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**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*.



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ATTEST:



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Dated: December 4, 2019