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All Law Enforcement Chief Executives

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FROM: Jeffrey S. Chiesa, Attorney General

DATE: June 20, 2012

SUBJECT: Directive to Prevent Concurrent or Sequential Use of a Flammable Aerosol Spray Device and a Conducted Energy Device

In the coming months, many New Jersey law enforcement officers will be equipped with conducted energy devices (CEDs). Many, if not most, uniformed police officers, meanwhile, will continue to carry oleoresin capsicum (OC) spray or similar aerosol spray devices. Those who oversee our ongoing CED training program have brought to my attention that clothing that has been sprayed with certain types of aerosol chemical or natural agents can ignite when subjected to the electric spark generated by a CED dart/electrode. This poses a very serious threat to public and officer safety.

The risk of inadvertently igniting a fire through the concurrent or sequential use of a flammable OC spray and a CED is heightened by the fact that there are circumstances when a police officer would be authorized to use OC spray but would not be authorized to fire or discharge a CED. One example of this situation is when a suspect is passively resisting lawful police authority. It is



therefore foreseeable that an officer may use OC spray, the spray fails to cause the suspect to submit to lawful police authority, and the police-citizen confrontation then escalates to the point where a CED is needed to prevent the suspect from causing serious bodily injury to the officer, another person, or to him or herself.

The Attorney General Revised Policy On Conducted Energy Devices addresses the risk that a CED may inadvertently ignite flammable spray residue. The Revised CED Policy explains, for example, that a CED “may be used in conjunction with a water-based chemical agent.” Revised CED Policy, Section VIII, par. 9 (emphasis added to show that an officer is not expressly authorized to discharge a CED in conjunction with a chemical agent that is not water-based). Furthermore, the Revised CED Policy expressly provides that:

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.... [Revised CED Policy, Section VIII, par. 12]

When deciding whether to use a CED during a swiftly evolving confrontation, a law enforcement officer has enough to think about without having to determine conclusively whether the suspect may have recently been subjected to a flammable chemical agent by another officer from his or her own department, or by an assisting officer from another department that equips its officers with a flammable aerosol spray. By the same token, we do not want to chill officers from deploying a CED when the circumstances warrant the use of that type of force, especially if the officer might then have no remaining viable option other than to use deadly force.

A recent survey of police departments conducted by the Division of Criminal Justice confirms that most agencies today equip their officers with aerosol spray devices that use a water-based propellant and that emit non-flammable material. A small number of departments, however, report that they use a type of aerosol spray that emits a flammable substance. This means that the risk of the concurrent or sequential use of a flammable aerosol device and a CED is real. It also shows that most police agencies have already determined that, considering all relevant factors, it is advisable to equip officers with aerosol spray devices that do not emit a flammable substance.

In the circumstances, it is necessary to take decisive action to preclude the possibility that a CED is ever fired or discharged against a suspect who has been subjected to an aerosol spray device that emits a flammable substance. This is best achieved simply by discontinuing the use of aerosol devices that pose a risk of inadvertent ignition by a CED. Accordingly, pursuant to my authority as the State’s chief law enforcement officer to issue and implement statewide use of force policies, I hereby Direct that all law enforcement agencies operating under the authority of the laws of the State

of New Jersey take the following actions:

1. **Definitions.** As used in this Directive, the term "aerosol spray device" means a device that is carried by an officer that projects a spray or stream of oleoresin capsicum, tear gas, or other chemical or natural agent intended to produce temporary physical discomfort or to incapacitate a suspect. The term does not include a tear gas canister or similar projectile that is launched by a firearm or by a non-firearm delivery device or system. The acquisition and deployment of such canisters or other projectiles is not affected by this Directive.

2. **Assessment and Inventory of Aerosol Spray Devices in Service.** The chief executive of every law enforcement agency shall immediately determine whether the agency equips any officer with an aerosol spray device that emits a flammable substance.

3. **Prohibition Against Procurement of Aerosol Spray Devices that Emit a Flammable Substance.** Effective immediately, a law enforcement agency shall be prohibited from purchasing or otherwise acquiring any aerosol spray device that emits a flammable substance. This prohibition applies without regard to whether the agency authorizes or intends to authorize any officer to carry and deploy a conducted energy device. Effective immediately, law enforcement agencies shall only procure aerosol spray devices that emit non-flammable substances.

4. **Duty to Remove From Service All Aerosol Spray Devices that Emit Flammable Substances As Expeditiously As Possible.** All agencies that use aerosol devices that emit a flammable substance shall remove from service all such devices as soon as practicable. All agencies shall make certain that all such devices that have been taken out of service are properly disposed of (e.g., destroyed or returned to the vendor for use in another State) so as to ensure that these devices are not inadvertently put back into service in this State. Until such time as all such devices have been removed from service, the agency shall take steps to ensure that any officer who is equipped with an aerosol spray device that emits a flammable substance is aware of and complies with the requirements of paragraph 6 of this Directive.

5. **Agency-Wide Prohibition Against Using CEDs Until the Agency Certifies That It Does Not Equip Any Officer With an Aerosol Spray Device That Emits a Flammable Substance.** Notwithstanding any provision of the Revised Policy On Conducted Energy Devices, no officer shall be authorized by his or her agency to fire and discharge a CED unless and until the chief executive of the agency reports in writing pursuant to paragraph 7 of this Directive that no officer employed by the agency is equipped with an aerosol spray device that emits a flammable substance.

6. Interim Safeguards Pending Removal From Service Of Aerosol Spray Devices That Emit A Flammable Substance. Any officer who is equipped with an aerosol spray device that emits a flammable substance and who discharges such device against a suspect shall be responsible for alerting all other officers at the scene, and any officer(s) who may take custody of the suspect, that 1) the suspect has been subjected to the use of an aerosol spray device that emits a flammable substance, and 2) notwithstanding any provision of the Revised Policy On Conducted Energy Devices to the contrary, the use of a CED against the suspect is strictly prohibited.

7. Reports to County Prosecutors or Division of Criminal Justice. The chief executive of every law enforcement agency shall within 14 days of the effective date of this Directive report in writing to the appropriate County Prosecutor, or in the case of a State law enforcement agency, to the Director of the Division of Criminal Justice, on whether the agency equips any officer with an aerosol spray device that emits a flammable substance, and if so, the date by which the agency will remove from service any and all such devices. Immediately upon removing all such devices from service, the chief executive shall report in writing to the County Prosecutor, or to the Director, confirming that all aerosol spray devices that emit a flammable substance have been removed from service.

8. Precautions to Confirm Non-Flammability. Every agency that purchases or otherwise acquires aerosol spray devices shall take reasonable precautions to make certain that the devices do not emit a flammable substance. Such precautions should include testing of one or more randomly selected devices from bulk purchases. Agencies are encouraged to make arrangements with vendors to conduct such precautionary tests to make certain that manufacturer labels and other product descriptions or representations regarding the flammability of emitted substances are accurate. Any instances of product mislabeling or other misrepresentation as to the flammability of any substance emitted from an aerosol spray device must be reported immediately to the Superintendent of State Police and the Director of the Division of Criminal Justice. Agencies are also urged to make arrangements with vendors to confirm that devices in the agency's existing inventory do not emit a flammable substance.

9. Interpretation. This Directive shall be interpreted with a view toward eliminating as expeditiously and cost-effectively as possible the risk that the discharge of a CED might inadvertently ignite a suspect's clothing or other material that has been sprayed with an aerosol spray device, while minimizing disruption to the availability of aerosol spray devices for use in accordance with the Attorney General's Use of Force Policy. Questions by law enforcement agencies concerning the interpretation or implementation of this Directive should be addressed to the Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau, which shall consult as

10. Scope and Effective Date. This Directive shall apply to every law enforcement agency and officer operating under the authority of the laws of the State of New Jersey. This Directive shall take effect immediately, and shall remain in force and effect unless and until repealed, amended, or superseded by Order of the Attorney General. Every law enforcement agency shall take such steps as may be necessary to implement this Directive as expeditiously as possible.



Jeffrey S. Chiesa
Attorney General

DATED: June 20, 2012