intends to fire the weapon.

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.



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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.

During the deployment of a CED, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.

An officer trained and authorized to carry a CED shall be aware of and comply with any targeting recommendations made by the manufacturer.

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.

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).

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.

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.

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).

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.



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VII. DUTY TO PROVIDE MEDICAL AID

A. Procedures

1. In accordance with the Newark Police Division Use of Force General Order, and in the interest of ensuring that injured persons receive proper medical attention, if a CED is directed at a person, the member shall:
 - a. Immediately request for E.M.S. to respond, and
 - b. If trained and qualified to do so will render aid until E.M.S. arrives.
2. 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.



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3. 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.

B. Restrictions

1. Members are prohibited from removing a CED dart/electrode from certain areas such as:
 - a. any part of the person's head or neck, or
 - b. genitalia, or
 - c. female breast
2. 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.

VIII. REPORTING AND EVALUATION RESPONSIBILITIES

A. Reporting Responsibilities

In all instances when a conducted energy device is fired at or discharged upon a person, the following shall be completed:

1. Member

The member who employed such force shall complete a "Use of Force" report in BlueTeam, a "NJOAG Use of Force" report in the Benchmark Analytics Attorney General's Use of Force Reporting Portal and any other reports made necessary by the nature of the underlying incident (e.g., Continuation Report, Arrest).

2. Witnessing Member

Any member witnessing a CED being deployed by another member shall also complete a Continuation Report documenting his/her observations.



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3. Supervisor

An uninvolved higher ranking supervisor shall respond to the scene of any firing or discharge of a CED. If the discharge of a CED results in death or serious bodily injury, the supervisor shall request that immediate notification be made to E.C.P.O., O.P.S., Public Safety Director, and Chief of Police. He/she shall ensure medical aid is provided for any injured persons, that the scene is secured, and be guided by the instructions of the E.C.P.O. Investigators.

If the incident does not result in death or serious bodily injury, the supervisor shall, at a minimum, complete the following:

- a. Take custody and secure the CED and safeguard the digital information in the device regarding the incident (Ref: IX);
- b. Ensure any injured persons receive medical aid (Ref: VII);
- c. Assess the incident and determine if the deployment of the CED conforms to NPD Policy, Attorney General Guidelines, and the Law;
- d. Identify any witnesses;
- f. Check for video cameras in the area;
- g. Ensure any In-Car Camera and or Body Camera Video is saved;
- h. Request notifications from Communications Division/911 Call Center are made to OPS, ECPO, Public Safety Director, and Chief of Police;
- i. Complete the Incident Report;
- j. Be guided by the instructions given by E.C.P.O. and O.P.S.; and
- k. Request notification be made to the appropriate N.P.D. Investigating Unit (e.g., Special Victims Division, Major Crimes, Homicide) when applicable.

4. Office of Professional Standards

O.P.S. shall respond to incidents where a CED is fired or discharged and conduct the investigation, except for incidents that result in death or serious bodily injury, which shall be investigated by the E.C.P.O.

The O.P.S. Commander shall review the firing and discharge of a CED incident and submit a report to the Public Safety Director detailing the relevant circumstances, deployment, and outcome, including whether the deployment avoided injury to an officer and avoided the need to use deadly force.

The Public Safety Director (PSD) shall review the O.P.S. report concerning the CED discharge and issue a finding on whether the firing and all discharges complied with the Attorney General's Supplemental Policy on CEDs. The PSD shall forward the report to the Essex County Prosecutor within **3 business days** of the firing/discharge, unless the Essex County Prosecutor grants the PSD's request for a reasonable extension of time within which to forward the report for good cause shown.



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5. Show of Force Report

When any member **conducts a spark display** but does not thereafter fire or discharge the device, or otherwise employ actual force against a subject, the member **shall document said actions as a Show of Force in the Attorney General's Use of Force Reporting Portal, as well as in corresponding reports** (Arrest, Incident, Continuation Reports, etc.).

- If an officer merely points a conducted energy device at a subject and **does not discharge the device or conduct a spark display**, their actions shall only be documented in any corresponding reports (Arrest, Incident, Continuation Reports, etc.) made necessary by the event.

6. Report Tracking

Each ***Show of Force Report and Use of Force Report*** shall contain event number for the assignment. The box labeled "Other-Specify" on the Use of Force report shall be checked.

B. Notifications

1. The Communications Division shall send notifications to the following commands for all incidents where a conducted energy device has been fired or discharged:
 - a. Public Safety Director
 - b. Chief of Police
 - c. Essex County Prosecutor's Office
 - d. Respective Precinct Commander
 - e. Office of Professional Standards
 - f. Any other person deemed necessary by the Public Safety Director.
2. A notification is not required when a conducted energy device is displayed as constructive authority or where a spark display is activated.

IX. EVIDENCE RETENTION

A. CED Digital Data Retention

1. The digital information from a CED shall be retained indefinitely.



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2. O.P.S. shall be responsible for securing and retrieving all digital information from CEDs. The O.P.S. Commander or designee shall ensure that the digital information from CEDs cannot be accessed, tampered, or erased except as allowed by law and under direction of the Public Safety Director or Chief of Police.
3. OPS Commander or designee shall serve as the administrator for the CED web-based virtual storage provided by the CED manufacturer (<https://evidence.com>).
4. The OPS Commander or designee shall be responsible for granting the appropriate level of access to select Division members to the manufacturer web-based virtual storage for the purposes of analysis, investigation, review, and storage of the digital data contained in the CED.
5. All CED firing and discharge data shall be stored in the manufacturer web-based virtual storage (<https://evidence.com>). Additionally, O.P.S. shall download the digital media from a CED onto a non-rewriteable, optical media (i.e., CD-R, and/or DVD-R), and secure the media in accordance with established Division policies and procedures for the marking and storage of digital evidence.

B. Cartridges/Probes

1. When a CED is fired or discharged upon a person, the expended cartridge(s) and probes will be collected and placed into property and evidence under the central complaint number.
2. If the expended probes are removed on the scene or at a medical facility, the member who deployed the CED will be responsible for collecting the expended cartridge(s) and probes and submitting them into property and evidence. Should an extenuating circumstance exist and the member who deployed the CED is unable to secure the cartridge(s) and probes, the supervisor on the scene shall make the determination who shall collect the evidence.
3. Members will treat the probes that have penetrated the body as contaminated needles and will utilize gloves.
4. Used probes may be secured sharp-tip first into either a sharps container or into the cartridge side wire pocket container.



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X. APPROVED CONDUCTED ENERGY DEVICES

The specifications for approved CEDs are found in the Attorney General “Use of Force Policy Addendum A – Conducted Energy Devices and Other Less-Lethal Devices and Ammunition”

Specifications for approved Conducted Energy Devices include 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 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
- 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.
- 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 and the Public Safety Director.

XI. CARE AND HANDLING OF CONDUCTED ENERGY DEVICE

All conductive energy devices shall be worn on a member’s support side of their duty belt in a cross-draw holster.

When conducted energy devices are not deployed, they shall be secured in a locked area determined by the commander. Conducted energy devices shall be included in the command inventory (such as shot guns) and accounted for at the beginning and end of every tour.



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A member issued a conducted energy device shall determine and record on an appropriate log, prior to each field deployment, that the device, including the video recording function, is functional.

If the function checks reveal the device battery is below 80% charge, the member will ensure the device is fully charged prior to field deployment.

If the function checks reveal the conducted energy device is not functioning properly, the device shall not be deployed. The member shall tag the device as out of service and submit an Administrative Report to the commander detailing the deficiency.

Commands equipped with CEDs shall be responsible for ensuring that on a *monthly* basis all CEDs are time synced, and a firmware update check is conducted via the Axon Evidence Sync link.

Members are required to ensure cleanliness of the conducted energy devices. A certified technician shall conduct periodic maintenance of the devices in accordance with the manufacturer's recommendation.

XII. TRAINING, QUALIFICATIONS, AND TRACKING

A. Training and Qualifications

1. All initial CED qualifications are conducted by the Essex County Prosecutor's Office.
2. 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.
3. 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).



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4. 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 Essex County Prosecutor or statewide law enforcement agency executive. The Essex 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.
5. For purposes of CED and Less-Lethal re-qualification ONLY, upon approval and designation of the Essex County Prosecutor's Office, Newark Police 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. The Essex 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.

B. Tracking

1. The Newark Police Training Division shall keep records on all members who are CED Task Force Officers, CED Re-Qualification Instructors, in addition to all members who have been trained as users of a conducted energy device. The Training Division shall monitor the re-qualification process. The tracking of re-qualified personnel shall indicate if the training was conducted on the FATS or the actual device.
2. OPS shall be responsible for tracking all CED firings and discharges by Division members.

XIII. SANCTIONS FOR NON-COMPLIANCE

Should the Attorney General or designee have reason to believe a law enforcement agency or officer is not complying with or adequately enforcing the provisions of the conducted energy device policy, the Attorney General may temporarily or permanently suspend or revoke the authority of the division 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 deems appropriate to ensure compliance with the policy.



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XIV. RESPONSIBILITY FOR COMPLIANCE

All Division members shall be responsible for compliance with this directive. Commanders and Supervisors shall ensure that all subordinates read and acknowledge understanding of this directive.

XV. EFFECT OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

By Order of:


BRIAN A. O'HARA
PUBLIC SAFETY DIRECTOR

BO/CM/LC/jg

Relevant Resources:

Attorney General Use of Force Policy Addendum A Conducted Energy Devices and Other Less-Lethal Devices and Ammunition

c: Sharonda Morris, Deputy Police Director of Operations
Lee Douglas III, Chief of Police

