



*State of New Jersey*

PHILIP D. MURPHY  
*Governor*

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

GURBIR S. GREWAL  
*Attorney General*

SHEILA Y. OLIVER  
*Lt. Governor*

**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-5**

**TO:** All Law Enforcement Chief Executives

**FROM:** Gurbir S. Grewal, Attorney General

**DATE:** December 4, 2019

**SUBJECT:** **Directive Strengthening and Supplementing *Internal Affairs Policy & Procedures***

To build and maintain public trust, law enforcement agencies must implement mechanisms for identifying and investigating allegations of misconduct within their ranks. Although the vast majority of law enforcement officers consistently adhere to the highest professional and ethical standards, it is vital that police departments hold officers accountable when they fall short of those requirements.

The principal mechanism for officer accountability is a police department’s internal disciplinary process, typically administered through the police force’s “Internal Affairs” unit. The virtues of the process are clear. Because Internal Affairs units are housed within law enforcement agencies, their investigators can gain prompt access to sensitive personnel and law enforcement records that are typically inaccessible to third parties. And because Internal Affairs units operate outside an agency’s normal chain of command, the investigators can proceed independently, thoroughly, and fairly.

But Internal Affairs units are only as effective as the policies that govern them and the people that staff them. In recent years, stakeholders across the country have raised concerns about the credibility and objectivity of internal disciplinary processes at various police departments. It is therefore especially important that New Jersey maintain robust, statewide standards to ensure that all Internal Affairs units function effectively.

In August 1991, the Attorney General issued *Internal Affairs Policy & Procedures (IAPP)*, a landmark document outlining the role and functions of an Internal Affairs unit. Five years later, in 1996, the Legislature went a step further, requiring that each law enforcement



agency in New Jersey adopt its own policies consistent with *IAPP*. P.L.1996, c.115 § 10 (codified at N.J.S.A. 40A:14-181). Over the past three decades, Attorneys General have revised the document several times to strengthen or clarify various provisions. Today's Directive marks one of the most substantial revisions to *IAPP* since its initial publication and represents a significant step forward in our effort to strengthen public confidence and promote public accountability.

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 revised *IAPP* appended to this Directive, and to take any additional measures necessary to update their guidelines consistent with *IAPP*, as required by N.J.S.A 40A:14-181.

#### **I. Summary of Changes to *Internal Affairs Policy & Procedures***

Enclosed with this Directive is the latest version of *IAPP*. The new version, among other things:

- **Incorporates the new law enforcement resiliency initiatives established by the Officer Resiliency Directive (AG Directive 2019-1).** The revised *IAPP* identifies resources for law enforcement officers seeking tools to cope with the emotional and mental stresses of their work, and clarifies that an officer shall not face adverse internal affairs consequences for the sole reason that the officer decided to seek medical or psychological treatment for a mental health concern. § 2.4.3.
- **Facilitates review of the disciplinary history of an officer who seeks employment with another law enforcement agency.** The revised *IAPP* requires that background investigations for new recruits must include a review of the internal affairs files of any candidate who previously worked for another law enforcement agency. § 3.1.1. New Jersey law enforcement agencies are now generally required to disclose the entire internal affairs file of a candidate to prospective law enforcement employers, and a candidate with out-of-state law enforcement experience must waive confidentiality for their internal affairs files. § 3.1.2.
- **Emphasizes the importance of “early warning systems” for the prevention of misconduct; incorporates the Statewide EWS Directive (AG Directive 2018-3).** The revised *IAPP* incorporates the requirement that each police department must establish and maintain an “early warning system” protocol to identify officers whose conduct is or may become problematic. The revised *IAPP* requires coordination with the department's Internal Affairs function in order to ensure that minor episodes of misconduct do not escalate to more serious disciplinary issues. § 3.4.

- **Clarifies standards for the selection of personnel for Internal Affairs units.** The revised *IAPP* encourages law enforcement executives to assign personnel to Internal Affairs who have sufficient experience and rank to effectively handle sensitive investigation. The *IAPP* also encourages officers to serve a tour in Internal Affairs before promotion to leadership positions. § 4.2.2. The *IAPP* further clarifies that Internal Affairs investigators with conflicts of interest must recuse from certain cases, and that the Internal Affairs investigatory function can never be contracted out to a private entity. §§ 4.2.5-4.2.7. Instead, departments should refer matters to the County Prosecutor when they believe they are unable to investigate the matter on their own. Where appropriate, departments may enter into an agreement with another law enforcement agency to conduct an Internal Affairs investigation or explore regional internal affairs arrangements with other law enforcement agencies. §§ 4.2.7, 4.2.8.
- **Expands and standardizes training for officers assigned to Internal Affairs units.** Per the revised *IAPP*, the Division of Criminal Justice will resume providing “train-the-trainer” courses for county prosecutor personnel responsible for internal affairs training. § 4.3. County Prosecutors shall ensure that officers in their jurisdiction assigned to an Internal Affairs unit complete required training. *Id.*
- **Strengthens procedures for accepting reports of alleged misconduct.** To standardize reporting of complaints, the revised *IAPP* includes a standardized civilian complaint form that must be made available in multiple languages in all department offices and websites. § 5.1.4. *See* Appendix C. The revised *IAPP* also clarifies that agencies must accept complaints from undocumented immigrants and should establish systems for the receipt of complaints by telephone or email, and that officers are prohibited from affirmatively warning complainants that they may face consequences for filing a false report. §§ 5.1.1, 5.1.2, 5.1.5. Alleged violations of directives issued by the Attorney General or relevant County Prosecutor must also be handled through the Internal Affairs process. § 4.1.3.
- **Ensures effective handling of complaints against law enforcement executives and senior management.** Under the revised *IAPP*, County Prosecutors are directly responsible for Internal Affairs investigations of municipal law enforcement executives under their jurisdiction and the members of those executives’ senior management teams, regardless of the type of alleged misconduct. § 5.1.8.
- **Establishes new timelines to encourage quicker resolution of Internal Affairs investigations.** The revised *IAPP* reiterates the importance of completing Internal Affairs investigations in a prompt manner. The revised *IAPP* makes clear that most internal affairs complaints are straightforward and that 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. § 6.1.2. The revised *IAPP* mandates that, 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, who may take steps to ensure prompt resolution of the matter. § 6.1.4. Investigators must provide further notice to the law enforcement executive every additional 45 days that the investigation remains incomplete. § 6.1.5. In the rare cases where the agency has not filed

disciplinary charges within 180 days of receipt of the complaint, the agency must notify the County Prosecutor, who will investigate the reasons for the extended investigation and will also examine whether the agency's internal affairs function faces any systemic issues that require additional resources or oversight. § 6.1.6. In such cases, the County Prosecutor may take any steps necessary to ensure prompt resolution of the pending matter, including supersession of the agency's investigation. *Id*

- **Requires completion of an administrative investigation after a criminal investigation is declined or terminated.** County Prosecutors are responsible for ensuring that when a matter is declined for criminal prosecution, a prompt and comprehensive Internal Affairs administrative investigation is nonetheless completed. § 6.3.8.
- **Generally requires recording of witness statements.** The revised *IAPP* requires that, when taking a formal statement from a civilian, including a complainant, 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. § 7.1.5. 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. *Id*. In addition, the revised *IAPP* requires that, 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 it. § 7.1.6.
- **Clarifies that investigations of firearm discharges are subject to the Independent Prosecutor Directive (AG Directive 2019-4).** The revised *IAPP* codifies the existing requirement that all initial investigations of firearms discharges are generally conducted by County Prosecutors or, in cases of discharges resulting in fatalities, the Attorney General. § 7.11.4. Any public statements by a law enforcement agency regarding the conduct of officers involved in such discharges must be approved by the County Prosecutor or Attorney General. § 7.11.3. In addition, all on-duty and off-duty firearms discharges by a law enforcement officer, except in certain limited circumstances, must be documented and reviewed by Internal Affairs to determine whether additional investigation is necessary. §§ 4.1.2(a), 7.11.1.
- **Clarifies public reporting requirements.** The revised *IAPP* makes clear that, 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. § 9.11.1. The revised *IAPP* also clarifies that, on a periodic basis, and at least once a year, every agency shall submit to the County Prosecutor and publish on the agency's website a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to an agency member. § 9.11.2.
- **Clarifies when police departments may share certain Internal Affairs investigative materials with third parties.** Since its inception, *IAPP* has placed strict confidentiality requirements on records obtained and created during Internal Affairs investigations, to preserve the integrity of the investigative process. These records may only be released

under a narrow range of circumstances, including when a police department's law enforcement executive has "good cause." The revised *IAPP* makes clear that good cause may exist (a) when another law enforcement agency requests records related to a current or former officer that the agency is considering whether to hire; or (b) if a Civilian Review Board that meets certain minimum procedural safeguards has requested access to a completed investigation file. §§ 9.6.3, 9.7, 9.8. In addition, the *IAPP* strongly discourages municipalities from entering into non-disclosure agreements that may inhibit the sharing of Internal Affairs information between law enforcement agencies. § 9.8.4.

- **Enhances role of County Prosecutors in overseeing police departments' Internal Affairs functions.** The revised *IAPP* includes a number of new policies to ensure that County Prosecutors exercise appropriate oversight of the Internal Affairs functions of all law enforcement agencies based in their respective counties. Among other things, the revised *IAPP* requires that County Prosecutors closely review summary Internal Affairs reports, investigate troubling patterns in specific agencies, and conduct random reviews of Internal Affairs functions at all agencies within the county. §§ 10.0.1-10.0.4. To facilitate this enhanced oversight, the revised *IAPP* strengthens reporting requirements from police departments to their respective county prosecutors, and includes an updated standard reporting form for this purpose. § 9.10.1. In addition, if an officer subject to an administrative investigation has a good-faith basis to question the impartiality or independence of an investigation being conducted within their agency, the officer may report their concerns to the County Prosecutor. § 6.3.6.

## **II. Clarification Regarding Civilian Review Boards**

Recognizing that some New Jersey municipalities view Civilian Review Boards as effective tools for improving police-community relations, the revised *IAPP* establishes certain minimum procedural safeguards that a municipality must adopt for a Civilian Review Board before a law enforcement agency is permitted to provide the Board with access to internal affairs records. To gain access to such records, Civilian Review Boards must of course comply with all other applicable legal requirements.

These minimum requirements are necessary to protect the integrity and confidentiality of the internal affairs function, which will continue to be the principal mechanism for addressing allegations of police misconduct and an important means of protecting the constitutional rights of the State's residents, even in those municipalities that choose to create a Civilian Review Board.

Establishing a Civilian Review Board is only one of many options available to municipalities seeking to improve police-community relations. Other reforms to the internal affairs function and the introduction of other police accountability measures may lead municipalities to conclude that the costs and other drawbacks of creating a Civilian Review Board outweigh the benefits. Likewise, a municipality may conclude that its objectives for improving police-community relations would be better served by a civilian oversight body that does not conduct its own investigations of individual civilian complaints but instead reviews

aggregate data and/or de-identified records from closed investigations to evaluate the overall effectiveness of police discipline and inform policy recommendations.

In addition to these policy reforms, the Attorney General or a County Prosecutor play a significant supervisory role and may intervene directly in the day-to-day operations of a law enforcement agency when warranted by substantiated allegations of serious misconduct that the agency may not be effectively addressing on its own. Together with the Attorney General's authority to establish uniform criminal justice policy for the State of New Jersey, the authority of the Attorney General and County Prosecutors to intervene directly in the day-to-day operations of law enforcement agencies makes New Jersey's criminal justice system unique in the nation.

The uniqueness of New Jersey's unified, integrated system of law enforcement means that certain policies adopted in other jurisdictions may be misplaced in New Jersey. Nonetheless, the Attorney General recommends that a municipal governing body study the many options available for structuring a civilian review procedure before it establishes a Civilian Review Board, including by studying the strengths and weaknesses of various models of civilian review adopted by other jurisdictions across the country. *See, e.g.,* Joseph De Angelis, et al., *Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models* (2016); Joseph De Angelis, et al., *Civilian Oversight of Law Enforcement: Assessing the Evidence* (2016); Peter Finn, U.S. Dep't of Justice, Office of Justice Programs, Nat'l Inst. of Justice, *Civilian Review of Police: Approaches & Implementation* (2001).

In addition, municipal governing bodies should ensure compliance with N.J.S.A. 40A:14-118, also known as the "Police Force Statute," which outlines the responsibilities and authorities of a governing body in establishing civilian oversight of the municipal police force. For example, the Police Force Statute makes clear that the chief of police is directly responsible to the "appropriate authority" for the day-to-day operations of the force, with the "appropriate authority" defined as the mayor; certain other civilians, such as a public safety director; the governing body or a designated committee or member thereof; or any municipal board or commission established by ordinance for such purposes. N.J.S.A. 40A:14-118. The Police Force Statute further states that civilian authority to examine the "performance of any officer or member" of the police force may be vested in the appropriate authority or the executive or administrative officer charged with the general administration responsibilities within the municipality. *Id.*

At present, several New Jersey municipalities have established civilian oversight bodies responsible for investigating the operations of the police force at a programmatic level and recommending policy reforms when warranted, without investigating individual civilian complaints of misconduct by specific law enforcement officers. Few New Jersey municipalities have expressed an interest in establishing a Civilian Review Board with authority to investigate individual misconduct complaints, and this approach raises legal questions that policy-focused boards do not.

Regardless of the model it chooses, any municipality establishing a Civilian Review Board should take care that the Board's members and staff have the resources, experience and training necessary to carry out their duties in an effective and professional manner; that the Board's work does not impair or unnecessarily duplicate the important work of the police force's internal affairs unit or prosecutor's office; that confidentiality is maintained; and that law enforcement executives retain appropriate control over their personnel. Civilian Review Boards that fall short in any of these respects are unlikely to be effective tools for promoting police-community relations and could in fact have the opposite effect.

The revised *IAPP* identifies the limited circumstances in which disclosure of internal affairs records to a Civilian Review Board is consistent with the Attorney General's Internal Affairs Policy & Procedures. The relevant provisions are not intended to address all of the legal and policy considerations that should inform a municipality's decision whether to establish a Civilian Review Board or how to structure its procedures. In particular, the provisions do not address whether any Civilian Review Board model or any set of Civilian Review Board procedures comports with applicable federal, state, and local laws, other than *IAPP*. Municipalities weighing their options are encouraged to consult all relevant authorities, including any contractual requirements that might supplement the municipality's other obligations under federal, state, and local law.

One of the most important questions for any municipality deciding whether to create a Civilian Review Board or how to structure a Board's procedures is whether the Board should be granted access to confidential law enforcement information, including internal affairs records, and, if so, on what terms such access will be permitted. This question is an important one not only because the answer will inform how the municipality's Civilian Review Board carries out its duties, but also because the lack of appropriate safeguards may impair the integrity of the police force's internal affairs function and increase the municipality's litigation risk.

The revised *IAPP* therefore identifies minimum procedural safeguards that a municipality must adopt for its Civilian Review Board, in addition to compliance with all other applicable legal requirements, before a law enforcement agency will provide the Board with access to internal affairs records, including initial complaints. Nothing in the revised *IAPP* restricts in any way a Civilian Review Board's ability to access non-confidential information located outside internal affairs records, or to refer complaints received by the Civilian Review Board to a law enforcement agency's internal affairs unit. However, only those Civilian Review Boards that operate in accordance with the revised *IAPP*'s requirements will be granted access to otherwise confidential internal affairs records. 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.

**III. 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 both this Directive and *IAPP* shall be severable. If any phrase, clause, sentence or provision of either this Directive or *IAPP* is declared by a court of competent jurisdiction to be invalid, the validity of the remainder either document shall not be affected.
  
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive or *IAPP* shall be addressed to the Executive Director of Office of Public Integrity & Accountability, or their designee.
  
- D. ***Effective date.*** This Directive shall take effect on April 1, 2020. 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. The revised *IAPP* appended to this Directive supersedes all prior versions of *IAPP*.



Gurbir S. Grewal  
Attorney General

ATTEST:



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

# INTERNAL AFFAIRS POLICY & PROCEDURES

Office of the Attorney General | State of New Jersey

December 2019  
Version

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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,<sup>1</sup> 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.

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<sup>1</sup> 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.Ps. 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;<sup>2</sup>
- (d) Suspension without pay;

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<sup>2</sup> 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.

- (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.

- 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.<sup>3</sup> 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.

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<sup>3</sup> 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.**

<b>Timing of Internal Affairs Investigations</b>	
<b>Length of investigation from receipt of complaint</b>	<b>Special notice required</b>
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.

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.<sup>4</sup> 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;

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<sup>4</sup> 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.<sup>5</sup>
- 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

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<sup>5</sup> 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

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,<sup>6</sup> 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

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<sup>6</sup> *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.

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 <b>CRIMINAL</b>	Investigation is <b>ADMINISTRATIVE</b>
Officer is <b>SUBJECT</b>	<ul style="list-style-type: none"> <li>• Prosecutor notification</li> <li>• Treat as any other defendant</li> <li>• <i>Miranda</i> warning if appropriate</li> <li>• No <i>Garrity</i> warning unless prosecutor approves</li> <li>• May require routine business reports</li> <li>• No special reports</li> <li>• Right to counsel (attorney)</li> </ul>	<ul style="list-style-type: none"> <li>• Obligation to cooperate</li> <li>• Administrative interview form</li> <li>• May require special reports</li> <li>• Cannot charge as a subterfuge</li> <li>• Right to representative</li> </ul>
Officer is <b>WITNESS</b>	<ul style="list-style-type: none"> <li>• Obligation to cooperate</li> <li>• No <i>Miranda</i> warning</li> <li>• Witness acknowledgement form</li> <li>• May be entitled to a <i>Weingarten</i> representative<sup>7</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Obligation to cooperate</li> <li>• Witness acknowledgement form</li> <li>• May be entitled to a <i>Weingarten</i> representative</li> </ul>

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

<sup>7</sup> *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.<sup>8</sup> 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.

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<sup>8</sup> N.J.A.C. 4A:2-2.6(c).

- 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.<sup>9</sup> 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.

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<sup>9</sup> 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.<sup>10</sup> 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.

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<sup>10</sup> Gardner v Broderick, 392 U.S. 273 (1968).

## 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.

## 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;<sup>11</sup>
- (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

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<sup>11</sup> 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.

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.