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ANNE MILGRAM
Attorney General

March 19, 2008

TO: All County Prosecutors


All Law Enforcement Chief Executives

Colonel Joseph R. Fuentes
Superintendent, New Jersey State Police

Gregory Paw, Director
Division of Criminal Justice

RE: ***Supplemental Policy on Less-Lethal Ammunition***

I have today approved a new policy regarding the use of less-lethal impact projectiles. The attached policy supplements and becomes a part of the Attorney General's Use of Force Policy. This supplemental policy is based on the work of the Attorney General Advisory Group to Study the Use of Less-Lethal Force. I am convinced that this new tool will help to enhance officer safety, and will provide officers with the means in appropriate circumstances to avoid having to use deadly force. Any questions concerning the implementation of this new policy should be addressed to Division of Criminal Justice Director Paw, or his designee.



Anne Milgram
Attorney General

/mp
c: John Michael Vazquez
First Assistant Attorney General



**ATTORNEY GENERAL POLICY ON LESS-LETHAL AMMUNITION
(LESS-LETHAL IMPACT PROJECTILES)
DIRECTED AGAINST PERSONS**

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 less-lethal ammunition, as defined in N.J.S.A. 2C:3-11(f), that is ejected from a firearm and that is targeted at a person. 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)). Nor does this supplemental policy address the use of ammunition that is designed to gain access to a building and that is used for that purpose and is not directed against a person.

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. For example, a target's volatile movements may increase the chance that the person will unintentionally be struck in the head, neck, or spine. So too, an officer may not be aware of a person's pre-existing physical condition that makes him or her more likely to be seriously injured or killed by an impact projectile.

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. 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 develop a list of specifications and characteristics of less-lethal ammunition that may be deployed and used pursuant to this supplemental policy. This list of specifications and characteristics shall be submitted to the Attorney General for approval and dissemination. No law enforcement agency or officer shall deploy or use any ammunition pursuant to this policy unless the ammunition satisfies the specifications and characteristics approved by the Attorney General.

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. 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, but the danger to the officer is not yet imminent.

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, when feasible, 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.