

Directive # 07-05
[Supersedes Directive #2-95]

Questions or Comments
May Be Directed to
609-292-1589

TO: Assignment Judges
Trial Court Administrators

FROM: Philip S. Carchman, J.A.D.

SUBJECT: Procedures on Aerosol Defensive Devices - Training and Policies
for Use by Judiciary Staff

DATE: March 28, 2005

This Directive promulgates the attached *Procedures on Aerosol Defensive Devices - Training and Policies for Use*, as approved by the Judicial Council. This Directive supersedes Directive # 2-95, which first authorized probation officers who have regularly assigned field responsibilities, after successful completion of a training program, to carry Judiciary-issued aerosol defensive devices, also known as oleoresin capsicum (OC) or “pepper spray,” for defensive purposes.

That earlier Directive was interpreted in practice to include not just line probation officers but also any officer or probation administrator who provides field coverage for other officers, thus including within its coverage Vicinage Chief Probation Officers, Assistant Chief Probation Officers, and Probation Supervisors, provided they completed the Probation Officer Safety Training Course and the approved OC spray training program. Intensive Supervision Probation (ISP) officers and Juvenile Intensive Supervision Probation (JISP) officers also were covered by the earlier Directive.

This superseding Directive sets forth policies and procedures that standardize training; standardize exposure to OC spray as part of that training; allow for alternate protection measures when a medical condition precludes an individual probation officer from using OC spray; and create an administrative tool for tracking this training certification and recertification. Training may be conducted by Probation-certified trainers or by qualified law enforcement trainers following the Judiciary training curriculum. The procedures include a form whereby a probation officer acknowledges training, accepts or declines exposure, and acknowledges receipt of an OC canister, if issued. The form also records the probation officer’s subsequent recertification.

The standardized training program now requires exposure to pepper spray for successful completion of the initial training program, or for recertification if exposure was not part of the officer's original training (as may have happened before the adoption of the current procedures). Recertification will be required every three years, but exposure to the pepper spray will be required only once. Experience has proven that exposure to the product in a safe training environment will enhance the officer's safety by providing first-hand knowledge of the effects of the spray (in the event of accidental blow-back) and of decontamination procedures prior to any use or exposure in the field.

In order to receive a Judiciary-issued pepper spray canister, Probation staff will be required to complete the full one-day training, which includes the one-time exposure to the OC spray as a component of the training. While carrying OC spray will remain voluntary, and to that extent the exposure component of the training also is voluntary, the rest of the pepper spray training (other than the exposure component) will be mandatory for all probation officers with field duty to ensure they understand the policy and the use and decontamination issues. Each officer's training (including whether or not the officer underwent exposure to the spray) will be documented in Pathlore, the recently implemented Judiciary employee training database system. No probation officer is permitted to carry OC spray in the course of his or her duties without a current certification or recertification.

This policy is effective immediately. Questions regarding it may be directed to the Probation Services Division at 609-292-1589.

P.S.C.

Attachment

cc: Chief Justice Deborah T. Poritz
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
Vicinage Chief Probation Officers
Harvey Goldstein, Chief, ISP
Philip Hill, Chief, JISP
Gayle Maher, Chief, Juvenile Supervision
John Pizarro, Chief, Adult Supervision
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant



**New Jersey Judiciary
Conference of Chief Probation Officers**

TRAINING and POLICIES FOR USE of AEROSOL DEFENSIVE DEVICES

**Directive # 7-05
(Issued March 28, 2005)**

As Approved by the Judicial Council

BACKGROUND:

On January 17, 1995, then Administrative Director, Robert Lipscher, issued Directive # 2-95 authorizing Probation Officers with regularly assigned field responsibilities to carry Judiciary-issued aerosol defensive devices, also known as oleoresin capsicum (OC) or “pepper spray,” for defensive purposes when engaged in the performance of their official duties.

That earlier Directive was interpreted in practice to include any officer or probation administrator who provides field coverage for other officers, thus including Chief Probation Officers, Assistant Chief Probation Officers, and Probation Supervisors, provided they complete the Probation Officer Safety Training Course and the approved OC spray training program. Intensive Supervision Probation (ISP) and Juvenile Intensive Supervision Probation (JISP) officers are also covered.

The key components of this document are:

- Policy for use of aerosol defensive devices;
- Standardization of training;
- Standardization of method of exposure as part of the training.

AUTHORIZATION

Directive #2-95 authorizes Probation Officers who have regularly assigned field responsibilities to carry oleoresin capsicum or “pepper spray” canisters for defensive purposes while they are engaged in the performance of their official duties. This policy recognizes the risks to which Probation Officers may be exposed as they carry out their duties. Probation Officers who elect to carry the OC spray are required to complete training and follow approved procedures in the use of aerosol devices for defensive purposes. The training curriculum, more fully described below, was developed by the Conference of Chief Probation Officers incorporating information from the manufacturer of the Judiciary’s current aerosol defensive device. Training may be conducted by Probation-certified trainers or by qualified law enforcement trainers following the Judiciary training curriculum.

Following the training, Probation Officers will be issued a ¾ oz. pocket-sized canister of OC which is the type of personal self-defense device that may be carried by any citizen pursuant to N.J.S.A. 2C:39-6f(4)(i). Only approved Judiciary-issued canisters will be allowed for use by Probation Officers in the performance of their official duties. This will ensure that use, handling, storage and decontamination procedures comply with the approved product specifications. No probation officer is permitted to carry OC spray in the course of his or her duties without a current certification or recertification.

The possession of the OC canister is permitted by N.J.S.A. 2C: 39-6i, which provides, in part, as follows:

Nothing in subsection d. of N.J.S.2C: 39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a

felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air.

The aerosol device is to be used for defensive purposes only. Probation Officers should make every effort to neutralize or avoid potentially assaultive situations by means of verbal and nonverbal tactics, including retreat. If, despite these tactics, the probation officer reasonably believes that the use of the OC spray is immediately necessary as a defense against an individual or animal, the use is appropriate and conforms to N.J.S.A. 2A: 62A-20:

Notwithstanding any provisions of law to the contrary, a person who possessed a chemical substance for the purpose of personal self-defense in accordance with subsection i of N.J.S. 2C: 39-6 and who releases or discharges that chemical substance upon or toward another person shall not be liable in any civil action for damages resulting from that release or discharge when the actor reasonably believes that the releasing or discharging of that chemical substance is immediately necessary for the purpose of self-defense. Nothing in this section shall be deemed to grant immunity to any person causing any damage by his willful, wanton or grossly negligent unlawful releasing or discharging of such a chemical substance upon or toward another person.

An officer's unauthorized discharge of the spray against an individual may result in disciplinary action against the officer and the officer's loss of rights to a legal defense provided by the State in actions arising out of the officer's conduct.

AEROSOL DEFENSIVE DEVICE TRAINING

Prior to being issued an aerosol defensive device, Probation Officers must successfully complete a one-day training program in the proper use and physiological effects of OC Spray. Prior successful completion of the Probation Officer Safety Training Course is a pre-requisite to this training. Only an instructor certified by the manufacturer and approved by Probation Services may conduct the Aerosol Defensive Device Training. Training should be conducted in a suitable police or fire training facility.

The training will include but not be limited to:

Part I

- Pre-test and a post-test
- Judiciary policies on the use of aerosol defensive devices.
- Proper use and handling
- Physiological effects and decontamination
- Incident reporting and debriefing
- Liability issues

Part II

- Practicum in the use of the product
- Exposure to the product – *Required if officer wishes to carry OC.* (Trainee will be partnered with an individual who will assist with the decontamination process)
- Effects will be monitored by class

All Probation Officers with field duties will be required to take Part I of the Aerosol Defensive Training. This is to insure that ALL officers, whether or not they choose to carry OC spray, will have an understanding of the policy, use and decontamination issues. Trainees may decline to be exposed to the OC spray as part of the training, but nevertheless will complete the classroom session and observe and assist in the practicum.

Exposure to the OC spray for training purposes is defined as very brief (approx. 1 second) burst of OC spray to the forehead just above the brow. This will allow a minimal amount of OC to enter the eyes, providing a sufficient application for the trainee to experience the effects of OC. Immediately upon being affected by the OC, the trainee will be led by a training partner to available water where the decontamination process will be completed.

All trainees will complete the Acknowledgement of Training and Exposure /Declination of Exposure Form (attached) at the completion of Part I of the training. This form, also signed by the Instructor, will assist in keeping a record of trainees who have been exposed to the OC spray and will be issued canisters. In order to be issued OC by the Division, officers must be exposed to the product at the initial certification.

Exposure to the OC spray is voluntary. However, a trainee will not be issued a canister if he/she has not been exposed to the spray in training. Such individuals will, nevertheless, be expected to perform the same field duties as officers who elect to carry an aerosol defensive device. The Acknowledgement of Training and Exposure /Declination of Exposure Form serves as a declination for any trainee who chooses not to be exposed to the spray.

If the trainee declines exposure and self-discloses a medical reason for doing so, the Vicinage Chief Probation Officer needs to ascertain what steps need to be taken to accommodate this individual in the performance of field duties. This may include pairing the officer with a field partner who does not carry OC. Alternative protective measures may be considered, such as the issuance of a personal alarm, self-defense training or other measures deemed appropriate. Medical documentation specific to the use of OC spray must be produced in order for the Vicinage Chief to consider the appropriate accommodation.

Exposure to the OC spray is an essential element of training because:

- There is a very real possibility that a Probation Officer who carries an aerosol defensive device will experience residual exposure to the OC spray when either the officer or the officer's field partner uses the spray against an attacker. The reason for this may be the confines of space, a back spray due to wind conditions or the location of the officer in the path of the spray.

- The first time an individual is exposed to OC, it is common to experience a degree of anxiety due to the discomfort and the inability to open one's eyes. This first exposure should not occur in an actual hostile situation when safety may be compromised either from residual or misdirected spray or spray emanating from an attack on the officer. Experiencing the effects of this spray in a safe and controlled training environment will enable the officer to get the maximum benefit of the experience without the stress of unforeseen danger. The fact that there is peer support and medical assistance (certified CPR or EMT at the police/fire training facility), if needed, assures the officers' protection while enabling them to understand the ramifications of using OC spray.
- Research has shown that once an individual has experienced the effects of OC, subsequent exposures tend to be less dramatic, giving the officer confidence to focus on his/her immediate situation and employ defensive tactics, including escape.
- Probation Officers who have been exposed will have first hand knowledge of the product's ability to affect an individual or animal, including the fact that in some instances it is possible for that individual or animal to continue to pose a threat to the officer after being sprayed.
- Exposure to OC also has the effect of reinforcing the need for the officer to arrange for decontamination and safe monitoring of anyone the officer sprays.
- If a Probation Officer is called upon to testify to the use of OC spray during the performance of his/her duties, it is in the officer's best interest to relate his or her first-hand knowledge of the effects of the OC spray.

CERTIFICATION

Upon successful completion, trainees will receive a wallet-sized Certificate of Training to carry with their Probation credentials. Officers must complete a refresher every three (3) years in order to continue to carry the spray issued by the Division. All probation officers who choose to carry OC spray must comply with the approved protocol for exposure; therefore any officer who has not been previously exposed to OC in training must undergo the exposure upon recertification or no longer than one year after the standard is approved. Thereafter, exposure to the product is not required for recertification.

EQUIPMENT

Officers who receive a Certificate in Training for Aerosol Defensive Devices will be issued a ¾ ounce pocket-sized canister of Oleoresin Capsicum. The Equipment Authorization portion of the attached form will be signed by the officer and maintained for records. Officers issued OC must carry judiciary identification. It is the officer's responsibility to maintain the device as instructed in training. It is also their responsibility to secure the device in order to prevent its use by an unauthorized person. In the event of theft, loss, and/or allegations of misuse or accidental discharge, the

Vicinage Chief Probation Officer will be notified immediately. Substantiated misuse of the device may result in disciplinary action.

Used, inoperable or expired devices must be turned in to the Vicinage Chief Probation Officer or designee prior to the issuance of a new canister. OC canisters must be turned in upon resigning, retiring, transferring to another division, or when instructed to do so by the Vicinage Chief Probation Officer.

POLICY REGARDING THE USE OF SPRAY

The aerosol device is to be used for defensive purposes only, in accordance with Judiciary policies and as specified in the training. Officers will make every effort to neutralize or avoid potentially assaultive situations through verbal and non-verbal tactics, including retreat. If, despite these tactics, the officer reasonably believes that the use of the OC spray is immediately necessary as a defense against an individual or animal, the use is appropriate.

If the device is used, the officer must immediately contact the local police or Sheriff's Department to report the incident. The authorities must be advised that OC was used to subdue the attacker and decontamination or medical assistance may be necessary.

The officer will file the appropriate police reports and complaint. Notification to the supervisor must be made as soon as possible. By the end of the next working day, the officer must submit the New Jersey Judiciary Workplace Violence/Security Incident Report to the Workplace Violence Liaison. In addition, a copy must be given to the Vicinage Chief Probation Officer or designee who will conduct a review within one working day. The purpose of the review is to assess the use of OC under the circumstances, develop or modify any related policies or procedures and identify training issues. This review is also an opportunity to assist the Probation Officer in dealing with the aftermath of an assaultive situation.

New Jersey Judiciary
Probation Division

ACKNOWLEDGEMENT OF TRAINING
AND
EXPOSURE/DECLINATION OF EXPOSURE
to OC (Oleoresin Capsicum) DURING TRAINING

I, _____, acknowledge that I have been provided
(print)
with information on the handling and use of OC spray in accordance with Judiciary
policy and guidelines. I was further provided with information that exposure to the
product in the training session would enhance my knowledge and experience with the
product.

I have made the following determination in regard to my particular situation:

_____ I choose to be exposed to OC spray during the training session.

_____ I decline exposure to OC spray during the training session and I will
not be issued OC spray by the Probation Division.

Date: _____

(Signature - employee)

(Signature - Certified Instructor)

EQUIPMENT AUTHORIZATION

Employee Name: _____ Title: _____

Canister Serial #: _____ Manufacturer Date: _____

I understand that upon resigning, retiring, or transferring to another Division, I must
return this canister to the Vicinage Chief Probation Officer.

Employee Signature: _____ Date: _____

Authorized Signature: _____ Title: _____

RECERTIFICATION

(Signature -Certified Instructor) Date: _____

(Signature -Certified Instructor) Date: _____