

# NJ2AS

## NEW JERSEY SECOND AMENDMENT SOCIETY

[www.NJ2AS.org](http://www.NJ2AS.org)

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October 22, 2017

To Whom It May Concern,

In August of 2016 the New Jersey Second Amendment Society filed a lawsuit against the state of New Jersey against the prohibition of the sale, possession and carrying of a stun guns or tasers (electronic devices for self-defense).

The New Jersey Second Amendment Society prevailed and in April of 2017 a federal judge ordered the laws banning the sale, possession, and carrying of stun guns and tasers as unconstitutional and the laws were struck down with a 180 day stay for the State to promulgate rules and regulations. On October 22, 2017, the 180 stay expired and the Attorney General's office issued the attached directive providing guidance on the issue.

For your convenience we have also attached the Consent Order signed by Shipp advising that self-defense is an appropriate purpose for carrying a stun gun or taser in public. We hope you find this information in good order and will use it appropriately to prevent good samaritans from being wrongfully arrested.

We will also be posting the most up-to-date information on our legal actions in regard to this matter at [www.NJ2AS.org/Taser](http://www.NJ2AS.org/Taser)

Sincerely,



Alexander Roubian  
President



*State of New Jersey*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
PO BOX 080  
TRENTON, NJ 08625-0080

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

CHRISTOPHER S. PORRINO  
*Attorney General*

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.

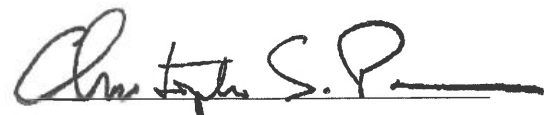
In response to the Consent Order, the Superintendent of State Police proposed a rule, published at 49 N.J.R. 2765(a) (August 21, 2017), that would maintain the prohibition on sale and possession of stun guns to minors under the age of 18. This approach is consistent with public safety, and the Consent 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.



Christopher S. Porrino  
Attorney General



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
VICINAGE OF TRENTON

NEW JERSEY SECOND	:	HON. MICHAEL A. SHIPP, U.S.D.J.
AMENDMENT SOCIETY and	:	
MARK CHEESEMAN,	:	Civil Action No. 16-4906 (MAS-DEA)
Plaintiffs,	:	
v.	:	
	:	CONSENT ORDER
CHRISTOPHER S. PORRINO	:	
in his Official Capacity	:	
as Acting Attorney	:	
General of New Jersey,	:	
and COLONEL RICK FUENTES	:	
in his Official Capacity	:	
as Superintendent of the	:	
New Jersey State Police,	:	
Defendants.	:	

THIS COURT having received a verified complaint filed by Plaintiffs New Jersey Second Amendment Society and Mark Cheeseman (Docket Entry 1), an Answer filed by Defendants (Docket Entry 18), a pending Motion for Judgment on the Pleadings filed by Plaintiffs (Docket Entry 19), and a response to Plaintiffs' Motion for Judgment on the Pleadings adjourned by Defendants, the Attorney General of New Jersey and the Superintendent of the New Jersey State Police in their respective official capacities; and

This Court finding that plaintiffs' asserted claims in this matter are whether, in light of the United States Supreme Court's recent decision in *Caetano v. Massachusetts*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (per curiam), they have a right to possess a stun gun protected by the Second Amendment to the United States Constitution, notwithstanding the State of New Jersey's prohibition of "stun guns" (defined as "any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person"), by declaring that "[a]ny person who knowingly has in his possession any stun is guilty of a crime of the fourth degree," N.J. Stat. Ann. § 2C:39-1(t); N.J. Stat. Ann. § 2C:39-3(h); and

This Court finding that a separate New Jersey statute, N.J. Stat. Ann. § 2C:39-9(d), among other things prohibits the sale or shipment of "weapons," which are statutorily defined as including all "stun guns," by declaring that any such person who does so "is guilty of a crime of the fourth degree," N.J. Stat. Ann. § 2C:39-1(r)(4); and

This Court finding that New Jersey statutes define a "crime of the fourth degree" as one imposing certain penalties including imposition of a term of imprisonment of up to 18

months and a fine of up to \$10,000.00, N.J. Stat. Ann. § 2C:43-3(b)(2); N.J. Stat. Ann. § 43:3-6(g); and

This Court finding that plaintiffs' prayer for relief in their verified complaint includes, among other things, a request for an order enjoining Defendants and their officers, agents, servants, and employees from N.J. Stat. Ann. § 2C:39-3(h) to the extent it bans the acquisition, possession, carrying or use of "Tasers[®] and other electronic arms" (Docket Entry 1, Prayer for Relief, § 1); and a request for an order declaring that N.J. Stat. Ann. § 2C:39-3(h) is unconstitutional and violates the Second Amendment to the United States Constitution (Docket Entry 1, Prayer for Relief, § 2); and an order declaring N.J. Stat. Ann. § 2C:39-3(h) unenforceable (Docket Entry 1, Prayer for Relief, § 3); and costs of suit, including attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

Defendants having advised the Court that, they, in their official capacities, and in light of the aforementioned recent United States Supreme Court decision, recognize that an outright ban on the possession of electronic arms within the state, regardless of the contextual circumstances surrounding any such possession, would likely not pass constitutional muster and enter into this consent decree and do hereby concede that the

aforementioned statute banning electronic arms in New Jersey is unconstitutional.

IT IS on this 25<sup>th</sup> day of April, 2017,  
HEREBY ORDERED THAT:

1. The Second Amendment guarantees individuals a fundamental right to keep and bear arms for self-defense *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Caetano v. Massachusetts*, 577 U.S. \_\_\_ (2016). Further, "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582; *Caetano*, slip op. at 1 (per curiam).

2. Pursuant to the holdings in *Heller*, *McDonald* and *Caetano*, N.J. Stat. Ann. § 2C:39-3(h), to the extent this statute outright prohibits, under criminal penalty, individuals from possessing electronic arms, is declared unconstitutional in that it violates the Second Amendment to the United States Constitution and shall not be enforced.

2. N.J. Stat. Ann. § 2C:39-9(d) shall not be enforced to the extent this statute prohibits, under criminal penalty, the sale or shipment of Tasers® or other electronic arms; and

3. For good cause shown, any and all further proceedings in this matter, are hereby stayed for a period of 180 days until

such time that any necessary revisions to existing controlling legal authorities may be implemented; and


4. Plaintiffs are prevailing parties for purposes of an award of reasonable attorneys' fees and costs of suit pursuant to 42 U.S.C. § 1988, and within 30 days after the date of this Order, the parties will either come to an amicable resolution as to the amount of attorneys' fees and costs, or the Plaintiff shall make application to the Court for resolution; and

5. Nothing in this order shall constitute an admission of liability, duty, or wrongdoing by any party or an admission that any other statute, law, or any policy, practice, or procedure of the State of New Jersey, its officers, officials, employees, agents, or servants, at any time or in any way violated federal or any other law; and

6. No other law, including but not limited to the remainder of N.J. Stat. Ann. 2C:39-1 et seq., shall be affected by the entry of this Order.

7. The effect of this Order shall be fully stayed for 180 days to allow the State of New Jersey to institute new laws, rules, or regulations "that will impose reasonable limitations, consistent with public safety and the Second Amendment," on the possession and/or carrying of electronic arms or "stun guns." Cf. *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012).



  
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HON. MICHAEL A. SHIPP  
UNITED STATES DISTRICT JUDGE

Dated:

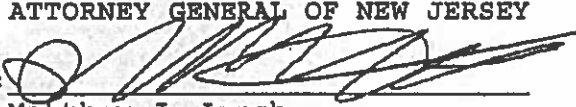
I consent to the form and entry of the within Order.

RYAN SCOTT WATSON, ESQ.  
LAW OFFICES OF RYAN SCOTT  
WATSON

  
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CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY

By:

  
\_\_\_\_\_  
Matthew J. Lynch  
Deputy Attorney General