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MEMORANDUM

TO: Director, Division of Criminal Justice
Superintendent, New Jersey State Police
All County Prosecutors
Insurance Fraud Prosecutor
All County Sheriffs
All Police Chiefs
All Law Enforcement Chief Executives

FROM: Christopher S. Porrino, Attorney General

DATE: October 20, 2017

SUBJECT: Alert for Prosecutors and Law Enforcement as to the Constitutionality of Certain Criminal Prohibitions on the Sale and Possession of Stun Guns in New Jersey.

This is an update of informal guidance previously provided by e-mail on December 16, 2016, which we issued following the United States Supreme Court's decision in Caetano v. Massachusetts, 136 S.Ct. 1027 (2016) (invalidating on Second Amendment ground a state law establishing an absolute prohibition against stun gun possession), advising of the impact of that decision on our ability to enforce New Jersey's absolute criminal prohibition against stun gun possession set forth in N.J.S.A. 2C:39-3(h). Consistent with that prior advice, please be advised that, as of October 22, in accordance with a Consent Order entered in the United States District Court in New Jersey Second Amendment Society v. Porrino, No. 16-4906 (U.S.D.Ct.), certain provisions of law pertaining to the possession or sale of stun guns in New Jersey have been declared unconstitutional in violation of the Second Amendment and shall no longer be enforced. Specifically, these provisions include:

- N.J.S.A. 2C:39-3(h), which makes it a crime of the fourth degree for any person to knowingly have in his possession any stun gun, to the extent this statute outright prohibits, under criminal penalty, individuals from possessing electronic arms; and



- N.J.S.A. 2C:39-9(d), which makes it a crime of the fourth degree to manufacture, transport, ship, sell or dispose of certain weapons, to the extent this statute prohibits the sale or shipment of stun guns such as Tasers® or other electronic arms in New Jersey.

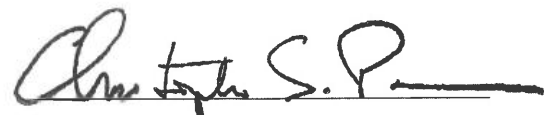
In response to the Consent Order, the Superintendent of State Police proposed a rule, published at 49 N.J.R. 2765(a) (August 21, 2017), that would maintain the prohibition on sale and possession of stun guns to minors under the age of 18. This approach is consistent with public safety, and the Consent Order does not preclude prohibiting the sale to or possession of stun guns by minors. Accordingly, we advise that, consistent with the Consent Order and the proposed rule:

- The prohibition under N.J.S.A. 2C:39-3(h) of possession of a stun gun may still be enforced against possession by minors under the age of 18; and
- The prohibition under N.J.S.A. 2C:39-9(d) of the sale or shipment of stun guns in New Jersey may still be enforced against the sale or shipment of stun guns to minors under the age of 18.

Other provisions of the Criminal Code pertaining to stun guns remain in force and effect and shall continue to be enforced, including:

- N.J.S.A. 2C:39-4(d) – possession of a weapon (which is defined to include a stun gun) with a purpose to use it unlawfully against the person or property of another;
- N.J.S.A. 2C:39-4.1 – possession of a stun gun with a purpose to use it unlawfully against the person or property of another (subsection b.) or under circumstances not manifestly appropriate for such lawful uses as it may have (subsection c.), while in the course of committing certain drug offenses;
- N.J.S.A. 2C:39-5(d) - possession of a stun gun under circumstances not manifestly appropriate for such lawful uses as it may have;
- N.J.S.A. 2C:39-5(e)(2) – possession of a stun gun while in or upon any part of the buildings or grounds of any school, college, university or other educational institution without the written authorization of the governing officer of the institution; and
- N.J.S.A. 2C:39-7(a) – prohibition against “certain persons” purchasing, possessing, or controlling a stun gun.

The foregoing guidance sets forth the extent under current law to which law enforcement may regulate the sale and possession of stun guns under the Criminal Code. Should the law be amended to establish new, additional, or alternate criminal or regulatory provisions, we will so advise.



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Attorney General

