

APPENDIX

Written Testimony
Attorney General Gurbir S. Grewal

Senate Law & Public Safety Committee
Wednesday, July 15, 2020

Chairwoman Greenstein and Members of the Senate Law and Public Safety Committee, thank you for inviting me to join you today to discuss policing reform—an area in which New Jersey has been a leader in many ways and now has the opportunity to become not just “a,” but “the” national model.

The recent, tragic deaths of George Floyd, Breonna Taylor, and Rayshard Brooks – among countless others – have brought this issue to the forefront of our national conversation. These tragedies have sparked the largest protest movement in our nation’s history. Since May 25, according to some estimates, as many as 26 million Americans have taken part in nearly 4,700 demonstrations, including hundreds in this state. These protests have highlighted not only the racial divides, but also the systemic and implicit biases that continue to affect so many Americans. When it comes to policing, they have laid bare the gap in trust between law enforcement and many of the communities they serve, especially black and brown communities. They have also led to calls for meaningful police reform, including increased accountability and transparency measures. States across the country, including New Jersey, have responded to these calls for change.

Before discussing our recent efforts, it is important to note that this work started in New Jersey well before current events. Over the past two years, Governor Murphy and I have worked hard to make New Jersey a national leader on policing practices. We have recognized since day one that law enforcement officers cannot do their jobs without the trust of the people they serve. To build and maintain that trust, we must institute policies and programs that promote transparency, accountability, and professionalism throughout law enforcement. And that’s exactly what we’ve done. Since 2018, we have implemented some of the most ambitious and progressive policing reforms in the country. We expanded on those efforts this past December, when we launched our “Excellence in Policing” initiative, which we have continued to build on throughout this year.

Some of these programs are well underway. We mandated implicit bias training for all prosecutors, state and county detectives, and State Troopers. We created a statewide conviction review unit. We launched a first-in-the-nation officer resiliency program. We banned chokeholds except in the most limited circumstances. We hold regular community listening sessions in all 21 of our counties. We implemented the independent prosecutor bill that the Legislature passed and the Governor signed last year.

And many more projects are in progress. We are overhauling of the state’s police training programs. We’re building a statewide use-of-force database. And we’re rewriting New Jersey’s use of force policies for the first time in two decades.

I encourage everyone to visit our website – nj.gov/oag/excellence – to read about these and all of the other projects we have launched. I have appended a summary of these

initiatives to my written testimony today. I would also be happy to answer your questions about any of these topics.

I'm especially proud that all of these reforms were developed collaboratively with all of the relevant stakeholders at the table. We've worked with everyone – civil rights organizations, religious groups, law enforcement leaders, and community members – to ensure that our systemic reforms have systemic buy-in.

And I am equally proud that our state-level reforms not only build on steps taken by my predecessor Attorneys General, but are also an extension of the innovation and creativity that's been happening at the county and local level across New Jersey since well before I became Attorney General. New Jersey has a long history of progressive law enforcement initiatives and I'd like to highlight several of these groundbreaking programs with you.

For example, the Community Law Enforcement Affirmative Relations, or "CLEAR," Institute was established by Attorney General Porrino to mandate that law enforcement received de-escalation, cultural sensitivity, as well as other forms of training designed to build police/community relations. The Newark Community Street Team is quickly becoming a national model for community-based violence reduction, thanks to the hard work of Mayor Baraka, Director Ambrose, and Chief Henry. The reimagining of the Camden police force, which started with Chief Thomson and continues with Chief Wysocki today, is garnering interest from law enforcement agencies across the country that are looking for a new way to protect their communities. In Cape May County, thoughtful leaders like Chief Leusner in Middle Township are championing trauma-informed policing by working with school districts and community stakeholders to prevent "Adverse Childhood Experiences" and, in turn, future violence victimization and perpetration. And at the New Jersey State Police, Colonel Callahan has launched an innovative "Citizens Academy" that helps citizens better understand the work of law enforcement.

But despite all of this good work, there's one area where New Jersey lags behind the pack. We are one of a shrinking number of states where police disciplinary records remain shrouded in secrecy, virtually never seeing the light of day. In recent months, I have come to recognize that our policy isn't just bad for public trust, it's bad for public safety.

And it's time for our policy to change.

Last month, I announced my intention to publish the names of law enforcement officers who have received major discipline—that is, those officers who have been fired, demoted, or suspended for more than five days. Those plans are now on hold, pending the resolution of ongoing litigation. Despite this delay, I think it is important to provide additional background about how New Jersey treats police disciplinary records, which implicate so many of the policing reforms underway in our state.

I would like to address three topics in the balance of my testimony: how we got here, why the status quo is a problem, and where we need to go next.

How We Got Here

In New Jersey, like almost everywhere else, law enforcement agencies are responsible for investigating allegations of misconduct within their ranks. These investigations are typically conducted by an agency's "internal affairs" unit, which operates outside the agency's normal chain of command so that it can investigate matters thoroughly and fairly.

By law, the Attorney General is required to establish statewide rules governing these investigations. The rules are contained in a document known as the "Internal Affairs Policy & Procedures," or the IAPP, which was first published in 1991 and updated numerous times since.

Since the IAPP was first published – and even long before then – New Jersey has treated the records of these disciplinary investigations as highly confidential. That includes not just the investigative case file, like the notes of witness interviews, but also the outcome of the investigation and any discipline imposed.

These records are considered so confidential that even police officers outside of the agency's internal affairs unit are not allowed to access them. It goes without saying that a wide range of other stakeholders who want to review the files – from civilian review boards to members of the public – are also denied access. We have made some recent exceptions, such as when a police department is considering hiring someone who used to be an officer somewhere else. But generally, if an officer is fired or suspended as a result of an internal affairs investigation in New Jersey, very, very few people will know unless criminal charges are brought. This is true even in the most serious cases, including those where a police department concluded that its officer has improperly used excessive force against a civilian or engaged in racially discriminatory policing.

New Jersey's extremely strict confidentiality is not an example of standard practice across the country. It makes us the outlier. A majority of states already release the names of disciplined officers, and many also make at least some additional information available. Some states go much further, making the entire disciplinary file public—not just a summary of findings, but the underlying documents that gave rise to those findings. Those states include Florida, Arizona, Georgia and, as of last month, New York.

Why the Status Quo Is a Problem

This has been the policy in New Jersey for so long that so many of us, myself included, began to take it for granted. But I have now come to realize that that approach is wrong. Other states have moved away from confidentiality because they recognize that transparency promotes accountability, and, in turn, greater trust.

That is why I issued two directives last month, changing the Internal Affairs policy to require disclosure of the identities of officers who engage in serious misconduct.

The first directive applied to all state, county, and local law enforcement agencies in New Jersey. It required that, going forward, these agencies must include the names of any

officers who were fired, demoted, or suspended for more than 5 days during the past year. The first of these annual reports must be published no later than the end of 2020.

The second directive applied to the three law enforcement agencies in the Department of Law & Public Safety—that is to say, the New Jersey State Police, the Division of Criminal Justice, and the Juvenile Justice Commission. For those three agencies, I instructed them to publish similar summaries of misconduct since the year 2000, each of which must include the officers' names. I chose the year 2000 in part because that was when the State Police began publishing its own anonymized annual summaries of Troopers misconduct.

Why did I order law enforcement agencies to publish the names of disciplined officers?

The answer is simple: at a time when tens of millions of people are expressing distrust of the police and questioning their legitimacy, I believe it's important to embrace that scrutiny head on and stand up for New Jersey law enforcement to show that, here in New Jersey, we have nothing to hide. Because here in New Jersey, we have the best trained law enforcement officers in the country. Because here in New Jersey, we are talking about an extraordinarily small number of officers out of our state's nearly 36,000 that fall short. And because here in New Jersey, we will not protect those few to the detriment of the many. The public should know that the vast majority of officers never commit a major disciplinary violation throughout their careers. That's only possible if we are candid and transparent with the public.

At the same time, this type of transparency helps build a culture of accountability. It enables the public to identify repeat offenders. And, perhaps most importantly, it serves as a deterrent. So, at a time when the public is questioning the role of police in our society, these directives help to restore trust between law enforcement and the communities we serve.

And to be clear, the goal of publishing these lists is not to shame those that fall short, but remain in law enforcement. The mere fact that an officer was suspended does not mean that he or she is a bad person—or even a bad law enforcement officer. Plenty of people make mistakes in their lives and grow from the experience, and turn their careers around. I've witnessed that growth firsthand and rewarded it by promoting individuals over my career. Instead, by publishing the names, we are simply acknowledging a basic fact: that our society entrusts law enforcement officers with extraordinary powers, and the public has the right to know when an officer falls short of the profession's high standards.

For all those reasons, I was surprised, and frankly disappointed, by the reaction of some law enforcement officers to these directives. Over a one-week period, I was sued five times. The reaction demonstrated that, unfortunately, not all of my law enforcement colleagues see the benefit of this type of transparency. And the reaction was all the more remarkable given that releasing the names of disciplined officers is simply one of many steps we must take in order to catch up with many of our sister states on transparency issues.

Where We Need to Go

Simply put, this is both a historical and moral moment in our country's history, and it offers us an unique opportunity to prevent further injustices; to strengthen police-community relations; and to improve public safety. We simply cannot let this moment go to waste. Although I have broad authority under the IAPP to release information regarding police discipline, it appears likely that many of these efforts – no matter how legally sound – will be delayed through litigation by those intent on preserving the status quo. I know that the Legislature is considering several bills on this subject, and I'm not going to comment on any particular proposal. But I think it would be helpful to share four general principles that have influenced my thinking in recent weeks about transparency that could provide a roadmap of where we need to go from here:

First, when it comes to the transparency of police disciplinary records, New Jersey needs to end its outlier status and move towards greater openness. We can and should be a national leader on this issue.

Second, we must protect victims, witnesses, and whistleblowers who wish to report misconduct. We cannot conduct effective investigations without their assistance, and we will lose their cooperation if we cannot provide assurances that they will not be identified if disciplinary information is made public.

Third, we must protect the integrity of ongoing investigations. Investigators cannot effectively gather evidence if their work is being released publicly while the investigation is still proceeding. As a result, we should only make disciplinary information public once an investigation is complete and the law enforcement agency has decided whether to impose discipline or, alternatively, to close the investigation.

Fourth and finally, we must ensure that we do not stigmatize officers who seek help for medical or mental health issues. We want to encourage officers to take advantage of programs designed to prevent or correct misconduct—such as alcohol abuse treatment, mental health counseling, and officer resiliency programs—and we must ensure that an officer's participation in such programs, or the offer to participate in such programs, is not made public.

* * *

Although some reforms must be placed on hold pending the outcome of current litigation, I plan to take several additional steps in the near future.

For example, last year, I amended the IAPP to make it easier for civilian review boards to access police disciplinary files. At the time, I was trying to balance the interests of local communities in exercising greater oversight of police departments against the longstanding norms of confidentiality of police records. But now, as we move towards greater openness of police records, that balance must shift. I intend to re-assess our position, in the hopes of finding a way to help civilian review boards in Newark and elsewhere obtain access to the records they need. I look forward to working with Mayor

Baraka, Director Ambrose, Chief Henry, and other law enforcement stakeholders on a solution.

Similarly, my office is currently litigating a matter that has attracted significant public attention—the case of a former Neptune Township sergeant named Philip Seidel, who shot and killed his wife in 2015. For years, the Asbury Park Press has sought access to Sgt. Seidel’s internal affairs file, which runs nearly 700 pages long. My office joined the Monmouth County Prosecutor’s Office in seeking to block the release of the files, citing our longstanding confidentiality rules. But as we rethink those rules, so too must we rethink our position in that litigation. In the coming weeks, I intend to give the case a hard look and make a decision on the best path forward.

In addition, I look forward to moving forward on a statewide police licensing system. Last month, the Police Training Commission unanimously endorsed plans to license New Jersey’s law enforcement officers. We need the ability to revoke the licenses of officers who violate the public trust, and a statewide licensing system dovetails with our overall effort to promote accountability and transparency within the profession.

All of these steps are crucial to our efforts to strengthen public trust in law enforcement. I cannot promise that these changes will be easy or popular, but real reforms rarely are. As we face a once-in-a-generation reckoning over policing practices in this country, we must be ready to make the hard decisions that promote public trust and support public safety.

**Appendix to Written Testimony
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New Jersey is home to some of the finest law enforcement officers in the country. Since 2018, Attorney General Gurbir S. Grewal has launched a series of policy initiatives designed to reinforce and clarify the Garden State's commitment to excellence in policing. These statewide reforms are intended to promote the culture of professionalism, accountability, and transparency that are hallmarks of New Jersey's best law enforcement agencies.

Professionalism

Overhaul of law enforcement training programs. Directed the Police Training Commission to redesign statewide training programs for law enforcement officers at all steps of their career, including at police academies and during their first year of employment.

- [AG Memo Expanding the Work of the Police Training Commission](#) (Dec. 4, 2019)
- [Press Release Announcing PTC Vote to Support Police Licensure](#) (June 24, 2020)

Early warning systems. Required that all state, county, and local law enforcement agencies in New Jersey establish an "early warning system" to identify at-risk officers and provide corrective action before their conduct escalates. Tasked the Office of Public Integrity & Accountability (OPIA) with creating data-driven tools to improve the accuracy and effectiveness of such systems.

- [AG Directive 2018-3](#) (Mar. 20, 2018)
- [AG Memo Regarding Early Intervention Systems](#) (Dec. 4, 2019)

Officer resiliency. Launched a first-in-the-nation statewide program to protect the emotional and psychological wellbeing of law enforcement officers and provide them with additional tools to cope with the unique stressors of their work. Established a state "chief resiliency officer" and required that each state, county, and local law enforcement agency designate a "resiliency program officer" to serve as a resource for their colleagues.

- [AG Directive 2019-1](#) (Aug. 6, 2019)

Use-of-force policy. Initiated the first revision in two decades to New Jersey's "use of force policy," which governs when an officer may—and may not—use force against a civilian. Launched a statewide listening tour on use of force issues and created an online portal to receive public comments on the revision process.

- [Press Release Announcing Policing Reforms](#) (June 2, 2020)
- Website: nj.gov/oag/force

Implicit bias training. Required that all New Jersey State Troopers, as well as all prosecutors and detectives employed by the Division of Criminal Justice and the twenty-one County Prosecutor's Offices undergo in-person implicit bias training.

- [AG Memo Regarding Diversity Initiatives](#) (June 18, 2018)

Chokeholds and neck restraints. Issued statewide guidance prohibiting the use of chokeholds or neck restraints, except in the very limited situations when deadly force is necessary address an imminent threat to life. Established that officers who cause a subject's death or injury while performing such tactics face potential criminal liability.

- [AG Guidance Regarding Use of Force](#) (June 5, 2020)

Crisis Intervention Team (CIT) training. Expanded the use of Crisis Intervention Team (CIT) training, which helps officers respond to situations involving individuals with mental health issues. Launched pilot program with police departments in Atlantic City, Paterson, Trenton, and Millville, as well as the New Jersey State Police Troopers assigned in Trenton.

- [Press Release Announcing Policing Reforms](#) (June 2, 2020)

Protocols on law enforcement interactions with transgender individuals. Established rules to ensure that law enforcement officers treat transgender, non-binary, and gender non-conforming people with dignity and respect.

- [AG Directive 2019-3 \("LGBTQ+ Equality Directive"\)](#) (Nov. 20, 2019)

Protocols on voluntary cooperation with federal civil immigration authorities. Established limits on the types of voluntary cooperation that state, county, and local law enforcement agencies can provide to federal civil immigration authorities, including by prohibiting the use of 287(g) agreements.

- [AG Directive 2018-6 \("Immigrant Trust Directive"\)](#) (Nov. 29, 2018, rev. Sep 28, 2019)
- Website: nj.gov/trust

Protocols on investigation of bias incidents. Issued revised statewide standards for investigating and prosecuting bias incidents, including by streamlining reporting protocols and enhancing victim services.

- [Press Release Announcing Bias Incident Investigation Standards](#) (Apr. 5, 2019)
- [AG Standards for Bias Incident Investigations](#) (Apr. 5, 2019)

Protocols on investigation of sexual assault cases. Issued a set of fourteen statewide protocols to ensure that investigators and prosecutors prioritize the needs and concerns of sexual assault victims in the hours, days, weeks, and months after reporting an assault.

- [AG Directive 2018-5](#) (Nov. 26, 2018)

Accountability

Independent investigations of officer-involved shootings. Established a ten-step process for conducting an independent investigation of any case involving the serious use of force by a law enforcement officer or the death of a civilian in law enforcement custody.

- AG Directive 2019-4 (“Independent Prosecutor Directive”) (Dec. 4, 2019)
- Summary of Independent Prosecutor Directive’s 10-step process

Internal affairs investigations. Established new rules to ensure objective and timely internal affairs investigations by police departments, with robust oversight by county prosecutors and new guidelines for coordination with civilian review boards.

- AG Directive 2019-5 (“Internal Affairs Directive”) (Dec. 4, 2019)
- Internal Affairs Policy & Procedures (Dec. 4, 2019)

Professional licensing of police officers. Directed Police Training Commission to develop proposal regarding professional licensure of law enforcement officers.

- AG Memo Expanding the Work of the Police Training Commission (Dec. 4, 2019)
- Press Release Announcing PTC Vote to Support Police Licensure (June 24, 2020)

Mandatory random drug testing. Required that all state, county, and local law enforcement agencies in New Jersey conduct random drug testing at least twice a year, with at least ten percent of an agency’s officers tested per occasion.

- AG Directive 2018-2 (Mar. 20, 2018)

Office of Public Integrity & Accountability. Established an Office of Police Integrity & Accountability (OPIA), charged with investigating official misconduct, officer-involved shootings, and criminal violations of civil rights laws. Also created within OPIA an “Office of Policing Policy” to oversee implementation of Excellence in Policing initiative and to develop additional resources, tools, and training to assist law enforcement agencies.

- AG Directive 2019-8 (Dec. 4, 2019)

Transparency

Public release of video recordings of police use-of-force incidents. Required that investigators publicly release recordings depicting a serious use-of-force incident, including any incident where an officer shoots or kills a civilian. Upon request, the footage—which includes any recordings made by an officer’s body-worn camera or dashboard-mounted recorder—must be released once the initial investigation into the incident is substantially complete, typically within 20 days, except where extenuating circumstances require a delay.

- AG Directive 2019-4 § II.E (Dec. 4, 2019)
- AG Directive 2018-1 (Feb. 26, 2018)

Use-of-force database. Launched the development of a statewide database to track the use of force by law enforcement officers against civilians. In July 2020, expanded program to begin onboarding law enforcement agencies from across the state.

- Statement of Law Enforcement Leaders on Use of Force (Dec. 5, 2018)
- AG Letter Launching Pilot Program for Use-of-Force Portal (Dec. 4, 2019)
- Press Release Announcing Policing Reforms (June 2, 2020)

Disclosure of exculpatory and impeachment evidence. Required that all County Prosecutors establish policies and procedures for the timeline disclosure of exculpatory evidence pursuant to *Brady v. Maryland* and impeachment evidence pursuant to *Giglio v. United States*.

- AG Directive 2019-6 (Dec. 4, 2019)

Rights of journalists covering protests. Issued statewide guidance reiterating that the media has a right to cover protests and public demonstrations from any location where the public is normally allowed, and that law enforcement officers should allow credentialed journalists to film, broadcast, and otherwise report on these demonstrations without undue interference.

- AG Guidance to County Prosecutors (June 5, 2020)

Community listening sessions. Launched the “21 County, 21st Century Community Policing Project,” which required that all twenty-one County Prosecutors host at least one quarterly community event on a particular topic, resulting in more than 80 events across the state per year. Topics addressed by the “21/21 Project” include officer-involved shootings, juvenile justice reform, opioid abuse, and bias incidents.

- Press Release Announcing 21/21 Project (Apr. 5, 2018)

Other Initiatives to Build Community Trust

Statewide conviction review unit. Established statewide unit to review claims of actual innocence and investigate those deemed meritorious. Simultaneously launched a statewide network of regional cold case task forces, which pool personnel, expertise, technology, and resources to solve cold cases, including those where a convicted defendant has been exonerated.

- Press Release Announcing Conviction Review Unit (Apr. 11, 2019)

Drug sentencing reform. Through the Criminal Sentencing & Disposition Commission, advocated for the repeal of mandatory minimum sentences for all non-violent drug offenses.

- Star-Ledger op-ed (July 15, 2019)
- Press Release Announcing Commission Recommendations.

Incident response teams. Announced plans to develop “incident response teams” within the Division of Civil Rights, with the capacity and training to deploy to New Jersey communities following a major civil rights incident.

- Press Release Announcing Policing Reforms (June 2, 2020)

Oversight of municipal prosecutors. Enhanced oversight of municipal prosecutors by imposing new registration and ethics requirements.

- AG Directive 2019-7 (Dec. 4, 2019)

INTERNAL AFFAIRS POLICY & PROCEDURES

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1 Introduction

- 1.0.1 The purpose of *Internal Affairs Policy & Procedures* is to assist the State's law enforcement agencies with investigating and resolving complaints of police misconduct that originate with members of the public or are generated by the supervisors, officers, or employees of a law enforcement agency. The goals of the policy are to enhance the integrity of the State's law enforcement agencies, improve the delivery of police services, and assure the people of New Jersey that complaints of police misconduct are properly addressed. This policy can also be more broadly applied to non-law enforcement employees.
- 1.0.2 State and federal courts have emphasized the importance of the internal affairs function for protecting the constitutional rights and civil liberties of the State's residents. Case law generally requires that law enforcement agencies do three things under the internal affairs function. First, agencies must implement an internal affairs policy that provides for a meaningful and objective investigation of complaints and other evidence of police misconduct. Second, agencies must monitor and track the behavior of police officers for incidents of misconduct. Third, when officers are found to have engaged in misconduct, agencies must correct the behavior. The courts have with increasing frequency issued decisions that set minimum standards of performance for the internal affairs function.
- 1.0.3 The New Jersey Legislature also recognized the importance of the internal affairs function in 1996 with the enactment of N.J.S.A. 40A:14-181. The statute provides that:
- Every law enforcement agency shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.
- 1.0.4 In accordance with this mandate, and recognizing that proper administration of internal affairs is a critical priority for the State's criminal justice system, Attorneys General have periodically issued updated versions of this Internal Affairs Policy & Procedures document through the Division of Criminal Justice. This most recent round of revisions reflects the need to incorporate emerging best practices into the State's internal affairs system, and to ensure that all law enforcement agencies in the State are adhering to the guidelines.
- 1.0.5 It is important for county and municipal law enforcement agencies to recognize that, as they conduct internal affairs investigations, they do so under the general supervision of the Attorney General. The Criminal Justice Act of 1970 designates the Attorney General as the State's chief law enforcement officer. See N.J.S.A. 52:17B-98. As such, the Attorney General is responsible for the general supervision of the State's law enforcement agencies to

provide for the efficient administration of the criminal justice system. Subordinate law enforcement agencies, including county and municipal police forces, have a duty to cooperate with the Attorney General to improve the administration of the criminal justice system, including the efficient delivery of police services. For county and municipal law enforcement agencies, cooperation in internal affairs matters begins with strict adherence to the Attorney General's policy requirements.

- 1.0.6 County and municipal law enforcement agencies must also recognize that they conduct internal affairs investigations, particularly those that involve allegations of criminal conduct, under the direct supervision of the County Prosecutors. County and municipal law enforcement agencies must inform the appropriate County Prosecutor when allegations of police misconduct involve potential criminal conduct. In addition, county and municipal law enforcement agencies must confer with and follow the instructions given by the County Prosecutor at all critical points in the investigative process. This is particularly true when the agency is in the process of gathering evidence, including the taking of statements, concerning allegations of criminal conduct. References to County Prosecutors throughout this document should also be understood to refer to the Office of the Attorney General wherever such an interpretation would be appropriate.
- 1.0.7 This policy contains mandates that, at the Attorney General's direction, every law enforcement agency must implement. In some areas, the manner in which these agencies must implement these mandates is a decision that is left to the individual law enforcement agency's discretion. For instance, every agency must establish an internal affairs function. But certain aspects of the manner in which the mandate is satisfied are left to the discretion of the individual agencies. Individual agencies shall decide, based on the characteristics of their jurisdiction and the workload of their agency, whether the internal affairs function is a full- or part-time unit and how many officers are assigned to work in that unit.
- 1.0.8 Nothing in this document displaces other existing requirements for law enforcement agencies or officers, such as those established by Attorney General Law Enforcement Directives ("AG Directives"), including AG Directive 2018-2 (mandatory random drug testing), AG Directive 2018-3 (mandatory early warning systems), and AG Directive 2019-4 (independent investigations of use-of-force and death-in-custody incidents).
- 1.0.9 Policy requirements that the Attorney General has determined are critical and must be implemented by every law enforcement agency include the following:

General Practices

- (a) Each agency must establish by written policy an internal affairs function.
- (b) Each agency must accept reports of officer misconduct from any person, including anonymous sources, at any time.

- (c) Each agency must thoroughly, objectively, and promptly investigate all allegations against its officers.
- (d) Each agency must notify its officers in writing of complaints made against them, unless this notification would interfere with any investigation resulting from these complaints.
- (e) Each agency must notify its officers of the outcome of any Internal Affairs investigation involving them.
- (f) Each agency must notify complainants of the outcome of their complaints.
- (g) If an agency's internal affairs investigators are unable to complete an investigation within 45 days of receiving a complaint, they must notify the agency's law enforcement executive,¹ who may take steps to ensure prompt resolution of the matter.

Notifications to the County Prosecutor

- (h) Where a preliminary investigation indicates the possibility of a criminal act on the part of the subject officer, the County Prosecutor must be notified immediately. No further action should be taken, including the interviewing of, or the filing of charges against the officer, until the County Prosecutor so directs.
- (i) Pursuant to AG Directive 2019-4, the agency must notify the County Prosecutor immediately of any use of deadly force, any use of force by an officer that results in death or serious bodily injury, or any death in custody that occurs within its jurisdiction.
- (j) In the rare cases where the agency has not made a charging decision within 180 days of receiving a complaint, the agency must notify the County Prosecutor, who may take whatever steps he or she deems appropriate, including supersession of the investigation, to ensure prompt resolution of the matter.

Recordkeeping & Data Reporting

- (k) Pursuant to AG Directive 2018-3, each agency shall establish an "early warning" protocol for monitoring and tracking the conduct of all officers.
- (l) Each agency must establish and maintain an internal affairs records system which, at a minimum, will consist of an internal affairs index system and a filing system for all documents and records.
- (m) On a quarterly basis, each agency shall submit to the County Prosecutor a report summarizing the allegations received and the investigations concluded for that period. The Attorney General shall establish a schedule for the submission of the reports.

¹ For the purposes of this document, "law enforcement executive" refers to a law enforcement agency's highest ranking sworn law enforcement officer, typically the chief of police. In situations where the highest ranking officer is recused from a matter, then "law enforcement executive" refers to the next highest-ranking officer without a conflict.

- (n) On an annual basis, each agency shall publish on its public website a report to the public summarizing the allegations received and the investigations concluded for that period. These reports shall not contain the identities of officers or complainants.
- (o) On a periodic basis, and at least once a year, each agency shall submit to the County Prosecutor and publish on the agency's public website a brief synopsis of all complaints where a fine or suspension of 10 days or more was assessed to an agency member. The synopsis shall not contain the identities of the officers or complainants.

Training

- (p) Each agency shall ensure that officers assigned to the internal affairs function complete training as mandated by the Division of Criminal Justice.
- (q) Each County Prosecutor shall ensure that each agency within the Prosecutor's jurisdiction implement and maintain a system of ensuring appropriate training for all personnel involved in the agency's internal affairs function.
- (r) The Division of Criminal Justice shall conduct periodic "train-the-trainer" courses for all persons assigned responsibility for internal affairs training within the County Prosecutor's Offices.

1.0.10 The above list represents critical performance standards that every county and municipal law enforcement agency must implement. Agencies that make a vigorous commitment to the internal affairs process signal their desire to comply with the highest standards of professionalism in law enforcement. They also ensure that their officers will be accountable for their actions to both the agency and the community. Agencies that fail to make such a commitment run the risk of failing to uncover policies, practices and procedures that may undermine legitimate efforts to provide the highest quality law enforcement services.

1.0.11 Indifference to the internal affairs function will have a negative impact on the administration of criminal justice and the delivery of police services to New Jersey's residents. Agencies that fail to make the internal affairs function a priority can lose the respect and support of the community. The integrity of individual law enforcement agencies, and the reputation of the State's criminal justice system, can also suffer if agencies fail to identify and correct officer misconduct. In addition, law enforcement agencies that fail to implement a meaningful and objective internal affairs process may be found liable in civil lawsuits for their failure to effectively address officer misconduct. It is for these reasons that the Attorney General has issued this revised policy and directed that the State's law enforcement agencies implement the critical mandates set forth by the policy.

1.0.12 The internal affairs process represents the agency's response to allegations and complaints that have been brought to the agency's attention either by agency employees or members of the public. Law enforcement agencies must establish and implement a process of investigation and review that is both meaningful and objective. The process must be

designed to ensure that individuals receive adequate redress for legitimate complaints of misconduct. It is not enough for law enforcement executives to adopt a policy governing the receipt, investigation and resolution of complaints of officer misconduct; rather, the policy must be implemented and executed with a commitment to the integrity of the agency and the constitutional rights of the public. Agencies with an objective and fair internal affairs process will limit their risk of civil liability.

- 1.0.13 This policy, the procedures set forth in the policy and the legal citations contained in the text are intended for implementation by all State, county and municipal law enforcement agencies. As made clear in AG Directive 2019-5 (issued concurrently with the publication of this December 2019 version of this policy), all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey are directed to implement and comply with this policy, and to take any additional measures necessary to update their guidelines consistent with this policy, as required by N.J.S.A 40A:14-181.
- 1.0.14 Law enforcement agencies that fail to comply with the policies and procedures contained within this document may be subject to the same sanctions arising from any other violation of an AG Directive, including supersession of an agency's law enforcement functions by the Attorney General.

2 Fundamentals of the Disciplinary Process

- 2.0.1 Achieving the desired level of discipline within the law enforcement agency is among the most important responsibilities of the law enforcement executive. Yet, this is one of the most frequently neglected processes within many law enforcement agencies. While the word "discipline" was originally defined as instruction, teaching or training, its meaning has shifted toward a concept of control through punishment. This emphasis on control has resulted in discipline being viewed as a negative threat rather than a mechanism for remediation and improvement. Too frequently rules of conduct and disciplinary procedures are used as an end in themselves, and their purpose in reaching agency goals is forgotten. Focusing on the negative aspects of discipline diminishes officer morale and productivity.
- 2.0.2 The first step toward positive discipline is to emphasize instruction and de-emphasize control. This requires the law enforcement executive to focus on organizational practices. The executive must first define the goals and objectives of the agency's units and then announce management's expectations to guide the units toward realizing those goals. The law enforcement executive must establish a means to monitor performance and to correct improper actions.
- 2.0.3 This approach to management as it relates to discipline insures that all subordinates know and understand what must be done, why it must be done, how it must be done and when it must be done. Employees must be clearly told what constitutes satisfactory performance through performance evaluations and similar procedures. N.J.A.C. 4A:6-5.1. Supervisors and managers also must know when and how to take corrective action. To achieve this, management must establish workable procedures for documenting all expectations and advising individuals of their duties and responsibilities.

2.1 Policy Management System

- 2.1.1 The agency's policy management system serves as the foundation for effective discipline. A clearly defined policy management system is designed to move the organization toward its stated goals and set the standard for acceptable performance. The system must incorporate a mechanism for distributing rules, regulations, policies and procedures, and provide for periodic review and revision as necessary. The system should include a classification and numbering mechanism that facilitates cross-referencing where necessary.
- 2.1.2 Law enforcement agencies should have a policy management system that, at a minimum, includes:
 - (a) *Rules and regulations.* Principles of behavior that set forth acceptable and unacceptable conduct. In municipal police agencies, the rules and regulations must be

issued by the appropriate authority as designated by ordinance. See N.J.S.A. 40A:14-118.

- (b) *Standard operating procedures (SOPs)*. Written statements providing specific direction for performing agency activities. Each SOP should also include the agency's policy in that area, which is a statement of agency principles that provides the basis for the development of the procedures.
- (c) *Directives or orders*. Documents detailing the performance of a specific activity or method of operation.

2.1.3 The policy management system should clearly and explicitly state management's intentions. Employees must understand what management wants to accomplish and what behavior is expected. Each category of documents in the policy management system should be issued in a distinctive, readily identifiable format.

2.2 Rules and Regulations

2.2.1 The agency's rules and regulations should form a "code of conduct" for employees. It should contain the broadly stated "do's and don'ts," without delving into specific details. For instance, an agency's rules and regulations should state that any use of force by an officer must comply with state and federal law, the Attorney General's and the County Prosecutor's policies, and the agency's S.O.P.s. The specific details of what is considered force, and what constitutes the acceptable use of force, should be found in the agency's use of force S.O.P.

2.2.2 The rules and regulations should identify general categories of misconduct or inappropriate behavior that are subject to disciplinary action. An incident of misconduct or inappropriate behavior may fall into one or more of the following categories:

- (a) *Crime*. Complaint regarding the commission of an illegal act that constitutes a violation of the criminal code including disorderly and petty disorderly persons offenses.
- (b) *Excessive force*. Complaint regarding the use or threatened use of excessive force against a person.
- (c) *Improper arrest*. Complaint that the restraint of a person's liberty was improper, unjust, or violated the person's civil rights.
- (d) *Improper entry*. Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.
- (e) *Improper search*. Complaint that the search of a person or property was improper, unjust, violated established agency procedures or violated the person's civil rights.
- (f) *Differential treatment*. Complaint that the taking of police action, the failure to take police action or method of police action was predicated upon irrelevant factors such as race, appearance, age or sex.
- (g) *Demeanor*. Complaint that an agency member's bearing, gestures, language or other actions were inappropriate.

- (h) *Serious rule infractions.* Complaint for conduct such as insubordination, drunkenness on duty, sleeping on duty, neglect of duty, false statements or malingering.
- (i) *Minor rule infractions.* Complaint for conduct such as untidiness, tardiness, faulty driving, or failure to follow procedures.

2.2.3 The Rules and regulations shall provide for uniform classification of the resolution of complaints as follows:

- (a) *Sustained.* A preponderance of the evidence shows an officer violated any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standing operating procedure; rule; or training.
- (b) *Unfounded.* A preponderance of the evidence shows that the alleged misconduct did not occur.
- (c) *Exonerated.* A preponderance of the evidence shows the alleged conduct did occur, but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standing operating procedure; rule; or training.
- (d) *Not Sustained.* The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

2.2.4 In addition, the rules and regulations should set forth a schedule of possible penalties an officer might receive when discipline is imposed. The rules and regulations may incorporate a system of progressive discipline. Progressive discipline serves an important role in the process by which the agency deals with complaints of misconduct or inappropriate behavior. In lieu of discipline, counseling, re-training, enhanced supervision, oral reprimand and performance notices can be used as instructional or remedial devices to address deficiencies or inadequate performance.

2.2.5 In providing a range of penalties, the agency can use the disciplinary process to achieve the basic goals of instruction and address inappropriate behavior before minor problems escalate into major problems. At the same time, the subject officer should be made aware that repeated violations of the agency's rules will result in progressive discipline. An internal affairs complaint that has a disposition of exonerated, unfounded or not sustained should not be used to effect progressive discipline.

2.2.6 A system of progressive discipline can include the following elements:

- (a) Oral reprimand or performance notice;
- (b) Written reprimand;
- (c) Monetary fine;²
- (d) Suspension without pay;

² Agencies operating under Civil Service Commission statutes (N.J.S.A. 11A:2-20) and regulations may only assess a fine in lieu of a suspension where loss of the officer from duty would be "detrimental to the public health, safety or welfare" or if the assessment is restitution or is agreed to by the employee.

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- (e) Loss of a promotional opportunity;
- (f) Demotion; and
- (g) Discharge from employment.

- 2.2.7 The disciplinary process should be thoroughly explained in the agency's rules and regulations, including a description of the officer's rights, the identity of the hearing officer, an outline of the hearing process and, if applicable, appeal procedures available to the officers.
- 2.2.8 An agency's rules and regulations, which include the description of the disciplinary process, shall be distributed to all employees. The agency should document that this distribution has taken place. In addition, a copy of the rules and regulations and a copy of the agency's internal affairs S.O.P. shall be made available to a representative of any employee collective bargaining unit.

2.3 Responsibility for Discipline

- 2.3.1 The successful implementation of discipline requires the law enforcement executive to delegate responsibility for the disciplinary process to individual units and supervisors within the agency, and perhaps to Human Resources. Although the levels of authority may vary within an agency's chain of command, the failure to carry out disciplinary responsibilities at any level in that chain will contribute to the organization's ineffectiveness. The task of clearly delineating the authority and responsibility to initiate and impose discipline is essential to the agency's administration.
- 2.3.2 Every supervisor must establish a familiarity with the agency's disciplinary process and develop an understanding of how to implement specific disciplinary procedures when called upon to deal with inappropriate behavior or misconduct. If a supervisor fails to follow these procedures or avoids their responsibility, that supervisor is not conforming to expected behavior and must receive some sort of corrective action. Some supervisors occasionally need to be reminded that the fundamental responsibility for direction and control rests with the immediate supervisor at the operational level, not with the law enforcement executive.
- 2.3.3 To provide such direction and control, supervisory personnel must be granted the proper authority to carry out their responsibilities. To properly exercise this authority, supervisory personnel must be fully familiar with applicable agency rules and regulations. Based on the size and needs of the individual agency, supervisory personnel may be permitted to impose specific disciplinary measures (subject to approval of the law enforcement executive) including oral reprimands or performance notices, written reprimands and suspensions. In addition, the supervisor should be permitted to make written recommendations for other disciplinary actions. The extent of this authority must be clearly stated in the agency's disciplinary rules and regulations.

2.4 Fitness for Duty

- 2.4.1 One of the areas that often involves internal affairs is an employee's fitness for duty. This is not exclusively an internal affairs issue; an officer's fitness may be impacted for reasons other than misconduct. For instance, an officer may become unfit for duty because of a medical problem unrelated to the job. There are occasions, however, when internal affairs may be called upon to assist in determining whether or not an officer is fit for duty.
- 2.4.2 It is incumbent upon a law enforcement agency to ensure that its members are fit to safely and effectively perform the duties of their profession. If, for whatever reason, an officer's fitness for duty is questioned, the agency must have the officer evaluated by competent professionals to answer that question. If a law enforcement executive, commander, supervisor or internal affairs investigator has reasonable concerns about an officer's fitness for duty, they are obligated to begin the process necessary to obtain that evaluation. If the officer in question is obviously unfit for duty, the officer in authority may effect an immediate suspension pending the outcome of the evaluation and investigation. *See* Section 5.2 ("Immediate Suspension Pending Investigation and Disposition").
- 2.4.3 At the same time, law enforcement work places an extraordinary mental and emotional toll on officers, and all officers must be free to seek treatment and support that enables them to cope with those pressures. Accordingly, under no circumstances shall an officer face any sort of discrimination or adverse internal affairs consequences for the sole reason that the officer decided to seek medical or psychological treatment for a mental health concern, including depression, anxiety, post-traumatic stress disorder, or substance use disorder. All officers are encouraged to take advantage of the resources provided by the New Jersey Resiliency Program for Law Enforcement, as well as the other resources identified in AG Directive 2019-1, also known as the "Officer Resiliency Directive."

3 Prevention of Misconduct

3.0.1 Prevention is the primary means of reducing and controlling inappropriate behavior and misconduct. Although disciplinary actions are properly imposed on officers who engage in wrongdoing, they have limited utility if they shield or obscure organizational conditions that permit the abuses to occur. Inadequate training and a lack of appropriate guidance too often are factors that contribute to inappropriate behavior and misconduct. An agency should make every effort to eliminate the organizational conditions that may foster, permit or encourage an employee's inappropriate behavior. In the furtherance of this objective, special emphasis should be placed on the following areas.

3.1 Recruitment and Selection

3.1.1 Selecting and appointing the highest quality individuals to serve as law enforcement officers must be a priority of every law enforcement agency. During the selection process, written tests, psychological tests, background investigations and individual interviews should be completed by each candidate in an attempt to identify those who would be best suited for law enforcement employment. Background investigations must include a review of the prior internal affairs files of any candidate.

3.1.2 New Jersey law enforcement agencies are required by this policy to disclose the entire internal affairs file of a candidate to prospective law enforcement employers. See Section 9 ("Internal Affairs Records"). Candidates with out-of-state law enforcement experience must sign waivers of confidentiality regarding their internal affairs files so that they may be reviewed by the prospective employer, where legally permissible. These procedures may also be used for promotional testing, and assignment to especially sensitive responsibilities or those that pose the greatest opportunities for abuse or wrongdoing. Each agency should establish policies and procedures for recruitment, oral and written examinations, selection and the promotional process.

3.2 Training

3.2.1 Basic and in-service training for law enforcement officers should emphasize the sworn obligation of those officers to uphold the law and ensure public safety. Police ethics should be a major component in the training curricula. In addition, the rules, regulations, policies and procedures of the agency, including the disciplinary process, should be stressed. There must also be a process to advise veteran officers of any new statutory requirements or significant procedural changes.

3.2.2 An agency's supervisory personnel should always consider the need for training when officers engage in inappropriate behavior or misconduct. The question should be, "Could training have prevented this behavior and can training prevent it from happening in the

future?" Perhaps a particular officer or group of officers needs a refresher course in a certain subject. In addition, changes in the law, the agency or even within the community may trigger the need for a type of training never before given to the officer or agency. Training in this sense can be anything from informal counseling of an officer about a particular policy or procedure to formal agency-wide training. The agency may also take advantage of training offered by other agencies, including police academies, the County Prosecutors, the Division of Criminal Justice, other public or private entities or web-based programs.

3.3 Supervision

- 3.3.1 Proper supervision is critical to the discipline and management of a law enforcement agency. To maximize their effectiveness, agency supervisors should receive appropriate supervisory training as close as possible to the time of their promotion. Emphasis should be placed on anticipating problems among officers before they result in improper performance or conduct. Supervisors are expected to recognize potentially troublesome officers, identify training needs of officers and provide professional support in a fair and consistent manner.

3.4 Early Warning and Risk Management

- 3.4.1 Although the internal affairs process is frequently triggered by the filing of a civilian complaint, law enforcement agencies must also proactively work to detect troubling patterns in police conduct before that conduct escalates into more serious internal affairs issues.
- 3.4.2 To enhance its integrity, provide an optimal level of service to the community and reduce its exposure to civil liability, every law enforcement agency should establish procedures for dealing with problem employees. Law enforcement agencies have a duty to monitor their employees' behavior, and establish mechanisms that provide the internal affairs function and the law enforcement executive with the ability to track the complaint records of individual officers and identify those officers with a disproportionate number of complaints against them. Law enforcement agencies must utilize the information developed by these mechanisms to prevent individual officers from engaging in conduct or behavior that violates the constitutional liberties every member of the community enjoys. It also is expected that law enforcement agencies will utilize the information to prevent development of patterns, practices or trends of inappropriate behavior or conduct.
- 3.4.3 Per AG Directive 2018-3 v2.0, also known as the "Early Warning Systems Directive," law enforcement agencies are required to implement a specific mechanism to track employee behavior, commonly known as an "early warning system." An early warning system should be designed to identify any pattern or practice by any member of the agency that warrants intervention or remediation before it develops into a more serious problem.

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- 3.4.4 Any mechanism or procedure a law enforcement agency establishes to monitor and track the behavior and performance of individual police officers must have as two of its linchpins quality supervision and an objective and impartial internal affairs process. Supervisors who have sufficient time and resources to properly perform their duties should be able to timely identify officers with performance and misconduct issues. Supervisors can react to problems they identify through direction, counseling and effective performance evaluations. Proper training of agency supervisors is critical to the discipline and performance of law enforcement officers. Emphasis should be placed on anticipating problems among officers before they result in improper performance or misconduct. Supervisors are expected to recognize potentially troublesome officers, identify training needs of officers and provide professional support in a consistent and fair manner.
- 3.4.5 Many different measures of officer performance can be regularly examined for any of these troubling patterns or practices. Law enforcement executives shall determine what performance measures are appropriate for the communities they serve, but at a minimum an agency must track the following performance indicators:
- (a) Internal affairs complaints against the officer, whether initiated by another officer or by a member of the public;
 - (b) Civil actions filed against the officer;
 - (c) Criminal investigations of or criminal complaints against the officer;
 - (d) Any use of force by the officer that is formally determined or adjudicated (for example, by internal affairs or a grand jury) to have been excessive, unjustified, or unreasonable;
 - (e) Domestic violence investigations in which the officer is an alleged subject;
 - (f) An arrest of the officer, including on a driving under the influence charge;
 - (g) Sexual harassment claims against the officer;
 - (h) Vehicular collisions involving the officer that are formally determined to have been the fault of the officer;
 - (i) A positive drug test by the officer;
 - (j) Cases or arrests by the officer that are rejected or dismissed by a court;
 - (k) Cases in which evidence obtained by an officer is suppressed by a court;
 - (l) Insubordination by the officer;
 - (m) Neglect of duty by the officer;
 - (n) Unexcused absences by the officer;
 - (o) Any other indicators, as determined by the agency's chief executive.
- 3.4.6 This information should be maintained to facilitate analysis as to individual members, supervisors, squads, districts and assignments, and the agency as a whole. Depending on the size of the agency and the complexity of this data, computerized software that utilizes mathematical algorithms may be best suited to assist in revealing the presence of particular patterns of incidents. However, not all law enforcement agencies have the computer capabilities for such an in-depth screening process. At a minimum, every law enforcement agency should establish a protocol for tracking employee behavior and

reviewing all internal affairs complaints made against its officers, regardless of outcome, for evidence of a pattern or practice of inappropriate or unconstitutional conduct.

- 3.4.7 For further information regarding the Attorney General's requirements for early warning systems, agencies should consult the Early Warning Systems Directive.

3.5 Staff Inspections

- 3.5.1 While the primary responsibility for enforcing agency policies rests with the line supervisors, management cannot rely solely on those supervisors for detecting violations. Administrators should establish a mechanism to determine whether an agency's policies and procedures are being properly implemented. It is necessary for management to know if behavior is, in fact, consistent with the agency's rules and regulations, policies and procedures. The task of detecting such defects should be delegated to an inspection unit or function.
- 3.5.2 Large agencies might establish an inspection unit operating directly out of the office of the law enforcement executive. Small and medium size agencies can successfully accomplish this function by periodically assigning the inspection task to selected unit supervisors. Individuals so assigned must be of unquestioned integrity and hold sufficient rank to achieve the objectives of the inspection function.
- 3.5.3 The inspection function should determine by actual on-site inspection whether personnel are properly implementing management's policies at the operational level. This function is also responsible for reviewing and evaluating procedures. In addition, the inspection unit or function should evaluate the material resources of the agency and the utilization of those resources. This includes, but is not limited to, motor vehicles, communications equipment, computers, office machinery and supplies. The inspection function or unit should report any deficiencies to the law enforcement executive, and recommend any possible solutions and improvements.

3.6 Community Outreach

- 3.6.1 Commanding officers should strive to remain informed about and sensitive to the community's needs and problems. Regularly scheduled meetings to discuss community concerns should be held with public advisory councils, religious groups, schools, businesses and other community leaders. These meetings help commanding officers identify potential crisis situations and keep channels of communication open between the agency and the community. The disciplinary process should be publicized and clearly explained in these forums.

4 Internal Affairs Unit or Function

- 4.0.1 Every law enforcement agency shall establish, by written policy, an internal affairs unit or function. Depending upon the need, the internal affairs function can be full- or part-time. In either case, this requires the establishment of a unit or the clear allocation of responsibility and resources for executing the internal affairs function. The unit will consist of agency personnel assigned to internal affairs by the law enforcement executive. Personnel assigned to the internal affairs function serve at the pleasure of and are directly responsible to the law enforcement executive or the designated internal affairs supervisor.

4.1 Duties and Responsibilities

- 4.1.1 The purpose of the internal affairs function is to establish a mechanism for the receipt, investigation, and resolution of officer misconduct complaints. The goal of internal affairs is to ensure that the integrity of the agency is maintained through a system of internal discipline where an objective and impartial investigation and review assure fairness and justice.
- 4.1.2 The internal affairs function or officer will investigate alleged misconduct by members of the agency and review the adjudication of minor complaints handled by supervisors. In addition, internal affairs shall receive notice of:
- (a) Any firearm discharge by agency personnel, whether on-duty or off-duty, unless the discharge occurred during the course of: (1) a law enforcement training exercise; (2) routine target practice at a firing range; (3) a lawful animal hunt; or (4) the humane killing of an injured animal;
 - (b) Any discharge of an agency-owned firearm by anyone other than agency personnel;
 - (c) Any use of force by agency personnel that results in injury to any person,
 - (d) Any vehicular pursuit involving agency personnel; and
 - (e) Any collision involving agency-owned vehicles.

Upon receiving notification, the agency's internal affairs function shall document the incident and determine whether additional investigation is necessary.

- 4.1.3 An internal affairs function also has an obligation to investigate or review any allegation of employee misconduct that is a potential violation of an AG Directive or Guideline, a Directive issued by a County Prosecutor in that jurisdiction, the agency's rules and regulations, or any allegation that indicates the employee is unable, unwilling or unfit to perform their duties. The obligation to investigate includes not only acts of misconduct that are alleged to have occurred while the subject officer was on-duty, but also acts of misconduct that are alleged to have occurred outside the employing agency's jurisdiction or while the subject officer was off-duty.

- 4.1.4 An internal affairs function may conduct an internal investigation on its own initiative or upon notice to or at the direction of the law enforcement executive or the internal affairs supervisor. Internal affairs may refer investigations to the employee's supervisor for action as permitted by agency policy and procedures.
- 4.1.5 Internal affairs investigations must be considered as important to the agency as any criminal investigation. Members of the internal affairs function therefore should have the authority to interview any member of the agency and to review records and reports of the agency relative to their assignment. In addition, the agency's personnel should be instructed that the internal affairs function acts at the behest of the law enforcement executive in all internal affairs investigations. The agency's personnel should be further instructed that during an internal affairs investigation, every member of the agency, regardless of rank, shall treat an order or a request from a member of the internal affairs function as if the order or request came directly from the law enforcement executive.
- 4.1.6 The internal affairs function shall maintain a comprehensive central file on all complaints received, whether investigated by internal affairs or assigned to the officer's supervisors for investigation and disposition. In addition, internal affairs should establish protocols for tracking all complaints received by the agency and the conduct of all officers. The protocols must include criteria for evaluating the number of complaints received by the agency and the number of complaints filed against individual officers.

4.2 Selection of Personnel for the Internal Affairs Function

- 4.2.1 Personnel assigned to conduct internal affairs investigations should be energetic, resourceful and committed to the agency's mission and the internal affairs function. They must display a high degree of perseverance and initiative. The internal affairs investigator must maintain an appropriate balance between professional commitment and personal and group loyalties. Internal affairs personnel must be of unquestioned integrity and possess the moral stamina to perform unpopular tasks. It is important that these investigators possess the ability to withstand the rigors and tensions associated with complex investigations, social pressures and long hours of work. The investigator must possess the ability to be tactful when dealing with members of the agency and the community. It is recommended that personnel assigned to the internal affairs function provide the agency with the opportunity to access all segments of the community. For example, if a particular community has a significant proportion of the population that speaks a foreign language, the law enforcement executive may wish to consider assigning an officer to the internal affairs function who speaks that language.
- 4.2.2 Law enforcement executives should assign personnel to internal affairs who have sufficient experience and rank to effectively handle sensitive investigations that may include investigations of supervising officers. In addition, law enforcement executives should

encourage (but need not require) officers to complete a tour in the agency's internal affairs function prior to promotion to a leadership position in the agency.

- 4.2.3 Investigations of officer misconduct may proceed in one of two ways. An investigation may be conducted for the purpose of imposing a disciplinary sanction or initiating a criminal prosecution. The distinction between the two is important because each type of investigation has differing legal requirements. Consequently, it is important that the internal affairs investigator be familiar with proper investigative techniques and legal standards for each type of proceeding. It is essential that experienced investigators be assigned to internal affairs investigations. Each investigator must be skilled in interviews and interrogation, observation, surveillance and report writing.
- 4.2.4 Internal affairs investigators should be trained not only in the elements of criminal law, court procedures, rules of evidence and use of technical equipment, but also in the disciplinary and administrative law process. Initially upon assignment, and on an ongoing basis, these investigators should receive training in internal affairs and disciplinary procedures, including training required by the Division of Criminal Justice.
- 4.2.5 Law enforcement executives shall not assign to the internal affairs function any person responsible for representing members of a collective bargaining unit. The conflict of interest arising from such an assignment would be detrimental to the internal affairs function, the subject officer, the person so assigned, the bargaining unit and the agency as a whole.
- 4.2.6 Investigators must recuse from cases where they have a conflict of interest that may prevent them from being impartial in the investigation of a subject officer. One example is if the investigator and the officer are family members or close personal friends. Additionally, agencies should ensure, if feasible, that the initial investigator of a subject officer is not an officer who is a supervisor within the subject officer's chain of command. In rare cases, this requirement may prove difficult to fulfill because an agency is particularly small.
- 4.2.7 Under no circumstances may a law enforcement agency's internal affairs investigatory function be contracted or delegated to a private entity. Instead, when necessary, law enforcement agencies may request that an internal affairs complaint be investigated directly by the County Prosecutor, who shall determine whether to investigate the matter, refer the matter to the Internal Affairs function of another law enforcement entity, or return the matter to the originating law enforcement agency if the County Prosecutor determines that the original agency can appropriately investigate the matter.
- 4.2.8 Where appropriate, an agency may enter into an agreement with another law enforcement agency to conduct an Internal Affairs investigation, and smaller law enforcement agencies that consistently have difficulty carrying out the internal affairs function are encouraged to

explore regional internal affairs arrangements in concert with other law enforcement agencies.

- 4.2.9 Nothing in this policy shall prevent a law enforcement agency from retaining a qualified private individual to serve as a hearing officer or an expert witness.

4.3 Training of Internal Affairs Personnel

- 4.3.1 Each agency shall ensure that officers assigned to the internal affairs function complete training as mandated by the Division of Criminal Justice.
- 4.3.2 Each County Prosecutor shall ensure that each agency within the Prosecutor's jurisdiction implement and maintain a system of ensuring appropriate training for all personnel involved in the agency's internal affairs function.
- 4.3.3 The Division of Criminal Justice shall conduct periodic "train-the-trainer" courses for all persons assigned responsibility for internal affairs training within the County Prosecutor's Offices. These trainers shall be responsible to train the internal affairs officers of agencies within their jurisdiction of the County Prosecutor.

5 Accepting Reports of Officer Misconduct

5.0.1 Every law enforcement agency shall establish a policy providing that any complaint from a member of the public is readily accepted and fully and promptly investigated. Allegations of officer misconduct or complaints of inappropriate behavior can alert the law enforcement executive to problems that require disciplinary action or identify the need for remedial training. In addition, executives must also recognize that complaints from the public provide them with an invaluable source of feedback. Such complaints, whether substantiated or not, increase the executive's awareness of both actual or potential problems and the community's perceptions and attitudes about police practices and procedures. The executive should use complaints from the public as one means of determining whether the agency is falling short of its intended goals.

5.1 Accepting Reports Alleging Officer Misconduct

5.1.1 All complaints of officer misconduct shall be accepted from all persons who wish to file a complaint, regardless of the hour or day of the week. This includes reports from anonymous sources, juveniles, undocumented immigrants, and persons under arrest or in custody. Internal affairs personnel, if available, should accept complaints. If internal affairs personnel are not available, supervisory personnel should accept reports of officer misconduct, and if no supervisory personnel are available, complaints should be accepted by any law enforcement officer. At no time should a complainant be told to return at a later time to file their report.

5.1.2 Members of the public should be encouraged to submit their complaints as soon after the incident as possible. If the complainant cannot personally appear at the agency to file the complaint, a member of the agency, preferably a member of the internal affairs function, should visit the complainant at their home, place of business or other location if necessary to complete the report. Law enforcement agencies are encouraged to establish systems to enable complaints to be accepted by telephone or by email if a complainant does not wish to be interviewed in person or wishes to remain anonymous. Under no circumstances shall it be necessary for a complainant to make a sworn statement to initiate the internal affairs process. Furthermore, every police agency shall accept and investigate anonymous complaints.

5.1.3 The internal affairs investigator, supervisor or other officer receiving the complaint will explain the agency's disciplinary procedures to the person making the complaint. The officer shall advise the complainant that he or she will be kept informed of the status of the complaint, if requested, and its ultimate disposition. To best accomplish this, the agency shall prepare a fact sheet or brochure that includes information on the agency's internal affairs process and what role the complainant can expect to play. If feasible, the fact sheet or brochure should be provided to the complainant at the time the complaint is made. A sample fact sheet is found in Appendix B.

- 5.1.4 The supervisor or other officer receiving the complaint shall complete the appropriate internal affairs report form. The report form should have adequate instructions for proper completion. Attached to this directive is a standardized statewide public complaint form that will be available in multiple languages in electronic format on the Attorney General's website. Agencies shall make available to complainants versions of the standardized form in all of those languages in their offices and, if the agency has a website, online.
- 5.1.5 Upon receipt of an internal affairs complaint, the internal affairs investigator can advise the complainant of the importance of providing accurate and truthful information. However, when providing such advice, internal affairs investigators must remember that it is important to balance the need for receiving complaints of officer misconduct against the danger of discouraging members of the public from coming forward with their complaints. Therefore, any language that would serve to dissuade or intimidate a member of the public from coming forward should be avoided. Accordingly, at no point during the initial intake of a complaint should any officer affirmatively warn a complainant that consequences could potentially result from making misrepresentations or a false report. This does not preclude officers from explaining the potential consequences of false reports to complainants if the officer is specifically asked about this.
- 5.1.6 Although there are complaints against officers that are legitimate and based upon facts, others are contrived and maliciously pursued, often with the intent to mitigate or neutralize the officer's legal action taken against the complainant. The law enforcement agency must fully and impartially investigate the former, while taking a strong stand to minimize the latter. The law enforcement agency should notify the County Prosecutor in any case where a complainant has fabricated or intentionally misrepresented material facts to initiate a complaint of officer misconduct.
- 5.1.7 Anonymous reports of improper conduct by an officer shall be accepted. All efforts will be made to encourage full cooperation by the complainant. The investigation of anonymous complaints can be troublesome. However, accurate information about officer wrongdoing may be provided by someone who, for any number of reasons, does not want to be identified. Therefore, an anonymous report must be accepted and investigated as fully as possible. In the event an agency receives an anonymous complaint, the officer accepting it should complete as much of the internal affairs report form as he or she can given the information received.
- 5.1.8 Complaints against a law enforcement executive, or a member of the executive's senior management team, may originate from a member of the public or from an employee of the agency. All such complaints shall be documented and referred to the County Prosecutor for review. If the subject of the Internal Affairs investigation is the Police Chief, Police Director, Sheriff or Head of Internal Affairs, the County Prosecutor or the Attorney General's Office shall handle the investigation. The investigation may involve any type of alleged employee misconduct, as described in Section 4.1.3, and shall be conducted pursuant to Section 6 (Investigation of Internal Complaints). At the conclusion of the investigation, the internal

affairs investigator and/or the investigating agency shall make factual findings, summarize the matter, and indicate the appropriate disposition (Sustained, Unfounded, Exonerated, or Not Sustained) as to each allegation of misconduct. See Sections 6.2.3, 6.3.9. In cases involving Police Chiefs, final dispositions and recommendations shall be forwarded to the appropriate authority. While the appropriate authority must make the final decision regarding discipline, the County Prosecutor may make a non-binding recommendation regarding the discipline to be imposed by the appropriate authority. The County Prosecutor or the Attorney General's Office also may determine that it is appropriate to handle other internal affairs investigations of high-level officials in their discretion.

- 5.1.9 Complaints may also be received from other law enforcement agencies, such as neighboring municipal police agencies, the County Prosecutors, the Division of Criminal Justice or federal law enforcement agencies. Those complaints should be forwarded to internal affairs for immediate investigation. In some jurisdictions, law enforcement agencies may be subject to the oversight of a civilian review board authorized to accept complaints directly from members of the public. If a civilian review board refers a complaint to a law enforcement agency, then those complaints should be forwarded to internal affairs for immediate investigation.
- 5.1.10 If a person comes to a particular law enforcement agency to make a complaint about a member of another law enforcement agency, he or she should be referred to that agency. The complainant should also be advised that if they have fear or concerns about making the complaint directly to the agency, they may instead file a complaint with the County Prosecutor or the Attorney General's Office.
- 5.1.11 All complaints should be investigated if the complaint contains sufficient factual information to warrant an investigation. In cases where the officer's identity is unknown, the internal affairs investigator should use all available means to determine proper identification. Where civil litigation has been filed and the complainant is a party to or a principal witness in the litigation, the internal affairs investigator shall consult with legal counsel to determine whether an investigation is appropriate or warranted.
- 5.1.12 In some cases, a complaint is based on a misunderstanding of accepted law enforcement practices or the officer's duties. Supervisors should be authorized to informally resolve minor complaints, whenever possible, at the time the report is made. If the complainant is not satisfied with such a resolution, the complaint should be forwarded to internal affairs for further action as warranted. The process of informally resolving internal affairs complaints requires the exercise of discretion by supervisors. The proper exercise of discretion in such matters cannot be codified.
- 5.1.13 Even if the complainant is satisfied with the informal resolution, the process should be recorded on an internal affairs report form. Regardless of the means of resolution, the integrity of the internal affairs process, particularly the receipt of complaints, demands that complaints and inquiries from any member of the public be uniformly documented for

future reference and tracking. The form should indicate that the matter was resolved to the satisfaction of the complainant and sent to internal affairs for review and filing. The internal affairs supervisor should periodically audit those reports indicating that the complaint was informally resolved to ensure that the agency's supervisors are properly implementing their authority to resolve complaints from members of the public.

- 5.1.14 Once a complaint has been received, the subject officer shall be notified in writing that a report has been made and that an investigation will commence. This notification is not necessary if doing so would impede the investigation. An example of a notification form is found in Appendix F.

5.2 Immediate Suspension Pending Investigation and Disposition

- 5.2.1 In certain serious cases of officer misconduct, the agency may need to suspend the subject officer pending the outcome of the investigation and subsequent administrative or criminal charges. To effect an immediate suspension pending the investigation, at least one of the following conditions must be met:

- (a) The employee is unfit for duty;
- (b) The employee is a hazard to any person if permitted to remain on the job;
- (c) An immediate suspension is necessary to maintain safety, health, order, or effective direction of public services;
- (d) The employee has been formally charged with a first, second or third degree crime;
or
- (e) The employee has been formally charged with a first, second, third or fourth degree crime or a disorderly persons offense committed while on duty, or the act touches upon their employment.

- 5.2.2 Before the immediate suspension of an officer, the law enforcement executive or authorized person should determine which of those criteria apply. The decision whether or not to continue to pay an officer who has been suspended pending the outcome of the investigation rests with the law enforcement executive and appropriate authority, who should carefully consider all ramifications of these choices.

- 5.2.3 It should be clear that the suspension of an officer before completing an investigation or disposing of a case is a serious matter. Such suspensions may be immediately necessary, as in the case of an officer reporting for work under the influence of alcohol. In other cases, however, a suspension need not be immediate but rather would follow a preliminary investigation into the matter that indicates that one of the above criteria has been met. In any case, suspension prior to disposing of the case must be clearly documented and justified. At the time of the suspension, the individual shall be provided with a written statement of the reasons the action has been taken. In the event of a refusal by the individual to accept that written statement, a copy shall be provided to the individual's

collective bargaining representative as soon as possible. If a supervisor or commander authorized to do so imposes an immediate suspension, the law enforcement executive must be advised without delay. He or she will then determine the status of the suspension given the facts of the case in light of the above criteria. In no case shall an immediate suspension be used as a punitive measure.

6 Investigation of Internal Complaints

6.0.1 All allegations of officer misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion.

6.1 Time Limitations

6.1.1 It is vitally important that agencies complete internal affairs investigations in a prompt manner. Long, unnecessary delays do not simply create additional uncertainty for the subject officer; they can also threaten the integrity of an investigation and the trust of the community.

6.1.2 Most internal affairs complaints are straightforward, and most of these routine complaints can be investigated and resolved quickly. In many cases, an internal affairs investigation will take no more than 45 days from the receipt of the complaint to the filing of disciplinary charges. The simpler the case, the quicker the inquiry should be completed.

6.1.3 In more complex matters, however, investigators sometimes need additional time to collect evidence, interview witnesses, or take other necessary investigative steps. In addition, when an officer's alleged conduct gives rise to a criminal investigation, ordinarily, internal affairs investigators should stay their own inquiry pending the resolution of the criminal matter.

6.1.4 If investigators are unable to complete an internal affairs investigation within 45 days of receiving a complaint, they must notify the agency's law enforcement executive on or about the 45th day.³ In such situations, the law enforcement executive should seek to identify the reasons for the extended investigation and whether the internal affairs function requires additional resources or oversight to complete the inquiry in a prompt manner. In addition, the law enforcement executive should ensure compliance with the "45-day rule" established by N.J.S.A. 40A:14-147, which requires that certain disciplinary charges be filed within 45 days of the date the person filing the charge obtained "sufficient information" to do so.

6.1.5 Investigators are required to provide further notice to the law enforcement executive every additional 45 days that the internal affairs investigation remains open (*i.e.*, on or about the 90th, 135th, and 180th days from the receipt of the complaint), and the law enforcement executive should exercise increasing scrutiny of the investigators' work the longer the case remains open.

³ The purpose of this notice is to facilitate prompt resolution of internal affairs investigations, not to create an impediment to discipline in cases that take longer to resolve.

6.1.6 In the rare cases where the agency has not filed disciplinary charges (or decided not to do so) within 180 days of receipt of the complaint, the agency must notify the County Prosecutor. The County Prosecutor, or their designee, shall investigate the reasons for the extended investigation and shall also examine whether the agency's internal affairs function faces any systemic issues that require additional resources or oversight. The County Prosecutor may take any steps necessary to ensure prompt resolution of the pending matter, including supersession of the agency's investigation. The agency shall provide further notice to the County Prosecutor every additional 90 days that the investigation remains open (*i.e.*, on or about the 270th and 360th days from the receipt of the complaint). The chart in Figure 1 provides an overview of that information.

Figure 1.

Timing of Internal Affairs Investigations	
Length of investigation from receipt of complaint	Special notice required
1 to 44 days ("Routine")	None. Case resolved in the ordinary course.
45 days ("More complex")	Law enforcement executive
90 days	Law enforcement executive
135 days	Law enforcement executive
180 days ("Rare cases")	County Prosecutor Law enforcement executive
225 days	Law enforcement executive
270 days	County Prosecutor Law enforcement executive

6.1.7 The law enforcement executive should consult with counsel about compliance with the 45-day rule, which includes several exceptions and tolling provisions. For example, the "45-day rule" does not apply to internal affairs investigations alleging incapacity. In addition, members of the public are not required to make their complaint within 45 days of the incident. But once the agency has received the individual's complaint, the 45-day rule applies.

6.1.8 Commencing a criminal investigation into the subject matter of an internal affairs complaint will suspend the 45-day rule pending the disposition of that investigation; such suspension remains until the disposition of the criminal investigation. (Similarly, a criminal investigation will toll the notice requirements established in Sections 6.1.4 – 6.1.6.) Upon disposition of the criminal investigation, agencies will once again be bound by the 45-day rule, with the 45-day period starting anew upon termination of the criminal investigation.

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Therefore, in the event a County Prosecutor has initiated a criminal investigation of an internal affairs matter, the internal affairs function must remain in contact with the County Prosecutor on a regular basis to determine the investigation's progress. Where a County Prosecutor has decided to terminate a criminal investigation and return the matter to the agency for appropriate disciplinary action, the internal affairs investigator and County Prosecutor must be able to document the date on which the County Prosecutor disposed of the criminal investigation.

- 6.1.9 When an agency can conduct an internal affairs investigation and file disciplinary charges within 45 days of the receipt of a complaint, the 45-day rule does not become an issue. In many instances this will be possible. However, if an agency cannot do so, the burden is on the investigator and ultimately the agency to identify the point at which "sufficient information" was developed to initiate disciplinary action. Therefore, it is important that a detailed chronology be maintained of each investigation so that critical actions and decisions are documented.
- 6.1.10 Along these same lines, it is important that there is no unreasonable delay between the conclusion of the investigation by the assigned investigator and the decision to file charges by the person who has that responsibility. Although the 45-day clock begins at the time the person who has the responsibility to file charges has sufficient information, an agency would have a difficult time justifying an extensive bureaucratic delay once any member of that agency has established sufficient information. The need to eliminate bureaucratic delay is one of the reasons that the internal affairs function should be closely aligned with the office of the law enforcement executive in the agency's organizational structure.
- 6.1.11 In addition, all agencies must comply with the time limitations established by N.J.S.A. 40A:14-200 et seq. regarding the imposition of discipline. Lastly, agencies operating under the purview of Title 11A must comply with the deadlines for disciplinary action imposed by Civil Service Commission Rules. *See N.J.A.C. 4A:1-1.1, et seq.*

6.2 Investigation and Adjudication of Minor Complaints

- 6.2.1 Following the principle that the primary goal of internal affairs and discipline is to correct problems and improve performance, management in the subject officer's chain of command should handle relatively minor complaints. Complaints of demeanor and minor rule infractions should be forwarded to the supervisor of the subject officer's unit because it is often difficult for an immediate supervisor to objectively investigate a subordinate. In addition, that arrangement might obscure the possibility that part of the inappropriate conduct was the result of poor supervision. While the structure of each law enforcement agency is different, it is recommended that minor complaints be assigned to and handled by a commanding officer at least one step removed from the officer's immediate supervisor. Often Human Resources may need to be notified and involved.

- 6.2.2 Supervisors investigating minor complaints of inappropriate behavior must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer. Accordingly, all officers who may be called upon to do an internal investigation must be thoroughly familiar with the agency's entire internal affairs policy, including the protection of the subject officer's rights and the procedures for properly investigating internal complaints.
- 6.2.3 The investigator should interview the complainant, all witnesses and the subject officer, and review relevant reports and documents, gather evidence and conduct any other investigation as appropriate. The investigator should then submit a report to the law enforcement executive or appropriate supervisor summarizing the matter and indicating the appropriate disposition. Possible dispositions include:
- (a) *Sustained*. A preponderance of the evidence shows an officer violated any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training.
 - (b) *Unfounded*. A preponderance of the evidence shows that the alleged misconduct did not occur.
 - (c) *Exonerated*. A preponderance of the evidence shows the alleged conduct did occur, but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training.
 - (d) *Not Sustained*. The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
- 6.2.4 If the investigator determines that the complaint is unfounded, exonerated or not sustained, the investigative report is to be forwarded to internal affairs for review and entry in the index file and filing. The subject officer shall be notified in writing of the investigation's outcome.
- 6.2.5 If the complaint is sustained, the superior officer so authorized should determine the appropriate disciplinary action. Typical disciplinary actions for minor infractions include performance notices, oral reprimands or written reprimands. The superior officer shall complete the appropriate disciplinary document and provide a copy of that document to the officer being disciplined. A copy of the disciplinary document shall be forwarded to the law enforcement executive or appropriate supervisor for review, placed in the officer's personnel file and sent to internal affairs for entry into the index file and filing.
- 6.2.6 Each agency should establish its own protocol for reviewing and purging performance notices and oral reprimands from an employee's personnel file. Written reprimands should remain permanently in the employee's personnel file.

6.2.7 A letter shall be sent to the complainant explaining the outcome of the investigation. If the allegation was unfounded or the officer was exonerated, this conclusion shall be stated and defined for the civilian complainant. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc.). If the allegation was sustained and discipline was imposed, the letter shall state that the allegation was sustained and that the officer has been disciplined according to agency procedures. *See Appendix K.*

6.3 Investigation and Adjudication of Serious Complaints

6.3.1 All serious complaints shall be forwarded to the internal affairs function. This includes complaints of criminal activity, excessive force, improper or unjust arrest, improper entry, improper or unjustified search, differential treatment, serious rule infractions and repeated minor rule infractions.

6.3.2 Unless otherwise directed to do so by the County Prosecutor, the prosecutor's office must be immediately notified of all allegations of criminal conduct. The internal affairs investigator shall refrain from taking any further investigative action until directed to do so by the County Prosecutor unless an imminent threat exists to the safety or welfare of an individual. Once a complaint has been forwarded to the prosecutor's office, that office shall endeavor to review the allegation within 30 days and advise the law enforcement agency whether a criminal investigation will be conducted. In the event the prosecutor's office cannot reach a decision within the initial 30 day period, the deadline may be extended in 30 day increments at the discretion of the County Prosecutor. The law enforcement agency shall be advised of any extensions of the deadline.

6.3.3 If a criminal investigation is initiated, the law enforcement agency shall receive periodic and timely updates concerning the course of the investigation. While a criminal investigation is pending, complainants and witnesses may be referred by the law enforcement agency to the county victim witness office for information concerning the criminal investigation. Once the criminal investigation is complete and a disposition of the allegation has been made, the prosecutor's office shall provide the law enforcement agency with its investigative file for use in the internal affairs investigation subject to applicable state statutes, court rules and case law. If the prosecutor's office declines to initiate a criminal investigation or the investigation is administratively closed, it shall notify the law enforcement agency of the outcome in writing.

6.3.4 As for administrative complaints, the internal affairs supervisor or law enforcement executive will direct that an internal affairs investigator conduct an appropriate investigation. Investigators must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer. Internal affairs investigators, and anyone who may be called upon to do an internal investigation, must be thoroughly familiar with the agency's entire internal affairs policy,

including the protection of the subject officer's rights and the procedures for properly investigating internal complaints.

- 6.3.5 Internal affairs shall notify the suspect officer in writing that an internal investigation has been started, unless the nature of the investigation requires secrecy. The internal affairs investigator should interview the complainant, all witnesses and the subject officer, review relevant reports and documents, and obtain necessary information and materials.
- 6.3.6 If an officer subject to an administrative investigation has a good-faith basis to question the impartiality or independence of the investigation, then they may report their concerns to the County Prosecutor. Law enforcement officers employed by a County Prosecutor's Office or the Division of Criminal Justice may report concerns to the Office of Public Integrity & Accountability (OPIA). The County Prosecutor may, within their discretion, conduct their own review of the internal affairs investigation and determine whether any further action is warranted, including potential reassignment of the investigation to a different entity.
- 6.3.7 An administrative investigation may commence with the disposition of a complaint against the subject officer by the Superior Court or a municipal court. In the alternative, an administrative investigation may commence with a county or municipal prosecutor's decision to dismiss a complaint against a subject officer. A finding of guilt by the Superior Court or a municipal court may assist in resolving an administrative investigation because such a finding requires proof beyond a reasonable doubt, which is more than is required to meet the burden of proof in administrative matters.
- 6.3.8 A disposition that does not involve a finding of guilt by the courts or where a complaint is dismissed by a county or municipal prosecutor means that proof beyond a reasonable doubt has not been found. However, it does not mean that an administrative investigation cannot be pursued or should be closed. The absence of proof beyond a reasonable doubt does not foreclose the possibility that an investigation may reveal evidence that meets the burden of proof in administrative matters. Thus, the internal affairs investigator must continue the administrative investigation to determine whether evidence exists or can be developed that meets the "preponderance of the evidence" burden of proof for administrative proceedings. Under no circumstances shall an internal affairs administrative investigation be closed merely because a criminal investigation was declined or terminated. In all cases where an investigation is returned to internal affairs because the prosecutor declined or terminated the criminal investigation, internal affairs shall inform the County Prosecutor as to the disposition of the complaint, including any discipline imposed, once the administrative investigation is completed.
- 6.3.9 Upon completing the investigation, the internal affairs investigator will recommend dispositions for each allegation through the chain of command to the law enforcement executive. As previously described, these dispositions may include exonerated, sustained,

not sustained or unfounded. Each level of review may provide written recommendations and include comment for consideration by the law enforcement executive.

- 6.3.10 The law enforcement executive, upon reviewing the report, supporting documentation and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate. If the complaint is unfounded or not sustained or the subject officer is exonerated, the disposition shall be entered in the index file and the report filed. The determination must remain within the discretion of the law enforcement executive.
- 6.3.11 If the complaint is sustained and it is determined that formal charges should be made, the law enforcement executive will direct either internal affairs or the appropriate commanding officer to prepare, sign and serve charges upon the subject officer or employee. The individual assigned shall prepare the formal notice of charges and hearing on the charging form. This form will also be served upon the officer charged in accordance with N.J.S.A. 40A:14-147. An example of a charging form is in Appendix N.
- 6.3.12 The notice of charges and hearing shall direct that the subject officer may: (1) enter a plea of guilty to the charges; (2) enter a plea of not guilty to the charges; or (3) waive their right to a hearing. If the officer enters a plea of guilty or waives their right to a hearing, he or she is permitted to present mitigating factors prior to being assessed a penalty. Conclusions of fact and the penalty imposed will be noted in the officer's personnel file after he or she has been given an opportunity to read and sign it. Internal affairs will cause the penalty to be carried out and complete all required forms.
- 6.3.13 If the subject officer enters a plea of not guilty and requests a hearing, the law enforcement executive will set the date for the hearing as provided by statute and arrange for the hearing of the charges. Internal affairs may assist the assigned supervisor or prosecutor in preparing the agency's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.
- 6.3.14 The hearing shall be held before the designated hearing officer. The hearing officer shall recommend a disposition of the charges, including modifying the charges in any manner deemed appropriate. The decision of the hearing officer must be in writing and should be accompanied by findings of fact for each issue in the case.
- 6.3.15 If the hearing officer finds that the complaint against the officer is sustained by a preponderance of the evidence, he or she should recommend any of the penalties which he or she deems appropriate under the circumstances and within the limitations of state statutes and the agency's disciplinary system.
- 6.3.16 A copy of the decision and accompanying findings and conclusions shall be delivered to the officer or employee who was the subject of the hearing and to the law enforcement executive (if he or she was not the hearing officer) for the imposition of discipline. Upon

completion of the hearing, internal affairs will complete all required forms (Civil Service Commission jurisdictions use the Final Notice of Disciplinary Action form DPF-31C), including the entry of the disposition in the index file. If the charges were sustained, internal affairs will cause the penalty to be carried out. Documentation of the charge and the discipline shall be permanently placed in the officer's or employee's personnel file.

- 6.3.17 Upon final disposition of the complaint, in cases where the officer was not notified of the outcome through some written form of discipline, the officer shall be notified of the outcome of the case through a written internal agency communication.
- 6.3.18 In all cases, a letter shall be sent to the complainant explaining the outcome of the investigation. If the allegation was unfounded or the officer was exonerated, this conclusion shall be stated and defined for the civilian complainant. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc.). If the allegation was sustained and discipline was imposed, the letter shall state that the allegation was sustained and that the officer has been disciplined according to agency procedures.

6.4 Domestic Violence Incidents Involving Agency Personnel

- 6.4.1 Law enforcement personnel may become involved in domestic violence incidents. It is important to the integrity of the agency, the safety of the victim and the career of the officer that such matters are handled appropriately. Thus, it is imperative that every law enforcement agency establish a policy for investigating and resolving domestic violence complaints involving its employees. A sample policy is in Appendix Q.
- 6.4.2 Whenever an officer is involved in a domestic violence incident, either as an alleged perpetrator or as a victim, internal affairs must be promptly notified. Where the officer was the alleged perpetrator, investigating officers must seize their service weapon or any other weapon possessed, as mandated by AG Directives 2000-3 and 2000-4. The directives are in Appendix R.
- 6.4.3 Every law enforcement agency should promulgate a rule which requires any officer or employee to notify the agency if he or she has been charged with an offense, received a motor vehicle summons or been involved in a domestic violence incident. In cases of domestic violence, the investigating agency should also notify the employing agency's internal affairs investigators as soon as possible.
- 6.4.4 The primary responsibility for investigating the domestic violence incident itself, along with any related offenses, belongs to the agency with jurisdiction over the incident. The processing of domestic violence complaints, restraining orders, criminal complaints, etc., will remain with that agency. In many cases, this will not be the officer's employing agency.

- 6.4.5 The employing agency's internal affairs officers will be responsible for receiving the information and documenting the matter as they would any other misconduct allegation. If the report is that the officer is the victim of domestic violence, it should still be recorded and followed up in case employee assistance is warranted.
- 6.4.6 If a criminal charge has been filed, internal affairs must notify the County Prosecutor immediately even if the incident took place in another county. As the chief law enforcement officer of the county, it is critical that a prosecutor be made aware of any outstanding criminal charges against any law enforcement officer in their county.
- 6.4.7 Internal affairs is responsible for reviewing the incident's investigation and conducting whatever further investigation is necessary to determine if the officer violated agency rules and regulations or if the officer's fitness for duty is in question. In addition, internal affairs will track the proceedings of any criminal charges or civil matters that may arise out of the incident. Internal affairs will also work with the Division of Criminal Justice or the County Prosecutor to determine if and when an officer may have their weapon(s) returned.

7 Internal Affairs Investigation Procedures

- 7.0.1 Only after a thorough and impartial investigation can an informed decision be made as to a complainant's proper disposition. Decisions based upon such an investigation will support the credibility of the agency both among its ranks and the public at large.
- 7.0.2 As with all other investigations, lawful procedures must be used to gather all evidence pertaining to allegations against a law enforcement officer. Investigations for internal disciplinary or administrative purposes involve fewer legal restrictions than criminal investigations.
- 7.0.3 Restrictions that do exist, however, must be recognized and followed. Failure to do so may result in improperly gathered evidence being deemed inadmissible in court. Restrictions that apply to internal affairs investigations may have their basis in state statutes, case law, collective bargaining agreements, local ordinances, Civil Service Commission rules or agency rules and regulations. Internal affairs investigators shall familiarize themselves with all of these provisions.
- 7.0.4 Complaints must be professionally, objectively and expeditiously investigated in order to gather all information necessary to arrive at a proper disposition. It is important to document complainants' concerns, even those that appear to be unfounded or frivolous. If such complaints are not documented or handled appropriately, public dissatisfaction will grow, fostering a general impression of agency insensitivity to community concerns.
- 7.0.5 The internal affairs investigator may use any lawful investigative techniques including inspecting public records, questioning witnesses, interviewing the subject officer, questioning agency employees and surveillance. The investigator therefore must understand the use and limitations of such techniques.
- 7.0.6 It is generally recommended that the complainant and other lay witnesses be interviewed prior to interviewing sworn members of the agency. This will often eliminate the need to do repeated interviews with agency members. However, this procedure does not have to be strictly adhered to if circumstances and the nature of the investigation dictate otherwise.

7.1 Interviewing the Complainant and Civilian Witnesses

- 7.1.1 The investigator assigned an internal investigations case should initially outline the case to determine the best investigative approach and identify those interviews immediately necessary. The investigator should determine if any pending court action or ongoing criminal investigation might delay or impact upon the case at hand. If it appears that the conduct under investigation may have violated the law or the investigation involves the

officer's use of force that resulted in serious bodily injury or death, the County Prosecutor shall be immediately notified of the internal affairs investigation.

- 7.1.2 If the investigation involves a criminal charge against the complainant, an initial interview should be conducted with the complainant. However, the investigator must realize that the complainant is simultaneously a criminal defendant arising out of the same incident and must be accorded all of the appropriate protections. Thus, all further contact with the complainant should be arranged with and coordinated through the County Prosecutor and the complainant's defense attorney.
- 7.1.3 The complainant should be personally interviewed if circumstances permit. If the complainant cannot travel to the investigator's office, the investigator should conduct the interview at the complainant's home or place of employment if feasible. If not, a telephonic interview may be conducted. All relevant identifying information concerning the complainant should be recorded, e.g., name (unless the complainant wishes to remain anonymous), complete address, telephone numbers and area codes, race or ethnic identity, sex, date of birth, place of employment, social security number if necessary and place of employment (name and address). The investigator should grant reasonable requests for accommodations to protect the complainant's identity, such as meeting the complainant at a place other than the investigator's office if the complainant's identity cannot be kept confidential at that location.
- 7.1.4 All relevant facts known to the complainant should be obtained during the interview. An effort should be made to obtain a formal statement from the complainant at the initial interview. Whenever possible, all witnesses to the matter under investigation should be personally interviewed and formal statements taken.
- 7.1.5 When taking a formal statement from a civilian, the investigator shall video- or audio-record the statement according to the same protocols that would apply if the civilian were being interviewed in connection with a criminal investigation. If a witness objects to the recording of the interview, the investigator may proceed with the interview without recording, but must document in writing the reasons for doing so.
- 7.1.6 When taking a formal statement from an officer, the investigator shall video- and audio-record the statement, except that in cases that did not arise from a civilian complaint, the investigator need not record the statement unless the officer being interviewed requests such.

7.2 Reports, Records and Other Documents

- 7.2.1 All relevant reports should be obtained and preserved as expeditiously as possible. Internal agency reports relating to a subject officer's duties should be examined. Examples of such

reports include arrest and investigative reports, and radio, patrol, vehicle and evidence logs pertaining to or completed by the officer.

- 7.2.2 The investigator should also examine and retrieve all electronic, computer, digital and video records. These may include analog and digital records created by radio and telephone recorders, computer aided dispatch systems, mobile data terminals, in-car video systems, video surveillance systems and other forms of audio and video recording. In these cases, the relevant data should be copied to an appropriate medium as soon as possible and retained by internal affairs.
- 7.2.3 Records and documents of any other individual or entity that could prove helpful in the investigation should be examined. These may include reports from other law enforcement agencies, hospital records, doctors' reports, jail records, court transcripts, F.B.I. or S.B.I. records, motor vehicle abstracts and telephone and cellular phone records. In some instances, a search or communications data warrant or a subpoena may be necessary to obtain the information.

7.3 Physical Evidence

- 7.3.1 Investigators should obtain all relevant physical evidence. All evidence, such as fingerprints, clothing, hair or fabric fibers, bodily fluids, stains and weapons should be handled according to established evidence procedures.
- 7.3.2 With respect to radio and telephone recordings, the original recording is the best evidence and should be secured at the investigation's outset. Transcripts or copies of the original recordings can be used as investigative leads. Entire tapes or transmissions should be reviewed to reveal the totality of the circumstances.

7.4 Photographs

- 7.4.1 Photographs and video recording tapes can be useful tools if relevant to the investigation. If a complaint involves excessive use of force, photographs of the complainant and the officer should be taken as close as possible to the time of the incident. Photographs also can be used to create a record of any other matter the investigator believes is necessary. Whenever possible, digital color photography should be used.
- 7.4.2 The law enforcement agency should maintain a recent photograph of each officer. These can be used if a photo array is needed for identification purposes. If a photo array is used, it must be properly retained for possible evidentiary purposes.

7.5 Physical Tests

7.5.1 Police officers who are the subjects of internal investigations may be compelled to submit to various physical tests or procedures to gather evidence.

7.5.2 N.J.R.E. 503(a) states that "no person has the privilege to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics or his physical or mental condition." Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:

- (a) Breath sample;
- (b) Blood sample;
- (c) Buccal swab;
- (d) Requiring suspect to speak;
- (e) Voice recordings;
- (f) Participation in a lineup;
- (g) Handwriting samples;
- (h) Hair and saliva samples;
- (i) Urine specimens;
- (j) Video recording; and
- (k) Field sobriety tests.

7.5.3 For internal affairs investigations that may result in a criminal prosecution, physical tests should be conducted pursuant to a court order or an investigative detention under Rule 3:5A. Officers that refuse to perform or participate in a court-ordered physical test may be subject to a contempt of court sanction and agency discipline for failing to comply with the order.

7.5.4 For internal affairs investigations that may result in an administrative disciplinary proceeding, the internal affairs investigator or the appropriate supervisor may order subject officers to perform or participate in a physical test. The order must be reasonable and relevant to the investigation at hand. Officers that refuse to perform or participate in a lawfully ordered physical test can be disciplined for their refusal.

7.6 Drug Testing

7.6.1 The testing of law enforcement officers in New Jersey for the illegal use of drugs is strictly regulated by the Attorney General's Law Enforcement Drug Testing Policy. This policy permits the testing of applicants and trainees for law enforcement positions. It further specifies that veteran law enforcement officers may be tested for drugs if reasonable suspicion exists that they are using drugs or if they have been chosen as part of a random drug testing program. In any case, drug testing is done through an analysis of urine samples by the State Toxicology Laboratory within the Department of Health.

7.6.2 The Attorney General's Law Enforcement Drug Testing Policy identifies specific responsibilities that may be assigned to internal affairs. These include the collection of specimens, the establishment of a chain of custody and the maintenance of drug testing records. Every officer assigned to internal affairs should be familiar with the Attorney General's Law Enforcement Drug Testing Policy.

7.7 Polygraph

7.7.1 N.J.S.A. 2C:40A-1 states that an employer shall not influence, request or require an employee to take or submit to a lie detector test as a condition of employment or continued employment. To do so constitutes a disorderly persons offense. Therefore, a law enforcement officer should never be asked to take a polygraph examination as part of an internal affairs investigation. The investigator should not even suggest to the officer that a polygraph examination would be appropriate or that it "might clear this whole thing up." However, the subject officer may voluntarily request to take a polygraph examination.

7.7.2 Polygraph tests of civilian complainants and witnesses should only be used when a reasonable suspicion exists that their statements are false. Polygraph examinations should not be used routinely in internal affairs investigations. Under no circumstances should polygraph examinations be used to discourage or dissuade complainants. In addition, a victim of sexual assault cannot be asked or required to submit to a polygraph examination.

7.8 Search and Seizure

7.8.1 All people, including police officers, have a Fourth Amendment right to be free from unreasonable searches and seizures. In an internal affairs investigation, the Fourth Amendment applies to any search the employing agency undertakes. The internal affairs investigator must be cognizant of the various principles governing search and seizure, particularly where the investigator will conduct a search as part of a criminal investigation or will search personal property belonging to the subject officer.

7.8.2 Criminal investigations generally require the investigator to obtain a search warrant to conduct a search. Search warrants require probable cause to believe that the search will reveal evidence of a crime. In internal affairs investigations, a search warrant should be obtained before a search is conducted of a subject officer's personal property, including any home, personal car, bank accounts, safety deposit boxes, briefcases, etc. A warrant also may be necessary where a search of the subject officer's workplace is conducted and it is determined that the officer has a high expectation of privacy in the place to be searched. The internal affairs investigator should consult with the County Prosecutor's Office before undertaking the search of any workplace area in a criminal investigation.

- 7.8.3 The law is somewhat less restrictive as to searches conducted during an administrative investigation. While it appears that an employing agency does not need a warrant to conduct a search during an administrative investigation, the investigator should exercise great care when searching property or items in which the subject officer has a high expectation of privacy. Internal affairs investigators should document their reasons for conducting the search and limit its intrusiveness. If any doubts or concerns exist about the propriety or legality of a search, the investigator should seek advice from legal counsel before proceeding with the search.
- 7.8.4 During either administrative or criminal investigations, generally workplace areas may be searched without a warrant. The critical question is whether the public employee has a reasonable expectation of privacy in the area or property the investigator wants to search. The determination of this expectation must be decided on a case-by-case basis. There are some areas in a person's workplace where this privacy expectation can exist just as there are some where it does not. Areas that several employees share or where numerous employees go to utilize files or equipment would present no expectation, or a diminished expectation, of privacy. Included here would be squad rooms, lobby areas, dispatch areas, government- provided vehicles (patrol cars), general filing cabinets, etc.
- 7.8.5 However, employees may have a greater expectation of privacy in their own lockers, assigned desks or possibly in a vehicle assigned to them solely for their use. If an agency intends to retain the right to search property it assigns to officers for their use, including lockers and desks, it should put officers on notice of that fact. This notification will help defeat an assertion of an expectation of privacy in the assigned property. The agency should issue a directive regarding this matter and provide notice of the policy in any employee handbook or personnel manual (including the rules and regulations) the agency provides. Notice should also be posted in the locker area and on any bulletin boards. The following is a sample of what such a notice should contain:
- The agency may assign to its members and employees agency-owned vehicles, lockers, desks, cabinets, etc., for the mutual convenience of the agency and its personnel. Such equipment is and remains the property of the agency. Personnel are reminded that storage of personal items in this property is at the employee's own risk. This property is subject to entry and inspection without notice.*
- 7.8.6 In addition, if the agency permits officers to use personally owned locks on assigned lockers and other property, it should be conditioned on the officer providing the agency with a duplicate key or the lock combination.
- 7.8.7 With the introduction of new technologies in law enforcement, it may become necessary to search computers and cell phones or other digital devices, (hereafter "devices"), and seize their contents. The critical question remains whether the public employee has a reasonable expectation of privacy in information stored in a device. While the determination of a

reasonable expectation of privacy must be decided on a case-by-case basis, the law enforcement agency should take steps to actively and affirmatively diminish this expectation. The agency should state, in writing, that it retains the right to enter and review the contents of any agency-issued device at any time. This notice may be worded as follows:

The agency may assign to its members and employees agency-owned electronic devices, including computers and smartphones, for business purposes. Such equipment and its contents are and remain the property of the agency. Personnel are prohibited from installing unauthorized software and from storing personal information in the device, regardless of any password protection or encryption. The devices, their contents, and any email or electronic correspondence originating from or arriving at the device are the property of the agency and are subject to entry and inspection without notice.

- 7.8.8 The courts routinely examine agency practice in evaluating the expectation of privacy. Written notification thus would quickly be nullified if representatives of the agency never entered or inspected any of these areas. In addition to notifying employees of the agency's right to search and inspect, the agency should also, with some regularity, inspect these areas to establish the practice coinciding with the policy. Any search of agency or personal property should be conducted in the presence of the subject officer and a property control officer.
- 7.8.9 A voluntary consent to a search may preclude some Fourth Amendment problems. A consent search eliminates the need to determine what threshold standard must be met before conducting the search or seizure, either for an administrative or criminal investigation. For consent to be legally valid in New Jersey, a person must be informed that he or she has the right to refuse to permit a search.⁴ If a consent search is undertaken, the internal affairs investigator shall follow standard law enforcement procedures and have the subject officer sign a consent form after being advised of the right to refuse such a search.

7.9 Electronic Surveillance

- 7.9.1 N.J.S.A. 2A:156A-1 et seq. governs the use of electronic surveillance information in New Jersey. This statute specifically covers the areas of:
- (a) *Wire communication*, which essentially means any conversation made over a telephone, N.J.S.A. 2A:156A-2a;
 - (b) *Oral communication*, which means any oral communication uttered by a person who has an expectation that such communication will not be intercepted, N.J.S.A. 2A:156A-2b;

⁴ State v. Johnson, 68 N.J. 349 (1975).

- (c) *Intercept*, which means to acquire the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device, N.J.S.A. 2A:156A- 2c; and
- (d) *Electronic communication*, which means the transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio or other system, N.J.S.A. 2A:156A-2m.

All of these forms of communication are protected from intrusion and interception except under very narrowly defined exceptions.

- 7.9.2 One such exception is when one person in a communication decides to intercept (e.g., record) the conversation. As long as this person is a part of the conversation, such recording is lawful. But if the person stops being a party to the conversation (e.g., he or she walks away from the group or turns the telephone over to someone else), it is no longer lawful for him or her to intercept the conversation.
- 7.9.3 Another exception exists where a person, acting at the direction of an investigative or law enforcement officer, gives prior consent to intercept a wire, electronic or oral communication and is a party to the communication. This "consensual intercept" can only be made after the Attorney General or a County Prosecutor, or their designee, approves it.
- 7.9.4 Pursuant to N.J.S.A. 2A:156A-4b, a law enforcement officer may intercept and record a wire or oral communication using a body transmitter if that officer is a party to the communication or where another officer who is a party requests or requires that such interception be made. Individual departmental or agency policy dictates procedures for such recordings. This kind of law enforcement non-third party intercept can be used during internal affairs investigations.
- 7.9.5 Generally, the use of evidence derived from an authorized wiretap is limited to criminal investigations and prosecutions. Agencies that wish to use wiretap information in a disciplinary proceeding should consult with their County Prosecutor because it may be necessary to obtain a court order to so use it.
- 7.9.6 The monitoring of 9-1-1 telephone lines is required by law. Nothing prohibits the monitoring of other telephones used exclusively for agency business if the agency can demonstrate a regulatory scheme or a specific office practice of which employees have knowledge. In such instances a diminished expectation of privacy exists in the use of these telephones, and monitoring would be acceptable.
- 7.9.7 The New Jersey Wiretap Act applies only to oral, wire and electronic communications. While not specifically covered by this law, reasonable limitations should exist on video surveillance. The primary issue is one of privacy. Video surveillance, especially covert surveillance, should not be used in areas where employees have a high expectation of privacy, such as locker rooms and bathrooms. In public areas, video surveillance may be

used. In many law enforcement agencies, certain areas such as lobbies, cell blocks and sally ports have video surveillance for security reasons. Video obtained from these sources is applicable to internal investigations. Questions about the specific application of video surveillance, especially covert surveillance, should be addressed to the County Prosecutor's Office. It must be emphasized that this refers to video surveillance with no sound recording component.

- 7.9.8 Many law enforcement agencies use in-car video systems, which record the video image from a camera mounted in the car and an audio signal from a microphone worn by the officer. These recordings can be used in internal investigations because the video image is not restricted at all and the officer is a party to the audio portion of the recording at all times.
- 7.9.9 Some agencies equip their patrol vehicles or other vehicles with GPS devices. These devices can locate a vehicle with great accuracy. Information gleaned from these devices may be used in internal affairs investigations because the subject officer has no expectation of privacy in their whereabouts when performing police duties.

7.10 Lineups

- 7.10.1 A law enforcement officer may be ordered to stand in a lineup to be viewed by witnesses or complainants. Probable cause need not exist, and the officer may be disciplined for refusal.⁵
- 7.10.2 The lineup must be constructed so as not to be unfairly suggestive. The same rule applies to photo arrays. See Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures; October 4, 2012, Memorandum and Revised Model Eyewitness Identification Procedure Worksheets.

7.11 Investigation of Firearm Discharges

- 7.11.1 An agency's internal affairs function shall receive notice of any incidents involving:
 - (a) Any firearm discharge by agency personnel, whether on-duty or off-duty, unless the discharge occurred during the course of (1) a law enforcement training exercise; (2) routine target practice at a firing range; (3) a lawful animal hunt; or (4) the humane killing of an injured animal; or
 - (b) Any discharge of an agency-owned firearm by anyone other than agency personnel.
- 7.11.2 Upon receiving notice, the internal affairs function shall determine whether additional investigation is necessary and whether information must be reported to the County

⁵ Biehunik v. Felicetta, 441 F.2d 228 (2d Cir.), cert. denied, 403 U.S. 932 (1971).

Prosecutor and/or OPIA, pursuant to AG Directive 2019-4, also known as the “Independent Prosecutor Directive,” and other state law. If the firearm discharge occurs while the agency employee is on duty, then the County Prosecutor must be notified. If the firearm discharge results in a fatality, the matter shall be investigated by OPIA or another entity pursuant to the Independent Prosecutor Directive.

- 7.11.3 Any public statements by a law enforcement agency about the conduct of law enforcement officers involved in a firearm discharge require approval by the County Prosecutor or the Attorney General’s Office, depending upon which entity is supervising the investigation.
- 7.11.4 Agency law enforcement officers including internal affairs personnel will participate in the initial investigation only if directed to do so by the County Prosecutor, OPIA, or other designee of the Attorney General. In the general course, employees of the same agency as the subject officer shall not participate in the investigation or attend any investigative activities. This does not, however, preclude any officer from acting as a first responder to the scene of a use-of-force incident, helping to secure the scene, or participating in a be-on-the-lookout search or pursuit related to the incident. All officers are also obligated to comply with any orders of recusal that may be issued pursuant to the investigation.
- 7.11.5 No law enforcement officer shall share, either directly or indirectly (i.e., through another person), any information learned in the course of the use-of-force investigation with any witness without authorization. Nor shall any law enforcement officer who was a witness to the use-of-force incident receive any such information from any sworn or civilian employee of a law enforcement agency without first obtaining authorization from the authority in charge of the investigation or their designee. If any law enforcement officer learns of such an unauthorized dissemination or receipt of information, then they must immediately report that to the authority in charge of the investigation or their designee.
- 7.11.6 Officers who are directed to assist with an initial firearm discharge investigation may be required to operate independently of their ordinary chain of command and report directly to the authority in charge of the investigation or their designee. In all such circumstances, officers shall comply with that requirement.
- 7.11.7 In cases where discharge of a firearm does not result in criminal charges, the prosecutor, OPIA, or other designee of the Attorney General will refer the incident back to the agency for an internal affairs administrative review.
- 7.11.8 Officers conducting administrative investigations of firearm discharges must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer. All supervisors and any other officer who may be called upon to participate in a firearm discharge investigation therefore must be thoroughly familiar with the agency’s entire internal affairs policy, including protection of the subject officer’s rights and the procedures for properly investigating firearm discharges. Investigators should review all administrative reports the agency requires. These reports

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should include a description of the incident, the date, time and location of the incident, the type of firearm used, the type of ammunition used and number of rounds fired, the identity of the officer, and any other information a superior officer requests. The involved officer's supervisor must assist the internal affairs investigator as needed.

- 7.11.9 The investigator must consider relevant law, any Attorney General or County Prosecutor policies and guidelines, and agency rules, regulations and policy. In addition to determining if the officer's actions were consistent with agency regulations and policy, the internal affairs investigator should also examine the relevance and sufficiency of these policies. The investigator should also consider any relevant aggravating or mitigating circumstances.
- 7.11.10 The investigation of a shooting by an officer should include photographs, ballistics tests, and interviews with all witnesses, complainants and the officer involved. All firearms should be treated as evidence according to agency procedures. A complete description of the weapon, its make, model, caliber and serial number must be obtained and, if appropriate, N.C.I.C. and S.C.I.C. record checks should be made.
- 7.11.11 In a firearm discharge investigation, the investigator must determine if the weapon was an approved weapon for that officer and if the officer was authorized to possess and carry it at the time of the discharge. The investigator must also determine if the weapon was loaded with authorized ammunition. The weapon must be examined for its general operating condition and to identify any unauthorized alterations made to it.

7.12 Collateral Issues

- 7.12.1 The work of an internal affairs function should not be limited to resolving complaints by narrowly focusing on whether the subject officer engaged in misconduct. In many cases, the examination of collateral issues presented by the complaint can be as important as the resolution of the allegation itself. For example, while investigating an allegation of excessive force during an arrest, the officer's actions in making the arrest may be improper. In such cases, even though the investigation may exonerate the officer of the excessive force allegation, internal affairs must still examine whether the officer should have been effecting the arrest at all.
- 7.12.2 Examining collateral issues can provide the law enforcement agency and its executive officers with information concerning:
 - (a) The utility and effectiveness of the agency's policies and procedures.
 - (b) The competency and skills of individual law enforcement officers.
 - (c) Appropriate topics for in-service training programs.
 - (d) The allocation of resources by the law enforcement agency and other municipal agencies.

7.12.3 The identification and examination of collateral issues is critically important to the internal affairs process. Internal affairs investigators are in the unique position of examining law enforcement operations from the inside. Their insight, if properly used, can be extremely helpful to management. In contrast, the failure to use this resource can deprive the law enforcement agency of the ability to identify and correct problems with personnel and procedures through self-critical analysis. It can also lead to an erosion of community support for the agency. An internal affairs process that is objective and complete is critical to the credibility and reputation of the law enforcement agency within the community.

8 Interviewing Members of the Agency

- 8.0.1 The interview of a police officer as either the subject of an internal affairs investigation or as a witness to an incident that is the subject of such an investigation represents a critical stage in the investigative process. The information gained during such an interview often will go a long way toward resolving the matter, regardless of the outcome.
- 8.0.2 The difficulty in conducting officer interviews, particularly subject officer interviews, is the differing legal principles that apply depending on the nature of the interview and the type of investigation being conducted. For example, a subject officer suspected of criminal conduct will be interviewed in a manner far different than an officer suspected of committing just a disciplinary infraction. A further distinction may be made when the officer to be interviewed is believed to be a witness to either criminal conduct or an administrative infraction.
- 8.0.3 While a police officer has the same constitutional rights as any other person during a criminal investigation, their status as a police officer may create special concerns. For the most part, the internal affairs investigator should utilize the same procedures and apply the same legal principles to the subject officer as he or she would to any other target or suspect in a criminal investigation. However, the internal affairs investigator should recognize that the interview process of a police officer is somewhat different than that of civilians.
- 8.0.4 A police officer has the same duty and obligation to their employer as any other employee. Thus, where an internal affairs investigation is being conducted solely to initiate disciplinary action, the officer has a duty to cooperate during an administrative interview. The officer also must truthfully answer all questions put to him or her during the course of the investigation. Failure to fully cooperate with an administrative investigation and/or to be completely truthful during an administrative interview can form the basis for disciplinary action separate and apart from the allegations under investigation.
- 8.0.5 For the internal affairs investigator, it is critical to distinguish between those investigations involving potential criminal conduct and those limited to administrative disciplinary infractions. The investigator also must be able to identify and apply the appropriate procedures to be utilized during the interview process in either a criminal or an administrative investigation. Failure to identify and apply the appropriate procedures can compromise and render inadmissible evidence gathered during the interview process in a criminal investigation or needlessly complicate the interview process during an administrative investigation.
- 8.0.6 The vast majority of internal affairs investigations will be limited to alleged disciplinary infractions and the vast majority of law enforcement officer interviews conducted during an internal affairs investigation will be limited to gathering evidence of disciplinary

infractions. But in cases of a potential criminal violation, it is absolutely necessary that the internal affairs investigator coordinate officer interviews with the County Prosecutor's Office.

- 8.0.7 Because the County Prosecutor is ultimately responsible for prosecuting criminal cases, the internal affairs investigator shall defer to the prosecutor's supervision and direction in conducting officer interviews. The investigator shall consult with the County Prosecutor prior to initiating an officer interview in matters that could involve criminal conduct, and shall pay particular attention to the County Prosecutor's instructions concerning the types of interviews to be conducted and procedures to be utilized (e.g., *Miranda* warning, *Garrity* warning,⁶ etc.).
- 8.0.8 Police officer interviews during an internal affairs investigation are rendered difficult by the conflict that exists between the officer's right against self-incrimination in criminal interviews and the obligation to answer questions truthfully during an administrative investigation. So while an agency may compel an officer to answer questions posed during the course of an administrative investigation, an officer cannot be forced to give answers that could be used against him or her in a criminal prosecution. Officers who have been compelled by order to produce incriminating information, with the belief that a failure to do so will result in termination or other serious disciplinary action, cannot have that evidence used against them in a criminal prosecution. However, an officer can be compelled to provide answers during an internal affairs investigation if those answers are to be used as evidence only in a disciplinary proceeding.
- 8.0.9 A subject officer who reasonably believes that what he or she might say during an internal affairs interview could be used against him or her in a criminal case cannot ordinarily be disciplined for exercising their *Miranda* rights. However, an officer can be disciplined for refusing to answer questions during an internal affairs interview if he or she has been told that whatever he or she says during the interview will not be used in a criminal case. Informing an officer that their statement will not be used against him or her in a criminal case is called a *Garrity* warning. This warning informs the officer being interviewed that he or she must cooperate with the investigation and can be disciplined for failing to do so because the County Prosecutor has decided to provide the officer with "use immunity."
- 8.0.10 It is for this reason that the internal affairs investigator must continually reassess the nature of an internal affairs investigation as evidence is being gathered. Having initially determined that a particular allegation is criminal or administrative in nature, it is important for the internal affairs investigator to revisit that decision during the course of an investigation to determine whether any of the evidence gathered following the initial determination changes the investigation's nature and scope. If the nature and scope of an investigation change, the investigator must be prepared to change the methods and procedures he or she utilizes to reflect the new focus. For example, if an investigator

⁶ *Garrity v. New Jersey*, 385 U.S. 493 (1967) (coerced statements obtained by threat of removal from office cannot be used in criminal proceedings); see Appendix J.

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initially determines that an allegation appears to be a disciplinary matter but later evidence leads the investigator to conclude that criminal conduct may have occurred, he or she must cease using the methods and procedures appropriate for an administrative investigation and notify the County Prosecutor immediately before proceeding further.

8.1 Overview of Interviews

8.1.1 In the sections that follow, the details of interviewing law enforcement officers in internal matters will be discussed. The chart in Figure 2 provides an overview of that information.

Figure 2.

	Investigation is CRIMINAL	Investigation is ADMINISTRATIVE
Officer is SUBJECT	<ul style="list-style-type: none"> • Prosecutor notification • Treat as any other defendant • <i>Miranda</i> warning if appropriate • No <i>Garrity</i> warning unless prosecutor approves • May require routine business reports • No special reports • Right to counsel (attorney) 	<ul style="list-style-type: none"> • Obligation to cooperate • Administrative interview form • May require special reports • Cannot charge as a subterfuge • Right to representative
Officer is WITNESS	<ul style="list-style-type: none"> • Obligation to cooperate • No <i>Miranda</i> warning • Witness acknowledgement form • May be entitled to a <i>Weingarten</i> representative⁷ 	<ul style="list-style-type: none"> • Obligation to cooperate • Witness acknowledgement form • May be entitled to a <i>Weingarten</i> representative

8.1.2 Serious allegations of officer misconduct may implicate both a violation of a criminal statute and of an agency's rules and regulations. As a result, a criminal investigation and an administrative disciplinary investigation may be needed to properly resolve a misconduct complaint. In general, criminal investigations and administrative investigations should be kept separate to the extent possible, with criminal investigations led by the County Prosecutor's Office preceding internal affairs disciplinary investigations. However, in some cases where both a criminal and an administrative disciplinary investigation are needed, the internal affairs investigator from the subject officer's agency may be expected to help conduct both. Under these circumstances, the methods employed in the criminal investigation conflict with those used in the administrative investigation.

8.1.3 Typically, this conflict will become most apparent during subject officer interviews. As already explained, a subject officer has the right to remain silent during a criminal

⁷ *N.L.R.B. v. Weingarten*, 420 U.S. 251 (1975) (unionized employee who reasonably believes that an investigatory interview may result in disciplinary action against him or her is entitled to union representation).

investigative interview. But the same officer must cooperate and answer questions posed by their employer during an administrative disciplinary interview. So while the internal affairs investigator cannot require a subject officer to answer questions during a criminal interview, he or she can require that officer to answer questions during an administrative disciplinary interview.

- 8.1.4 The confusion caused by these issues can be alleviated several ways. One way is to separate the investigations by time—the criminal investigation is completed first and then the administrative investigation may follow. Another way is to conduct bifurcated investigations. In a bifurcated investigation, the responsibility for a criminal investigation is separated from that for an administrative investigation. Thus, one investigator (typically from the prosecutor's office) is assigned the responsibility of gathering evidence of criminal wrongdoing while a second (typically the internal affairs investigator from the subject officer's agency) is assigned the responsibility of gathering evidence of a disciplinary infraction.
- 8.1.5 With a bifurcated investigation, the internal affairs investigator will not be forced to juggle the roles of criminal and administrative investigator during an internal affairs investigation. This is particularly important during the subject officer interview for three reasons. First, the internal affairs investigator will not be forced to decide whether and when to issue a *Miranda* or a *Garrity* warning during the interview. In a bifurcated investigation, the criminal investigator will be limited to issuing a *Miranda* warning while the administrative investigator will be limited to issuing a *Garrity* warning. Second, by assigning distinct roles to each investigator, there will be no confusion on the part of the subject officer as to the particular interview's purpose. Third, because a bifurcated investigation permits both the criminal and administrative investigations to take place simultaneously, the administrative investigator can be confident that, once the criminal investigation has been completed, the administrative investigation will also be substantially complete. As a result, the subject officer's agency will have no difficulty complying with the 45-day rule under N.J.S.A. 40A:14-147.
- 8.1.6 In all cases where a subject officer is interviewed pursuant to an administrative or criminal investigation, the interview must be audio- or video-recorded by the investigator.

8.2 When the Investigation is Criminal and the Officer Is a Subject

- 8.2.1 Criminal interviews should be conducted only with the prior approval, or at the direction, of the County Prosecutor. Once an investigation becomes criminal in nature, the subject officer shall be advised that he or she is not required to answer questions as a condition of employment. Of course, an officer who is the subject of a criminal investigation may elect to voluntarily answer questions with or without an attorney so that the facts known to him and his perspective are available to the investigators.

- 8.2.2 *Miranda* warnings generally are triggered whenever an individual's questioning is custodial in nature. For custodial interviews, the question is whether a reasonable person would believe that he or she is free to leave. So a subject officer who is not free to leave a criminal interview should be provided a *Miranda* warning. See Appendix I.
- 8.2.3 However, the internal affairs investigator should be aware that other factors may also serve to affect a subject officer's decision to answer questions during a criminal interview. For example, directing an officer to appear at a particular time and place may generate confusion on the officer's part as to whether he or she is being required to participate in the interview. When these circumstances or any other questions as to the need to provide a warning in criminal interviews are present, the internal affairs investigator should always consult with the County Prosecutor regarding whether the subject officer should be advised of their right against self-incrimination.
- 8.2.4 If the subject officer agrees to voluntarily provide a statement or waives his rights, the interview may then continue. Unless the officer specifically waives their Fifth Amendment rights, any incriminating statements obtained under direct order will not be admissible in a criminal prosecution but will be admissible in an administrative hearing. The subject officer should be afforded the opportunity to consult with an attorney prior to a compelled interview.
- 8.2.5 If the officer has invoked their *Miranda* rights but the agency deems that it must have the answers to specific questions to properly conduct its investigation, the agency must contact the County Prosecutor to request use immunity for the interview to continue. This contact should be made timely so that the County Prosecutor can review all relevant reports and have a full briefing prior to determining whether to grant use immunity. Use immunity provides that anything the officer says under the grant of immunity, and any evidence derived from their statements, cannot be used against him or her in a criminal proceeding (except for perjury or false swearing if the information is not truthful). But use immunity does not eliminate the possibility that the subject officer will be prosecuted. A criminal prosecution may proceed even though the target or defendant has received use immunity.
- 8.2.6 If the County Prosecutor grants use immunity, the agency shall advise the subject officer in writing that he or she has been granted such immunity in the event their answers implicate him or her in a criminal offense. The officer must then answer the questions specifically and narrowly related to the performance of their official duties, but no answer given nor any evidence derived from the answer may be used against this officer in a criminal proceeding. At this point, any officer refusing to answer is subject to disciplinary charges and possible dismissal from employment.
- 8.2.7 A grant of use immunity shall be recorded on a form the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file.

See the sample form in Appendix J. In all cases, approval from the authorizing assistant prosecutor or deputy attorney general must be obtained before giving the *Garrity* warning.

8.3 When the Investigation is Criminal and the Officer Is a Witness

- 8.3.1 When interviewing a law enforcement officer as a witness, he or she must be made aware of the differences between being a witness in a criminal investigation and being the subject of a criminal investigation. The officer also shall be advised that he or she is not the subject of the investigation at this time. Appendix G provides a model form that may be used for this purpose. If at any time the officer becomes a subject of the investigation, he or she shall be advised of that fact and the appropriate procedures must be followed.
- 8.3.2 Officers who are witnesses must cooperate. They must truthfully answer all questions narrowly and directly related to performing their duty. "Performance of duty" includes an officer's actions, observations, knowledge and any other factual information of which they may be aware, whether it concerns their own performance of duty or that of other officers. If the officer feels their answer would incriminate him or her in a criminal matter, the officer must assert their *Miranda* rights.

8.4 When the Investigation is Administrative and the Officer Is a Subject

- 8.4.1 A public employee must answer questions specifically, directly and narrowly related to the performance of their official duties, on pain of dismissal. This obligation exists even though the answers to the questions may implicate them in a violation of agency rules, regulations and procedures that may ultimately result in some form of discipline up to and including dismissal. In short, no "right to remain silent" exists in administrative investigations.
- 8.4.2 However, internal affairs investigators in civil service jurisdictions should be aware that, under civil service rules, an employee cannot be forced to testify at their own disciplinary hearing.⁸ As a matter of fairness, the internal affairs investigator in a civil service jurisdiction should refrain from questioning a subject officer about a particular disciplinary offense if the officer has already been charged with that offense and is awaiting an administrative hearing on the charge.
- 8.4.3 Prior to the start of any questioning, the officer shall be advised that he or she is being questioned as the subject of an investigation into potential violations of agency rules and regulations, or fitness for duty. He or she should be advised of the subject matter under investigation, and that he or she will be asked questions specifically related to performing their official duties.

⁸ N.J.A.C. 4A:2-2.6(c).

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- 8.4.4 This information shall be recorded on a form which the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file. See the sample form in Appendix H. The form in Appendix H shall only be used for administrative, non-criminal investigations.
- 8.4.5 If the subject officer refuses to answer questions during this interview, the interviewer should inquire about the reason for that refusal. If the officer states that he refuses to answer any questions on the grounds that he may incriminate himself in a criminal matter, even though the investigators do not perceive a criminal violation, the agency should discontinue the interview and contact the County Prosecutor.
- 8.4.6 If the agency wants to continue its administrative interview and the County Prosecutor agrees to grant use immunity, the agency shall advise the subject officer in writing that he or she has been granted use immunity if their answers implicate him or her in a criminal offense. The officer must then answer the questions specifically related to performing their official duties, but no answer given, nor evidence derived therefrom, may be used against the officer in a criminal proceeding. If the officer still refuses to answer, he or she is subject to disciplinary charges for that refusal, including dismissal. This information shall be contained in a form that the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file. See the sample form in Appendix J.
- 8.4.7 If the subject officer refuses to answer on any other grounds, he or she should be advised that such refusal will subject him or her to disciplinary action, including dismissal, in addition to discipline for the matter that triggered the interview in the first place. If the officer still refuses, the interview should be terminated and appropriate disciplinary action initiated.
- 8.4.8 The courts have decided that a public employer must permit an employee to have a representative present at an investigative interview if the employee requests representation and reasonably believes the interview may result in disciplinary action.⁹ However, a representative shall be permitted to be present at the interview of a subject officer whenever he or she requests a representative. While the Sixth Amendment right to counsel does not extend to administrative investigations, an officer shall be permitted to choose an attorney as their representative if he or she so desires.
- 8.4.9 If it appears that the presence of counsel or another representative the subject requests will not disrupt or delay the interview, no reason exists to prevent their presence as an observer. But the representative or attorney cannot cause undue delay in scheduling interviews or interfere in the interview process. If the representative or attorney is disruptive or interferes, the investigator can discontinue the interview and should document the reasons for doing so. The investigator must control the interview and cannot allow the representative or subject to take control.

⁹ N.L.R.B. v. Weingarten, 420 U.S. 251 (1975).

8.5 When the Investigation is Administrative and the Officer Is a Witness

- 8.5.1 When interviewing a law enforcement officer as a witness, he or she must be made aware of the differences between being a witness in an administrative investigation and being the subject of an administrative investigation. The officer also should be advised that he or she is not the subject of the investigation at this time. Appendix G provides a model form that may be used for this purpose. If at any time the officer becomes a subject of the investigation, he or she should be advised of that fact and the appropriate procedures followed.
- 8.5.2 Officers who are witnesses must cooperate and truthfully answer all questions narrowly and directly related to performing their duty. "Performance of duty" includes an officer's actions, observations, knowledge and any other factual information of which they may be aware, whether it concerns their own performance of duty or that of other officers. If the officer feels their answer would incriminate him or her in a criminal matter, the officer must assert their *Miranda* rights.

8.6 Interviewing Procedures

- 8.6.1 Interviews should take place at the internal affairs office or a reasonable and appropriate location the investigator designates. The subject officer's supervisor should be made aware of the time and place of the interview so the officer's whereabouts are known. Interviews shall be conducted at a reasonable hour when the officer is on duty, unless the seriousness of the matter requires otherwise.
- 8.6.2 The employee shall be informed of the name and rank of the interviewing investigator and all others present during the interview. The questioning session must be of reasonable duration, considering the subject matter's complexity and gravity. The officer must be allowed time for meal breaks and to attend to personal physical necessities.
- 8.6.3 In cases of potential criminal conduct, interviews of subject officers should be recorded consistent with AG Directives 2006-2 and 2006-4. A copy of the directives may be found in Appendix T. As to serious disciplinary infractions, the agency should audio or video record the interview. A transcript or copy of the recording shall be made available to the officer, if applicable, at the appropriate stage of a criminal or disciplinary proceeding. If the subject officer wishes to record the interview, he or she may do so, and a copy of the recording shall be made available to the agency upon request, at the agency's expense. Agencies should consider adopting a policy requiring officers to inform the agency or internal affairs investigator if the officer plans to record the interview.

- 8.6.4 Any questions asked of officers during an internal investigation must be "narrowly and directly" related to performance of their duties and the ongoing investigation.¹⁰ Officers must answer questions directly and narrowly related to that performance. All answers must be complete and truthful, but officers cannot be compelled to answer questions having nothing to do with their performance as law enforcement officers, that do not implicate a rule or regulation violation, or that are unrelated to the investigation.
- 8.6.5 At the interview's conclusion, the investigator should review with the subject officer all the information obtained during the interview to alleviate any misunderstandings and to prevent any controversies during a later proceeding.

¹⁰ Gardner v Broderick, 392 U.S. 273 (1968).

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9 Internal Affairs Records

9.0.1 Every law enforcement agency shall maintain a system for documenting the work of its internal affairs function and preserving records of this work.

9.1 The Internal Affairs Report

9.1.1 At the conclusion of the internal affairs investigation, the investigator shall submit a written report consisting of an objective investigative report recounting all of the case's facts and a summary of the case, along with conclusions for each allegation, and recommendations for further action.

(a) *Investigative report.* The first part of the report will be an objective recounting of all the relevant information the investigation disclosed, including statements, documents and other evidence. This part of the report is similar in all respects to a standard law enforcement investigative report, and should contain a complete account of the investigation.

(b) *Summary and Conclusions.* The investigator should summarize the case and provide conclusions of fact for each allegation. These conclusions of fact should be recorded as exonerated, sustained, not sustained or unfounded.

9.1.2 If the conduct of an officer was found to be improper, the report must cite the agency rule, regulation, or SOP violated. Any aggravating or mitigating circumstances surrounding the situation, such as unclear or poorly drafted agency policy, inadequate training or lack of proper supervision, shall also be noted.

9.1.3 If the investigation reveals evidence of misconduct not based on the original complaint, this too must be reported. An investigation concerning this secondary misconduct should be conducted.

9.2 Internal Affairs Index File

9.2.1 The purpose of the internal affairs index file is to serve as a record control device to maintain an inventory of internal affairs case files and to summarize each case's status for authorized personnel. The instrument used for such an index file will vary by agency and could include a log book, index cards or a computerized data base.

9.2.2 All internal affairs complaints shall be recorded in the index file. Entries should record each case's basic information, including the subject officer, allegations, complainant, date received, investigator assigned, disposition and disposition date for each complaint. A unique case number assigned to each internal affairs complaint will point to the complete investigation file's location and will simplify case tracking.

9.3 Investigation Files

- 9.3.1 An internal affairs investigation file is needed for all internal affairs reports. Given the wide range of internal affairs allegations a law enforcement agency receives, these investigation files might consist of only the initial report form and the appropriate disposition document. On the other hand, investigation files might include extensive documentation of an investigation.
- 9.3.2 The internal affairs investigation file should contain the investigation's entire work product, regardless of the author. This includes investigators' reports, transcripts of statements, and copies of all relevant documents. The file should also include all related material from other agency incidents that may be applicable. For instance, if an allegation is made of excessive force during an arrest, the internal affairs investigation file should contain copies of the reports from that arrest.
- 9.3.3 Where an internal affairs investigation results in the filing of criminal charges, the file shall be made available to the County Prosecutor's Office. It will be the responsibility of that office to decide which items are discoverable and which are admissible. In these cases, the agency must follow the County Prosecutor's instructions.

9.4 Retention Schedule

- 9.4.1 Investigative records created during an internal affairs investigation are included in the "Records Retention and Disposition Schedule for Local Police Departments" issued by the New Jersey Division of Archives and Records Management. Under the schedule, files concerning a criminal homicide must be permanently maintained. The schedule also requires that any other file involving a criminal matter resulting in the subject officer's arrest must be maintained for 75 years. While the schedule further suggests that all other criminal or administrative internal affairs investigative records be maintained for at least 5 years, agencies should maintain these files as they relate to a particular officer for that officer's career plus 5 years.
- 9.4.2 Agencies are not required to purge their records at the intervals outlined above, and may adopt longer retention schedules if such schedules benefit the agency. In the case of internal affairs investigative records, longer retention times will provide agencies with the resources and evidence necessary to assist with defending civil lawsuits.
- 9.4.3 While the internal affairs records of other types of law enforcement agencies are not yet specified by the Division of Archives and Records Management, it would be appropriate for all law enforcement agencies to follow essentially the same retention schedule.

9.5 Security of Internal Affairs Records

- 9.5.1 Internal affairs personnel shall maintain a filing system accessible only to unit personnel and the law enforcement executive. Other personnel may be given access based on a specific need, such as a deputy chief in the law enforcement executive's absence. Access to these records must be specifically addressed with agency policy and procedures. The list of those authorized to access these files must be kept to a minimum.
- 9.5.2 Physical security measures also should be taken, such as using securely locked filing cabinets in secured offices. If a law enforcement agency uses computers to maintain internal affairs records of any kind, special security measures must be taken. A stand-alone personal computer is the most secure system to limit unauthorized access to internal affairs records. If a stand-alone computer is not feasible, reasonable measures, including the use of fire walls and/or password protected software, should be utilized to control access to investigative files and related materials.

9.6 Confidentiality

- 9.6.1 The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information. The contents of an internal investigation case file, including the original complaint, shall be retained in the internal affairs function and clearly marked as confidential. The information and records of an internal investigation shall only be released or shared under the following limited circumstances:
- (a) If administrative charges have been brought against an officer and a hearing will be held, a copy of all discoverable materials shall be provided to the officer and the hearing officer before the hearing;
 - (b) If the subject officer, agency or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigative reports may be released to the attorney representing the subject officer, agency or jurisdiction;
 - (c) Upon the request or at the direction of the County Prosecutor or Attorney General; or
 - (d) Upon a court order.
- 9.6.2 In addition, the law enforcement executive may authorize access to a particular file or record for good cause. The request and the authorization should be in writing, and the written authorization should specify who is being granted access, to which records access is being granted and for what time period access is permitted. The authorization should also specify any conditions (i.e., the files may be reviewed only at the internal affairs office and may not be removed). In addition, the law enforcement executive may order any redactions necessary to protect sensitive or privileged information, including an officer's medical or mental health records or the details of an ongoing criminal investigation. The

law enforcement executive should grant such access sparingly, given the purpose of the internal affairs process and the nature of many of the allegations against officers.

- 9.6.3 As a general matter, a request for internal investigation case files may satisfy the good cause requirement:
- (a) If a Civilian Review Board that meets certain minimum requirements requests access to a completed or closed investigation file, subject to the conditions described in this section; or
 - (b) If another law enforcement agency requests the files because it is considering hiring an officer who was formerly employed at the agency with the internal investigation files.
- 9.6.4 Agencies may receive law enforcement or judicially sanctioned subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the law enforcement executive or internal affairs investigator should consult with the agency's legal counsel to determine whether the subpoena is valid and reasonable. Courts may modify or quash invalid or unreasonable subpoenas, but will require the agency seeking to so modify or quash to file an appropriate motion. Similar considerations may provide grounds for opposing a records request from a Civilian Review Board that otherwise satisfies the minimum requirements described below. For that reason, the appropriate agency personnel should consult with legal counsel to determine under what circumstances it would be appropriate to provide notice to any individual who is referenced in records requested by a Civilian Review Board.
- 9.6.5 If the release of internal affairs documents is appropriate, the agency should inventory the reports released and obtain a signed receipt.

9.7 Coordination with Civilian Review Boards

- 9.7.1 Internal investigation case files generally are not releasable to Civilian Review Boards, but the "good cause" standard may be satisfied when a Civilian Review Board requests records from a completed or closed investigation file and the Civilian Review Board has in place certain minimum procedural safeguards, as described in Section 9.7.2, to preserve the confidentiality of the requested records and the integrity of the internal affairs function, in addition to complying with all other applicable legal requirements. A violation of any of these requirements may result in the revocation of a Civilian Review Board's access to confidential law enforcement information, including internal affairs records, and potentially may result in other adverse or remedial actions under federal, state, or local law.
- 9.7.2 For the purposes of satisfying the requirements of Section 9.7.1, a Civilian Review Board must implement the following minimum procedural safeguards:

(a) Avoidance of Interference with Ongoing Investigations or Proceedings

The Civilian Review Board must establish policies to avoid interference with ongoing investigations or proceedings, similar to the policies that an internal affairs function must adopt to avoid interference with ongoing criminal investigations or proceedings. Specifically, the policy must make clear that the Board may not commence an investigation of a particular civilian complaint or incident until after any criminal and/or internal affairs investigations have concluded and any resulting discipline has been imposed. This requirement applies regardless of whether the Civilian Review Board is granted authority to recommend discipline, or request reconsideration of any findings or disciplinary decisions, or is limited in its authority to auditing completed investigations. This requirement also applies regardless of whether, as a general matter, the Civilian Review Board is granted access to redacted or unredacted internal affairs records.

After reviewing the relevant internal affairs records and conducting any other lawful investigation that the Civilian Review Board deems appropriate, the Board may, to the extent permitted by law, present its conclusions to the law enforcement executive or appropriate authority; request additional information or clarification regarding the findings or decisions made in the course of the internal affairs investigation; and/or request that the internal affairs investigation be re-opened. Whether to re-open an internal affairs investigation remains within the discretion of the law enforcement executive and, with regard to criminal matters, the County Prosecutor's Office.

The Civilian Review Board may not override any finding or decision made as part of the internal affairs process, impose discipline, require that another official impose discipline, or render any finding or decision that requires deference from any other official. If a law enforcement agency declines to re-open an investigation at the request of the Civilian Review Board, the Board may issue a final public report regarding the complaint or incident after appropriately redacting the report in accordance with instructions from the law enforcement executive. The personal identity of specific subject officers, complainants, or witnesses may not be disclosed to the public.

Under no circumstances may a Civilian Review Board immunize any person from prosecution or take any other action that would have the effect of conferring immunity on any person.

(b) Confidentiality

The Civilian Review Board must establish and adhere to written policies and procedural safeguards to preserve the confidentiality of internal affairs records and other confidential information, which shall include at least the following requirements:

- (1) *Closed sessions for reviews or investigations.* The Board must be in a closed session whenever the content of internal affairs records are discussed or testimony or other evidence regarding a specific incident is presented.
- (2) *Protection of internal affairs information.* No part of any internal affairs file may be disclosed by the Civilian Review Board under any circumstances to any person who is not a Board member or employee, the law enforcement executive, or a member of the law enforcement agency's internal affairs function, except in a final public report appropriately redacted in accordance with instructions from the law enforcement executive. This prohibition on disclosure includes any statement made by police officers to law enforcement investigators under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967).
- (3) *Personal identifiers.* Even in the Civilian Review Board's final public report, the Board may not disclose the personal identity of subject officers, complainants, or witnesses.
- (4) *Dedicated location for reviewing internal affairs records.* Whenever Civilian Review Board members and staff are granted access to internal affairs records, that review shall take place only in a secure location designated by the law enforcement executive and no internal affairs records may be copied or removed from the designated location.
- (5) *Training.* All Civilian Review Board members and staff shall undergo training approved by the County Prosecutor's Office on the confidentiality of internal affairs records and other investigative material prior to being granted access to such information.
- (6) *Attestation.* All Civilian Review Board members and staff shall receive a copy of the Board's written confidentiality policies and sign a sworn statement that they will comply those policies prior to being granted access to internal affairs records.

The law enforcement executive may condition the Civilian Review Board's access to internal affairs records on the Board's agreement to other protections that the law enforcement executive reasonably considers necessary to safeguard their confidentiality.

(c) Conflicts of Interest

The Civilian Review Board must adopt a written conflicts-of-interest policy that addresses both inherent conflicts—which preclude a person's service entirely as a Board member or staffer—and incident-specific conflicts—which require a Board member or staffer's recusal from particular matters. Prior to commencing their service,

Board members and staff must sign a sworn statement that they will comply with the Civilian Review Board's written conflicts-of-interest policy.

The Civilian Review Board's conflicts-of-interest policy must include, at a minimum, the following stipulations:

- (1) *Incident-specific conflicts.* Any Board member or staffer with an incident-specific conflict must immediately recuse from all proceedings related to that matter.
- (2) *Inherent conflicts.* At least the following categories of persons are considered inherently conflicted and may not serve as a Board member or staffer:
 - a. A sworn officer or employee of a law enforcement agency within the Board's jurisdiction, or any person who has held such a position in the last five years;
 - b. A sworn officer or employee of any other state, county, or local law enforcement agency;
 - c. A prosecutor or criminal defense attorney currently practicing in the county within the Board's jurisdiction;
 - d. A relative of any of the aforementioned individuals, as defined in the New Jersey Conflicts of Interest Law at N.J.S.A. 52:13D-21.2(2)(d);
 - e. A current candidate for public office; or
 - f. With respect to Board membership, a current officer or employee of the municipality.
- (3) *Duty to disclose.* Board members and staff have an ongoing duty to affirmatively disclose any conflict of interest that they may reasonably become aware of, whether that conflict is inherent or incident-specific.
- (4) *Screening.* If a Board member or staffer has a close personal or business relationship with an interested party or any individual who meets any of the criteria listed under the "inherent conflicts," the Board member or staff should establish a screen to ensure the non-disclosure of sensitive information involving the Board.

(d) Criminal History of Board Members and Staff

All Civilian Review Board members and staff who support the Board's work, on a full- or part-time basis, must undergo a criminal history background check. A person who has been convicted of a crime or offense may not be granted access to the content of internal affairs records unless both the law enforcement executive and the County Prosecutor consent to that person being granted such access.

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9.8 Coordination with Other Law Enforcement Agencies

- 9.8.1 In some instances, an officer who was formerly an employee of one law enforcement agency may apply to join a different law enforcement agency. It is imperative that the law enforcement agency that may hire the officer has access to all internal investigative files related to that officer's previous employment. Without such information, a law enforcement agency is unable to make a fully informed hiring decision.
- 9.8.2 Accordingly, in any case where a law enforcement agency has reason to believe that a candidate for employment was previously a sworn officer of another law enforcement agency, the hiring agency has an affirmative obligation to identify all such former employers. The hiring agency shall then request all internal affairs files for cases where the candidate was the subject officer, regardless of the ultimate disposition or status of the complaint.
- 9.8.3 If a law enforcement agency receives such a request regarding a former employee, then it shall immediately share copies of all internal investigative information related to that candidate with the hiring agency. Confidential internal affairs files shall not be disclosed to any other party.
- 9.8.4 This disclosure requirement does not apply when the agency responsible for sharing internal affairs files is unable to do so because the information is clearly subject to a non-disparagement or non-disclosure agreement. Such agreements must be followed even though they inhibit the ability of law enforcement agencies to fully evaluate candidates applying for positions of public trust, and therefore have the potential to compromise public safety. Given the public safety risks that such agreements pose, county and municipal governing entities and their counsel are strongly discouraged from entering into them.
- 9.8.5 In all cases, law enforcement executives retain the authority to defer a decision on hiring a particular candidate until all extant internal affairs information has been received and reviewed.

9.9 Reporting to Law Enforcement Executive

- 9.9.1 The internal affairs function should prepare periodic reports for the law enforcement executive that summarize the nature and disposition of all misconduct complaints the agency received. This report should be prepared at least quarterly, but may be prepared more often as directed by the executive. The report should include the principal officer; the allegation; the complainant; the age, sex, race and other complainant characteristics that might signal systematic misconduct by any member of the agency; and the investigation's status.

- 9.9.2 Concluded complaints should be recorded and the reasons for termination explained. See example in Appendix P.
- 9.9.3 This report shall be considered a confidential, internal work product. Dissemination of the report should be limited to command personnel, the County Prosecutor, the appropriate authority, or a civilian review board that meets the minimum requirements for access to internal affairs information, if mandated by the governing body.

9.10 Reporting to County Prosecutor

- 9.10.1 On a quarterly basis, every law enforcement agency shall report internal affairs activity to the County Prosecutor on an internal affairs summary report form. Each County Prosecutor will provide those law enforcement agencies—including municipal police departments—in their jurisdiction with the report forms to be used, instructions on completing the forms, and a reporting schedule.
- 9.10.2 The summary report forms must contain sufficient information to enable the County Prosecutor to identify warning signs of potential deficiencies in the internal affairs process. At a minimum, each report must include a brief summary of each internal affairs complaint that was pending before the agency at any point during the reporting period. The summary shall at least include the nature of the complaint, the date the complaint was received, the current status of the complaint, and, if the case is closed, the final disposition of the complaint with any discipline imposed.
- 9.10.3 Honesty is an essential job function for every New Jersey law enforcement officer. Officers who are not committed to the truth, who cannot convey facts and observations in an accurate and impartial manner and whose credibility can be impeached in court cannot advance the State's interests in criminal matters. In addition, defendants in criminal matters may be entitled to certain evidence the prosecutor has concerning the credibility of prosecution witnesses, including police officers. Prosecutors are considered to possess such evidence even when law enforcement agencies create and maintain information concerning the honesty of individual officers. Furthermore, prosecutors may be required to provide such evidence to the court. It is therefore imperative that the internal affairs investigator assist prosecutors with their legal duty to review and, if necessary, disclose evidence that may impact the credibility of police officers. Thus, the following matters shall be reported to the County Prosecutor so that he or she may evaluate the material's relevance:

- (a) A finding that a police officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial or insurance matter in their professional or personal life;¹¹
- (b) A pending court complaint or conviction for any criminal, disorderly persons, petty disorderly persons, municipal ordinance or driving while intoxicated matter;
- (c) A finding that undermines or contradicts a police officer's educational achievements or qualifications as an expert witness;
- (d) A finding of fact by a judicial authority or administrative tribunal that is known to the officer's employing agency that concludes that a police officer intentionally did not tell the truth in a matter;
- (e) A sustained finding that a police officer intentionally mishandled or destroyed evidence; and
- (f) A sustained finding that a police officer is biased against a particular gender or ethnic group.

9.10.4 That law enforcement agencies report the above-listed incidents to the County Prosecutor's Office does not constitute a mandate or requirement that the information be disclosed to the court. Prosecutors should conduct an independent review of the information provided to determine whether it needs to be disclosed and whether the officer can participate in the prosecution of criminal cases.

9.10.5 Once a decision is reached as to a particular case or defendant, the prosecutor shall, if necessary, discuss their decision with the internal affairs investigator and the law enforcement executive. If it is determined that an officer cannot participate in a criminal prosecution, the prosecutor must advise the agency whether the officer's disability is limited to a particular case, a particular category of cases or all criminal matters.

9.11 Public Reports

9.11.1 On an annual basis, every law enforcement agency shall publish on its public website a report summarizing the types of complaints received and the dispositions of those complaints. This report can be statistical in nature, and the names of complainants and subject officers shall not be published.

9.11.2 On a periodic basis, and at least once a year, every agency shall submit to the County Prosecutor and publish on the agency's public website a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to an agency member. This

¹¹ This provision is not intended to require that law enforcement agencies initiate internal affairs investigations into the accuracy of every statement, report or certification that may be filed with respect to civil litigation, including matrimonial and employment matters or any other personal or financial matters not directly related to the officer's employment. In most cases, such investigations would be inappropriate. Determinations as to the credibility of statements or certifications made in the context of litigation should be made by the courts or administrative tribunals. Determinations as to the credibility of statements or certifications in other personal or financial matters should be addressed if they arise in the context of an ongoing internal affairs investigation.

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synopsis shall not contain the identities of the officers or complainants, but should briefly outline the nature of the transgression and the fine or suspension imposed. An example of a synopsis is found in Appendix U.

9.12 Personnel Records

9.12.1 Personnel records are separate and distinct from internal affairs investigation records, and internal affairs investigative reports shall never be placed in personnel records, nor shall personnel records be co-mingled with internal affairs files. When a complaint has a disposition of exonerated, not sustained or unfounded, there shall be no indication in the employee's personnel file that a complaint was ever made.

9.12.2 Where a complaint is sustained and discipline imposed, the only items to be placed into the employee's personnel file are a copy of the administrative charging form and a copy of the disposition form. See form DPF-31C in Appendix O for an example. No part of the internal affairs investigative report shall be placed in the personnel file.

10 The Responsibilities of County Prosecutors

- 10.0.1 County Prosecutors are responsible for conducting substantive oversight to ensure that the internal affairs functions of all law enforcement agencies within their jurisdiction are operating professionally and effectively. As specialists with deep experience in the criminal justice system and working in the community, prosecutors are well situated for identifying procedural deficiencies before serious issues emerge with an agency's internal affairs function. As such, County Prosecutors must review the information they receive from law enforcement and the public regarding internal affairs, and swiftly follow up if there are any signs of trouble.
- 10.0.2 County Prosecutor Offices are an important alternative venue for the filing of internal affairs complaints against an officer of any law enforcement agency in their jurisdiction. Prosecutors must be especially alert to any indication from complainants or the public that the process for receiving and investigating complaints of misconduct is not operating in accordance with the guidelines in this document. For instance, any indication that a member of the public who attempted to file a complaint was turned away or dissuaded is extremely serious and must be immediately investigated.
- 10.0.3 It is also critical that County Prosecutors substantively review the summary reports that they receive from the internal affairs functions of agencies in their jurisdiction, including municipal police departments. The role of the prosecutor is not limited to ensuring that such reports are submitted on time. Instead, prosecutors must examine the reports, and conduct follow up investigation when concerning patterns emerge. For instance, if an agency consistently appears to summarily close administrative investigations in instances where criminal investigations are declined, then that would be cause for further investigation. Or, if an agency's officers have been the subjects of numerous serious complaints over a long span of time, but no such complaint has ever been sustained, then that would merit a close review. County Prosecutors are at all times empowered to direct that an agency's internal affairs files be shared with prosecutors for the purposes of facilitating further investigation.
- 10.0.4 County Prosecutors should conduct reviews of agencies with concerning patterns, as well as instituting a process for random reviews of the internal affairs functions of agencies in their jurisdiction. For instance, a County Prosecutor might direct a randomly selected agency to share all internal affairs files for cases that were closed in the previous quarter, so that the prosecutor can ascertain whether the internal affairs guidelines are being rigorously observed both in the procedures being employed and in the substance of the results. Likewise, if excessive force complaints are never sustained by an agency, the County Prosecutor may elect to review the body worn camera footage of force incidents to make an independent assessment. Even if the County Prosecutor's Office finds that there have been no substantive errors in an agency's dispositions or disciplinary decisions, periodic reviews might uncover procedural deficiencies that, if allowed to continue, might

result in serious errors in the future. In instances where a County Prosecutor reviewed a matter for potential criminal prosecution, declined prosecution and referred back for administrative action, the County Prosecutor must review the ultimate disposition of those matters.

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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-4

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: December 4, 2019

SUBJECT: Directive Ensuring the Independent Investigation of Criminal Cases Involving Police Use-of-Force or In-Custody Deaths

There are few investigations more important—or more challenging—than those involving the use of force by law enforcement officers against civilians. The purpose of this Directive is to outline clear procedures governing such investigations and to ensure that they are done fully, fairly, and independently of any potential bias.

Broadly speaking, the Directive outlines a ten-step process for conducting independent investigations of use-of-force and death-in-custody incidents in compliance with State law. Although the precise timing will vary depending on the case, the first three steps generally occur simultaneously in the immediate aftermath of the incident, while the remaining steps unfold over the course of the investigation:

1. Notification to Attorney General
2. Arrival of First Responders
3. Selection of Independent Investigator
4. Initial Investigation & Evidence Collection
5. Public Release of Incident Footage (if requested)
6. Completed Investigation
7. Independent Supervisory Review of Investigative Findings
8. Grand Jury Proceedings (if applicable)
9. Announcement of Criminal Charges or Declination
10. Referrals for Administrative Review



Although this ten-step process applies regardless of whether the officer's use of force resulted in a civilian's death, there are a number of additional important procedural requirements that apply when a death does occur. *See* N.J.S.A. 52:17B-107 (P.L. 2019, c.1). For that reason, it is vital that any officials conducting an independent investigation pursuant to this Directive familiarize themselves with both this document and relevant state law.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the procedures outlined below. This Directive repeals and supersedes the provisions of Attorney General Law Enforcement Directive ("AG Directive") 2006-5, the supplement to that Directive issued on July 28, 2015, and AG Directive 2018-1.

I. Scope of Directive

- A. ***Types of Incidents.*** This Directive applies to investigations involving the following types of incidents ("Law Enforcement Incidents") occurring within the State of New Jersey:
1. Any use of force by a law enforcement officer resulting in death;
 2. Any use of force by a law enforcement officer resulting in serious bodily injury;
 3. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury;
 4. The death of any civilian during an encounter with a law enforcement officer; and
 5. The death of any civilian while in the custody of law enforcement.
- B. ***Types of Officers.*** This Directive applies to criminal investigations involving any municipal, county, state, or other law enforcement officer, regardless of whether the officer was acting in the performance of their official duties ("on duty") or in their personal capacity ("off duty").
- C. ***Definitions.*** For the purposes of this Directive:
1. "Law Enforcement Incident" (or "LE Incident") means any incident described in Section I.A subject to the procedures outlined in this Directive.

2. “Principal of the Investigation” (or “Principal”) means any officer(s) described above in Section I.B. subject to investigation for their role in a LE Incident.
3. “Independent Investigator” means the law enforcement entity tasked with primary responsibility for investigating a specified LE Incident and, where appropriate, determining whether to present a proposed indictment regarding the Principal(s) for their role(s) in an LE Incident.
4. “Independent Supervisory Reviewer” means the official tasked with reviewing the factual findings, legal analysis, and charging recommendations prepared by the Independent Investigator at the conclusion of the investigation.
5. “Office of Public Integrity & Accountability” (or “OPIA”) refers to an Office established pursuant to Attorney General Administrative Executive Directive 2019-8 to conduct sensitive investigations, including those involving allegations of misconduct by law enforcement officers. The Office is run by an Executive Director (“OPIA Director”), who reports directly to the Attorney General.

II. Process for Conducting Independent Investigations

- A. ***Step 1: Notification to Attorney General.*** As soon as any local, county, or state law enforcement agency learns of a Law Enforcement Incident, the agency should immediately notify the County Prosecutor’s Office of the county in which the incident occurred, who shall in turn immediately notify the OPIA Director or their designee.
- B. ***Step 2: Arrival of First Responders.*** In the moments immediately following a LE Incident, emergency first responders have a duty to address any imminent threats to public safety and minimize the loss of life. First responders can and should carry out those duties, while also ensuring that they do not take any actions that would undermine the integrity of a subsequent investigation into the LE Incident. As a result, nothing in this Directive should be construed to preclude any law enforcement officer or emergency medical professional from responding to the scene of the LE Incident for following purposes:
 1. Providing or facilitating prompt medical assistance to any injured person;
 2. Responding to any ongoing threat to public safety;
 3. Preserving evidence and securing the scene, including by controlling traffic or preventing members of the public from interfering with the activities of first responders;

4. Identifying eyewitness and asking them to remain near the scene until appropriate investigators can interview them; and
5. Participating in the pursuit or be-on-the-lookout (BOLO) search for any person suspected of committing a crime related to the LE Incident, including taking any investigative steps (e.g., canvassing, interviewing) in furtherance of such pursuit.

C. ***Step 3: Selection of Independent Investigator.*** As soon as possible after learning of the LE Incident, the OPIA Director shall determine which state or county law enforcement agency shall serve as the Independent Investigator. The OPIA Director shall appoint the Independent Investigator taking into account the default rules described below, unless the selected law enforcement agency is unable to do so because of an actual, potential, or perceived conflict of interest, in which case the OPIA Director shall either seek to mitigate the conflict or identify another agency to serve as Independent Investigator.

1. Default Rules for Appointment of Independent Investigator

- a. As a general rule, the Independent Investigator cannot be the law enforcement agency that employs the Principal of the Investigation. In addition, the Independent Investigator cannot possess any other actual, potential, or perceived conflict of interest, as described below in Section II.C.2, and cannot rely on the investigative assistance of any individual who works for the same law enforcement agency as the Principal, except pursuant to the narrow exceptions described below in Section II.D.
- b. OPIA shall serve as the “default” Independent Investigator in the following circumstances, subject to a conflict check conducted pursuant to Section II.C.2 below:
 - i. The use of force by a law enforcement officer resulting in death or serious bodily injury likely to result in death;
 - ii. The death of a civilian during an encounter with a law enforcement officer;
 - iii. The death of a civilian while in the custody of law enforcement, where the death could be plausibly linked to the actions of a law enforcement officer, whether through the intentional use of force or a reckless indifference to human life;¹
 - iv. Where the Principal of the Investigation is a member of the Division of Criminal Justice or the New Jersey State Police; or

¹ In cases involving a death inside a prison, jail, or other detention facility, the investigation shall be subject to the protocols described below in Section III of this Directive.

- v. Any other LE Incident where, in the discretion of the OPIA Director, justice would be served by appointing OPIA as the Independent Investigator.
- b. The County Prosecutor's Office in the county where the LE Incident occurred shall serve as the "default" Independent Investigator in the following circumstances, subject to a conflict check conducted pursuant to Section II.C.2 below:
 - i. The use of force by a law enforcement officer resulting in serious bodily injury, but unlikely to result in death; or
 - ii. The use of deadly force by a law enforcement officer acting in their official capacity, except those resulting in death or likely to result in death.

2. Review for Conflicts of Interest

- a. Before the OPIA Director appoints a law enforcement agency as Independent Investigator, that agency shall conduct a comprehensive inquiry to determine whether it has any actual, potential, or perceived conflicts of interest that might undermine public confidence in the impartiality and independence of the investigation, and shall promptly report its findings to the OPIA Director.
- b. As part of the conflict review, the agency shall identify whether any of the following circumstances exist:
 - i. Whether any person who will supervise² or participate in the investigation has had any personal or professional interaction with or relationship to the Principal that might reasonably call the person's impartiality into question;
 - ii. Whether the law enforcement agency is prosecuting any case in which the Principal is expected to testify on behalf of the State; or
 - iii. Whether, within the past five years, the Principal has been assigned to a task force operating under the direct supervision of the law enforcement agency.
- c. As part of the conflict review, the OPIA Director may request from any local, county, or state law enforcement agency, and such agency shall provide, any

² For the purposes of this provision, "any person who will supervise" includes all members of the agency's leadership team. For a County Prosecutor's Office, this includes the Prosecutor, First Assistant Prosecutor, Chief of Detectives, and any mid-level supervisors who will oversee the investigation.

information that the OPIA Director deems necessary to determine whether any law enforcement agency has a conflict of interest.

- d. To facilitate the conflict review process, the OPIA Director may issue standardized statewide forms and other materials for use by law enforcement agencies.

3. Addressing Conflicts of Interest

- a. If the OPIA Director becomes aware of an actual, potential, or perceived conflict, the Director must take one or more of the following remedial measures:

- i. Appoint the law enforcement agency to serve as the Independent Investigator, but only on the condition that any person who has a conflict be recused from the investigation;
- ii. Appoint a different law enforcement agency to serve as the Independent Investigator; or
- iii. Require any other action as necessary to ensure the impartiality and independence of the investigation.

- b. Should the OPIA Director decide to mitigate a conflict by appointing a different law enforcement agency to serve as the Independent Investigator, the Director may do so using the following guidelines:

- i. Where OPIA is the “default” agency, *see* Section II.C.1.b above, the OPIA Director shall appoint the Division of Criminal Justice as the Independent Investigator.³
- ii. Where a County Prosecutor’s Office is the “default” agency, *see* Section II.C.1.c above, the OPIA Director shall appoint a different County Prosecutor’s Office as the Independent Investigator. If the OPIA Director is unable to identify a County Prosecutor’s Office able to serve in this capacity, or if justice so requires, the Director may appoint OPIA as the Independent Investigator.

³ In situations where both OPIA and the Division of Criminal Justice are unable to serve as the Independent Investigator, the Attorney General shall designate a member of the Office of the Attorney General to supervise the investigation and shall deputize other state or county law enforcement officers to serve as Special Deputy Attorneys General operating under the supervision of the Attorney General’s designee.

4. Timing of Selection of Independent Investigator

- a. The OPIA Director shall seek to complete the conflict review and select the Independent Investigator as soon as possible after learning of the LE Incident, and no later than 24 hours after the LE Incident occurs.
- b. In order to avoid delay in the collection of evidence in the immediate aftermath of an LE Incident, the OPIA Director may temporarily designate one or more persons employed by the County Prosecutor's Office where the LE Incident occurred as "Special Deputy Attorneys General" or "Special State Investigators," who, for the purposes of the temporary designation, will report directly to the OPIA Director and will carry out any investigative functions deemed necessary by the OPIA Director.⁴
- c. Once selected, the Independent Investigator has an ongoing responsibility to notify the OPIA Director of any actual, potential, or perceived conflicts of interest that arise during the course of the investigation, whether involving the entire agency or one or more persons operating under the supervision of the Independent Investigator.
- d. If the OPIA Director becomes aware of a conflict during the course of the investigation, the Director shall seek to address the conflict pursuant to the procedures outlined in Section II.C.3 above.

D. ***Step 4: Initial Investigation & Evidence Collection.*** Upon selection by the OPIA Director, the Independent Investigator shall promptly begin investigating the LE Incident. Such investigation shall include whatever steps are deemed appropriate by the Independent Investigator, including canvassing, witness interviews, evidence collection, forensic analysis, and the issuance of grand jury subpoenas. As part of this initial investigation, the Independent Investigator shall make all reasonable efforts to preserve and obtain any video or audio recordings that depict any aspect of the LE Incident. To ensure the independence of the investigation, only law enforcement officers working under the direct supervision of the Independent Investigator may participate in the investigation or share or receive information about any aspect of the investigation, except as authorized pursuant to the exceptions below.

1. Authorized Investigative Assistance. Subject to the authorization process described in Section II.D.3 below, the following personnel may assist the Independent Investigator in the investigation of an LE Incident:

⁴ To facilitate such designations, the OPIA Director may issue standing orders, procedures, or standardized forms to County Prosecutor's Offices that outline the process for establishing temporary designees in response to LE Incidents, including designation of such persons in advance of an LE incident.

- a. Personnel employed by OPIA, New Jersey State Police, or the Division of Criminal Justice, including members of the Attorney General's Shooting Response Team;
 - b. Law enforcement personnel with expertise in crime scene investigation (CSI), for the purpose of collecting or documenting physical evidence at the scene;
 - c. Law enforcement personnel with expertise in forensic examinations, including but not limited to the examination of DNA, fiber, fingerprints, firearm, hair, serology, or toxicology evidence, as well as personnel assigned to the state medical examiner's office or such county medical examiner's offices as the OPIA Director may designate, for the purpose of conducting forensic analysis or an autopsy;
 - d. Foreign language translators;
 - e. Any other personnel who can assist the investigation through their specialized knowledge or skills, provided that the Independent Investigator lacks sufficient specialized expertise; and
 - f. A designee of any local, county, state, or federal law enforcement agency who can serve as a liaison to the Independent Investigator and facilitate the performance of ministerial functions, such as the obtaining of agency documents and information (including personnel or internal affairs records) and providing contact information for employees, witnesses, and other local residents.
2. **Authorized Dissemination of Investigative Information.** Subject to the authorization process in Section II.D.3 below, the Independent Investigator can share investigative information with other law enforcement personnel only under the following circumstances:
- a. The Independent Investigator may provide updates on the status of the investigation to the leadership of the County Prosecutor's Office where the LE Incident occurred, as well as the law enforcement executive in the municipality where the LE Incident occurred, so that these officials may address or prepare for any public safety concerns in that county, provided that they do not share the information publicly or with other law enforcement personnel; or
 - b. Any other circumstance where the Independent Investigator concludes that the dissemination of investigative information would serve the public interest.

3. Authorization Process for Investigative Assistance or Dissemination of Investigative Information.

- a. Before seeking investigative assistance or disseminating investigative information, the Independent Investigator shall conduct a conflict check and take any necessary remedial actions, using the same procedures required of the OPIA Director in Sections II.C.2 and II.C.3 above.
- b. After addressing any actual, potential, or perceived conflicts, the Independent Investigator may, for good and sufficient cause, authorize the use of investigative assistance or the dissemination of investigative information as described in Sections II.D.1 and II.D.2 above. If such authorization is granted, then the Independent Investigator shall record the names and titles of any personnel who will provide investigative assistance or will receive investigative information, and provide a record of such information to OPIA.
- c. In any case involving any of the circumstances described above in Section II.C.1.A (use of force resulting death or likely death; death of civilian during law enforcement encounter; death of civilian while in custody), the Independent Investigator may not obtain investigative assistance from the personnel described above in Section II.D.1, unless those personnel are designated as Special Deputy Attorneys General or Special State Investigators and are operating under the direct supervision of the Independent Investigator.
- d. To facilitate the prompt designation of Special Deputy Attorneys General or Special State Investigators, the OPIA Director may issue standing orders, procedures, and standardized forms for use for by local, county, state, or federal law enforcement agencies.

- 4. Public Statements Regarding Law Enforcement Incidents.** No law enforcement officer other than the Independent Investigator shall make any public statement regarding the conduct of a law enforcement officer in connection with a LE Incident during the pendency of an investigation of that incident.

- E. ***Step 5: Public Release of Incident Footage, If Requested.*** During an initial investigation, the Independent Investigator will sometimes obtain audio or video recordings of the LE Incident, including recordings captured by an officer's body-worn camera ("body-worn footage"), a camera mounted in an officer's patrol vehicle ("dash-cam footage"), a camera embedded in an officer's conductive energy device ("CED footage"); a surveillance or security camera ("surveillance footage"), or a camera or smartphone belonging to witnesses ("witness footage") (collectively, "LE Incident footage"). Such footage should be released to the public according to the following procedures:

1. **Presumption of Release upon Substantial Completion of Initial Investigation.** If any individual or organization sends a written request to the Independent Investigator seeking the release of LE Incident footage, the Independent Investigator shall authorize the release of such footage once they have concluded that the initial investigation is substantially complete, subject to the conditions described in Sections II.E.2 to II.E.5 below and any other legal restrictions that would limit public release. Generally speaking, the initial investigation shall be deemed substantially complete once all available material witnesses have been interviewed and the physical and documentary evidence most relevant to the case has been gathered. Typically, these steps take no more than 20 days to complete.
2. **Consultation with Persons Depicted in Footage.** Before releasing any LE Incident Footage, the Independent Investigator shall consult with persons depicted in the footage, including law enforcement officers and civilians involved in the LE Incident, but excluding bystanders or those appearing only in the background of the footage. In the case of decedents, the Independent Investigator shall consult with the decedent's family or next of kin. During these consultations, the Independent Investigator shall seek to learn whether the depicted persons believe that the release of the footage would threaten their safety or privacy.
3. **Digital Blurring of Footage.** The Independent Investigator may, in their discretion, authorize the digital blurring of footage to obscure the identity of any person, including a law enforcement officer, if the Independent Investigator concludes that the public release would substantially threaten the safety or privacy of that individual. The editing shall be done in a way that does not conceal the *actions* of any person who is using physical force against another.⁵ Any digital blurring shall be made to a *copy* of the recording intended for public release; under no circumstances may the Independent Investigator alter in any way the master copy of the recording.
4. **Release of Non-Officer Footage.** If the Independent Investigator possesses footage recorded by anyone other than a law enforcement officer (e.g., witness footage, surveillance footage), the Independent Investigator should consult with the individuals or entities who provided the footage, unless that individual or entity has previously made it publicly available, and take into account any legitimate safety or privacy concerns they raise. If the footage was obtained through legal process, the release must comply with any applicable laws and procedures for public dissemination of such material.
5. **Delayed Release of Footage.** The Independent Investigator must release the LE Incident Footage within 20 days of the LE Incident, unless the Attorney General, or

⁵ For example, the Independent Investigator will blur the faces of juveniles and images of first responders rendering medical aid.

designee, authorizes a delayed release. The Independent Investigator may seek a delayed release if, for example, additional time is needed to interview all available material witnesses, complete other essential investigative steps, review or redact videos to protect privacy interests, or conduct a safety assessment associated with the public release of the video.

- F. **Step 6: Completed Investigation.** After releasing any relevant video footage, the Independent Investigator shall continue its work to the conclusion of the investigation, at which point the Independent Investigator shall prepare a summary of their factual findings, legal analysis, and preliminary recommendations as to whether any Principal should be criminally charged for their involvement in the LE Incident.
- G. **Step 7: Independent Supervisory Review of Investigative Findings.** Upon the conclusion of the investigation, the Independent Investigator shall submit their factual findings, legal analysis, and preliminary charging recommendations for an independent assessment by the Independent Supervisory Reviewer.
1. **Determination of Independent Supervisory Reviewer.**
 - a. Where the Independent Investigator is any law enforcement agency other than OPIA, then the Independent Supervisory Reviewer shall be the OPIA Director.
 - b. Where the Independent Investigator is OPIA, then the Independent Supervisory Reviewer shall be a member of the Attorney General's Executive Leadership Team.
 2. **Role of Independent Supervisory Reviewer.** The role of the Independent Supervisory Reviewer is to review the sufficiency of the Independent Investigator's work and decide whether any additional investigative steps should be taken. In addition, the Independent Supervisory Reviewer shall review the Independent Investigator's charging and grand jury recommendations and determine whether the Independent Supervisory Reviewer agrees or disagrees with that recommendation.
- H. **Step 8: Grand Jury Proceedings.** Depending on the facts of the case, the Independent Investigator may or may not have discretion whether to present evidence to a Grand Jury regarding the LE Incident.
1. **LE Incidents Resulting in Death.** In any case involving any of the circumstances described above in Sections II.C.1.b.i – II.C.1.b.iii (use of force resulting in death; death of civilian during law enforcement encounter; death of civilian while in custody), the Independent Investigator is required by state law to present evidence to a Grand Jury concerning the LE Incident. In such cases, the Independent Investigator shall act as follows:

- a. Any presentation of evidence to a Grand Jury shall occur in a county other than the one where the LE incident occurred.
 - b. A prosecutor operating under the supervision of the Independent Investigator shall present sufficient evidence to the Grand Jury to provide the jurors with a full, complete, and accurate representation of the relevant facts of the LE Incident.
 - c. After presenting sufficient evidence, the prosecutor shall instruct the Grand Jury as to the legal elements of the offense, as well as the elements of justification for the use of force by law enforcement, pursuant to N.J.S.A. 2C:3-7 and N.J.S.A. 2C:3-9.
 - d. In cases where the Independent Investigator and Independent Supervisory Reviewer agree that one or more Principals should be charged criminally for their role in the LE Incident, the prosecutor should present the Grand Jury with a draft charging document for the jurors' consideration and vote.
 - e. In cases where the Independent Investigator and Independent Supervisory Reviewer agree that none of the Principals should be charged criminally, the prosecutor may refrain from presenting the Grand Jury with a draft charging document. In such incidents, the Independent Investigator may instruct the Grand Jury on its ability to issue a Presentment addressing matters of public policy in cases in which no criminal charges are returned by the Grand Jury.
2. **LE Incidents Not Resulting in Death.** For all other cases involving LE Incidents (i.e., those not resulting in death), the Independent Investigator shall present the matter to a Grand Jury, except that the Independent Investigator may decline to do so in cases where the Independent Investigator and the Independent Supervisory Reviewer agree that the undisputed facts indicate that the Principal's use of force in the LE Incident was justified.
 3. **Separate Grand Juries to Decide LE Incident and Underlying Criminal Activity that Precipitated the LE Incident.** The underlying offense that gave rise to the LE Incident (e.g., a crime allegedly committed by the civilian injured in the LE Incident) shall be presented to a different Grand Jury than the Grand Jury that will decide whether the Principals should be charged criminally.
- I. **Step 9: Announcement of Criminal Charges or Declination.** In any instance where the matter is not presented to a Grand Jury, or where the matter is presented but the Grand Jury declines to criminally charge any of the Principals, the Independent Investigator shall prepare a statement for public dissemination, which shall comply with all rules of

Grand Jury secrecy and be reviewed by the Independent Supervisory Reviewer prior to release. The statement shall include a summary of:

1. The factual findings of the investigation;
2. The legal analysis concerning the lawfulness of the Principal's use of force;
3. The results of the conflicts review conducted pursuant to Section II.C; and
4. An explanation that the matter was reviewed by the Independent Investigator and the Independent Supervisory Reviewer.

- J. ***Step 10: Referrals for Administrative Review.*** At the conclusion of the investigation, the Independent Investigator shall determine whether any Principal should be referred to the appropriate law enforcement agency for administrative review in accordance with the Attorney General's *Internal Affairs Policy & Procedures*. The Independent Investigator shall monitor any resulting review and take such actions as are necessary to ensure that the review is completed in a timely fashion, and that appropriate actions are taken based on the results of that review. *See* AG Directive 2019-5.

III. **Death-in-Custody Investigations**

- A. ***Special considerations for death-in-custody investigations.*** State law requires that the Attorney General supervise investigations of in-custody deaths, which run the gamut from a jail suicide, to a heart attack in the back of a police vehicle, to a death from natural causes in a prison hospital. As a result, the protocols for investigating an in-custody death turn, in part, on whether the death could be plausibly linked to the use of force by a law enforcement officer.
- B. ***Death involving use of force.*** Where an in-custody death could be plausibly linked to the actions of a law enforcement officer, whether through the intentional use of force or a reckless indifference to human life, OPIA shall investigate the matter pursuant to the protocols described above in Section II.
- C. ***Death not involving use of force.*** Where an in-custody death cannot be plausibly linked to the actions of a law enforcement officer, OPIA shall supervise the investigation of the matter as follows:
1. The OPIA Director shall assign the matter to personnel employed by the County Prosecutor's Office in the county where the death occurred, with the understanding that those personnel shall be designated as Special Deputy Attorneys General or Special State Investigators for the limited purpose of conducting the investigation under the supervision of OPIA.

2. Subject to the approval of the OPIA Director or designee, the investigative personnel assigned to the matter shall take whatever investigative steps they deem necessary to determine whether:
 - a. Any law enforcement officer contributed to the in-custody death; or
 - b. Any person should be criminally charged in connection with the in-custody death.
3. At the conclusion of the investigation, the investigative personnel assigned to the matter shall report their findings to the OPIA Director. If the OPIA Director concludes that a law enforcement officer contributed to the in-custody death and/or any person should be criminally charged in connection with the death, then the matter shall be presented to a Grand Jury pursuant to Section II.H.1 above. If the OPIA Director concludes that neither of these conditions exist, then the matter need not be presented to a Grand Jury.
4. The OPIA Director or designee shall document the reasons for any declination to bring criminal charges and shall ensure that the proper parties comply with the federal Death in Custody Reporting Act, 42 U.S.C. § 60105 *et seq.*

IV. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- C. ***Training.*** Within 90 days of the issuance of this Directive, the Division of Criminal Justice, working in consultation with OPIA, shall develop a training program to explain the requirements of this Directive as they pertain to state, county, and local law enforcement agencies and officers. Such program shall be made available through the NJ Learn System or by other electronic means.
- D. ***Community outreach.*** Each County Prosecutor shall undertake efforts to educate residents within their jurisdiction about the provisions of this Directive, with a specific focus on strengthening trust between law enforcement and the public. Within 120 days of

the issuance of this Directive, each County Prosecutor shall report to the Attorney General on such public education efforts.

- E. **Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the OPIA Director, or their designee.
- F. **Supersession of prior directives.** This Directive repeals and supersedes the provisions of AG Directive 2006-5, the supplement to that Directive issued on July 28, 2015, and AG Directive 2018-1.
- G. **Effective date.** This Directive shall take effect immediately. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Jennifer Davenport
First Assistant Attorney General
Dated: December 4, 2019



State of New Jersey

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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-6

TO: All County Prosecutors
FROM: Gurbir S. Grewal, Attorney General
DATE: December 4, 2019
SUBJECT: Directive Establishing County Policies to Comply with Brady v. Maryland and Giglio v. United States

Federal and State precedent require prosecutors disclose exculpatory and impeachment evidence to defense counsel. The United States Supreme Court in Brady v. Maryland, 373 U.S. 83, 87 (1963), held "suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Thereafter, the Supreme Court in Giglio v. United States, 405 U.S. 150 (1972), further clarified that exculpatory evidence (or "Brady material") includes evidence that may be used to impeach the credibility of a prosecution witness. "When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within th[e] general rule [of Brady]." Giglio, 405 U.S. at 154 (internal quotations omitted).

Our State Supreme Court followed Brady and Giglio in State v. Carter, 91 N.J. 86, 111 (1982), holding "evidence impeaching testimony of a government witness falls within the Brady rule when the reliability of the witness may be determinative of a criminal defendant's guilt or innocence." Whether Giglio information is determinative of the defendant's guilt or innocence requires analysis of that information by the prosecutor in light of the circumstances of the case. This is important to note because the failure to disclose Brady and Giglio material could result in reversal of a defendant's convictions.

While prosecutors across the State are well aware of their obligations under Brady and Giglio, there is a great deal of variation among the County Prosecutors' Offices regarding specific Brady-Giglio policies. While some have written policies, others employ a more informal



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approach. To ensure compliance and the integrity of criminal prosecutions, however, written guidelines, incorporating the best practices and procedures discussed below, are required.

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all County Prosecutors to implement a policy within their respective counties consistent with this Directive to ensure compliance with *Brady* and *Giglio*.

It is understood that the procedures established for complying with *Brady* and *Giglio* may vary among the counties to accommodate the specific volume and available resources. However, each county's *Brady-Giglio* policy shall fully comply with the law and Rules of Professional Conduct.

I. Definitions

- A. **"Civilian witness"** refers to an individual who is not employed by a law enforcement agency or entity.
- B. **"Giglio liaison"** refers to the individual appointed by the County Prosecutor to serve as a primary point of contact within the County Prosecutor's Office concerning potential impeachment information.
- C. **"Investigative employee"** refers to an individual who is a sworn law enforcement officer, analyst, civil investigator, or civilian employee working for a law enforcement agency or entity.
- D. When used without a modifier, **"Prosecutor"** refers to the attorney(s) assigned to prosecute a particular case. In a County Prosecutor's Office, this will typically be an Assistant Prosecutor; in the Division of Criminal Justice, the Office of Public Integrity & Accountability, and the Office of the Insurance Fraud Prosecutor, this will typically be a Deputy Attorney General or Assistant Attorney General. The term **"County Prosecutor"** refers specifically to the acting or confirmed County Prosecutor who oversees a County Prosecutor's Office.
- E. **"Sustained¹ finding"** refers to any finding where a preponderance of the evidence shows an officer violated any law, regulation, directive, guideline policy or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating

¹ For purposes of this policy, "sustained" is the equivalent of "substantiated" as it pertains to New Jersey State Police policies.

procedure, rule or training, following the last supervisory review of the incident(s) during the internal affairs process or a ruling by a hearing office, arbitrator, Administrative Law Judge, or the Superior Court. Allegations that cannot be sustained, are not credible, or have resulted in the exoneration of an employee, including where the previous *Giglio* finding has either been vacated, or overturned on the merits in any subsequent action, generally are not considered to be potential impeachment information, subject to the requirements herein. On the other hand, if the officer negotiates a plea or there is an administrative or civil settlement with the employer whereby the *Giglio*-related charge is dismissed, the charge would still be considered sustained, if there was sufficient credible evidence to prove the allegation, and the officer does not challenge the finding and obtain a favorable ruling by a hearing officer, arbitrator, Administrative Law Judge, or the Superior Court. In reviewing dispositions reached before the issuance of this Directive, prosecutors must be mindful that officers may not have had an incentive to challenge *Giglio*-related charges or findings when the overall negotiated disposition of the matter was acceptable to the officer. Therefore, in such cases, prosecutors must thoroughly review the entire investigative file before making determinations on the disclosure of *Giglio*-related charges that were ultimately dismissed as part of an administrative or civil settlement.

II. Implementation of Countywide *Brady-Giglio* Policies

- A. ***Prosecutors' Responsibilities.*** It is the prosecutor's responsibility to gather and disclose relevant *Brady* and *Giglio* material to the defense. The obligation to turn over exculpatory material is embedded in New Jersey's discovery rules, Rule 3:13-3(a), (b), and (f). In addition to disclosing exculpatory information pre-trial, exculpatory information must also be disclosed prior to a plea offer when offered during the pre-indictment phase. R. 3:13-3(a). Prosecutors are also bound by the Rules of Professional Conduct. Rule 3.8(d) requires prosecutors to make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate guilt or mitigate the offense.

It is also the prosecutor's responsibility to decide, based on their professional judgment, what evidence is covered by *Brady* and *Giglio* and must be disclosed to the defendant. Because knowledge of *Brady* and *Giglio* material is imputed to the prosecutor, it is imperative that the prosecutor request that information of testifying State witnesses. Ultimately, it is the prosecutor's decision whether to disclose potentially exculpatory evidence.

1. ***Brady Material.*** In developing its policy, each County Prosecutor's Office shall use the following non-exhaustive list of *Brady* material as examples for guidance:
 - a. Evidence linking a State witness to the crime for which defendant is being charged. *State v. Landano*, 271 N.J. Super. 1 (App. Div.), *certif. denied* 137 N.J. 164 (1994);

- b. Evidence related to defendant's theory of third-party guilt. *State v. Smith*, 224 N.J. 36, 50 (2016);
 - c. Potentially exculpatory polygraph test of State's witness. *State v. Carter*, 85 N.J. 300 (1981); and
 - d. Prior inconsistent and exculpatory statements made by a State's witness. *State v. Cahill*, 125 N.J. Super. 492 (Law Div. 1973).
2. **Giglio Material.** "Evidence impeaching the testimony of a government witness falls within the *Brady* rule when the reliability of the witness may be determinative of a criminal defendant's guilt or innocence." *State v. Carter*, 91 N.J. at 111 (citing *Giglio* at 150) (emphasis added). The New Jersey Supreme Court in *Carter* held that "the State's obligation to disclose is not limited to evidence that affirmatively tends to establish a defendant's innocence but would include any information material and favorable to a defendant's cause even where the evidence concerns only the credibility of a State's witness." *Id.* This includes *Giglio* material on civilian and investigative State witnesses.

Thus, in developing its *Brady* and *Giglio* policy, each County Prosecutor's Office shall use the following non-exhaustive list of potential *Giglio* material as it relates to civilian and investigative State witnesses for guidance on the type of material that must be gathered. Again, this does not necessarily mean the information will be disclosed.

a. Civilian Witnesses

- i. Bias. A witness can be impeached with evidence that he or she has a bias against the defendant or in favor of the State (actual or potential exposure to criminal penalties, leniency/plea agreement, payments, immigration benefits, etc.);
- ii. Specific instances of dishonesty. A witness can be impeached with evidence of a prior act of misconduct involving dishonesty, even if it has not resulted in a criminal charge or conviction. This includes lying and falsifying records;
- iii. Criminal convictions, N.J.R.E. 609; and
- iv. Prior inconsistent statements, N.J.R.E. 613.

b. Investigative Employees

- i. A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life;
- ii. A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor;
- iii. A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609;
- iv. A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness;
- v. A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency, which includes a finding that the investigative employee was *intentionally* untruthful in a matter, either verbally or in writing;
- vi. A sustained finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and investigative employees should disclose findings or allegations that relate to substantive violations concerning: (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence;²
- vii. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;
- viii. Information that may be used to suggest that the investigative employee is biased for or against a defendant. *See United States v. Abel*, 469 U.S. 45, 52

² This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered *Giglio* information for purposes of disclosure.



State of New Jersey

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GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-7

TO: Director, Division of Criminal Justice
All County Prosecutors
All County Municipal Prosecutor Liaisons
All Municipal Prosecutors

FROM: Gurbir S. Grewal, Attorney General

DATE: December 4, 2019

SUBJECT: Directive Strengthening Oversight of Municipal Court Prosecutions

Municipal prosecutors play a major role in ensuring consistency and improving the quality of justice in our State's municipal courts. To that end, stakeholders from across New Jersey (including municipal prosecutors) have been meeting for more than a year to explore the role of prosecutors in establishing municipal court practices and procedures that better reflect New Jersey's interests in promoting justice and protecting public safety.

An initial working group of criminal justice stakeholders established in July 2018 identified a number of issues relating to municipal court prosecutions that warranted further study. Based in part on the working group's input, the Attorney General announced on August 28, 2018, that he would be directing the Division of Criminal Justice to prepare recommendations for action on several issues. Among the questions that the Attorney General identified for the Division of Criminal Justice to consider were:

- Should the Code of Ethics for County Prosecutors be extended to apply to municipal prosecutors?
- Should prosecutors adopt practices and policies to address criminal justice issues raised in the recent Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees?
- Is there an appropriate role for prosecutors to play in advising defendants of potential collateral consequences of convictions?



- Do Municipal Prosecutor Supervisors or Liaisons in County Prosecutors' Offices require additional guidance as to their duties?

After a series of meetings with stakeholders drawn primarily from the membership of the working group formed in July 2018, the Office of the Attorney General and the Division of Criminal Justice concluded that certain of the questions initially posed could not be properly answered without more comprehensive and reliable information concerning the State's municipal prosecutors. To provide one example, the working group could not properly evaluate whether to extend to municipal prosecutors the Code of Ethics for County Prosecutors without a better understanding of how many municipal prosecutors would be affected by the Code's restrictions on participating in political campaigns and holding elected office.

The necessary information about individual municipal prosecutors was not readily available. Many County Prosecutors' Offices did not have a current roster of the municipal prosecutors for each municipality within their jurisdiction. Nor did the Division of Criminal Justice. Yet without this information, neither is able to provide the kind of oversight contemplated by state laws, such as N.J.S.A. 2B:12-27, which establishes that municipal prosecutors act "under the supervision of the Attorney General or county prosecutor."

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement and comply with the procedures outlined below.

This Directive is designed to ensure that the Attorney General, the Division of Criminal Justice, and the County Prosecutors' Offices have the information needed to provide effective oversight and inform future policymaking, and that all stakeholders share and seek to constantly improve best practices.

I. Registration and Disclosure by Municipal Prosecutors

A. *Duties of Municipal Prosecutors*

1. Every municipal prosecutor must register with the Division of Criminal Justice. In municipalities with multiple persons authorized to act as municipal prosecutors, each prosecutor must register separately because each prosecutor must be appointed separately. *See* N.J.S.A. 2B:12-27; N.J.S.A. 2B:25-4.
2. Every municipal prosecutor shall annually file with the Division of Criminal Justice a completed Municipal Prosecutor Disclosure Statement ("Disclosure Statement"),

using the form created and published by the Division of Criminal Justice pursuant to Section I.C below. Upon filing the required Disclosure Statement, the municipal prosecutor will be considered registered as a municipal prosecutor with the Division of Criminal Justice until such time as the filer files a Municipal Prosecutor Separation Statement (“Separation Statement”) or fails to timely file a required Disclosure Statement.

3. Deadlines for Initial Disclosure Statements:
 - a. For any person who is serving as a municipal prosecutor as of January 1, 2020, the initial Disclosure Statement is due no later than May 1, 2020.
 - b. For any person beginning service as a municipal prosecutor after January 1, 2020, but no later than April 1, 2020, the initial Disclosure Statement is due no later than May 1, 2020.
 - c. For any person beginning service as a municipal prosecutor after April 1, 2020, the initial Disclosure Statement is due within 30 days of taking office.
4. After filing the required initial Disclosure Statement, a municipal prosecutor shall file annual Disclosure Statements by May 1 of each subsequent year for so long as they remain so employed.
5. A person who ceases employment as a municipal prosecutor in a municipality shall notify the Division of Criminal Justice within 30 days of the last day of service by filing a completed Separation Statement. A person who has filed a Separation Statement and no longer serves as a municipal prosecutor in the municipality is not subsequently required to file with the Division of Criminal Justice annual Disclosure Statements in connection with the person’s service in that municipality.
6. Municipal prosecutors serving in multiple municipalities must file separate Disclosure Statements and a separate Separation Statement for each position they hold.
7. Persons who serve as municipal prosecutor on an acting, temporary, substitute, or similar basis shall file Disclosure Statements in accordance with instructions to be issued by the Division of Criminal Justice in accordance with Section I.C.1 of this Directive. However, this Directive does not apply to attorneys whose prosecutorial role is limited to serving as a private prosecutor for a citizen complaint pursuant to R. 7:8-7b.
8. In addition to Disclosure Statements and Separation Statements, municipal prosecutors shall provide such additional information as the Division of Criminal

Justice or County Prosecutor's Office may from time to time require. Such information may be necessary, for example, to facilitate oversight and policymaking involving municipal court prosecutions. For instance, in evaluating policy proposals concerning prosecutorial independence in municipal court prosecutions, the Division may find it appropriate to solicit from all or some municipal prosecutors information regarding outside employment, political activity, and the sources and amounts of their income from the municipality and other sources.

B. *Duties of the County Prosecutors*

1. Every County Prosecutor's Office shall establish a "Municipal Prosecutor Liaison."
2. In addition to their other duties, which will be addressed in the Best Practices Manual developed in accordance with Section I.D below, Municipal Prosecutor Liaisons shall be responsible for coordinating with the Division of Criminal Justice and municipal prosecutors in their County to ensure that each municipal prosecutor in the County has a completed and up-to-date registrations and disclosures.

C. *Duties of the Division of Criminal Justice*

1. The Division of Criminal Justice shall create and publish the Disclosure Statement and Separation Statement forms no later than February 1, 2020. At the Division's discretion, Disclosure Statements and Separation Statements may be completed online using electronic forms. The Division also shall issue such clarifying instructions as are necessary to enable municipal prosecutors to make the required disclosures.
2. The Disclosure Statement form shall require disclosure of at least the following information:
 - a. The filer's name and contact information;
 - b. The filer's New Jersey attorney ID;
 - c. The first date of the filer's first consecutive term of service as municipal prosecutor;
 - d. The term of the filer's current appointment (or, if applicable, the date on which the filer assumed holdover status); and
 - e. Such other information as the filer is required to disclose on the Local Government Ethics Law Financial Disclosure Statement.
3. The Division of Criminal Justice shall establish the reporting periods to be covered by

filers' initial and subsequent Disclosure Statements and for Separation Statements.

4. The Division of Criminal Justice shall develop policies and practices for securing the information that municipal prosecutors are required to disclose on their Disclosure Statements and Separation Statements, in the event that a municipal prosecutor or former municipal prosecutor fails to comply with this Directive.
5. The Division of Criminal Justice shall designate one or more Deputy Attorney(s) General to serve as Municipal Prosecution Supervisor(s) within the Division's Prosecutors Supervision & Training Bureau.
6. In addition to the other duties of the Municipal Prosecution Supervisor(s), the Municipal Prosecution Supervisor(s) shall be responsible for ensuring that the Division has completed and up-to-date registrations and disclosures for each municipal prosecutor in the State. The Municipal Prosecution Supervisor(s) shall carry out this duty with the assistance of the County Municipal Prosecutor Liaisons, and shall ensure that each County Municipal Prosecutor Liaison has copies of the completed and up-to-date registrations and disclosures for each municipal prosecutor in the relevant County.
7. In carrying out the duties described in this Section, the Division shall seek to accomplish its objectives while minimizing the filing burden for municipal prosecutors.

D. *Best Practices Manual*

1. The Division of Criminal Justice, through its Municipal Prosecution Supervisor(s) and in consultation with the Municipal Prosecutor Liaisons, shall create a Best Practices Manual for County Municipal Prosecutor Liaisons.
2. The Best Practices Manual shall address, among other subjects, the best practices for communication and coordination among municipal prosecutors, Municipal Prosecutor Liaisons, and the Municipal Prosecution Supervisor(s).
3. The Division shall create the Best Practices Manual no later than April 1, 2020.

II. Other Provisions

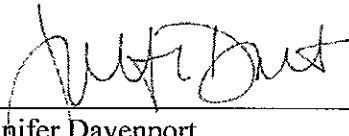
- A. *Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

- B. **Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- C. **Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.
- D. **Effective date.** This Directive shall take effect immediately, and shall remain in force unless and until rescinded or amended by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Jennifer Davenport
First Assistant Attorney General
Dated: December 4, 2019



State of New Jersey

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TO: Chief Jody Farabella, Millville Police Department
Chief Michael A. Gaimari, Sr., Bridgeton Police Department
Chief David Hart, Linden Police Department
Chief Raymond J. Hayducka, South Brunswick Police Department
Chief Troy Oswald, Paterson Police Department
Chief Anthony Smith, Dover Police Department

FROM: Gurbir S. Grewal, Attorney General

DATE: December 4, 2019

SUBJECT: Launching a Pilot Program for Statewide Police Use-of-Force Portal

I am writing to recognize your police departments as the six New Jersey law enforcement agencies that will participate in the pilot program for the State's new Police Use-of-Force Portal. The six participating towns – Bridgeton, Dover, Linden, Millville, Paterson, and South Brunswick – represent a cross-section of the rich diversity of our state, and they represent an excellent opportunity to fine-tune the portal and the data collection process before we roll out the system statewide. Thank you for your partnership and support for this important initiative, which will not only improve law enforcement training and accountability, but also bolster public confidence in the work of New Jersey law enforcement.

This pilot program represents the next stage in a joint effort to design a new system for obtaining statewide use-of-force data, which the Department of Law & Public Safety launched in partnership with the New Jersey State Police, the County Prosecutors' Association of New Jersey, the New Jersey State Association of Chiefs of Police, the New Jersey State Policemen's Benevolent Association, the New Jersey Fraternal Order of Police, the State Troopers Superior Officers Association, the State Troopers Non-Commissioned Officers Association, and the State Troopers Fraternal Association.

In December 2018, these law enforcement agencies and organizations called for a "complete overhaul" of our statewide use-of-force data collection system after media reporting exposed gaps in the uniformity of the State's data collection efforts. As we noted at the time,



although individual municipalities, departments, or counties may have effective data collection systems in place, the lack of uniformity across the State makes it difficult to confirm the accuracy of existing data and to draw correct conclusions about the state of law enforcement by aggregating and comparing disparate information from different law enforcement agencies. Numbers rarely tell the full story, moreover, so it is crucial that we not only obtain accurate data, but also that we provide the context necessary to understand and explain the data to the public.

During the past year, we have made substantial progress on setting up an electronic reporting system. Through an IT committee and with the assistance of a consultant, we identified the secure website of the Mid-Atlantic Great Lakes Organized Crime Law Enforcement Network (MAGLOCLEN), part of the Regional Information Sharing System, as the best solution for setting up a secure portal to permit police departments to transmit their records electronically and securely. MAGLOCLEN now has agreed to both host the reporting portal and handle law enforcement authentication and password systems. Meanwhile, a working group of law enforcement partners and academics developed a use-of-force reporting form that will now be deployed for beta-testing by your police departments to determine if it is clear, easy to use, understandable, and not unduly burdensome. A copy of this reporting form is enclosed for your reference. At the same time, we are preparing to engage an established University-related entity to assist with various technical aspects of transmitting, storing, scrubbing and analyzing the data, and maintaining the system.

Over the next year, the Office of Public Integrity & Accountability (OPIA), in cooperation with our law enforcement and community stakeholders, will undergo a comprehensive evaluation of our use-of-force policy, which has not been updated since 2000. We will use the data we are collecting—along with community feedback, evolving best practices and the experiences of other law enforcement agencies in the United States and around the world—to inform any revised policy. Our goal is to make sure that our use-of-force policy gives police the guidance they need to effectively and fairly protect public safety while maintaining their own safety and the trust of the communities they serve.

Representatives from the Office of Public Integrity & Accountability (OPIA) will be following up in the near future to work with your departments to begin the beta-testing. We look forward to working with you on the pilot program as we build towards the full statewide rollout of the use-of-force portal.

Thank you again for your cooperation.



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GURBIR S. GREWAL
Attorney General

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: December 4, 2019

SUBJECT: Transitioning from “Early Warning Systems” to “Early Intervention Systems”

On March 20, 2018, I issued Attorney General Law Enforcement Directive (AG Directive) 2018-3, also known as the “Early Warning Systems Directive,” which required that each state, county, and local law enforcement agency in New Jersey adopt and implement its own early warning system (EWS) protocol. As you know, EWS is an important management tool—not simply because it helps police departments identify officers whose behavior is, or may become, problematic, but also because it provides a mechanism for intervening *before* the matter escalates.

The idea behind EWS is simple. A law enforcement agency identifies certain types of officer conduct, or “performance indicators,” that may be predictive of future misconduct or danger to the officer. The EWS tracks all instances of performance indicators across the agency. If a particular officer engages in a certain number of performance indicators within a defined period of time (for example, three instances in a twelve-month period), then the EWS flags the officer for the agency’s leadership. The officer’s supervisor then works with the officer to improve their performance, typically with additional training or other forms of support, in order to avoid future misbehavior. The agency continues to monitor the officer’s performance in the subsequent months to ensure that the initial intervention was successful.

One of the most important aspects of EWS is that it is non-punitive. Although an officer may have received discipline for conduct associated with certain performance indicators, the mere fact that an officer was “flagged” by EWS does not, by itself, trigger additional punishment for the officer. Rather, EWS helps managers identify areas where officers may need additional support and creates an opening to raise the issue. In this regard, EWS simply formalizes what many good law enforcement leaders already do.



The March 2018 Early Warning Systems Directive did not simply mandate EWS for the state's law enforcement agencies, it also set some baseline requirements for each agency's program. The Directive required that each agency include 14 mandatory performance indicators and allowed the agency's law enforcement executive to add any additional indicators he or she deemed appropriate. The Directive also established the maximum number of indicators that would trigger EWS: three instances in a twelve-month period, with the option for agencies to set a lower number at the discretion of the law enforcement executive.

The 14 mandatory indicators covered a range of officer conduct, from criminal charges against an officer to more common disciplinary violations, such as insubordination, neglect of duty, and unexcused absences. In addition, several of the indicators involved *allegations* of improper conduct, rather than sustained findings, including allegations of domestic violence and sexual harassment. By design, the 14 indicators incorporated a broad range of actual and potential misconduct, even if it meant that EWS programs would occasionally trigger a "false positive" that flagged officers who presented little risk of future misconduct. Given the non-punitive nature of EWS, the Directive recognized that it would be better to create a system that prompted supervisory officers to have more EWS-triggered conversations than necessary, as opposed to creating a narrower program that allowed some at-risk officers to slip through the cracks.

That said, no system is perfect, and we can always find ways to improve operations. Over the past year, my office has engaged in a number of discussions with criminal justice stakeholders about improving our State's EWS protocols. Some individuals have expressed concern about several of the existing indicators, while others have pushed for entirely new ones. At the same time, we have heard that, despite best efforts, some officers still view EWS as a punitive measure rather than a remedial one. From these conversations, we have identified two overarching goals for EWS going forward: to ensure that our mandatory indicators are based on sound science, and to eliminate any lingering stigma associated with EWS.

One of the ways we hope to address these concerns is by reframing and redesigning how we identify at-risk officers. Rather than focusing on traditional "early warning systems," which simply track and count instances of performance indicators, we hope to build a new model—a true "early intervention system"—that comprehensively tracks officer conduct and provides better tools for assessing and assisting officers before problems escalate. Our goal is to develop a statewide system that is rigorously evidence-based and incorporates the latest research about effective law enforcement management. Among other things, this new early intervention system will work in conjunction with the new officer resiliency program established by AG Directive 2019-1.

For that reason, I am directing the Office of Public Integrity & Accountability (OPIA) to take the lead in developing a proposal for a new statewide system. As part of this effort, I have asked that OPIA consult with a wide range of stakeholders, including law enforcement leaders, county prosecutors, community advocates, and the state's newly appointed Chief Resiliency

Officer, and to deliver recommendations to me by December 31, 2020. I hope that you will share your thoughts and feedback with OPIA as it develops a system that works for all law enforcement agencies in the state.

I look forward to continuing our collaboration as we work to strengthen public safety, improve the health and wellbeing of our officers, and promote public trust.



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GURBIR S. GREWAL
Attorney General

TO: All Commissioners, Police Training Commission

FROM: Gurbir S. Grewal, Attorney General

DATE: December 4, 2019

SUBJECT: **Expanding the Work of the Police Training Commission**

The mission of the Police Training Commission (PTC) has never been more important than it is today. The PTC is uniquely positioned to ensure that New Jersey remains at the forefront of law enforcement training and professionalism, both of which are essential to public safety, law enforcement safety, and public confidence in policing. Over the last 22 months, however, I have spoken to many stakeholders, including members of the PTC, concerning these matters and it is apparent that we can and should do more. To that end, I am writing to request that we work together to make New Jersey a national leader on police training issues.

Specifically, I am asking the PTC to work with the Office of Public Integrity & Accountability (OPIA) to prepare reports on two issues that are critical to the future of law enforcement in New Jersey. I ask that you submit both reports to me within six months, by June 1, 2020.

- ***Framework for revisions to police officer training.*** The first report will assess New Jersey's current practices for training police officers and compare the status quo with best practices. Should we revise our recruit standards? How should we train officers before they enter the academy, on their first year on the job, and as their careers progress? How can we better ensure consistency across the fifteen schools approved to offer police training courses? How can we continuously update the curriculum for each of the twenty-eight currently PTC-approved courses and better evaluate changes to the course structure? How should we combine experiential and classroom learning so, for example, officers better understand the real-world impact of de-escalation training as well as the theory? I ask you to complete a report that addresses these issues, among other related topics, and explains the resources that the PTC would need to make New Jersey a national model for police officer training.



- ***Proposal regarding professional licensure for law enforcement officers.*** The second report will address an issue discussed at the most recent PTC meeting: whether to adopt a professional licensure regime for New Jersey's police officers. New Jersey licenses the practitioners of many different professions, from accountants to veterinarians and cosmetologists to plumbers. Yet we are one of only a handful of States that do not license the police officers we authorize to carry weapons and deploy deadly force. Most States operate under some form of statewide Peace Officer Standards and Training system, as recommended by the 1967 Report of the President's Commission on Law Enforcement and the Administration of Justice. The PTC, which already oversees basic, firearms, and instructional development training courses and certifies officers' completion of basic training courses, is uniquely well situated to prepare a report on the pros and cons of licensure; on how best to design a licensing regime that would facilitate training, increase public confidence in law enforcement, and protect officers' due process rights; on whether licensure would require new statutory authority; and on the resources that would be required to support the agency responsible for licensure.

Part of the reason why the PTC is so well-suited to address these issues is because its membership includes a cross-section of law enforcement interests in New Jersey, including representatives of uniformed officers, chiefs of police, sheriffs, jail wardens, prosecutors, municipal governments, and police academy directors. As the PTC prepares these two reports, it is important that the Commission also solicit input from a variety of community stakeholders, including civil rights, social justice, and religious leaders, especially those who advocate for the rights of historically disadvantaged communities. I know that all of us share a commitment to strengthening relationships between law enforcement and the communities they serve, and it is my sincere hope that PTC can forge consensus across a wide range of interests to develop proposals that promote both public safety and public trust.

To encourage public engagement on these important issues, I intend to release both reports publicly once they are complete, and I look forward to discussing these issues with all of you in an open session of the PTC at that time.

Finally, I understand that this request comes at a time when the PTC is doing so much more than was envisioned when it was created, with so much less. I know that decades of cutbacks, combined with increased demands on its dwindling staff, have left the PTC without the resources it needs to accomplish its statutory mandate. It is time to change that.

I am making a commitment to you that, as we enter the budget cycle for Fiscal Year 2021, one of my top priorities will be ensuring that the PTC's funding is increased so that it can fulfill its unlocked potential. I am making that commitment because you have convinced me that a renewed investment in the PTC will pay dividends for law enforcement officers and the broader New Jersey public alike.

The Legislature provided for the establishment of the PTC as a unit within the Department of Law & Public Safety in 1961, after recognizing that “police work . . . is professional in nature” and finding “a serious need for improvement in the administration of local and county law enforcement . . . in order to better protect the health, safety, and welfare of its citizens.” P.L. 1961, c.56, § 1. As originally conceived, the PTC’s role included approving schools to offer police training courses; prescribing minimum courses of study, curriculum, instructor qualifications, and other requirements for schools offering police training courses; and certifying police officers who have satisfactorily completed training programs. Municipalities would send police officers holding probationary or temporary appointments to an approved school during their first year on the job, and could deny permanent appointments to officers who did not successfully complete a required police training course.

Since its creation, the PTC’s role has grown. The Legislature has charged the PTC with approving training courses for corrections officers, juvenile detention officers, Department of Corrections investigators, safe school resource officers, and public school employees serving as liaisons to law enforcement. And the Legislature has made successful completion of a required course (or successful completion of a substantially equivalent course) mandatory for police officers, corrections officers, and juvenile detention officers seeking a permanent appointment.

Today, in addition to monitoring the fifteen schools approved to offer police training in New Jersey, the PTC’s statutory responsibilities also include but are not limited to:

- Studying the methods for training police, corrections officers, and juvenile detention officers;
- Maintaining a training course on identifying, responding to, and reporting bias intimidation crimes;
- Furnishing approved schools with curricular information about high speed chases;
- Adopting a training course regarding law enforcement engagement with individuals with autism or an intellectual or other developmental disability;
- Establishing a senior citizens crime prevention program;
- Recommending standards for training programs in crime prevention; and
- Administering undergraduate scholarship programs for police officers.

While the PTC’s responsibilities have grown, its staff has been depleted. The PTC’s personnel and responsibilities were transferred to the Division of Criminal Justice in the late 1980s. P.L.1985, c.491. With the transfer, PTC staff were divided and assigned to either the investigative bureau or the Police Services Section. Over time, the PTC’s professional staff were not replaced as employees retired or resigned. The current staff consists of two academy coordinators, two field representatives, one clerical employee, and one administrator.

Exacerbating the problem, a shift in law enforcement agencies' hiring preferences over the last decade has flooded PTC staff with paperwork. In 2010, PTC staff received and processed only 90 requests to waive the statutory training course requirements for officers who were hired with prior training and experience. As budget constraints and other factors have led many law enforcement agencies to prefer candidates with previous training, the number of waiver requests has ballooned, reaching 1055 in 2018. Keeping up has required staff to divert their attention from their more substantive responsibilities to complete administrative tasks.

I know we agree that the PTC's mission is too important to allow it to continue to wither due to underfunding. I look forward to working with you to help the PTC fulfill its full promise.

CC: Thomas Eicher, Executive Director, OPIA
Veronica Allende, Director, Division of Criminal Justice



State of New Jersey

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

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-7

TO: Director, Division of Criminal Justice
All County Prosecutors
All County Municipal Prosecutor Liaisons
All Municipal Prosecutors

FROM: Gurbir S. Grewal, Attorney General

DATE: December 4, 2019

SUBJECT: Directive Strengthening Oversight of Municipal Court Prosecutions

Municipal prosecutors play a major role in ensuring consistency and improving the quality of justice in our State's municipal courts. To that end, stakeholders from across New Jersey (including municipal prosecutors) have been meeting for more than a year to explore the role of prosecutors in establishing municipal court practices and procedures that better reflect New Jersey's interests in promoting justice and protecting public safety.

An initial working group of criminal justice stakeholders established in July 2018 identified a number of issues relating to municipal court prosecutions that warranted further study. Based in part on the working group's input, the Attorney General announced on August 28, 2018, that he would be directing the Division of Criminal Justice to prepare recommendations for action on several issues. Among the questions that the Attorney General identified for the Division of Criminal Justice to consider were:

- Should the Code of Ethics for County Prosecutors be extended to apply to municipal prosecutors?
- Should prosecutors adopt practices and policies to address criminal justice issues raised in the recent Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees?
- Is there an appropriate role for prosecutors to play in advising defendants of potential collateral consequences of convictions?



- Do Municipal Prosecutor Supervisors or Liaisons in County Prosecutors' Offices require additional guidance as to their duties?

After a series of meetings with stakeholders drawn primarily from the membership of the working group formed in July 2018, the Office of the Attorney General and the Division of Criminal Justice concluded that certain of the questions initially posed could not be properly answered without more comprehensive and reliable information concerning the State's municipal prosecutors. To provide one example, the working group could not properly evaluate whether to extend to municipal prosecutors the Code of Ethics for County Prosecutors without a better understanding of how many municipal prosecutors would be affected by the Code's restrictions on participating in political campaigns and holding elected office.

The necessary information about individual municipal prosecutors was not readily available. Many County Prosecutors' Offices did not have a current roster of the municipal prosecutors for each municipality within their jurisdiction. Nor did the Division of Criminal Justice. Yet without this information, neither is able to provide the kind of oversight contemplated by state laws, such as N.J.S.A. 2B:12-27, which establishes that municipal prosecutors act "under the supervision of the Attorney General or county prosecutor."

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement and comply with the procedures outlined below.

This Directive is designed to ensure that the Attorney General, the Division of Criminal Justice, and the County Prosecutors' Offices have the information needed to provide effective oversight and inform future policymaking, and that all stakeholders share and seek to constantly improve best practices.

I. Registration and Disclosure by Municipal Prosecutors

A. *Duties of Municipal Prosecutors*

1. Every municipal prosecutor must register with the Division of Criminal Justice. In municipalities with multiple persons authorized to act as municipal prosecutors, each prosecutor must register separately because each prosecutor must be appointed separately. *See* N.J.S.A. 2B:12-27; N.J.S.A. 2B:25-4.
2. Every municipal prosecutor shall annually file with the Division of Criminal Justice a completed Municipal Prosecutor Disclosure Statement ("Disclosure Statement"),

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using the form created and published by the Division of Criminal Justice pursuant to Section I.C below. Upon filing the required Disclosure Statement, the municipal prosecutor will be considered registered as a municipal prosecutor with the Division of Criminal Justice until such time as the filer files a Municipal Prosecutor Separation Statement ("Separation Statement") or fails to timely file a required Disclosure Statement.

3. Deadlines for Initial Disclosure Statements:
 - a. For any person who is serving as a municipal prosecutor as of January 1, 2020, the initial Disclosure Statement is due no later than May 1, 2020.
 - b. For any person beginning service as a municipal prosecutor after January 1, 2020, but no later than April 1, 2020, the initial Disclosure Statement is due no later than May 1, 2020.
 - c. For any person beginning service as a municipal prosecutor after April 1, 2020, the initial Disclosure Statement is due within 30 days of taking office.
4. After filing the required initial Disclosure Statement, a municipal prosecutor shall file annual Disclosure Statements by May 1 of each subsequent year for so long as they remain so employed.
5. A person who ceases employment as a municipal prosecutor in a municipality shall notify the Division of Criminal Justice within 30 days of the last day of service by filing a completed Separation Statement. A person who has filed a Separation Statement and no longer serves as a municipal prosecutor in the municipality is not subsequently required to file with the Division of Criminal Justice annual Disclosure Statements in connection with the person's service in that municipality.
6. Municipal prosecutors serving in multiple municipalities must file separate Disclosure Statements and a separate Separation Statement for each position they hold.
7. Persons who serve as municipal prosecutor on an acting, temporary, substitute, or similar basis shall file Disclosure Statements in accordance with instructions to be issued by the Division of Criminal Justice in accordance with Section I.C.1 of this Directive. However, this Directive does not apply to attorneys whose prosecutorial role is limited to serving as a private prosecutor for a citizen complaint pursuant to R. 7:8-7b.
8. In addition to Disclosure Statements and Separation Statements, municipal prosecutors shall provide such additional information as the Division of Criminal

Justice or County Prosecutor's Office may from time to time require. Such information may be necessary, for example, to facilitate oversight and policymaking involving municipal court prosecutions. For instance, in evaluating policy proposals concerning prosecutorial independence in municipal court prosecutions, the Division may find it appropriate to solicit from all or some municipal prosecutors information regarding outside employment, political activity, and the sources and amounts of their income from the municipality and other sources.

B. *Duties of the County Prosecutors*

1. Every County Prosecutor's Office shall establish a "Municipal Prosecutor Liaison."
2. In addition to their other duties, which will be addressed in the Best Practices Manual developed in accordance with Section I.D below, Municipal Prosecutor Liaisons shall be responsible for coordinating with the Division of Criminal Justice and municipal prosecutors in their County to ensure that each municipal prosecutor in the County has a completed and up-to-date registrations and disclosures.

C. *Duties of the Division of Criminal Justice*

1. The Division of Criminal Justice shall create and publish the Disclosure Statement and Separation Statement forms no later than February 1, 2020. At the Division's discretion, Disclosure Statements and Separation Statements may be completed online using electronic forms. The Division also shall issue such clarifying instructions as are necessary to enable municipal prosecutors to make the required disclosures.
2. The Disclosure Statement form shall require disclosure of at least the following information:
 - a. The filer's name and contact information;
 - b. The filer's New Jersey attorney ID;
 - c. The first date of the filer's first consecutive term of service as municipal prosecutor;
 - d. The term of the filer's current appointment (or, if applicable, the date on which the filer assumed holdover status); and
 - e. Such other information as the filer is required to disclose on the Local Government Ethics Law Financial Disclosure Statement.
3. The Division of Criminal Justice shall establish the reporting periods to be covered by

filers' initial and subsequent Disclosure Statements and for Separation Statements.

4. The Division of Criminal Justice shall develop policies and practices for securing the information that municipal prosecutors are required to disclose on their Disclosure Statements and Separation Statements, in the event that a municipal prosecutor or former municipal prosecutor fails to comply with this Directive.
5. The Division of Criminal Justice shall designate one or more Deputy Attorney(s) General to serve as Municipal Prosecution Supervisor(s) within the Division's Prosecutors Supervision & Training Bureau.
6. In addition to the other duties of the Municipal Prosecution Supervisor(s), the Municipal Prosecution Supervisor(s) shall be responsible for ensuring that the Division has completed and up-to-date registrations and disclosures for each municipal prosecutor in the State. The Municipal Prosecution Supervisor(s) shall carry out this duty with the assistance of the County Municipal Prosecutor Liaisons, and shall ensure that each County Municipal Prosecutor Liaison has copies of the completed and up-to-date registrations and disclosures for each municipal prosecutor in the relevant County.
7. In carrying out the duties described in this Section, the Division shall seek to accomplish its objectives while minimizing the filing burden for municipal prosecutors.

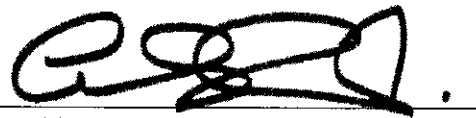
D. *Best Practices Manual*

1. The Division of Criminal Justice, through its Municipal Prosecution Supervisor(s) and in consultation with the Municipal Prosecutor Liaisons, shall create a Best Practices Manual for County Municipal Prosecutor Liaisons.
2. The Best Practices Manual shall address, among other subjects, the best practices for communication and coordination among municipal prosecutors, Municipal Prosecutor Liaisons, and the Municipal Prosecution Supervisor(s).
3. The Division shall create the Best Practices Manual no later than April 1, 2020.

II. Other Provisions

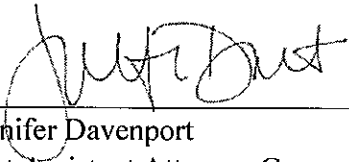
- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

- B. **Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- C. **Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.
- D. **Effective date.** This Directive shall take effect immediately, and shall remain in force unless and until rescinded or amended by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Jennifer Davenport
First Assistant Attorney General
Dated: December 4, 2019

Currently, we are living in a very important moment in history. We are protesting police violence that is disproportionately killing Black people in the midst of a pandemic that is disproportionately killing Black people. We are in a sense, risking our lives in order to save lives.

Over-policing of Black and brown communities leads to not only police violence and mass incarceration, but the reduction of resources for programming and initiatives that will actually make communities safe.

Police violence will only end when we end what is now known as policing. We shouldn't have to wait until a certain number of people are strangled to death to ban chokeholds. We are not asking for more diversity, because a fist hurts, regardless of the skin color. We are not interested in body cameras, if it means seeing more Black bodies harmed and their killers walk away freely. End qualified Immunity. Implement Civilian Complaint review boards with subpoena power. We want accountability, but more importantly. We want to live. But not just live but thrive.

Children need to be alive to go to school. Young adults need to be out of jail to go to work. In order to create a safe and sustainable community where residents can thrive, we need to forego past practices and approaches in favor of better ways that heal individuals and communities, instead of feeding into a vicious cycle of violence and re-incarceration.

Community policing and hot spot policing doesn't work. If they did, the same hot spots wouldn't be the continual sites of violence. We don't need memorials. We need solutions that work.

The globally recognized Cure Violence approach for example treats violence like a disease. Cure Violence uses disease-control and behavior-change methods to stop the spread of violence in communities around the world by detecting and interrupting conflicts, identifying and treating the highest risk individuals, and changing social norms — resulting in reductions in violence of up to 70 percent in communities where Cure Violence programs are active.

Newark Mayor Ras Baraka signed an ordinance to divert about \$11.4 million - or 5% - from the city's public safety budget toward violence prevention programs amid a growing push from activists to defund the police after George Floyd's death.

Similarly, Los Angeles city leaders voted Wednesday to slash the Los Angeles Police Department budget by \$150 million. Funding will be used instead to provide services and programs for communities of color, including a youth summer jobs program.

Divest from institutions that are harming Black and brown communities, and invest in initiatives that make us safe.

Being "tough on crime" traps many of our men and women into a cycle of re-incarceration. Instead of re-entering the community rehabilitated, folks are marked with a giant scarlet letter denying them access to living wage jobs to sustain themselves and their families.

The safest communities don't have more cops; they have more resources. Residents of safe communities have access to living wage jobs, quality health care, affordable homes and high quality education. You don't fight crime by hiring more police officers. You fight crime by ending poverty. Our approach is not to achieve public safety through mass incarceration, but by providing resources to our residents, especially the most marginalized and vulnerable.

We all deserve to live in safe and thriving communities, regardless of our race, creed, gender or zip code. Safety doesn't come with more police or foot patrols. You're still not safe from eviction. You're still not safe from foreclosure. You're still not safe from losing your job. Safety comes from equal access to

resources and opportunities. Safety comes from transparency and when those that do harm, are held accountable.

Together, we can take the steps to make this state safer for all. #BlackLivesMatter #JusticeforJameek #JusticeForMauriceGordon

SENATE LAW AND PUBLIC SAFETY COMMITTEE TESTIMONY

JULY 15, 2020

Good afternoon Madame Chairwoman and members of the committee, its an honor to be here and graciously accept the invitation to testify here today. The State Troopers Fraternal Association is the exclusive bargaining unit that represents over 1500 rank and file New Jersey state troopers. We stand united with our colleagues in the State Troopers Non-Commissioned Officers Association, and the State Troopers Superior Officers Association on these issues before us today. STFA members along with our colleagues, and all good Americans were unequivocally disturbed and disgusted by the actions of four Minneapolis police officers on May 25, 2020. Furthermore, we publicly condemn the actions of those officers.

We appear before this committee today to aggressively discuss and tackle issues such as use of force, implementation of Civilian or Community Review Boards, enhancing the recruiting of minority candidates, greater opportunities for promotion for minority officers, and even greater transparency and accountability by police agencies. We cannot implement reforms just for the sake of implementing reform, some which would have the potential to put police officers and communities in harm's way. In addition, we ask that other stakeholders come to the table with the understanding that police unions have a legal obligation to uphold and defend workplace, contractual, and the Constitutional Rights of our members. That being said, the State Police Unions and all other law enforcement unions have continually elicited, and especially in the current climate, that we are not in the business of protecting bad actors with a badge.

The New Jersey State Police has been operating on principles of accountability and transparency for over twenty years, and we are very proud of that. In 2009, to the Division's credit, Governor Corzine signed into law the Law Enforcement Professional Standards Act, which codified the many progressive reforms that the State Police made as a result of operating under a federal consent decree. In fact, at a September 21, 2009 press conference, then Attorney General Anne Milgram was quoted as saying, "The reforms had made the State Police a model for law enforcement throughout the country." In addition, the Reverend Reginal Jackson praised the agency's progress and called for the consent decree to end. Meanwhile, the ACLU Director, Deborah Jacobs was quoted on the reforms stating, "I think the consent decree served its purpose and resulted in a lot of improvements."

In a joint press release issued by the three New Jersey State Police Unions on June 19, 2020, we highlighted many levels of accountability and transparency practices that the Division of State Police has been engaging in for many years in order to ensure public trust. These practices include:

- Mandatory utilization of mobile video recorders in troop cars and body worn cameras.
- Mandatory monthly review of camera footage by numerous levels of supervision.
- Mandatory review of camera footage by numerous levels of supervision for ALL incidents involving arrests, searches, K-9 deployments, vehicle pursuits, and use of force.
- Each Troop region is staffed with an Integrity Officer and a Risk Management Unit, which serve as additional layers of review.
- The Office of Law Enforcement Professional Standards or OLEPS is a full time, civilian staffed entity that is tasked with overseeing the accountability of all reviews and adherence to policy.
- An Early Warning System which alerts supervisors when a trooper is involved in either two instances of use of force in a twelve-month period or is the subject or the target of three internal investigations in a two-year period have been implemented.
- Mandatory gathering of data such as race, gender, and age from every motor vehicle stop and additional quarterly analysis of each trooper's stop data in comparison to his or her peers.
- Strict, streamlined, transparent process for the public to report complaints of misconduct by troopers including a twenty-four-hotline number and mandating troopers to maintain English and Spanish complaint forms as part of their mandatory equipment for a patrol shift.
- Internal Investigations are conducted by the Office of Professional Standards, which is an independent Section within the Division of State Police which is staffed full time by civilian and enlisted members and operates with strict adherence to the Attorney General's Internal Affairs Policy and Procedure Manual.

We agree that criminal justice reforms have been a long time coming and rightfully so. However, we must do so with a commitment to the professionalism of troopers and all law enforcement officers in the State of New Jersey. We are focused on a daily basis on fostering positive relations with members of the Legislature, community leaders, faith-based leaders and many of our joint accomplishments in these areas of criminal justice reform should not be lost either. Through these efforts, we continue to improve in areas such as minority recruiting, engaging in implicit bias training, engaging in mandatory annual training modules such as the Handling of Mentally Ill Persons, Recognizing Issues when interacting with members of the LGBTQ community, and the development of a policy on interacting with Transgender individuals. Just last month, we publicly supported legislation passed in the Assembly corresponding with these issues and will continue to improve the record that the New Jersey State Police has on minority recruiting. For instance, in 2013, the 152nd State Police Class was touted to be the most diverse State Police Class in history. This was followed by the 153rd State Police Class that graduated just a few months later where there was an aggregate rate of forty seven percent minority graduates. The numbers still remain strong, where about a third of the state police recruits that graduate are minority candidates. Excellence in recruiting can only be

achieved with the support of the legislature via funding mechanisms. Funding must be in place not only for effective recruiting campaigns but to have places available for minority recruits in future state police classes. We would love nothing more than for the State Police to be the model of being the most representative police department in the most diverse state in the nation.

Rightfully so, police use of force seems to be the most highly scrutinized issue at this point. Let's be clear, police use of force is never pretty as troopers and law enforcement officers deal with the worst society has to offer, but moreover it is not a welcomed aspect of the job. It is clear after consulting experts in the field of use of force that better and more frequent training in self-defense and restraint tactics is a must. Defensive tactics and restraint tactics are highly perishable skills if troopers and law enforcement officers are not given the opportunity to frequently practice this skill set. In addition, physical training and tactical maneuvers must be accompanied of training in de-escalation techniques and training.

We realize the danger of the utilization of maneuvers such as choke holds. The chokehold is an unorthodox maneuver which is not currently taught as a tool at the New Jersey State Police Academy. A chokehold is an absolute last resort life or death option and we concur with and supported recently passed legislation in the Assembly classifying a choke hold as deadly force on the Use of Force Continuum. However, we must have further conversations with respect to additional pieces of legislation with respect to the utilization of a choke hold by a law enforcement officer. As stated before, choke holds may be a last resort life or death maneuver for an officer who has to make a split-second reaction based upon the reasonable and objective facts and circumstances presented to him or her during an encounter. Some aspects of additional pending legislation are simply unfair to troopers and law enforcement officers because they sometimes must make a split-second decision which could save their life.

We cannot make progress in any way, shape, or form without investing in training and partnerships. One aspect that we view as a potential partnership is the implementation of Civilian Review Boards in towns and cities across the state, including state police patrolled areas. Although we already have exclusive civilian oversight at this time in the State Police via the Office of Law Enforcement Professional Standards, we believe working with members of the community to improve transparency and enhance trust in our troopers and police officers would be welcomed. We have had great dialogue with the sponsors of the legislation, specifically Assemblywoman McKnight, pertaining to the implementation of Civilian Review Boards. With a few improvements such as confidentiality components and training in areas such as use of force and police practices to name a few, we believe this legislation will be positioned well for us to support it. We were delighted to hear of the introduction of Assembly Bill A4392, which would require the increase of self-defense training at the police academy and in in-service training. We look forward to working with the Bill sponsor on this legislation, Assemblyman Johnson, that will make the utilization of use of force safer via awareness and practice.

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We also have grave concerns with pending legislation that would cease the authorization of “No Knock Search Warrants”. A “No Knock Search Warrant” is an essential tool in providing protections to troopers and police officers executing a search warrant on the residence of a credible threat. We welcome a seat at the table with Bill sponsors and the Attorney General to discuss our concerns for trooper safety which we believe would be compromised if this Bill were signed into law.

Finally, we must have a conversation regarding the examining and releasing police discipline records. As stated earlier, the State Police Unions will not carry the water for any bad actors and agree that moving forward the public has the Right to know about the discipline of troopers or police officers who engage in excessive use of force incidents and incidents of racial bias or disparate treatment. We only wish we were given the opportunity to have these discussions with the Attorney General. Last month we supported legislation in the Assembly which would require law enforcement agencies to provide internal affairs files and personnel files of law enforcement officers to other police agencies under certain circumstances. This Bill was quickly joined by an identical Senate version and signed into law on July 1, 2020. This Bill remedies the scenario of a bad actor slipping through the cracks and moving from agency to agency, while balancing confidentiality components that we as union leaders find important. We believe this Bill works for all stakeholders. However, additional Bills have recently been introduced which we believe would have an extremely detrimental impact on many good police officers that have been disciplined during the course of their careers, many for minor infractions. The current OPRA laws with respect to personnel files and discipline files are governed by strict confidentiality requirements and for good reason. The release of troopers and police officers’ names and disciplinary files would be detrimental to say the least to the individual member, but I also believe it would be detrimental to law enforcement agencies and communities as well. There are several unintended consequences that would manifest as a result of the haphazard release of disciplinary records just for the sake of saying that they were released. We stand ready to work with the legislature and the Attorney General to create a positive policy that of which the by-product will be enhanced public trust built on good policy for all.

I wish to thank Chairwoman Greenstein for the invitation and opportunity to speak before the committee today on this monumental topic. In addition, I wish to thank the members of the committee for listening to the unions perspective on this issue today. Finally, we wish to thank our partners and other stakeholders for their continued dialogue, partnership, and commitment to positive and sound criminal justice reform.

Salvation and Social Justice

Liberating Public Policy Theologically

**Testimony of Rev. Dr. Charles F. Boyer,
Executive Director Salvation and Social Justice
Before the Senate Law and Public Safety Committee
Senator Linda Greenstein, Chair
Regarding Policing in New Jersey
July 15, 2020**

Thank you, Chairwoman Linda Greenstein and the members of the Law and Public Safety Committee, for this opportunity to share Salvation and Social Justice's vision regarding policing in this critical moment.

NJ Advanced Media analyzed five years of police use-of-force data from every department in the state to develop "The Force Report" (<https://force.nj.com>). The report found that at least 9,302 people were injured by police from 2012 through 2016. While this number alone is troubling, the analysis also powerfully illustrates concerns that New Jersey's Black community has raised for decades. Statewide, Black people are more than three times more likely to face physical force by police and in certain areas, like Lakewood, that disparity is up to 21 times higher. This data, which predates George Floyd, reveals New Jersey's role in America's inhumane (immoral) posture towards Black bodies. The Black body continuously endures inequitable treatment throughout American history. This is evident from slavery, to Jim Crow and mass incarceration. The Force Reports finds that Black people were more likely to be punched, kicked, pepper sprayed, struck with a baton and attacked by a dog in police use-of-force situations and more than twice as likely to be shot. Of the more than 4,600 uses of force against people under 18, slightly more than half the subjects were Black, though they represent only 14.5 percent of the child population in New Jersey. Unfortunately, this narrative is not new, yet very few departments analyze racial profiling.

This is a critical moment that requires complete deconstruction of abusive policing. In response, in 2019, Salvation and Social Justice (SandSJ) held hearings in Newark (3.21.19), Paterson (4.2.19), New Brunswick (4.16.19), Elizabeth (6.16.19), and Burlington (6.17.19). The testimony in those hearings was overwhelming. The clear shared call from each testimony was to abolish officers' rights to use force with impunity and the need for community accountability at all levels.

SandSJ established several priorities to abolish abusive policing. Today we highlight three for the committee's consideration:

1. **Change the deadly force standard.** That means changing language as it relates to police and protocols and laws that give police the ability to use deadly force if they have a "reasonable" fear for their lives. The law should require officers to attempt to control an incident by using time, distance, communications, and available resources in an effort to deescalate a situation whenever it is safe, feasible, and reasonable to do so. The law should limit the use of deadly force, as defined, by an officer to those situations where it is necessary, as defined, to prevent defend against a threat of imminent and serious bodily

injury or death to the officer or to another person, as specified. The law should prohibit the use of deadly force by an officer in a situation where an individual poses a risk only to himself or herself. The law should also limit the use of deadly force by a peace officer against a person fleeing from arrest or imprisonment to only those situations in which the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving serious bodily injury or death, and there is an imminent risk of a threat of imminent death or serious bodily injury or death to the officer or to another person if the subject is not immediately apprehended. (see attached proposed amendments)

2. **Establish county level community accountability boards.** Much of the use of force incidents happen in white towns that are adjacent to Black neighborhoods. These boards should have appointment power by statewide or local community advocacy organizations and should be disproportionately occupied people of color. Boards should have; subpoena power, real-time investigatory insight, access and the authority to fire and discipline officers.
3. **Robustly fund public health first responses to all nonviolent, youth, mental health, and drug-related offenses.** Eugene Oregon, Los Angeles California, and here in Newark, cities are beginning to move resources to public health responses. Additionally, violence must be understood as a public health crisis and resources should be directed towards violence interruption.

It is critically important to understand that violence and crime are symptoms of poverty. Crime in Black communities is not a pathological, natural, or cultural connection to Blackness. To believe so is racist by definition. But rather it is the direct result of New Jersey making a choice to fund police and prisons rather than people. Structurally racist systems from housing segregation, redlining, predatory lending, mass incarceration, inadequate education, unfair wages, etc. are the leading contributors to crime as we know it. New Jersey has chosen to invest billions of dollars to control and warehouse people rather than heal them. This has led to New Jersey having the dubious distinction of having the nation's worst racial disparities in its adult and youth prisons, the largest racial wealth gap, and a leader amongst the most segregated schools.

To be clear, Salvation and Social Justice is advocating and asking this committee to reimagine public safety. In the short term it means changing statutes which give too much discretion for taking Black life, greater investments in public health responses, and community led accountability structures. In the long term it means fundamentally shifting our approach to public safety from policing and prisons to eradicating poverty and prioritizing people's healing.

Salvation and Social Justice

Liberating Public Policy Theologically

New Jersey Use of Force Laws - Proposed Amendments

Date: July 14, 2020

From: Rev. Dr. Charles F. Boyer

Re: Proposed Amendments to Existing Law(s) on Use of Force by Law Enforcement

PROPOSED AMENDMENT 1:

Existing Law:

New Jersey law states that the use of force by law enforcement is justifiable to effect an arrest, subject to certain limitations. See NJ Rev Stat Section 2C:3-7 (2015).

Without limitation, in order to use deadly force in connection with an arrest, the officer had to reasonably believe that “the crime for which arrest is made was homicide, kidnapping an offense under NJ Rev Stat 2C:14-2 [(sexual assault)] or 2C:14-3 [(aggravated criminal sexual assault and criminal sexual assault)], arson, robbery, burglary of a dwelling. See *Id.* at 2C:3-7b.(2)(c).

The use of deadly force is permitted under New Jersey law where the officer reasonably believes that the use of deadly force is necessary to prevent an escape. See *Id.* at 2C:3-7c.

Further, New Jersey law also allows the use of deadly force where the officer reasonably believes that the “use of deadly force is necessary to thwart the commission” of the crimes listed above. See *Id.* at 2C:3-7b.(2)(c).

Proposed Amendments:

1. The proposed amendment will require an officer to retreat or desist from an attempt to make an arrest because of resistance or threatened resistance of the person being arrested. Specifically, the proposed amendment will require officers to attempt to control an incident by using time, distance, communications and available resources in an effort to de-escalate a situation whenever it is safe to do so. NOTE: *The Use of Force Policy (2000) states that*

“[a] law enforcement officer is under no obligation to retreat or desist when resistance is encountered or threatened. However, a law enforcement officer shall not resort to the use of deadly force if the officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or another person.”

2. The proposed amendment will limit the use of deadly force by an officer against a person fleeing from arrest or imprisonment to only those situations in which the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving serious bodily injury or death, and there is an imminent risk of death or serious bodily injury to the officer or another person if the person is not immediately apprehended. NOTE: *The Use of Force Policy (2000) states that a law enforcement officer may use deadly force to prevent the escape of a fleeing suspect, without limitation, “whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause*

death or serious bodily harm". In addition, the Use of Force Policy states that "[a law enforcement officer shall not use deadly force to subdue persons whose actions are only destructive to property."

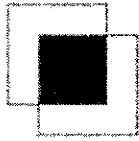
PROPOSED AMENDMENT 2:

Existing Law:

New Jersey law states that the use of force is permitted when the officer "reasonably believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting seriously bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace. See NJ Rev Stat Section 2C:3-7e. New Jersey law further states that the use of deadly force is not justified unless "the actor reasonably believes that it is likely that the person whom he seeks to prevent from committing a crime will endanger human life or inflict serious bodily harm upon another unless the commission or the consummation of the crime is prevented." *Id.* at 2C:3-7e.(2).

Proposed Amendment:

1. The proposed amendment will prohibit the use of deadly force by an officer in a situation where an individual poses a risk only to himself or herself. NOTE: *The Use of Force Policy states that "[d]eadly force shall not be used against persons whose conduct is injurious only to themselves."*



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WRITTEN TESTIMONY OF
THE INITIATIVE: ADVANCING THE BLUE AND BLACK PARTNERSHIP
BEFORE THE NEW JERSEY SENATE LAW AND PUBLIC SAFETY COMMITTEE

July 15, 2020

My name is Nadine Jones and I am the co-founder and executive director of The Initiative: Advancing the Blue and Black Partnership (“*The Initiative*”). I am a 2003 graduate of Howard University School of Law. I worked as an associate at a major Washington, D.C. law firm, and also served on a temporary Congressional commission. For the last 8 years I have been the Vice President of Compliance and Corporate Counsel for a multibillion-dollar logistics company, with US headquarters based in Jersey City, NJ.

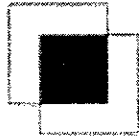
First and foremost, I want to thank the Senate Law and Public Safety Committee, and Senator Greenstein in particular, for giving me and my organization the opportunity to have a voice in these critical discussions. The opportunity is not lost on us and we are grateful for the chance to provide input today.

Next, allow me to explain a little bit about who we are and why we are in this space.

A group of Howard University alumni and their friends founded The Initiative to end police violence and implement a collaborative approach to building healthy, scalable, and immediately actionable, community policing models. *The Initiative* builds upon the long history of civil rights advocacy and education at the Howard University School of Law and our collective corporate training.

Many of us also are parents of Black children, and parents of Black sons, in particular. This year has been challenging for all of us, dealing with the unknown virus of COVID-19 and the eventual shutdown of the country. We were watching the death toll rise from this virus across our nation – these images of numbers climbing each night representing the loss of human lives. Then, we saw another horror that will no doubt forever be seared into our consciousness. We witnessed the horrendous killing of Ahmaud Arbery by a former police officer while he was jogging in Brunswick, GA. It piled on yet another layer of distress to a country already weakened by enormous pain.

When George Floyd was killed, for many of us, at least, for those of us who founded The Initiative, we simply could no longer sit by the sidelines on this issue. The fear of Black Americans, born out of the history of negative interactions with the police, is a fear that mostly every parent of Black children share. For us, we had reached our emotional, mental, physical, and spiritual maximum capacity of what we could bear. In addition, we felt compelled to act because we knew we could



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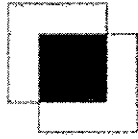
draw upon our professional training, experience and network to effectuate a meaningful and impactful solution. We had no choice but to act.

I am sharing this with the Senate so that you can understand our “why.” Many of us in the Black community have normalized this fear of police interaction with our children, and have accepted it as being inevitable. Each parent of a Black child knows that it is imperative to have “the talk” with our children about how they should interact with the police, or how to ride through a community, or not to carry backpacks in stores in order to avoid interactions where they are viewed with suspicion, which could ultimately save their lives. This “talk” isn’t the normal talk that most parents of children of all races have – namely, stay away from drugs, get good grades, don’t text and drive, don’t bully or let someone know if you are being bullied; don’t let anyone touch you in an inappropriate way, and last but not least, make sure you know what to do if there’s a school shooting. Sadly, these are universal fears that all parents of children of all races share. But “the talk” to which I am referring is the discussion that parents of Black kids have, over and above the other fears that other parents might have – that teaches Black children what to do if stopped by the police. We consider this talk to be imperative to them surviving the encounter. I respectfully submit that there is no age-appropriate time for a parent to have this “talk” with their children when the basis for this discussion is the color of their skin.

Understanding this backdrop will better allow you to understand why our approach to police reform leans heavily on taking immediate, actionable steps, as a necessary corollary to solutions that rely on more traditional approaches such as long-term protracted litigation. We support the latter and understand that advocacy and litigation are important to advancing civil rights and human rights. But the benefits of these efforts likely will not be seen for many years to come. Our approach contemplates immediate, qualitative improvements in the relationship between the police and the Black and Brown communities they serve.

So, The Initiative, and our approach, is unique and it is unique for three reasons:

1. We seek to implement change at the ground level – i.e., at a local level – in a manner that can generate demonstrable and measurable results in the near or immediate future. Why does that make us unique? It means that we are operating at a different frequency than many others operating in this space. For example, we wholeheartedly support changes to legislation that would ensure that qualified immunity cannot be abused by the law enforcement officers that the doctrine exists to protect. But to the extent there is federal or state legislation on this issue we should anticipate there will be challenges to that legislation, if passed, in courts up to and including the U.S. Supreme Court (should certiorari be granted). While we support these legislative and judicial processes; that is not the frequency at which the Initiative seeks to operate. In fact, it is clear from recent public protests that our society is demanding faster action. We would seek to implement measures



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that can more immediately restore public trust in the police while the legislative and court challenges to immunity are underway. At its root, the renewed interest in revising or even eliminating qualified immunity for police stems from the fact that a significant portion of the public has lost trust in the judgment of the police. If this trust can be restored, or at least improved upon in the near future, it allows for an immediate improvement to police-community relations that may actually create a basis for successfully addressing the qualified immunity challenges.

2. The second approach that makes us unique is that we are applying a corporate, compliance-based, scalable approach to solving this problem. Professor Barry Friedman, Director of the Policing Project at the NYU School of Law who is an advisor to The Initiative, notes that this is a key distinguishing feature of our program that simply does not exist in police departments today. The Federal Sentencing Guidelines provides companies with a roadmap for developing an effective compliance program (the “Guidelines”). The Guidelines, as recently revised, make specific reference to the need to promote a culture that “encourages ethical conduct” and a commitment to “compliance with the law.” Companies all over the country, and indeed all over the world, have developed a systematic and scalable approach to compliance that will be the basis for our community policing model. In fact, businesses today recognize that a “culture of compliance” goes well beyond annual mandated trainings. To be effective, compliance rules and principles of ethical behavior must be embedded into everyday workflows. It also often involves persuading relevant stakeholders at all levels that infusing these policies and values into how they carry out their functions *benefits* them. Our approach will show stakeholders that this compliance-based approach to community policing actually inures to their benefit. We will pilot and test our compliance program in 3 – 5 cities, then we will scale and implement across cities and states through the use of Interstate Compacts, similar to those that are currently used in the emergency management context. This local first strategy is espoused by the 21st Century Policing Report

3. The third element of our approach necessitates collaboration amongst key stakeholders to develop a shared vision of community policing. We intend to work with state and local legislators, state and local leaders (governors and mayors), police leaders and police unions, and Black and Brown community leaders to develop and implement our proposed solution. Furthermore, we will also be working closely with the Thurgood Marshall Civil Rights Center at the Howard University School of Law (the “Civil Rights Center”) to ensure the long-term viability of our approach.



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Now that you have a better idea of The Initiative, who we are, why we are in this space, and what our approach will be, we want to propose the key areas of police reform that we believe can be actionable by the Senate.

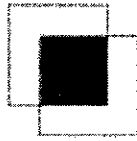
Mental Health First Responders

In many cities and states, the police officers are the catch-all of 911 service calls. If a call does not fit within the scope of EMT or Firefighters, then it goes to the police. It is well documented through calls-for-service reports that many of these calls are not appropriate for the police to handle in that it falls outside of the scope of the training that police receive. Mental Health-related service calls are one of those calls that we believe would be better served by a Fourth Arm of First Responders.

New Jersey is far ahead of many other states, because it does have the equivalent of mental health 24/7 first responders in the form of PerformCare. As you know, “PerformCare New Jersey is the Contracted System Administrator (CSA) for the State of New Jersey’s Department of Children and Families, Children’s System of Care (CSOC).” PerformCare offers mobile response stabilization services (MRSS) to come to a caller’s home 24 hours a day, 7 days a week. This first-responder offering is an alternative to calling 911 in situations where there is not an immediate threat of “serious and sudden medical, emotional, or behavioral health situation that, if not given immediate professional attention, could lead to your child being severely harmed or possibly harming someone else.”

We applaud New Jersey’s progressive stance in this area and offer the following recommendations:

- Create a statewide version of PerformCare for New Jersey residents over 21 years old;
- Implement a public awareness campaign to teach residents about this alternative to 911 and when it would be appropriate to use it; and
- Get an easier phone number for PerformCare (and for any corollary services offered to residents over 21 years old)! The current number is 1-877-652-7624. That is too difficult of a telephone number for citizens to remember should the Senate agree that PerformCare should be more widely known and used by residents as needed. That is just a branding issue.
- We would also advocate allowing 911 operators to direct calls to PerformCare as one of their triage options (similar to the approach that is used in Eugene, Oregon by CAHOOTS (Crisis Assistance Helping Out On the Streets)).



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Incentivize Departments that Obtain Year-Over-Year Reduction in Misconduct Lawsuits and Settlements

An important element driving the movement to reform or revoke qualified immunity for police is the need to make officers more accountable for their wrongful actions. As stated before, The Initiative supports the healthy exchange of ideas in this area, and believes dialogue amongst key stakeholders on this issue is critical. Accountability for misdeeds is critical to restoring trust between the police and the communities they serve. And, the police need to be able to do their jobs without the overhang of personal liability for missteps as we acknowledge the chilling effect that the threat of personal prosecution could have on recruiting and retaining officers.

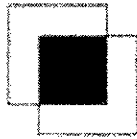
The reality, however, seems to be that police officers are seldom required to pay damages, not because of qualified immunity, but because local governments indemnify officers or otherwise pay damages out of local government coffers. As one news article stated, “Plaintiffs know most officers do not have the financial resources to satisfy large awards, and so they find other ways to recover damages — from other defendants or from the municipality.” Washington Post, “Suing police for abuse is nearly impossible,” by Joanna C. Schwartz (June 3, 2020), at <https://www.washingtonpost.com/outlook/2020/06/03/police-abuse-misconduct-supreme-court-immunity/>.

As the qualified immunity reform and litigation unfold, we recommend that the Senate consider the following stop-gap measures to incentivize police accountability:

- Track police departments’ number of excessive force lawsuits and corresponding settlements or judgments;
- Freeze budget increases for police departments with excessive force complaints/lawsuits exceeding X number (to be determined);
- Increase the budgets for police departments that are able to achieve a year-over-year reduction in the number of excessive force complaints/lawsuits and number of settlements/judgments;
- Each police division must pay, out of their budget, 10% of settlements or judgments arising from excessive force lawsuits due to conduct by that division’s local police.

Why do we think this approach will be successful? The Police Departments themselves will be incentivized to identify officers with a high number of citizen complaints for excessive use of force, because there is a natural progression from complaints to lawsuits. If a Police Department’s budget will be tied to the number of lawsuits filed and settled, then there is internal motivation to identify, intervene in, or even remove officers that are not able to perform their duties without evoking a high number of citizen complaints and/or excessive force lawsuits.

Conversely, Police Departments that are able to show reduced excessive force complaints and excessive force lawsuits year-over-year will be eligible for budgetary increases the next fiscal year.



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These Departments will be able to offer more training, have more advancement opportunities, and will be incentivized, as a group, to recruit and retain police officers who can perform their duties without evoking excessive force complaints, lawsuits, and settlement payouts.

Qualified immunity for the police officer remains in place, but the incentive to train, re-train, intervene in other ways, or even remove, police officers for excessive force violations also will be in place.

Effective Community Policing Should be Heavily Weighted in Performance and Promotion Evaluations

There are New Jersey cities doing remarkable things in the area of community policing. To be sure, we are not advocating performative, PR-related photo ops community policing. But rather, community policing that results in demonstrable improvements, such as reduced citizen complaints, crime reduction, and tracking and rewarding officer interventions where police misconduct is observed. Similarly, tickets for minor offenses should be tracked, with the goal of reducing over-policing, which can be an unintended consequence of increasing police presence and interactions. Camden, New Jersey's police department has received high-praises and national attention for its effective community policing. Also, Newark, New Jersey has shown measurable progress attributable, at least in part, to successful community policing.

We think that these NJ cities and police departments will prove to be gold standards for other communities across the country. Our organization seeks to increase the profile of these successes in New Jersey cities to a national level by creating and maintaining a database of best practices in community policing through our partnership with Howard University. Our only recommendation to the Senate is that it takes steps to ensure that police departments heavily weight community policing efforts in internal performance evaluations or promotional paths. We believe that the alignment of performance evaluations and promotional opportunities to effective community policing will:

- 1) Ensure community policing remains an important element of policing; and
- 2) Eventually elevate those police officers who have a natural gift, leadership skills, and talent for policing in this manner.

It is important to reward officers who do this well, as well as encourage those officers for whom community policing does not come naturally to develop these skillsets to advance through the ranks.

Transparency and Encourage Citizen Feedback



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We wholeheartedly support increased transparency to the community. It is clear that the police, as an industry, is suffering from a credibility crisis with a wide swath of the American population. This has a negative impact on recruiting and retention, and is ultimately unhelpful for the long term viability and effectiveness of our police departments. Increased transparency could help to restore that credibility.

The evidence is clear that policing should not be disconnected from the primary consumers of those services – namely, the community. There should be frequent invitations to the community to share their experiences with the police – be it good or bad – to ensure that policing is being performed in a manner that results in residents feeling safer and respected by their local police.

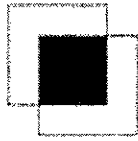
In the interest of greater transparency and citizen feedback, we propose the following:

- Citizen complaints, and how those complaints were resolved, should be made public. It is important to demonstrate that complaints are taken seriously, investigated, and resolved. There should be an explanation for the resolution taken, even if the resolution was to close the complaint as having “no merit,” or explain why an officer was reprimanded but not terminated. There might have been internal intervention measures taken to help the officer get on the right course. If so, the public needs to see that complaints are being addressed appropriately. This will help to restore trust.

Finally, as outlined below, it is clear that New Jersey has already adopted legislation designed to ensure safer police/community interactions, including those that were announced on June 7, 2020. Consistent with this legislative action, we propose that the Senate consider reviewing the state’s Use of Force and other Policies with the goal of adopting any of Campaign Zero’s #EIGHTCANTWAIT policies that are not already in place. This approach has already been adopted in the city of Fairlawn, NJ.

- Ban chokeholds & strangleholds
- Require de-escalation
- Require warning before shooting
- Require all alternatives are exhausted before shooting
- Duty to Intervene
- Ban shooting at moving vehicles
- Require use of force continuum
- Require comprehensive reporting

We are grateful for the many steps that you have already taken to ensure safe and healthy community policing in the State of New Jersey, and The Initiative stands ready to help through our collaborative, measurable, and scalable approach to continue to move the needle forward.



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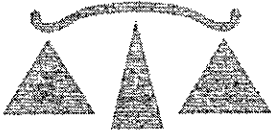
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In conclusion, I want to say that there is not a community in America today that does not want to feel safer, or a police officer who does not want to feel supported. The time to act is now.

Thank you again for allowing us to share our thoughts and recommendations. I am available at your convenience should you have questions.

“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder



NJISJ

NEW JERSEY INSTITUTE
FOR SOCIAL JUSTICE

**Police Reform Testimony of Brooke Lewis
New Jersey Institute for Social Justice
Senate Law and Public Safety Committee**

Wednesday, July 15, 2020

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do social justice.

Chairperson Linda Greenstein and members of the Senate Law and Public Safety Committee:

My name is Brooke Lewis, and I am the Trustee Social Justice Legal Advocacy Fellow at the New Jersey Institute for Social Justice (the “Institute”). I am writing to provide testimony on police reform in New Jersey on behalf of the Institute.

The Institute is a legal advocacy organization that works to ensure that people of color live in a society that respects their humanity, provides equality of economic opportunity, empowers them to use their voice in the political process, and protects equal justice.

The undeniable truth — that Black lives matter — is being tested everywhere in our country, particularly in the context of law enforcement killings of numerous Black people in states across the country, including right here in New Jersey.

The time for deep structural change is now.

Any police reform effort must center on the community’s voice so that new policies and practices directly address the safety needs of those communities. We take this approach in our role on the Monitoring Team overseeing reforms to the Newark Police Division under a federal consent decree, where, through community surveys, public meetings and ongoing community feedback, we ensure that community needs are at the heart of the reform process.

It is essential that even as we implement reforms in policing, we simultaneously rethink the entire institution of policing and work toward reducing its footprint in our communities, with a focus on what community members need to feel — and be — safe and protected. That includes investing in alternatives to policing that focus on demilitarization, the use of restorative justice, non-police first responder models, and increased funding for community resources that will allow communities to develop their own methods to keep themselves safe outside of law enforcement intervention.

This moment, perhaps more than any other in recent history, reveals that America is sick with the virus of racism. We see it in the persistent

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disparities in wealth. In the persistent discrimination in criminal justice. In the persistent attempts to suppress the vote. And in the persistent violence by police on Black bodies.

All of these things are true right here in New Jersey, where Black people face some of the worst racial disparities in America.

A Black child is 21 times more likely to be in prison in New Jersey than a white child – the highest youth incarceration disparity in America, even though Black and white kids commit most offenses at similar rates.

Black adults are 12 times more likely to be incarcerated than white adults.

These racial disparities begin early in New Jersey’s criminal justice system, where a Black person is more than three times more likely to have police force used against them.¹

We urge the legislature to take the following six immediate steps to transform this unacceptable reality.

First, New Jersey must reform its use of force practices by banning chokeholds. Currently pending in the legislature are two bills, A4284² and S2617,³ that will make the use of chokeholds by law enforcement a first-degree crime punishable by up to 20 years in prison and/or up to a \$200,000 fine. Banning the use of chokeholds, without exception, and establishing criminal liability is a critical step in reforming our state’s use of force practices and holding law enforcement officers accountable.

Second, New Jersey should pass legislation that eliminates qualified immunity for law enforcement. Qualified immunity is a legal rule that provides immunity to officers who commit civil rights violations, unless those rights were “clearly established.”⁴ The rule has prevented countless victims of police brutality from obtaining damages from their assailant in court. Recently, Colorado passed a bill that eliminates the qualified immunity defense for police officers who violate Colorado Constitution’s Bill of Rights. Similar to Colorado, New Jersey should pass legislation that eliminates the qualified immunity defense to claims brought under the New Jersey Civil Rights Act.

Third, New Jersey must safeguard the right to criticize and record police conduct. In 2017, the United States Court of Appeals for the Third Circuit ruled in *Fields v. Philadelphia*⁵ that a person’s right to record police conduct receives First Amendment protection under the United States Constitution. As part of a federal consent decree, the Newark Police Division (NPD) drafted a new policy that provides specific procedures for how police officers must interact with recording

¹ Stephen Stirling, S.P. Sullivan, *Hundreds of N.J. cops are using force at alarming rates. The state’s not tracking them.* So we did., NJ.COM (Nov. 29, 2018), https://www.nj.com/news/2018/11/nj_police_use_of_force_punch_kick_pepper_spray_sho.html

² Assemb. B., No. 4284, Leg. 219th (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/A4500/4284_11.HTM.

³ Senate B., No. 2617, Leg. 219th (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/S3000/2617_11.PDF.

⁴ *Harlow v. Fitzgerald*, 457 U.S. 800, 818, (1982).

⁵ 862 F.3d 353 (2017).

bystanders to ensure the bystanders' constitutional rights are protected. The policy expressly prohibits officers from stopping, detaining, or arresting citizens for recording police conduct; limits the exigent circumstances under which an officer may pursue a warrantless search and seizure of a recording device; and expressly prohibits officers from threatening force or arrest toward citizens who criticize police.⁶

A citizen's ability to record and criticize police conduct without fear of retaliation is critical to ensuring police accountability, as bystander recordings have proven to provide critical evidence in cases of police misconduct, including in the murder of George Floyd. Thus, New Jersey must create statewide standards for protecting the First Amendment right to record police conduct, modeled after the progressive safeguards outlined in NPD's policy.

Fourth, New Jersey must stop police militarization by discouraging local police departments from participating in the Department of Defense's 1033 program and increasing statewide oversight of the transfer of military equipment to local law enforcement agencies. The 1033 program allows the federal government to transfer surplus military equipment to local police departments. In recent years, many New Jersey police departments have received millions of dollars of military equipment from the 1033 program. For instance, as of 2018, Ocean County has acquired over \$28 million worth of military equipment, while Bergen County has acquired equipment valued at \$24 million.⁷ Since 2018, New Jersey has received a total \$11.8 million in equipment statewide.⁸ While this equipment is transferred at no cost to municipalities, local police departments are still responsible for cost related to the maintenance and training necessary to keep and operate the equipment.⁹

Police militarization undermines the public's trust and does not reduce violent crimes or increase officer safety.¹⁰ Instead of protecting officers and community members, the presence of military-grade equipment often escalates confrontations with citizens and alienates police officers from the communities they serve. Unsurprisingly, these harms are disproportionately felt by Black communities, where research shows militarized police units are more likely to be deployed.¹¹ Recognizing the harms of police militarization, there is already an effort at the federal level to end the 1033 program.¹²

⁶ NEWARK POLICE DIV., FIRST AMENDMENT RIGHT TO OBSERVE, OBJECT TO, AND RECORD POLICE ACTIVITY POLICY (2019), https://c3bb3214-4b49-462c-abf8-5d2c1d510fc0.filesusr.com/ugd/582c35_d198ac4670cc41c2b075fccfcaa85245.pdf.

⁷ *1033 Program Usage by County*, MAPPING POLICE MILITARIZATION PROJECT, <https://www.nj.com/crime/2020/07/nj-cops-receive-millions-in-surplus-military-gear-see-what-your-town-got.html>.

⁸ *N.J. Cops receive millions in surplus military gear. See what your town got.*, NJ.com (July 6, 2020), <https://www.nj.com/crime/2020/07/nj-cops-receive-millions-in-surplus-military-gear-see-what-your-town-got.html>.

⁹ N.J.S.A. 40A:5-30.1, https://www.njleg.state.nj.us/2014/Bills/PL15/23_.PDF

¹⁰ Nsikan Akpan, *Police Militarization fails to protect officers and targets black communities, study finds*, PBSNEWS HOUR (Aug. 21, 2018, 12:40 PM), <https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds>

¹¹ *Id.*

¹² Katelyn Burns, *Some senators want to stop police from getting military-grade equipment or weapons*, VOX (June 2, 2020, 1:20 PM), <https://www.vox.com/policy-and-politics/2020/6/2/21277981/senators-police-military-equipment-weapons>.

Police militarization must stop.

We urge the New Jersey legislature to pass S1632, which will require the Attorney General's Office to direct the Office of Emergency Management to review the 1033 program, as well as increase statewide oversight and transparency regarding the transfer of military equipment to local departments.¹³

Fifth, New Jersey must redirect law enforcement funding toward developing a non-law enforcement first-response system to address mental health crises. Those living with an untreated, severe mental illness account for *at least* one in four of all fatal police interactions, making those with untreated, severe mental illness 16 times more likely to be killed during a police encounter.¹⁴ As the Treatment Advocacy Center, a national nonprofit organization dedicated to eliminating barriers to the successful treatment of severe mental illness, emphasized in its 2015 report, “[g]iven the prevalence of mental illness in police shootings, reducing encounters between on-duty law enforcement and individuals with the most severe psychiatric diseases may represent the single most immediate, practical strategy for reducing fatal police shootings in the United States.”¹⁵

New Jersey has begun to recognize the importance of reforming law enforcement's response to mental illness by expanding the use of Crisis Intervention Teams (CIT), which provide law enforcement officers training on how to respond to individuals with a mental illness.¹⁶ In early June of this year, Governor Murphy and Attorney General Grewal announced their intention to explore our state's capacity for statewide CIT training by launching a pilot program in Atlantic City, Paterson, Trenton, Millville, and for the New Jersey State Troopers assigned in Trenton.¹⁷ There is also a bill pending in the New Jersey Assembly, A4366, which would require all police departments in the state to receive CIT training.¹⁸

Expanding CIT training is helpful, but not sufficient. New Jersey must also take a meaningful step toward limiting interactions between law enforcement and people with untreated, severe mental illness through the creation a non-law enforcement first responder system. In Oregon, for example, the CAHOOTS program has for 31 years provided 24/7 crisis intervention in situations that would otherwise be handled by law enforcement.¹⁹ The CAHOOTS program is run by the White Bird Clinic in Eugene, an agency that provides a continuum of care to the community and responds to medical and psychological crises. An emergency response team in the CAHOOTS program consists of a medic and a crisis worker, although police may accompany or respond in place of the

¹³ Senate B., No. 1632, 219th Leg. (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/S2000/1632_11.PDF.

¹⁴ DORIS A. FULLER ET AL., OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS, TREATMENT ADVOCACY CENTER 1 (2015), <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>.

¹⁵ *Id.*

¹⁶ Press Release, State of New Jersey, Governor Murphy and AG Grewal Announce Continued Progress and New Measures to Strengthen Police-Community Trust (June 2, 2020), <https://www.nj.gov/governor/news/news/562020/20200602a.shtml>.

¹⁷ *Id.*

¹⁸ Assemb. B., No. 4366, Leg. 219th (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/A4500/4366_11.HTM.

¹⁹ CAHOOTS, WHITE BIRD CLINIC, <https://whitebirdclinic.org/services/cahoots/> (last visited July, 10, 2020, 3:27 PM).

CAHOOTS team if the caller reports violence or a crime in progress.²⁰ Similar to Oregon, New Jersey must develop non-law enforcement response teams to respond to mental and other health crises.

Finally, New Jersey should prioritize investment in restorative justice practices, including restorative justice centers. Restorative justice focuses on resolving conflicts and harms by engaging people who have been harmed, those who have harmed, and, when possible, family and community members, through dialogue and consensual resolution instead of punishment. The practice helps to facilitate collective and individual healing, diverts individuals away from the criminal justice system and strengthens communities. New Jersey dramatically underuses diversionary programs intended to divert people from the criminal justice system. This disproportionately impacts Black people and other people of color who are far more likely to be detained or committed than their white counterparts. It is far time for New Jersey to prioritize investment in restorative justice diversionary programs.

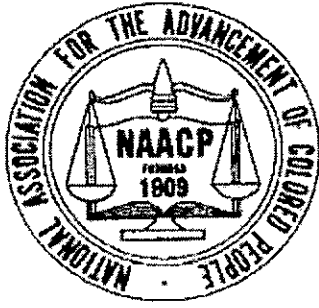
While we rightly focus on urgently reimagining policing and what Black communities need to feel protected and safe, we must also keep our eye on the larger picture — on the pressure that has built up from the widespread cracks of structural racism.

We must repair these cracks and build a new foundation if we are ever to become a New Jersey that lives up to its promise. A New Jersey where Black lives really matter.

Sincerely,

Brooke Lewis, Esq.

²⁰ *Id.*



Camden County East Branch

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July 13, 2020

C/O Senator Loretta Weinberg
The Senate Law & Public Safety Committee
State of New Jersey
219 Legislature

RE: Written Testimony in Support of Senate No. 2656

Dear Hon. Weinberg & Committee Members:

Thank you for the opportunity to submit our written testimony in support of Senate Bill 2656 which would permit access to law enforcement disciplinary records.

The public has the right to know who is policing our communities and their disciplinary record. Law enforcement personnel possessing a deadly weapon demands high standards of transparency and professionalism. Also, law enforcement officers should be accountable public servants who work collaboratively and fairly with the communities they serve.

Public awareness and input through this legislation would help improve policing and public confidence in law enforcement. This is desperately needed, particularly, in communities of color. The public needs this legislation to help keep our public officials who are supposed to oversee the police accountable. There should never be another incident where a police officer tragically takes a life of an unarmed citizen to only find out the officer's horrible disciplinary record which could have and should have kept the officer off the streets.

We should not be fearful of our commitment to the highest level of accountability which can only lead to safer communities.

Sincerely,

Lloyd D. Henderson

Lloyd D. Henderson, Esq.

President

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New Jersey Legislature
Senate Committee on Law and Public Safety

Testimony of CJ Griffin, Esq.

Director, Justice Gary S. Stein Public Interest Center
at Pashman Stein Walder Hayden

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July 15, 2020

Hearing on
Police Reform in New Jersey

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I. Introduction

I am the Director of the Justice Gary S. Stein Public Interest Center at Pashman Stein Walder Hayden (PSWH), which is dedicated to a broad range of public interest impact litigation and appellate advocacy that advances social, racial and economic justice, protects civil liberties and constitutional rights, and promotes an open and transparent government.

I write today to encourage the Legislature to take bold actions to truly transform policing in New Jersey. The modest reform measures that we have seen in the past have done little to fix a broken criminal justice system that disproportionately arrests, incarcerates, and uses force against people of color in this state. More of the same simply will not work; we must reimagine policing in New Jersey.

Two bills that I think meet the demands of this historic moment and that will significantly improve policing in New Jersey are S-2656 and A-4283, which were introduced by Senator Weinberg and Assemblyman Wimberly to make police internal affairs (IA) and disciplinary records fully subject to the Open Public Records Act (OPRA). I strongly believe that providing broad transparency in policing is one of the first steps the Legislature must take on this path to meaningful police reform. We have to be able to identify what problems exist before we can take actions to address those problems and ensure that the police are accountable to the public.

II. New Jersey's Police Internal Affairs and Disciplinary Processes Are Currently Shrouded in Complete Secrecy

I have dedicated my career to making government more accessible to the people it serves. For several years, I have represented media entities and individuals in OPRA lawsuits. In my experience, police departments are the most resistant to transparency. I have filed nearly 100 lawsuits seeking police records from law enforcement agencies across the state. In large measure, we have been successful and have obtained favorable decisions that make records relating to police-involved shootings and other uses of force available to the public. See, e.g., North Jersey Media Group Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017) (making police use of force reports and dash camera videos of deadly shootings accessible to public); Wronko v. New Jersey Society for the Prevention of Cruelty to Animals, 453 N.J. Super. 73 (App. Div. 2018) (making the NJSPCA subject to OPRA); Digital First Media v. Ewing Twp., 462 N.J. Super. 389 (App. Div. 2020) (making juvenile use of force reports accessible).

Unfortunately, the area most in need of transparency is completely off-limits to the public under current law: police misconduct investigations and the police disciplinary process. As is the case in all states, allegations of misconduct against police officers are investigated by the department's IA unit. Unlike most states, however, New Jersey police officers investigate themselves without any public oversight because IA records are not available through public records laws. They are shrouded in complete secrecy. There is no sunlight whatsoever.

Courts have repeatedly held IA records are exempt from access under OPRA pursuant to both the Attorney General's Internal Affairs Policy, as well as N.J.S.A. 47:1A-10. See, e.g., Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458 (App.

Div. 2019); Libertarians for Transparent Gov't v. New Jersey State Police, A-5675-16T2 (pp. Div. May 20, 2019); Paff v. Bergen Cty., A-1839-14T1 (App. Div. Mar. 13, 2017). Sadly, courts have also repeatedly refused to grant access to such records even under the common law right of access.

This is true even when the records relate to matters of great concern, such as the former police director of the City of Elizabeth who was confirmed by the Attorney General to have used “racist and misogynistic language” in the workplace.¹ The Appellate Division ruled just last month that the former director’s internal affairs reports are confidential, even though they may shed light on whether other City officials knew about his behavior and looked the other way. See Richard Rivera v. Union County Prosecutor’s Office, Docket No. A-2573-19T3 (App. Div. June 19, 2020). This deprived the public of the opportunity to advocate for full accountability.

Therefore, unless there is a statutory change by the Legislature, our courts have already made it clear that there is no path for the public to gain access to IA and police disciplinary records, not even in the most compelling circumstances. Even where allegations of blatant racism are sustained.

A. The AG’s Recent Directive Provides Little Transparency and Fails to Meet the Demands of the Moment

On June 15, 2020, the Attorney General issued Law Enforcement Directive 2020-5 (hereinafter “the Directive”), which will require future disclosure of the names of officers who have received major discipline. This may lead you to believe that additional transparency is not needed, but as the Attorney General himself recently tweeted, even with this proposed change, New Jersey remains at the “back of the pack” when it comes to police transparency.

Yes, even with this new Directive, states like Florida, Alabama, Colorado, Ohio, and many others are far more transparent than New Jersey. See Appendix A. Many states across the nation are also currently contemplating legislation to make IA and disciplinary records public, meaning that if we do not pass S-2656/A-4283 we will fall further behind.

Although the Directive is a welcomed departure from decades of complete and total secrecy in New Jersey’s IA processes, it nonetheless falls far short of the type of transparency that we need or that other states provide. There are several ways that the Directive is insufficient:

Major Discipline is Rarely Imposed: The Directive’s first shortcoming is that it applies only to officers who have received “major” discipline, which is defined as termination, demotion, or a suspension of five days or more. We know from IA annual summary reports that most complaints are not sustained and therefore do not result in *any* discipline whatsoever. Of the small percentage of cases that are sustained, very few have resulted in major discipline.

For example, there were 86 IA investigations concluded in the City of Orange in 2018. Only 13 complaints (15%) were sustained. Only six (7%) resulted in major discipline. This means roughly 93% of cases will remain a total secret.²

¹ The only reason the public knows about this IA investigation result was because the complainants told the press.

² Based on data on the Orange Police Department’s website: https://www.ci.orange.nj.us/police_department.html

Collectively, law enforcement agencies in Mercer County concluded 420 IA investigations in 2019.³ Of those, 174 (40%) complaints were sustained⁴ and major discipline was imposed in only 2. This means that roughly 99.6% of all cases will remain a total secret.

Similarly, law enforcement agencies in Bergen County collectively concluded 758 IA investigations in 2018.⁵ Of those, 241 (31.8%) complaints were sustained, but discipline was imposed in only 19.⁶ This means that 97.5% of all cases will remain a total secret.⁷

As a result, the Directive applies sunshine to only a very small percentage of IA cases and the remainder linger in the dark.

We Need Access to Actual Records: The Directive's second shortcoming is that it does not require disclosure of any actual records. More specifically, the Directive requires agencies to publish the names of officers who receive major discipline and a "brief summary of their transgressions" and a "statement of the sanction imposed," but does not require disclosure of any actual investigative files or underlying documents. This is not real transparency.

The requirement that agencies publish information about major discipline is not new, other than the fact that the disclosures will now have a name attached to them. Prior disclosures show that these "brief summaries" are often as vague as, "Officer received 10 days suspension for an Administrative Rules and Regulations violation." Going forward, the disclosures will now state "Officer Jones received 10 days suspension for an Administrative Rules and Regulations violation." Obviously, this tells the public very little information by which to determine whether Officer Jones' sanction was reasonable and whether there was true accountability.

Even where agencies disclose more detailed information in their summaries, as some agencies do, there is no way to know whether the disclosure is full and accurate. Without access to actual files, there is no way to know whether any major discipline has not been reported or whether the misconduct was inaccurately described. Public records laws exist so we do not have to trust what an agency tells us, yet that is what the Directive requires us to do.

The Directive is Easy to Evade: The Directive's third shortcoming is that it is far too easy to evade. As stated above, it requires disclosure only where an officer is terminated, demoted, or suspended for five or more days. Officers can avoid the disclosure requirement by resigning or retiring in lieu of serious discipline and there will no doubt be a sudden slew of agencies issuing four-day suspensions to avoid the publication requirements.

³ Based on data gathered pursuant to OPRA requests.

⁴ None of the 17 excessive force complaints filed within the county were sustained.

⁵ Based on Bergen County's 2018 Professional Standards Executive Summary: <https://bit.ly/38T3vwZ>

⁶ Only 2 of 31 (6.4%) excessive force complaints were sustained.

⁷ Unfortunately, even this basic aggregate data was hard to find. Although the Attorney General's Internal Affairs Policy & Procedures requires every law enforcement agency to issue a public synopsis of major discipline and to post internal affairs annual summary reports on their websites, very few agencies actually do. There is no centralized resource for such data and only a handful of the county prosecutors maintained such records, meaning that hundreds of OPRA requests would need to be filed with individual agencies just to get these statistics.

The Directive is Not Codified By Statute: The Directive's fourth shortcoming is the fact that it is not codified by statute. Because it is a mere written policy by the Attorney General, it can be reversed by the next Attorney General with the stroke of a pen. Transparency should not depend upon the whims of any single officeholder; we need permanent access.

Making matters worse, the police unions have challenged the Attorney General's authority to issue the Directive in the first place and have already successfully obtained a stay of the Directive from the Appellate Division. If the unions prevail in their appeals, there will be no disclosure at all. Even if they do not prevail, litigating their appeals will take months and what minimal transparency the Directive provides will almost certainly not occur in 2020.

By passing legislation to make IA and police disciplinary records available to the public, the Legislature will moot the unions' appeals and will ensure that access is permanent.

We Need Access to Dismissed Complaints: The Directive's final and perhaps most serious shortcoming is that it provides no transparency to dismissed complaints or complaints that result in less than major discipline. As stated above, most IA complaints are not sustained. Few excessive force complaints are ever sustained. The Directive provides no transparency over files. They remain shrouded in secrecy.

Yet, that is where transparency is needed the most. The public needs access to investigation files so that it can see how thoroughly an investigation was conducted and what the full weight of the evidence showed. IA complaints are often dismissed because the complainant was intimidated or otherwise unavailable (death, etc.).

There are far too many public examples where IA complaints were dismissed when they should have been sustained. For example, in 2012, Bloomfield Police Officers Orlando Trinidad and Sean Courter filed police reports stating that a motorist, Marcus Jeter, attempted to take Courter's gun and then hit Trinidad. See State v. Trinidad, __ N.J. __ (2020). Jeter filed an IA complaint, complaining that he was attacked, but the IA investigation cleared Courter and Trinidad of any wrongdoing. Jeter was criminally charged.

Thankfully Jeter's lawyer thought to file an OPRA request for any police videos of the incident and a dash camera video was provided, which had not been given to Jeter as part of discovery. See Ex-Bloomfield Cop Gets 5 Years In Jail For Beating Suspect on Garden State Parkway, Patch.com (Feb. 24, 2016). The dash cam video showed that the two officers lied; Jeter never attempted to grab Courter's gun, nor did he attack Trinidad. Instead, Trinidad assaulted Jeter. The charges against Jeter were thereafter dismissed and both Trinidad and Courter were subsequently convicted.

According to the *Asbury Park Press*, Trinidad had a long history of IA complaints that were not taken seriously:

In one brutal example, Trinidad mocked his department's mechanism for watching cops, a lawsuit claimed. In 2013, after beating and almost ripping

the ear off an unarmed man, Rodolfo Crespo, in the department's holding area, Trinidad walked to a nearby surveillance camera, looked up, pointed and said "IA" – the initials for the police department's internal affairs unit, the man claimed in his lawsuit.

The city settled the Crespo suit, who claims he suffered a massive laceration to his right ear, a thoracic spine fracture and multiple head traumas. They agreed to a \$363,910 payout. As is standard practice in settlements, no admission of wrongdoing was made by the city.

The Bloomfield Police Department in Essex County knew of at least 37 documented incidents where Trinidad allegedly used force over eight years – beginning when he started with the department in 2006. His use of force incidents made up about 27 percent of the 135 force reports documented by all officers in a 10-year period, one suit claimed.

[Kala Kachmar & Andrew Ford, Bad Cops are Built. Here's How, Asbury Park Press (Jan. 18, 2019).]

The above is just *one* example of misconduct being swept under the rug and IA investigations improperly resulting in a “not sustained” disposition, but there are plenty of others. See, e.g., Alex Napoliello, Ex-Cop Who Gunned Down Ex-Wife Has A Nearly 700-Page Internal Affairs File, NJ Advance Media (May 23, 2018). Importantly, what we do not know are all the examples that remain hidden from public view.

Unfortunately, in New Jersey we are unable to proactively review IA investigation files to root out the complaints that were erroneously dismissed or expose the shoddy IA investigations. Instead, we have to wait until tragic situations occur for IA information to become public. At that point, the damage is already done.

I was not born and raised in New Jersey, so I feel a sense of pride and ownership in having *chosen* to make this state my home. In that regard, I have bragged to friends and fellow advocates about the areas of law where we lead the nation. But, in this area—police transparency—we are, as the Attorney General recognized, at the “back of the pack.” We must not only catch up to most other states; we must *lead*.

Let's pass S-2656 and A-4283 and give reporters, researchers, and advocates the tools they need to start identifying problems in policing, holding police departments and police officers accountable, and giving lawmakers data they need to implement transformational reform⁸.

⁸ Of course, I also support Civilian Complaint Review Boards (CCRBs) so that members of the community can play a direct role in a police department's IA process and monitor outcomes, as well as police licensing (an area where New Jersey lags behind at least 45 other states).

APPENDIX A

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The following data is from WNYC's 2015 reporting "*Is Police Misconduct a Secret In Your State?*," but has been updated to reflect legislative changes that have occurred.

States Where IA/Discipline Records Are Public		
State	More Transparent Than NJ if Directive 2020-5 Struck Down?	More Transparent Than NJ If Directive 2020-5 Upheld?
1. Alabama	Yes	Yes
2. Arizona	Yes	Yes
3. Colorado	Yes	Yes
4. Connecticut	Yes	Yes
5. Florida	Yes	Yes
6. Georgia	Yes	Yes
7. Maine	Yes	Yes
8. Minnesota	Yes	Yes
9. New York	Yes	Yes
10. North Dakota	Yes	Yes
11. Ohio	Yes	Yes
12. Utah	Yes	Yes
13. Washington	Yes	Yes
14. Wisconsin	Yes	Yes
States With Partial Access to IA/Discipline Records		
State	More Transparent Than NJ if Directive 2020-5 Struck Down?	More Transparent Than NJ If Directive 2020-5 Upheld?
1. Arkansas	Yes	Mixed; Access to records, after balancing test
2. California	Yes	Mixed; Access to records, but narrow categories
3. Hawaii	Yes	Yes, Access to actual records
4. Illinois	Yes	Yes, Access to actual records
5. Indiana	Yes	Yes, Access to actual records
6. Kentucky	Yes	Yes, Access to actual records
7. Louisiana	Yes	Yes, Access to actual records
8. Massachusetts	Yes	Yes, Access to actual records
9. Michigan	Yes	Mixed; Access to records, after balancing test
10. New Mexico	Yes	Yes, Access to actual records
11. Oklahoma	Yes	Yes, Access to actual records
12. South Carolina	Yes	Yes, Access to actual records
13. Tennessee	Yes	Yes, Access to actual records
14. Texas	Yes	Yes, Access to actual records
15. Vermont	Yes	Yes, Access to actual records
16. West Virginia	Yes	Yes, Access to actual records

States Where IA/Discipline Records Are Confidential

State	More Transparent Than NJ if Directive 2020-5 Struck Down?	More Transparent Than NJ If Directive 2020-5 Upheld?
1. Alaska	No	No
2. Delaware	No	No
3. Idaho	No	No
4. Iowa	No	No
5. Kansas	No	No
6. Maryland	No	No
7. Mississippi	No	No
8. Missouri	No	No
9. Montana	No	No
10. Nebraska	No	No
11. Nevada	No	No
12. New Hampshire	No	No
13. New Jersey	Directive pending	Directive pending
14. North Carolina	No	No
15. Oregon	No	No
16. Pennsylvania	No	No
17. Rhode Island	No	No
18. South Dakota	No	No
19. Virginia	No	No
20. Wyoming	No	No

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By email

July 14, 2020

The Honorable Linda R. Greenstein
Chair, Law and Public Safety Committee
New Jersey State Senate
125 West State Street
Trenton, NJ 08608

The Honorable Joseph P. Cryan
Vice-Chair, Law and Public Safety Committee
New Jersey State Senate
125 West State Street
Trenton, NJ 08608

Re: Reporters Committee Support of S. 2656 (Weinberg)

Dear Chairwoman Greenstein and Vice-Chair Cryan:

The Reporters Committee for Freedom of the Press (the "Reporters Committee") respectfully submits the following written statement to the Senate Law and Public Safety Committee in support of S. 2656, which would classify law enforcement disciplinary records as government records subject to public access, as well as mandate retention of these records.

The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The Reporters Committee strongly supports transparency measures like S. 2656 that enable the news media to fulfill its constitutionally recognized role to gather and report newsworthy information about the activities of government, including law enforcement.

The public depends on the press as its "eyes and ears," and visibility into government activities permits the public to hold the government accountable. *Home News v. New Jersey Dept. of Health*, 677 A.2d 195, 198 (N.J. 1996). This vital function of the press is especially important when it comes to information about law enforcement personnel. In New Jersey, the press routinely serves this watchdog function, but faces challenges because of the secrecy surrounding disciplinary records. See, e.g., Rukmini Callimachi,

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9 Departments and Multiple Infractions for One New Jersey Police Officer, N.Y. Times (June 24, 2020), <https://perma.cc/Q52S-QGDC>; Andrew Ford, *NJ Police Misconduct: A Lying Cop Ruined a Man's Life. It Could Happen to You.*, Asbury Park Press (Mar. 23, 2019), <https://bit.ly/32gzs5p>.

Currently, under N.J. Stat. § 47:1A-10, agency personnel records are generally not public in New Jersey. Internal affairs records only become public if an officer appeals a disciplinary action to the state Civil Service Commission or the Office of Administrative Law, or if these records become exhibits in a civil or criminal proceeding. See Ted Sherman, *Should Police Disciplinary Records be Public? In N.J., the Answer is Still 'No,' But Some Want that to Change.*, N.J. Advance Media (June 10, 2020), <https://perma.cc/6SND-HNX8>.

S. 2656 would clarify that disciplinary records of any law enforcement officer are government records and therefore would be accessible by the press and public under New Jersey's Open Public Records Act, while providing for redaction of certain sensitive information. The information and records that would be made public include:

- (1) any complaints, allegations, and charges pertaining to an officer;
- (2) the name of the officer complained of or charged;
- (3) transcripts of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;
- (4) the disposition of any proceeding;
- (5) the final written opinion or memorandum supporting the disposition and discipline, if any, imposed, including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered officer;
- (6) internal affairs records relating to a law enforcement officer; and
- (7) any video and audio recording created by a body-worn camera, mobile video recorder, or other similar recording device, which recorded the incident or conduct giving rise to any complaint, allegation, charge, or internal affairs investigation.

The bill would also helpfully require the retention of disciplinary records for 20 years from the date of creation, and would require departments to maintain audio or video recordings of incidents or conduct giving rise to a complaint or investigation against an officer for five years (unless they become part of a criminal or civil investigation, in which case they are to be maintained until the final resolution of the matter).

S. 2656 would require the redaction of certain sensitive information before records can be released. Information to be redacted includes the home addresses, home telephone numbers, work or school addresses, work telephone numbers, and social security numbers of officers and their families, complainants and their families, and witnesses and their families.

Medical information would also be redacted, although the bill provides that it “shall not be construed to permit redactions to any descriptions of injuries or conditions that are the subject of the complaint or caused by or resulting from a law enforcement officer’s alleged conduct.” Names of complainants and witnesses can also be redacted upon request, and record custodians would be required to make a reasonable effort to determine whether complainants or witnesses request such redaction.

These provisions, coupled with the existing confidentiality provisions in New Jersey’s Open Public Records Act, N.J. Stat. Ann. § 47:1A-1.1 (exempting unlisted phone and drivers’ license numbers, among other things), would appropriately balance the legitimate privacy interests of officers, complainants, and witnesses with the need for greater transparency into police activity.

Shedding light on law enforcement misconduct is particularly crucial at this time in our history. In recent weeks, tens of thousands of Americans have taken to the streets, in exercise of their First Amendment rights, to demand justice for George Floyd, a 46-year-old father who, on May 25, 2020, was killed by a white Minneapolis police officer. At the time, that officer reportedly had been the subject of at least 17 prior complaints filed with the Minneapolis Police Department. See Shaila Dewan and Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. Times (May 30, 2020), <https://perma.cc/P92G-DEFM>.

Passage of S. 2656 is a necessary step not only to ensuring police accountability, but also to restoring trust between law enforcement and the communities they serve. The Reporters Committee thanks you in advance for your attention to this urgent issue of paramount public importance. Please do not hesitate to contact Melissa Wasser, policy analyst at the Reporters Committee, with any questions at mwasser@rcfp.org.

Sincerely,

Melissa Wasser
Policy Analyst, Reporters Committee for Freedom of the Press

cc: The Honorable Anthony M. Bucco
The Honorable Nia H. Gill, Esq.
The Honorable Declan J. O’Scanlon Jr.
The Honorable Nicholas J. Sacco

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ACDL-NJ

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Testimony of Linda Foster, Esq.

President, New Jersey Association of Criminal Defense Lawyers

The New Jersey Association of Criminal Lawyers (NJ-ACDL) represents 515 criminal defense attorneys who practice in New Jersey's Federal, State and Municipal courts. Our members include public defenders and private criminal and civil rights practitioners. It is also worth noting that some of our members represent police charged in disciplinary proceedings or with crimes. The NJ-ACDL writes this statement in support of S2656, a bill that brings long overdue transparency to policing in our state. Our statement focuses on why those accused of crimes need access to police misconduct data and how S2656/A4283 bring New Jersey in line with other states instituted similar reforms.

In the wake of George Floyd's killing and numerous killings of other Black men and women at the hands of police, the nation has struggled to find ways to repair systemic flaws in policing. Part of this discussion has revolved around accessibility of police records through public records act requests and how that process in other jurisdictions has led to greater accountability and outcomes in policing. Having such data is critical to any genuine effort to make changes in police behavior and culture. Several uses for this data that has proven useful in this effort include but are not limited to: identifying behavioral trends, amending use of force policies, ensuring bad officers cannot move from department to department, allocating police resources, and determining training priorities. NJ-ACDL supports any reform that leads to greater transparency and accountability for police.

We write specifically to endorse S2656 because it would have the most direct impact on the clients we serve. Amid the larger conversation about police reform, there has been relatively little discussion about the importance of police internal affairs (IA) data to people accused of crimes. The result of this is a misplaced assumption that criminal defendants learn in the discovery process about past misconduct committed by the officers who will testify in their cases. It seems only fair and natural that when an officer stands between the accused and his liberty, the accused would have some way to find out if the officer upon whom his fate rests has a history of misconduct. This assumption could not be further from the truth.

Under the current law, the accused in a criminal trial has no special right to IA records. There is a legal process by which an attorney can seek *in camera* review by the judge of IA records if, and only if, the accused can overcome the presumption of non-disclosure. The presumption can only be overridden when a Court finds the defendant's interest in the records outweighs officer privacy. Although the defendant's liberty interest is a compelling one, to meet the legal threshold for disclosure, the law requires the defense to show some evidence the officer has

TRUSTEES EMERITI

Matthew P. Boylan (1932-2009) • Raymond A. Brown (1915-2009) • S.M. Chris Franzblau • Richard L. Friedman
M. W. Pinsky • Michael A. Querques (1929-2013) • Theodore V. Wells, Jr. • Warren W. Wilentz (1924-2010)

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committed misconduct in the past and to provide some information about the nature of that misconduct. New Jersey has never released the names of officers who commit misconduct, which makes it next to impossible to overcome the presumption in court. The law is, in practice, a conundrum. The defense must know the officer committed misconduct to obtain IA records, but because attorneys do not have access to IA records, the defense never learns about the officer's prior misconduct.

Recently, the Attorney General (AG) announced some names would now be made public. The new policy requires, going forward, departments to disclose complaints that resulted in suspensions of five days or more. The policy requires the department to provide the name and a short description of the conduct for which the officer was disciplined but none of the underlying data or factual findings. NJ-ACDL acknowledges any step towards transparency is a positive one, but when it comes to policing, small steps can no longer be the yardstick by which we measure progress.

S2656 expands upon the AG's policy and sews shut its many loopholes. The Attorney General's new policy does nothing to provide criminal defendants to meaningful access to information critical to their cases. First, it continues to shield from public view cases where a complaint against an officer is sustained but the officer receives a lesser punishment, cases in which an officer retires to escape discipline, and cases in which poorly conducted internal affairs investigations result in dismissed complaints. In NJ, only a small percentage of misconduct claims are sustained. Rules violations are sustained at a much higher rate, which means records in most cases will remain hidden.

Second, the AG's new policy creates a climate in which the publication of discipline becomes a part of IA process itself – where the punishment dictates the crime. Officers will no doubt negotiate suspensions of less than five days for the sole purpose of keeping misconduct secret, and departments looking to avoid a scandal will easily sidestep disclosure by reducing charges to rules violations and minimizing penalties.

Finally, by continuing to allow departments to hide complaints and factual findings, the public will have little information about the exact conduct for which the officer was disciplined even when it is published. For example, finding out an officer was sanctioned for “departmental rules violations” is one thing, but discovering the conduct underlying the rules violation was falsifying a police report or testifying untruthfully under oath is another. When it comes to determining the relevance of IA records to a criminal case, the conduct and its context is far more important than how the officer was ultimately punished.

The flaws in both the status quo and the Attorney General's new policy can only be remedied with the passage of S2656.

Despite what opponents of S2656 would have this Body believe, the reforms contained in S2656 are nothing new or particularly groundbreaking. New Jersey consistently ranks among the least transparent states in the nation when it comes to

policing, a fact recently acknowledged by our Attorney General.¹ States like Florida and Georgia have long had open access to police records.²

More recently, in direct response to public calls for change, Colorado enacted and New York repealed laws to create public police access to police records.³ In sweeping legislation passed last month in Colorado, the state also adopted many of the reforms being debated by the New Jersey legislature today.⁴

The sky has not fallen in a single state where IA records are available upon public records requests. The availability of these records has had no impact on good policing. Instead, such transparency creates an increased trust in police and, when that trust breaks down, the ability to quickly assess what is broken and enact meaningful reforms.

New Jersey is behind. S2656 is the major step forward we need. It does not bring us to the front of the pack; but rather, puts us alongside sister states willing to make the changes necessary to hold police accountable both individually and as a group, and foster an environment where change is possible.

The fate of those accused of crimes often rests solely on the credibility of an investigating officer. This is particularly true of cases involving traffic stops, search warrants, and so-called street crimes; arrests we know disproportionately impact Black defendants.⁵ Martin Luther King Jr. cautioned that, "Throughout history it has been the inaction of those who could have acted, the indifference of those who should have known better, the silence of the voice of justice when it mattered most, that have made it possible for injustice to triumph." Action matters and the time is now.

On behalf of all members of the NJ Association of Criminal Defense Lawyers, we urge the Legislature to pass S2656.

¹ <https://twitter.com/NewJerseyOAG/status/1279086143955501056>

² <https://project.wnyc.org/disciplinary-records/> The data contained in this article is from 2016. Since its publication, NY, CA, and CO have enacted transparency reforms that would now put them in the category of states with public access to police records.

³ New York Daily News, June 10, 2020; <https://www.nydailynews.com/news/politics/ny-legislature-50a-transparency-george-floyd-20200609-yew7soogazfmdg3cr3xlsbmwye-story.html>

⁴ Denver Post, June 13, 2020; <https://www.denverpost.com/2020/06/13/colorado-police-accountability-reform-bill/>

⁵ New Jersey Sentencing and Disposition Commission Annual Report, November 2019; https://www.nileg.state.nj.us/OPI/Reports_to_the_Legislature/criminal_sentencing_disposition_ar2019.pdf

On June 15, 2020, Attorney General Grewal announced that all New Jersey law enforcement agencies must publicly identify officers who commit serious disciplinary violations. AG Grewal noted,

“Today, we end the practice of protecting the few to the detriment of the many. Today, we recommit ourselves to building a culture of transparency and accountability in law enforcement.”

These statements could not more tone deaf towards the members of the Gordon family and to the current state of the Maurice Gordon investigation. AG Grewal mentions transparency and accountability in policing, words that were cosigned by Governor Murphy. However, Maurice Gordon was killed by Sgt. Randall Wetzel on May 23, nearly two months ago, and still, not all of the unredacted footage has been released and the autopsy report from the medical examiner’s office has not been released.

For nearly two months, the Gordon family and their legal team have been demanding answers. Answers as to how did Maurice Gordon Jr. actually die, was he treated by paramedics, when was he pronounced dead, where was he shot, and where is the rest of the dash and body cam footage from NJ State troopers from May 23rd. To this day, the state of New Jersey has been suspect regarding the speed this investigation has been conducted. Here, like so many times in the past, the State attorney is investigating the State police, and the investigation is stalling and not progressing, while family members are the ones who have to endure the pain of their unanswered questions as it relates to yet another unarmed Black man being killed by the police.

In this case, we are focusing on police reform and accountability. We want Randall Wetzel to be held accountable for his actions. Not a slap on the wrist while he receives a paycheck on administrative leave and the Gordon family can’t get simple answers as to how their loved one died. Wetzel received body cam training on May 23, 2017 and Nov 5, 2019 but still did not have his body cam when he fatally shot Maurice Gordon Jr. six times. Why is Randall Wetzel permitted to go out into the public, enforce traffic law, use his firearm and kill an unarmed man without having to have a body cam? Especially after he received multiple trainings to have the body cam on his person and recording when necessary. We want answers. We want Wetzel held accountable and we want the Attorney General’s Office to participate in a fair, speedy investigation of Maurice Gordon and what happened on May 23, 2020. What the AG Grewal is doing is not helping bridge the distrust between police and the public, he is only furthering it.

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For Immediate Release

July 14, 2020

Contact:

Erica Dumas, edumas@mercuryllc.com

Djenny Passé, dpasse@mercuryllc.com

Statement by William O. Wagstaff III, Attorney for Family of Maurice Gordon Jr.

Dear Senator Linda R. Greenstein and Distinguished Members of the Senate Law and Public Safety Committee:

As you convene for this all-important hearing, it's been 52 days since 28-year-old Maurice Gordon, an unarmed Black man, was shot and killed by a White New Jersey State Trooper after he was stopped along the Garden State Parkway. It's been 52 days since Mr. Gordon's family has waited for answers about how a mere traffic stop ripped him away from their lives. It's been 52 days, and justice still has not been met.

Mr. Gordon Jr. was the son of Maurice Gordon Sr. and Raquel Barrett and loved by his entire family. Before his life was tragically cut short, he studied chemistry at Dutchess Community College in New York and worked as an Uber driver.

The Attorney General's Office has repeatedly shown that it's incapable of investigating Maurice's killing impartially, and without this, it's inconceivable to expect accountability. The Attorney General's 2019 Independent Prosecutor Directive has a glaringly apparent blind spot; it removes the prosecution of all police-involved killings from the ambit of local prosecutors pronouncing transparency as the goal, but still allows the state's police to be investigated and prosecuted by the state's attorney. It can't be underscored enough that this process is a sheer conflict of interest, resulting in this policy that purports to ensure impartiality to be mere artifice when applied to New Jersey State Troopers.

Given this dynamic, it's not surprising that this process has been botched from the beginning, including how Mr. Gordon's family learned about the release of the dashcam footage chronicling his final moments. That it was released to the public on YouTube of all places shows the Attorney General's Office's callousness.

The Attorney General's Office has made unreasonable requests of the family, while denying basic requests from my office.

We implore the New Jersey Attorney General to appoint an independent prosecutor to present the case to the grand jury. This is the only way Maurice Gordon's family can rest comfortably knowing every reasonable avenue towards justice was explored.

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100 W Camden Ave
Moorestown NJ, 08057
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July 14, 2020

VIA EMAIL TO: OLSAideSLP@njleg.org
The Senate Law and Public Safety Committee
State House Annex
P.O. Box 068
Trenton, NJ 08625-0068

Re: SUPPORT FOR S-2656 and JUSTICE FOR MAURICE GORDON

Dear Chairwoman and Members of The Senate Law and Public Safety Committee:

On behalf of our organization, Women Who Never Give Up, Inc. (“WWNG”), we are submitting this written testimony in support of S-2656, together with a copy of a Petition to the State of New Jersey, Office of the Attorney General, signed by over 3,500 people, calling for the full disclosure of all details surrounding the recent killing of a black man, Maurice Gordon, by a New Jersey State Police trooper.

WWNG is a nonprofit organization that confronts a wide range of criminal justice issues. My purpose in writing today is twofold: First, I urge you to vote Yes on Senator Weinberg’s bill (S-2656), which would make police internal affairs and disciplinary records subject to the Open Public Records Act. Second, I ask that the Committee direct its attention to Maurice Gordon, whose death, and the State of New Jersey’s filibustering response, highlights our desperate need for public oversight and accountability in law enforcement, which S-2656 is designed to help address.

On May 23, 2020, a routine traffic stop ended with a New Jersey State Police trooper shooting a black man to death on the side of the Garden State Parkway. According to an attorney for the family of Maurice Gordon, 28, of Poughkeepsie, New York, Maurice was unarmed and accompanied by a white trooper waiting for a tow truck to arrive because his car wouldn’t restart. Thousands of miles away in London, his mother, sister, and his father in Florida soon received the horrific news that Maurice had been shot and killed. Maurice was a law-abiding citizen, a chemistry student and driver for UberEATS, who refrained from

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trouble. One cannot fathom why a New Jersey State Trooper shot Maurice a total of three times.

Maurice's death on the parkway in Burlington County occurred two days before the killing of George Floyd at the hands of a Minneapolis police officer. That incident resulted in multiple officers' arrests and sparked protests across the nation, demanding change and chanting "Black Lives Matter." In New Jersey, we've seen the same narrative too many times: a routine traffic stop escalated into a deadly situation for a person of color. In the aftermath of these killings, WWNG submits that, far too often, law enforcement uses its secret-seeking privileges to conceal the truth, and there comes a point at which the privileges begin to corrode.

The family of Maurice Gordan and their attorney, William O. Wagstaff III, Esq., have sought answers from the authorities, presumably including internal affairs and disciplinary records for the officer(s) involved, only to be met with obstruction, obfuscation, and delay. Thus, Maurice's case illustrates why it is imperative to pass S-2656. The family's interest in this matter is matched only by the public interest in exposing—and meaningfully addressing—racist, discriminatory, corrupt, and/or overly violent police officers.

Notably, the Attorney General's recent directive ordering disclosure of the names of those who received major discipline is insufficient. Only a small percentage of internal affairs complaints are ever sustained, let alone result in major discipline. WWNG demands public oversight over internal affairs files, to ensure that misconduct is not swept under the rug. In addition, appeals filed by the police unions have stayed the Appellate Division's directive, so legislative action is needed as soon as possible.

To date, WWNG has gathered 3,506 signatures and counting on behalf of Maurice Gordon. We ask that the Committee and the Legislature do what is necessary to help achieve justice in his case, and in all similar cases going forward. To this end, I urge you to vote Yes on S-2656.

Thank you for your attention to this extremely important matter and please do not hesitate to contact our organization if you have any questions or would like to discuss these matters further.

Enclosed are copies of the Petition signatures and comments.

Sincerely,

*s/ Gale Muhammad,
President & Founder
Women Who Never Give Up, Inc.
WWNG.org*

164²x



s/ Rudie Weatherman, Esq.
Staff Attorney,
Women Who Never Give Up, Inc.
WWNG.org

s/ Megan Coleman
Program Coordinator
Women Who Never Give Up, Inc.
WWNG.org

cc:

Tisha Barnes
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Executive Director
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Attorney for Maurice Gordon



**PETITION TO THE STATE OF NEW JERSEY
ON BEHALF OF MAURICE GORDON**

To: State of New Jersey, Office of the Attorney General

From: Women Who Never Give Up, Inc.

100 W Camden Avenue, Moorestown NJ, 08057

(Address of Petitioner)

Our organization is petitioning for justice on behalf of Mr. Maurice Gordon. Women Who Never Give Up, Inc. ("WWNG"), calls upon the New Jersey Office of the Attorney General to disclose all details of Maurice Gordon's case. Enclosed you may find the petition letter, together with the petition signatures and comments.

856-723-6417

cmeganwwng@gmail.com

Phone Number

Email Address

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166x



Women Who Never Give Up, Inc.
100 W Camden Ave
Moorestown NJ, 08057
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WWNG.org

July 10th, 2020

State of New Jersey,
Office of the Attorney
General Gurbir S.
Grewal 25 Market St.
Trenton, NJ, 08611

Justice for Maurice Gordon

Dear Mr. Grewal,

My name is Megan Coleman, Program Coordinator of Women Who Never Give Up, Inc. I am writing on behalf of Women Who Never Give Up, Inc. and President and Founder of WWNGUP, Ms. Gale Muhammad.

On May 23, 2020, a routine traffic stop ended with a New Jersey State Police trooper shooting a black man to death on the side of the Garden State Parkway. According to an attorney for the family of Maurice Gordon, 28, of Poughkeepsie, New York, Maurice was unarmed and accompanied by a white trooper waiting for a tow truck to arrive because his car would not restart. Thousands of miles away in London, his mother, sister, and his father in Florida would soon receive the horrific news that Maurice had been shot and killed.

Maurice Gordon was a law-abiding citizen, a chemistry student and driver for UberEATS, who refrained from trouble. One cannot fathom why a New Jersey State Trooper shot Gordon a total of three times. Gordon's family and their attorney, William O. Wagstaff III, Esq., are trying to gather answers from authorities, but answers have been hard to come by, they say, and they only feel more helpless and hopeless each day.

The killing of Maurice Gordon on the parkway in Burlington County occurred two days before the death of George Floyd at the hands of a Minneapolis police officer. That incident resulted in multiple officers' arrests and sparked protesters across the nation and the world to take to the streets, demanding change and chanting his name, along with "Black Lives Matter." Here in New Jersey, we have seen the same narrative time



and time again: a routine traffic stop escalated into a deadly situation for a person of color.

WWNG began this petition because our membership felt the repercussions following the death of

Maurice Gordon. To date, we have gathered **3,506 signatures and counting** on Maurice Gordon's behalf. We send our condolences to the family and friends of Maurice Gordon, and of George Floyd, Ahmed Aubrey, Breonna Taylor, and all victims of hate crime and communities of color.

Women Who Never Give Up, Inc., calls upon the New Jersey Office of Attorney General to **disclose all details of Maurice Gordon's case**. WWNG humbly requests the following:

- Release and/or make accessible to all audio and video recording of the encounter and the immediate aftermath in their native format from the Office of Attorney General.
- Obtain all of the materials/evidence including the autopsy report from the Medical Examiner's Office, so the independent pathologist can complete his autopsy report.
- Immediate termination of Sgt. Wetzel's employment with the New Jersey State Police.
- Immediate arrest of Sgt. Wetzel for the murder of Maurice Gordon.
- A fair and impartial presentment of the evidence to the grand jury by an independent prosecutor due to the correspondence regarding the New Jersey Attorney General investigating and prosecuting its own State Trooper.

The time has come for real change and meaningful reform in New Jersey. Women Who Never Give Up, Inc., wishes to file this petition in support of Maurice Gordon.

Enclosed are copies of the petition signatures and comments.

Sincerely,

/s Megan Coleman
Program Coordinator
Women Who Never Give Up, Inc.
WWNG.org

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168x



cc: Gale Muhammad
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Attorney for Gordon Family

7/16/14



PETITION SIGNATURES

Available online

change.org

Recipient(s): New Jersey Office of Attorney General, Office of Governor Phil Murphy,
and William O. Wagstaff III, Esq.