# OFFICE OF THE SHERIFF
# CAMDEN COUNTY

## INTERNAL AFFAIRS
### POLICY AND PROCEDURES

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# INTERNAL AFFAIRS POLICY & PROCEDURES

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# Introduction

*Internal Affairs Policy & Procedures* was first published in 1991. Updates to the policy were issued in 1992, 2000 and 2011. The purpose of the policy is to assist the State's law enforcement agencies with investigating and resolving complaints of police misconduct that originate with private citizens 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 citizens of New Jersey that complaints of police misconduct are properly addressed. This policy can also be more broadly applied to non-law enforcement employees. *See* DCJ S.O.P. 11 (currently being revised to apply to all Department of Law and Public Safety employees).

Since the introduction of the policy, the process we call "internal affairs" has come under increasing scrutiny by the courts, the community and the media. In fact, it would be fair to say that the proper administration of the internal affairs function by the State's law enforcement agencies is a critical issue for the criminal justice system in New Jersey today.

The New Jersey Legislature 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.

In addition, the courts, particularly the federal courts, have focused on the importance of the internal affairs function. They have come to perceive this function as an important means of protecting the constitutional rights and civil liberties of the state's citizens. Under the case law, law enforcement agencies must 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 citizen complaints 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.

In view of these developments, the Attorney General has issued, through the Division of Criminal Justice, this revised and updated version of *Internal Affairs Policy & Procedures.* The revisions attempt to incorporate and reflect the numerous changes that have occurred in law enforcement and the internal affairs function since the policy was first issued in 1991. The revised policy is also designed to assist law enforcement agencies in their efforts to comply with emerging legal principles governing the internal affairs function.

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. *(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.

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.

The revised policy contains several mandates that, at the Attorney General's direction, every law enforcement agency must implement. However, 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 the manner in which the mandate is satisfied is a decision 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.

Other policy requirements that the Attorney General has determined are critical and must be implemented by every law enforcement agency include the following:

- Each agency must establish by written policy an internal affairs function.
- Each agency must accept reports of officer misconduct from any person, including anonymous sources, at any time.
- 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 filing of charges against the officer, until the county prosecutor so directs.
- The agency must notify the county prosecutor immediately of any use of force by an officer that results in death or serious bodily injury.
- Each agency must thoroughly and objectively investigate all allegations against its officers.
- Each agency must notify its officers of complaints and their outcomes.
- Each agency must notify complainants of the outcome of their complaint.
- 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. In addition, each agency shall establish a protocol for monitoring and tracking the conduct of all officers.

- Each agency must submit quarterly reports to the county prosecutor summarizing the allegations received and the investigations concluded for that period. Each county prosecutor shall establish a schedule for the submission of the reports and specify the content of the reports.

- Each agency must annually release reports 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. In addition, each agency shall periodically release 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.

- Each agency shall ensure that officers assigned to the internal affairs function complete training as mandated by the Division of Criminal Justice.

The above represent 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.

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 citizens. 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.

This revised policy, the procedures set forth in the policy and the legal citations contained in the text are primarily intended for implementation by county and municipal law enforcement agencies, including municipal and county police forces, county sheriff's offices, county prosecutor's offices and State police forces. Other law enforcement agencies should consult with their legal advisor before implementing specific provisions of the policy. Agencies not under the supervision of the Attorney General as set forth in the Criminal Justice Act of 1970 and/or whose primary mission does not include enforcing the criminal laws of this State (*e.g.*, State and county juvenile justice agencies, State and county correctional agencies, county probation agencies, State parole agencies, interstate law enforcement agencies), are under no obligation to implement the provisions of this policy. Should these agencies choose to adopt the provisions of this policy for their own use, they do so cognizant that one or more of the provisions of this policy may be unsuitable for implementation by their agency and/or one or more of the legal citations contained in the policy may not apply to their agency. These agencies should consult with legal counsel before implementing one or more provisions of this policy.

# Fundamentals of the Disciplinary Process

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 department goals is forgotten. Focusing on the negative aspects of discipline diminishes officer morale and productivity.

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.

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.

## Policy Management System

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.

Law enforcement agencies should have a policy management system that, at a minimum, includes:

1. Rules and regulations: Principles of behavior that set forth acceptable and unacceptable conduct. In municipal police departments, the rules and regulations must be issued by the appropriate authority as designated by ordinance.[1]

[1] *N.J.S.A.* 40A:14-118.

2. Standard operating procedures (S.O.P.): Written statements providing specific direction for performing agency activities. Each S.O.P. should also include the department's policy in that area, which is a statement of agency principles that provides the basis for the development of the procedures.

3. Directives or orders: Documents detailing the performance of a specific activity or method of operation.

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.

**Rules and Regulations**

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.

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:

Crime: Complaint regarding the commission of an illegal act that constitutes a violation of the criminal code including disorderly and petty disorderly persons offenses.

Excessive force: Complaint regarding the use or threatened use of excessive force against a person.

Improper arrest: Complaint that the restraint of a person's liberty was improper, unjust, or violated the person's civil rights.

Improper entry: Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.

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.

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.

Demeanor: Complaint that a department member's bearing, gestures, language or other actions were inappropriate.

Serious rule infractions: Complaint for conduct such as insubordination, drunkenness on duty, sleeping on duty, neglect of duty, false statements or malingering.

Minor rule infractions: Complaint for conduct such as untidiness, tardiness, faulty driving, or failure to follow procedures.

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.

In providing a range of penalties, the department 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 is 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.

A system of progressive discipline can include the following elements:

1. Oral reprimand or performance notice
2. Written reprimand
3. Monetary fine[2]
4. Suspension without pay
5. Loss of a promotional opportunity
6. Demotion
7. Discharge from employment

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.

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 department's internal affairs S.O.P. shall be made available to a representative of any employee collective bargaining unit.

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

## Prevention of Misconduct

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.

### Recruitment and Selection

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. 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.

### Training

Basic and in-service training for law enforcement officers should emphasize the sworn obligation of those officers to uphold the law and provide for the public safety of the citizenry. 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.

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 department.

Training in this sense can be anything from informal counseling of an officer about a particular policy or procedure to formal department-wide training. The department 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.

### Supervision

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.

**Staff Inspections**

While the primary responsibility for enforcing department 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.

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.

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 department 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.

**Community Outreach**

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 citizen 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.

## Responsibility for Discipline

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.

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 his or her 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.

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.

## Fitness for Duty

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.

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* "Immediate Suspension Pending Investigation and Disposition" on p. 16.

# Internal Affairs Unit

**Requirement 1**

Every law enforcement agency must establish, by written policy, an internal affairs function or unit within the agency.

Every law enforcement agency shall establish an internal affairs unit or function. Depending upon the need, the internal affairs unit 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 department personnel assigned to internal affairs by the law enforcement executive. Personnel assigned to the internal affairs unit serve at the pleasure of and are directly responsible to the law enforcement executive or the designated internal affairs supervisor.

## Duties and Responsibilities

The purpose of the internal affairs unit 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 department is maintained through a system of internal discipline where an objective and impartial investigation and review assure fairness and justice.

The internal affairs unit or officer will investigate alleged misconduct by members of the department and review the adjudication of minor complaints handled by supervisors. In addition, internal affairs shall be notified of and document all firearms discharges by department personnel that are not related to training, all use of force incidents that result in injury to a defendant or a third party, all vehicular pursuits undertaken by department personnel and all collisions involving department vehicles. Once notification has been received, internal affairs will determine whether additional investigation is necessary.

An internal affairs unit has an obligation to investigate or review any allegation of employee misconduct that is a potential violation of the agency's rules and regulations or that indicates the employee is unable, unwilling or unfit to perform his or her 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.

An internal affairs unit 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 department policy and procedures.

Internal affairs investigations must be considered as important to the agency as any criminal investigation. Members of the internal affairs unit 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 unit 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 unit as if the order or request came directly from the law enforcement executive.

The internal affairs unit 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.

## Selection of Personnel for the Internal Affairs Unit

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 department and the community. It is recommended that personnel assigned to the internal affairs unit 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 unit who speaks that language.

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.

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.

Law enforcement executives shall not assign to the internal affairs unit 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 unit, the subject officer, the person so assigned, the bargaining unit and the department as a whole.

# Accepting Reports of Officer Misconduct

**Requirement 2**

Every law enforcement agency must accept reports of officer misconduct from any person, including anonymous sources, at any time.

Every law enforcement agency shall establish a policy providing that all citizen complaints are 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. However, 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.

## Accepting Reports Alleging Officer Misconduct

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 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 his or her report.

Citizens should be encouraged to submit their complaints as soon after the incident as possible. If the citizen cannot personally appear at the agency to file the complaint, a member of the agency, preferably a member of the internal affairs unit, should visit the citizen at his or her home, place of business or other location if necessary to complete the report. Under no circumstances shall it be necessary for a citizen to make a sworn statement to initiate the internal affairs process. Furthermore, every police agency shall accept and investigate anonymous complaints.

The internal affairs investigator, supervisor or other officer receiving the complaint will explain the department'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 department 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.

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.

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 making such an advisement, internal affairs investigators must remember that it is important to balance the need for receiving citizen complaints of officer misconduct against the danger of discouraging citizens from coming forward with their complaints. Therefore, any language that would serve to dissuade or intimidate a citizen from coming forward should be avoided. Nonetheless, citizens may be advised of the consequences of filing a false report.

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.

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.

Complaints against a law enforcement executive 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 investigation.

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.

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. If the complainant expresses fear or concerns about making the complaint directly, he should be referred to the county prosecutor.

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.

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.

Even if the citizen 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 citizen complaints, demands that all citizen complaints and inquiries be uniformly documented for future reference and tracking. The form should indicate that the matter was resolved to the satisfaction of the citizen and sent to internal affairs for review and filing. The internal affairs supervisor should periodically audit those reports indicating that a citizen's complaint was informally resolved to ensure that the agency's supervisors are properly implementing their authority to resolve citizen complaints.

**Requirement 3**

The agency must notify an officer in writing that a complaint has been made against him and that an investigation will begin, unless this notification would interfere with the investigation.

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 it would impede the investigation. An example of a notification form is found in Appendix F.

## Immediate Suspension Pending Investigation and Disposition

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:

1. The employee is unfit for duty.
2. The employee is a hazard to any person if permitted to remain on the job.
3. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services.
4. The employee has been formally charged with a first, second or third degree crime.
5. 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 his or her employment.

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.

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.

# Investigation of Internal Complaints

**Requirement 4**

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

## Time Limitations

Under *N.J.S.A.*40A:14-147, disciplinary charges alleging a violation of the agency's rules and regulations must be filed within 45 days of the date the person filing the charge obtained sufficient information to do so. This "45 day rule" does not apply to disciplinary charges alleging officer misconduct or incapacity. In addition, citizens are not required to make their complaint within 45 days of the incident. But once the agency has received the citizen's complaint, the 45 day rule applies.

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. Upon disposition of the criminal investigation, agencies will once again be bound by the 45 day rule. Therefore, in the event a county prosecutor has initiated a criminal investigation of an internal affairs matter, the internal affairs unit 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 must be able to document the date on which the county prosecutor disposed of the criminal investigation.

Where 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. 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.

Along these same lines, it is important that there is no 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 unit should be closely aligned with the office of the law enforcement executive in the agency's organizational structure.

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.[3]

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[3] *N.J.A.C.* 4A:1-1.1 *et seq.*

## Investigation and Adjudication of Minor Complaints

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.

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 department's entire internal affairs policy, including the protection of the subject officer's rights and the procedures for properly investigating internal complaints.

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:

1. Exonerated: The alleged incident did occur, but the actions of the officer were justified, legal and proper.

2. Sustained: The investigation disclosed sufficient evidence to prove the allegation and the actions of the officer violated a provision of the agency's rules and regulations or procedures.

3. Not Sustained: The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

4. Unfounded: The alleged incident did not occur.

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.

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.

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.

**Requirement 5**

The agency must notify officers of complaints and their outcomes and must notify complainants of the outcome of the investigation.

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 simply state that the allegation was sustained and that the officer has been disciplined according to department procedures. It is not necessary to specify the discipline imposed. Sample letters are in Appendix K.

## Investigation and Adjudication of Serious Complaints

**Requirement 6**

Where preliminary investigation indicates the possibility of a criminal act on the part of the subject officer or the investigation involves the use of force by the officer which results in serious bodily injury or death, the county prosecutor must be notified immediately. In either case, no further action should be taken, including the filing of charges against the officer, until directed by the county prosecutor.

All serious complaints shall be forwarded to the internal affairs unit. 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.

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.

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, the law enforcement agency shall be advised of the outcome in writing.

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 department's entire internal affairs policy, including the protection of the subject officer's rights and the procedures for properly investigating internal complaints.

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.

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.

In the alternative, 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 is absent. However, it does not mean that an administrative investigation cannot be pursued or must 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 can be developed that meets the "preponderance of the evidence" burden of proof for administrative proceedings.

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.

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.

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.

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 his or her right to a hearing. If the officer enters a plea of guilty or waives his or her 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.

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 department's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.

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.

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 department's disciplinary system.

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.

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 department communication.

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 simply state that the allegation was sustained and that the officer has been disciplined according to department procedures. It is not necessary to specify the discipline imposed.

## Domestic Violence Incidents Involving Agency Personnel

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.

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 his or her service weapon or any other weapon possessed, as mandated by Attorney General Directives 2000-3 and 2000-4. The directives are in Appendix R.

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.

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.

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.

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 his or her county.

Internal affairs is responsible for reviewing the incident's investigation and conducting whatever further investigation is necessary to determine if the officer violated department 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 his or her weapon(s) returned.

# Internal Affairs Investigation Procedures

Only after a thorough and impartial investigation can an informed decision be made as to a complaint's proper disposition. Decisions based upon such an investigation will support the credibility of the department both among its ranks and the public at large.

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. Restrictions that do exist, however, must be recognized and followed. Failure to do so may result in improperly gathered evidence being deemed inadmissable 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.

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 citizens' concerns, even those that appear to be unfounded or frivolous. If such complaints are not documented or handled appropriately, citizen dissatisfaction will grow, fostering a general impression of agency insensitivity to community concerns.

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.

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.

## Interviewing the Complainant and Civilian Witnesses

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.

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.

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, 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).

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.

## Reports, Records and Other Documents

All relevant reports should be obtained and preserved as expeditiously as possible. Internal department 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.

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.

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.

## Physical Evidence

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.

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.

## Photographs

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.

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.

## Physical Tests

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

*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:

1. Breath sample
2. Blood sample
3. Buccal swab
4. Requiring suspect to speak
5. Voice recordings
6. Participation in a lineup
7. Handwriting samples
8. Hair and saliva samples
9. Urine specimens
10. Video taping
11. Field sobriety tests

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.

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.

## Drug Testing

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 only be tested for drugs if reasonable suspicion exists that they are using drugs or if they have been chosen as part of a regulated 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 Law and Public Safety.

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.*

## Polygraph

*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.

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 citizen complainants. In addition, a victim of sexual assault cannot be asked or required to submit to a polygraph examination.

## Search and Seizure

All citizens, 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.

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 his or her 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.

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.

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.

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 a department 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 department may assign to its members and employees departmentally owned vehicles, lockers, desks, cabinets, etc., for the mutual convenience of the department and its personnel. Such equipment is and remains the property of the department. 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.

In addition, if the department permits officers to use personally owned locks on assigned lockers and other property, it should be conditioned on the officer providing the department with a duplicate key or the lock combination.

With the introduction of new technologies in law enforcement, it may become necessary to search computers and seize their contents. The critical question remains whether the public employee has a reasonable expectation of privacy in information stored in a computer. 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 department-issued computer at any time. This notice may be worded as follows:

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

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 department'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 departmental or personal property should be conducted in the presence of the subject officer and a property control officer.

A voluntary consent to a search may preclude some Fourth Amendment problems. A consent search eliminates the need to determine what threshold standard must be met before conducting the search or seizure, either for an administrative or criminal investigation. For consent to be legally valid in New Jersey, a person must be informed that he or she has the right to refuse to permit a search.[4] If a consent search is undertaken, the

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

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.

## Electronic Surveillance

*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:

"Wire communication," which essentially means any conversation made over a telephone (*N.J.S.A.* 2A:156A-2a);

"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);

"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

"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.

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.

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.

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.

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.

The monitoring of 9-1-1 telephone lines is required by law. Nothing prohibits the monitoring of other telephones used exclusively for departmental 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.

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.

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.

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 his or her whereabouts when performing police duties.

## Lineups

A law enforcement officer may be ordered to stand in a lineup to be viewed by witnesses or complainants. Probable cause need not exist, and the officer may be disciplined for refusal.[5]

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.

## Investigation of Firearm Discharges

All incidents involving officer non-training firearm discharges, whether occurring on or off duty, must be thoroughly investigated. Whenever a firearm discharge results in injury or death, the county prosecutor and internal affairs must be notified immediately. Internal affairs personnel will proceed in the investigation as directed by the prosecutor, and should review all administrative reports the department 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 should assist the internal affairs investigator as needed.

Agencies that have established a "Shooting Response Team" to investigate officer firearm discharge incidents should coordinate their investigations with the internal affairs unit.

Officers investigating 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 do a firearm discharge

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

investigation therefore must be thoroughly familiar with the department's entire internal affairs policy, including protection of the subject officer's rights and the procedures for properly investigating firearm discharges.

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 department 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.

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 departmental 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.

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.

## Collateral Issues

The work of an internal affairs unit should not be limited to resolving citizen reports by narrowly focusing on whether the subject officer engaged in misconduct. In many cases, the examination of collateral issues presented by the citizen's report 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.

Examining collateral issues can provide the law enforcement agency and its executive officers with information concerning:

- The utility and effectiveness of the department's policies and procedures.
- The competency and skills of individual law enforcement officers.
- Appropriate topics for in-service training programs.
- The allocation of resources by the law enforcement agency and other municipal agencies.

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 department. An internal affairs process that is objective and complete is critical to the credibility and reputation of the law enforcement agency within the community.

# Interviewing Members of the Department

## General Background

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.

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.

While a police officer has the same constitutional rights as any other citizen 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 any other citizen.

A police officer has the same duty and obligation to his or her 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.

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.

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.

Because the county prosecutor is ultimately responsible for prosecuting criminal cases, the internal affairs investigator shall defer to the prosecutor's supervision and direction in conducting officer interviews. The investigator shall consult with the county prosecutor prior to initiating an officer interview in matters that could involve criminal conduct, and shall pay particular attention to the county prosecutor's instructions concerning the types of interviews to be conducted and procedures to be utilized (*e.g.*, *Miranda* warning, *Garrity* warning[6], etc.).

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

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 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.

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 his or her *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 his or her 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."

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 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.

In the sections that follow, the details of interviewing law enforcement officers in internal matters will be discussed. The chart in Figure 1 provides an overview of that information.

**Figure 1.**

| | **CRIMINAL** Investigation | **ADMINISTRATIVE** Investigation |
|---|---|---|
| Officer is **SUBJECT** | • Prosecutor notification<br>• Treat as any other defendant<br>• *Miranda* warning<br>• No *Garrity* warning unless prosecutor approves<br>• May require routine business reports<br>• No special reports<br>• Right to counsel (attorney) | • Obligation to cooperate<br>• Administrative interview form<br>• May require special reports<br>• Cannot charge as a subterfuge<br>• Right to representative |
| Officer is **WITNESS** | • Obligation to cooperate<br>• No *Miranda* warning<br>• Witness acknowledgement form<br>• May be entitled to a *Weingarten*[7] representative | • Obligation to cooperate<br>• Witness acknowledgement form<br>• May be entitled to a *Weingarten* representative |

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. Where both a criminal and an administrative disciplinary investigation are needed, the internal affairs investigator from the subject officer's agency is often expected to conduct both. Under these circumstances, the methods employed in the criminal investigation conflict with those used in the administrative investigation.

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 investigative interview. But the same officer must cooperate and answer questions posed by his or her 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.

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.

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

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.

## *Criminal* Investigation, Officer Is *Subject*

**Requirement 7**

Whenever a possibility exists that the investigation may result in criminally prosecuting the officer or that the county prosecutor may be conducting a separate criminal investigation, the internal affairs investigator must consult with the county prosecutor prior to interviewing the officer.

Once an investigation becomes criminal in nature, the subject officer shall be advised of his or her right against self-incrimination consistent with the requirements of the law and this policy. Criminal interviews should be conducted only with the prior approval, or at the direction, of the county prosecutor.

The need to issue *Miranda* warnings generally is 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.

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 his or her right against self-incrimination.

If the subject officer waives his rights, the interview may then continue. Unless the officer specifically waives his or her 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 an interview.

If the officer has invoked his or her *Miranda* rights but the department deems that it must have the answers to specific questions to properly conduct its investigation, the department 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 his or her 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.

If the county prosecutor grants use immunity, the department shall advise the subject officer in writing that he or she has been granted such immunity in the event his or her answers implicate him or her in a criminal offense. The officer must then answer the questions specifically and narrowly related to the performance of his or her 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.

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.

## *Criminal* Investigation, Officer Is *Witness*

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.

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 his or her answer would incriminate him or her in a criminal matter, the officer must assert his or her *Miranda* rights.

## *Administrative* Investigation, Officer Is *Subject*

A public employee must answer questions specifically, directly and narrowly related to the performance of his or her 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.

However, internal affairs investigators in civil service jurisdictions should be aware that, under civil service rules, an employee cannot be forced to testify at his or her own disciplinary hearing.[8] As a matter of fairness, the internal affairs investigator in a civil service jurisdiction should refrain from questioning a subject officer about a particular disciplinary offense if the officer has already been charged with that offense and is awaiting an administrative hearing on the charge.

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 department 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 his or her official duties.

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.***

If the officer refuses to answer questions during this interview, the interviewer should inquire about the reason for that refusal.

***If the subject 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 department should discontinue the interview and contact the county prosecutor.***

If the department wants to continue its administrative interview and the county prosecutor agrees to grant use immunity, the department shall advise the subject officer in writing that he or she has been granted use immunity if his or her answers implicate him or her in a criminal offense. The officer must then answer the questions specifically related to performing his or her 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.

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.

The courts have decided that a public employer must permit an employee to have a representative present at an investigative interview if the employee requests representation and reasonably believes the interview may result in disciplinary action.[9] However, a representative shall be permitted to be present at the interview of a subject officer whenever he or she requests a representative. While the Sixth Amendment right to counsel does not extend to administrative investigations, an officer shall be permitted to choose an attorney as their representative if he or she so desires.

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[8] *N.J.A.C.* 4A:2-2.6(c).

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

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 his or her presence as an observer.

But the representative or attorney cannot interfere with the interview. 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.

## *Administrative* Investigation, Officer Is *Witness*

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.

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 his or her answer would incriminate him or her in a criminal matter, the officer must assert his or her *Miranda* rights.

## Interviewing Procedures

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.

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.

In cases of potential criminal conduct, interviews of subject officers should be recorded consistent with Attorney General 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, or make a stenographic record. 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 department 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.

Any questions asked of officers during an internal investigation must be "narrowly and directly" related to performance of their duties and the ongoing investigation.[10] Officers must answer questions directly and narrowly related to that performance. All answers must be complete and truthful, but officers cannot be compelled to answer questions having nothing to do with their performance as law enforcement officers, that do not implicate a rule or regulation violation, or that are unrelated to the investigation.

At the interview's conclusion, the investigator should review with the subject officer all the information obtained during the interview to alleviate any misunderstandings and to prevent any controversies during a later proceeding.

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

# Internal Affairs Records

## The Internal Affairs Report

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.

### 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.

### 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.

If the conduct of an officer was found to be improper, the report must cite the agency rule, regulation or S.O.P. 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.

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.

## Internal Affairs Records

### Requirement 8

The agency must establish and maintain an internal affairs records system consisting of, at least, an internal affairs index system and a filing system for all documents and records. Access to these records shall be restricted.

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 department policy and procedures. The list of those authorized to access these files must be kept to a minimum.

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.

**Internal Affairs Index File**

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.

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.

**Investigation Files**

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. 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 department 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.

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 department must follow the county prosecutor's instructions.

## Retention Schedule

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.

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.

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.

## Confidentiality

The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information. The contents of the internal investigation case files shall be retained in the internal affairs unit and clearly marked as confidential. The information and records of an internal investigation shall only be released under the following limited circumstances:

- 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.
- 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.
- Upon the request or at the direction of the county prosecutor or Attorney General.
- Upon a court order.

In addition, the law enforcement executive officer 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). 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.

Agencies may receive subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the police 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.

If the release of internal affairs documents is appropriate, the agency should inventory the reports released and obtain a signed receipt.

## Reporting

The internal affairs unit 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 department; and the investigation's status. Concluded complaints should be recorded and the reasons for termination explained. *See* example in Appendix P.

This report shall be considered a confidential, internal work product. Dissemination of the report should be limited to command personnel, the county prosecutor and the appropriate authority.

**Requirement 9**

The agency must submit to the county prosecutor a report summarizing its internal affairs activity on a form the county prosecutor establishes for that purpose.

Every law enforcement agency will report internal affairs activity to the county prosecutor on an internal affairs summary report form. This form simply summarizes the number of cases by type of case received and disposed of during the reporting period. *See* the example in Appendix S. Each county prosecutor will provide those law enforcement agencies in his or her jurisdiction with the report forms to be used, instructions on completing the forms, and a reporting schedule.

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:

1. 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 his or her professional or personal life.[11]

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

2. A pending court complaint or conviction for any criminal, disorderly persons, petty disorderly persons, municipal ordinance or driving while intoxicated matter.

3. A finding that undermines or contradicts a police officer's educational achievements or qualifications as an expert witness.

4. A finding of fact by a judicial authority or administrative tribunal that is known to the officer's employing agency which concludes that a police officer intentionally did not tell the truth in a matter.

5. A sustained finding that a police officer intentionally mishandled or destroyed evidence.

6. A sustained finding that a police officer is biased against a particular gender or ethnic group.

That law enforcement agencies report the above-listed incidents to the 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. Once a decision is reached as to a particular case or defendant, the prosecutor shall, if necessary, discuss his or her 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.

**Requirement 10**

Each agency must release reports to the public summarizing the allegations received and the investigations concluded for that period. In addition, the agency shall periodically release a brief synopsis of all complaints where a fine or suspension of 10 days or more was assessed to an agency member.

An annual report summarizing the types of complaints received and the dispositions of those complaints shall be made available to the public. This report can be statistical in nature, and the names of complainants and subject officers shall not be published.

Each agency also shall periodically release a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to an agency member. This 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.

## Personnel Records

Personnel records are separate and distinct from internal affairs investigation records, and internal affairs investigative reports shall *never* be placed in personnel records. 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.

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.

# Risk Management Procedures

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. Recent court decisions, particularly those involving federal civil rights lawsuits that allege a deliberate indifference on the agency's part towards citizen complaints, have made it clear that law enforcement agencies have a duty to monitor their employees' behavior. Furthermore, these same court decisions expect law enforcement agencies to establish mechanisms that provide the internal affairs unit and the police executive with the ability to track the complaint records of individual officers and identify those officers with a disproportionate number of complaints against them. The courts also expect law enforcement agencies to 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.

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.

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, *i.e.*, the process must be "real." It must provide the citizen with "at least a rudimentary chance of redress when an injustice is done." It is not enough for police 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 citizenry. Agencies with an objective and fair internal affairs process will limit their risk of civil liability. Agencies with a superficial or shallow internal affairs process run the risk of significant civil liability.[12]

Law enforcement agencies may also wish to consider implementing a specific mechanism to track employee behavior. These mechanisms have been called several things, but the most common term is "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 glaring problem.

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[12] *Beck v. City of Pittsburgh,* 89 *F.*3d 966 (3d Cir. 1996), *cert. denied*, 519 *U.S.* 1151 (1997).

Many different measures of officer performance can be regularly examined for any of these patterns or practices. Some of the measures that should be considered in the "early warning system" are:

- Motor vehicle stop data
- Search and seizure data
- Internal complaints, regardless of outcome
- Civil actions filed, regardless of outcome
- Incidents of force usage, including firearms discharges and use of less lethal non-deadly force
- Claims of duty-related injury
- Arrests for resisting arrest
- Arrests for assault on a law enforcement officer
- Criminal investigations or complaints made against the officer
- Incidents of arrested persons injured
- Vehicular pursuits
- Vehicular accidents
- Cases rejected or dismissed by the prosecutor
- Evidence suppressed by the court

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.

The "early warning system" should be the internal affairs unit's responsibility. Because of its other responsibilities and placement in the organizational structure, this unit is best able to maximize an early warning system's benefits.

If the review points toward the emergence of a pattern, practices or trend of inappropriate behavior or misconduct, the internal affairs investigator shall consult with the appropriate supervisor. The investigator and the supervisor shall review the information provided by the early warning system along with any other relevant information from department records for the purpose of initiating a course of supervisory action designed to interrupt the emerging pattern, practice or trend. If the review indicates that the early warning system has returned a "false positive," that conclusion should be documented.

If the review reveals that an officer has violated department rules and regulations or standard operating procedures, the supervisor in consultation with the internal affairs unit should proceed with an internal investigation and possible disciplinary action.

If the review reveals that the officer has engaged in conduct indicating a lack of understanding or inability to comply with accepted procedures, the supervisor shall consult with the internal affairs unit to determine the appropriate course of remedial action. Remedial intervention may include training, retraining, counseling and enhanced supervision. In addition, the actions of the officer may indicate a question about the officer's fitness for duty. In that case, the officer should be examined for his or her fitness, either physically or psychologically. Internal disciplinary action, remedial action and fitness for duty examinations are not mutually exclusive and should be jointly pursued if appropriate.

When remedial action has been undertaken, the internal affairs unit should be formally notified of such efforts. This information shall be recorded in the internal affairs index file system. No entry should be made in the employee's personnel file unless disciplinary action results. If the remedial action was an appropriate training program, attendance and completion of that program should be noted in the officer's training record.

In addition to the regular, automated review by the early warning system, the internal affairs unit should query the early warning system and review an individual employee's history any time a new complaint is made. Using this information and their experience, internal affairs investigators may be able to identify employees who may need counseling, training or other remediation even before the early warning system's ongoing data review so indicates.

It must be noted that the purpose of an early warning system is to detect patterns and trends before the conduct escalates into more serious infractions. Employees therefore must understand that the early warning system is not identical to the disciplinary process. Although it is possible that disciplinary action may be taken as the result of evidence that rules and regulations were violated, this is not the system's sole or even primary intent. Rather, the primary intent of an early warning system is to address potential problems through appropriate management and supervisory strategies before formal discipline is warranted.

# Appendix A

## Model Internal Affairs Standard Operating Procedure

### Standard Operating Procedure
### Internal Affairs Policy and Procedures

I. Purpose

This agency is committed to providing law enforcement services that are fair, effective, and impartially applied. Toward that end, officers are held to the highest standards of official conduct and are expected to respect the rights of all citizens. Officers' adherence to these standards, motivated by a moral and professional obligation to perform their job to the best of their ability, is the ultimate objective of this agency.

The effectiveness of a law enforcement agency is dependent upon public approval and acceptance of law enforcement authority. The department must be responsive to the community by providing formal procedures for the processing of complaints from the public regarding individual officer performance.

The purpose of this policy is to improve the quality of law enforcement services. Citizen confidence in the integrity of the law enforcement agency increases through the establishment of meaningful and effective complaint procedures. This confidence engenders community support for the law enforcement agency. Improving the relationship between the officers and the citizens they serve facilitates cooperation vital to the department's ability to achieve its goals. An effective disciplinary framework also permits law enforcement officials to monitor officers' compliance with department policies and procedures. Adherence to established policies and procedures assists officers in meeting department objectives while a monitoring system permits managers to identify problem areas requiring increased training or direction. Finally, this policy will ensure fairness and due process protection to citizens and officers alike.

The internal affairs process shall also be used to identify and correct unclear or inappropriate agency procedures. In addition it will highlight organizational conditions that may contribute to any misconduct, such as poor recruitment and selection procedures or inadequate training and supervision of officers.

II. Policy

It is the policy of this agency to accept and investigate all complaints of alleged officer misconduct or wrongdoing from any citizen or agency employee. Following a thorough and impartial examination of the available factual information, the officer shall be either exonerated or held responsible for the alleged misconduct. Discipline shall be administered according to the degree of misconduct.

It is the policy of this department that officers and employees, regardless of rank, shall be subject to disciplinary action for violating their oath and trust. Committing an offense punishable under the laws of the United States, the State of New Jersey, or municipal ordinances constitutes a violation of that oath and trust. Officers are also subject to disciplinary action for failure, either willfully or through negligence or incompetence, to perform the duties of their rank or assignment. In addition, officers may be disciplined for violation of any rule and

regulation of the department or for failure to obey any lawful instruction, order, or command of a superior officer or supervisor. Disciplinary action in all matters will be determined based upon the merits of each case.

It is the policy of this department that officers conducting the investigation of any allegation of misconduct must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer, and show proper respect to all members of the public. Accordingly, all supervisors and any other officer who may be called upon to do an internal investigation must be thoroughly familiar with the department's internal affairs policy.

It is the policy of this agency that prevention is the primary means of reducing and controlling misconduct. To that end, it is the policy of this agency to discover and correct organizational conditions which permit the misconduct to occur. Special emphasis is placed on recruitment, selection and training of officers and supervisors, community outreach, and the analysis of misconduct complaints and their outcome.

It is the policy of this agency that each officer shall be provided ready access to an official, agency-written manual which contains specific directions for conducting all aspects of law enforcement work. Categories of misconduct shall be clearly described and defined, and the disciplinary process shall be thoroughly explained in the manual.

III. Procedures

A. Internal Affairs Unit

1. The Internal Affairs Unit is herein established. The unit shall consist of those members of the department as shall be assigned to the Internal Affairs Unit by the law enforcement executive. Personnel assigned to the internal affairs unit shall serve at the pleasure of and be directly responsible to the law enforcement executive or the designated internal affairs supervisor.

   a. The goal of internal affairs is to insure that the integrity of the department is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation and review.

2. Duties and responsibilities

   a. The Internal Affairs Unit is responsible for the investigation and review of all allegations of misconduct by members of this department.

      (1) Misconduct is defined as:
         (a) Commission of a crime or an offense; or
         (b) Violation of departmental rules and regulations; or
         (c) Conduct which adversely reflects upon the officer or the department.

   b. In addition to investigations concerning allegations of misconduct,

internal affairs shall be responsible for coordinating investigations involving the discharge of firearms by department personnel and motor vehicle accidents involving department vehicles.

c. Internal affairs shall be responsible for any other investigation as directed by the law enforcement executive.

d. Internal affairs officers may conduct an internal affairs investigation on their own initiative upon notice to, or at the direction of, the law enforcement executive or internal affairs supervisor.

e. Internal affairs may refer investigations to the employee's supervisor for action as outlined under §III.E of this policy.

f. Internal affairs members or officers temporarily assigned to that function shall have the authority to interview any member of the department and to review any record or report of the department relative to their assignment. Requests from internal affairs personnel, in furtherance of their duties and responsibilities, shall be given full cooperation and compliance as though the requests came directly from the law enforcement executive. Members assigned to the Internal Affairs Unit come under the direct authority of the law enforcement executive, reporting directly to the law enforcement executive through the Internal Affair's chain of command.

g. The Internal Affairs Unit shall maintain a comprehensive central file on all complaints received by this department whether investigated by internal affairs or assigned to the officer's supervisors for investigation and disposition.

h. The Internal Affairs Unit shall prepare quarterly reports that summarize the nature and disposition of all misconduct complaints the agency receives for submission to the law enforcement executive officer.

i. Copies of the internal affairs report shall be distributed to all command personnel, the appropriate authority, and the county prosecutor's office.

j. An annual report summarizing the types of complaints received and the dispositions of the complaints should be made available to members of the public. The report shall contain a brief synopsis of all complaints where a fine or suspension of 10 days or more was assessed to a member of the agency. The names of complainants and subject officers shall not be published in this report.

B. Accepting Reports Alleging Officer Misconduct

1. All department personnel are directed to accept reports of officer misconduct from all persons who wish to file a complaint regardless of the hour or day of the week. Citizens are to be encouraged to submit their complaints in person as soon after the incident as possible. If the complainant cannot file the report in person, a department representative shall visit the individual at his or her home, place of business or at another location to complete the report, if feasible.

2. Complainants shall be referred to the Internal Affairs Unit if an officer is immediately available.

3. If an internal affairs officer is not immediately available, all supervisory personnel are directed to accept the report of officer misconduct.

4. If an internal affairs officer and a supervisor are not available, any law enforcement officer shall accept the complaint.

5. The officer receiving the complaint will:

   a. Provide the person making the complaint with the internal affairs brochure which explains the department's internal affairs procedures.

   b. Advise the complainant that he or she will be kept informed of the status of the complaint and its ultimate disposition.

   c. Complete the Internal Affairs Report Form according to the instructions provided.

   d. Have the complainant sign the completed form. If the complainant will not sign the form, the officer receiving the complaint will so note that fact. However, the failure of a citizen to sign a complaint will in no way preclude investigation of the allegations.

6. All department personnel are directed to accept reports of officer misconduct from anonymous sources. If the anonymous complainant is talking to an officer, the officer should encourage him or her to submit his or her complaint in person. In any case, the complaint will be accepted.

   a. In the case of an anonymous complaint, the officer accepting the complaint shall complete as much of the Internal Affairs Report Form as he or she can with the information provided.

7. Complaints shall be handled as follows:

   a. All complaints will be forwarded to the Internal Affairs Unit for screening and entry into the record keeping system.

   b. Complaints of demeanor and minor rule infractions shall then be

forwarded to the subject officer's supervisor.

c. All other complaints shall be retained by the Internal Affairs Unit, including complaints of:

(1) criminal activity
(2) excessive force
(3) improper arrest
(4) improper entry
(5) improper search
(6) differential treatment
(7) serious rule infractions
(8) complaints of domestic violence
(9) repeated minor rule infractions

8. The subject officer shall be notified in writing of the complaint as soon as possible, unless the nature of the investigation requires secrecy.

C. Suspension Pending Disposition or Investigation

1. A supervisor, commander or law enforcement executive may immediately suspend an officer from duty if he or she determines that one of the following conditions exists:

a. The employee is unfit for duty; or

b. The employee is a hazard to any person if permitted to remain on the job; or

c. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services; or

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 while on-duty, or the act related to his or her employment.

2. The supervisor imposing the immediate suspension must:

a. Advise the employee in writing of why an immediate suspension is sought and the charges and general evidence in support of the charges.

(1) If the employee refuses to accept the written notification of immediate suspension, it shall be given to a representative of the employee's collective bargaining unit.

b. Provide the employee with sufficient opportunity to review the charges and the evidence and to respond either orally or in

writing.

c. Advise his immediate supervisor in writing of the suspension and the facts and circumstances requiring the suspension.

3. Within five days of the suspension, the department must complete and file formal charges against the suspended employee or return the employee to work.

D. Investigation and Adjudication of Minor Complaints

1. Complaints of demeanor and minor rule infractions shall be forwarded to the subject officer's commanding officer. The commanding officer shall investigate the allegation of misconduct.

2. The investigating officer shall take all necessary steps to investigate the complaint. These steps may include interviewing the complainant, all witnesses and the subject officer, and reviewing relevant reports, activity sheets, or dispatcher forms. The investigating officer shall then prepare a report summarizing the matter, indicating the appropriate disposition. Possible dispositions include the following:

   a. Exonerated: The alleged incident did occur, but the actions of the officer were justified, legal and proper.

   b. Sustained: The investigation disclosed sufficient evidence to prove the allegation, and the actions of the officer violated provisions of rule and regulation or agency procedures.

   c. Not Sustained: The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

   d. Unfounded: The alleged incident did not occur.

3. If the investigating officer determines the disposition of the complaint is unfounded, not sustained or exonerated, the investigative report is to be forwarded to internal affairs for review, and entry in the index file and filing.

4. Upon final disposition of the complaint, a letter shall be sent to the complainant by internal affairs explaining the outcome of the investigation.

5. Initiation of disciplinary action for minor complaints

   a. The supervisor giving the performance notice, oral reprimand or written reprimand shall complete the appropriate disciplinary document.

   b. The officer or employee shall be advised of the discipline and given a copy of the disciplinary document.

c. The supervisor will forward copies of the disciplinary document to the law enforcement executive for review, and to the Internal Affairs Unit for filing.

d. A copy of the disciplinary document will be placed in the officer's or employee's personnel file.

e. For oral reprimands or performance notices

(1) Six months[1] after the date of the reprimand or notice, the disciplinary report shall be removed from the personnel file and destroyed, provided no other breach of discipline has occurred.

(2) The subject officer shall be notified in writing that the oral reprimand or performance notice has been purged.

f. For written reprimands

(1) The written reprimand will remain permanently in the officer's or employee's personnel file

E. Investigation and Adjudication of Serious Complaints

1. All serious complaints shall be investigated by the Internal Affairs Unit, including complaints of:

a. criminal activity
b. excessive force
c. improper arrest
d. improper entry
e. improper search
f. differential treatment
g. serious rule infractions
h. complaints of domestic violence
i. repeated minor rule infractions.

2. Where preliminary investigative data indicates the possibility of a criminal act on the part of the subject officer, or the investigation involves the use of force by the officer which results in serious bodily injury or death, the county prosecutor shall be notified immediately. No further action shall be taken, including the filing of charges against the officer, until the county prosecutor so directs.

3. The investigating officer shall take all necessary steps to investigate the complaint. These steps may include interviewing the complainant, all witnesses and the subject officer, and reviewing relevant reports, activity sheets, or dispatcher forms.

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[1] In this model, six months is for example only, and is not a recommendation.

4. Interviewing the subject officer

   a. The internal affairs investigator shall schedule an interview with the officer.

   b. One person of the officer's choosing may attend the interview.

      (1) In investigations of criminal allegations, it is not appropriate for a union representative to be present. However, the officer shall be given the opportunity to consult with a union representative.

   c. Before questioning begins, the subject officer shall be informed of:

      (1) The nature of the complaint,
      (2) The name of the person in charge of the interview, and the names of all persons who will be present during the interview.

   d. If the matter under investigation involves an administrative allegation, the officer will be advised of his or her duties and obligations to answer using the Administrative Advisement Form.

   e. If the matter under investigation involves a possiblcriminal violation, the internal affairs investigator shall consult with the county prosecutor regarding the advisability of issuing a *Miranda* warning to the subject officer.

   f. Interview sessions may be audio or video recorded. A subject officer must inform the internal affairs investigator in advance of the interview if he or she wishes to have the interview recorded. A recording of any interview of a department employee cannot be created without the knowledge of the internal affairs investigator.

   g. If at any time during the questioning session the officer becomes a suspect in a criminal act, the officer shall be so informed and the questioning shall end. Promptly refer the case to the county prosecutor.

5. Upon completion of all possible avenues of inquiry, the internal affairs investigator shall complete the following reports:

   a. Investigative report: This is the objective report of all of the investigative activity, including all of the information obtained during the course of the investigation.

   b. Summary report: This report, in memorandum format, will summarize the matter, and will provide recommended dispositions for each allegation. Possible dispositions, as defined in §111.0.2 of this policy, include the following:

(1) Exonerated;
(2) Sustained;
(3) Not sustained;
(4) Unfounded.

6. Forward the completed reports through the internal affairs supervisor to the law enforcement executive.

7. The law enforcement executive, following a review of the completed report, supporting documentation and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate.

8. Upon completion of its investigation with a finding of exonerated, not sustained, or unfounded, internal affairs shall notify the subject officer in writing of the disposition.

9. If the complaint is sustained and it is determined that formal charges should be preferred, the law enforcement executive shall direct internal affairs to prepare, sign, and serve charges upon the subject officer or employee.

   a. The division commander, supervisor or internal affairs, as directed, shall prepare the formal notice of charges and hearing on the Charging Form.

10. The notice of charges and hearing shall direct that the officer charged must enter a plea of guilty or not guilty, in writing, on or before the date set forth in the notice for entry of plea. Such date for entry of plea shall be set within a reasonable time, at least five days after the date of service of the charges.

11. If the officer charged enters a plea of guilty, the law enforcement executive officer shall permit the officer to present factors in mitigation prior to assessing a penalty.

12. Conclusions of fact and the penalty imposed will be noted in the officer's personnel file after he 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.

F. Hearing

1. Upon written notice of a request for a hearing from the subject officer the law enforcement executive will set the date for the hearing within a reasonable time and arrange for the hearing of the charges.

2. Internal affairs shall be responsible for or assist the assigned supervisor or prosecutor in the preparation of the department's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.

3. In the event of a hearing, internal affairs will be responsible for preparing a discovery package from the internal affairs file, and providing it to the subject officer or his or her representative.

4. The hearing shall be held before the appropriate authority or the appropriate authority's designee.

5. All disciplinary hearings shall be closed to the public unless the defendant officer requests an open hearing.

6. The hearing officer shall recommend a finding of guilty or not guilty, or recommend that the charges be modified. The decision of the hearing officer should be in writing and accompanied by findings of fact for each issue in the case.

7. The hearing officer shall recommend any of the following punishments which it deems appropriate under the circumstances.

   a. Counseling;
   b. Oral reprimand or performance notice;
   c. Written reprimand;
   d. Monetary fine;
   e. Suspension without pay;
   f. Loss of promotion opportunity;
   g. Demotion;
   h. Discharge from employment.

8. A copy of the hearing officer's recommended decision or order 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 was not the hearing officer.

9. The Law enforcement executive shall accept, reject or modify the hearing officer's recommendations including the findings, conclusions and proposed penalty. The executive's decision will constitute the final disciplinary action.

10. Upon completion of the hearing internal affairs will complete all required forms including the entry of the disposition in the index file.

11. If the charges were sustained, internal affairs will cause the penalty to be carried out. The report shall be permanently placed in the officer's or employee's personnel file.

G. Confidentiality

1. The progress of internal affairs investigations and all supporting materials are considered confidential information.

2. Upon completing a case, internal affairs will enter the disposition in the index file.

3. The contents of internal investigation case files will be retained in the Internal Affairs Unit. The files shall be clearly marked as confidential.

4. Only the law enforcement executive or his designee is empowered to release publicly the details of an internal investigation or disciplinary action.

# Appendix B

## Sample Citizen Complaint Information Sheet

The members of the Police Department are committed to providing law enforcement services that are fair, effective, and impartially applied. It is in the best interests of everyone that your complaint about the performance of an individual officer is resolved fairly and promptly. The Police Department has formal procedures for investigating your complaint. These procedures ensure fairness and protect the rights of both citizens and law enforcement officers.

./ Your complaint will be sent to a superior officer or a specially trained internal affairs officer who will conduct a thorough and objective investigation.

You might be asked to help in the investigation by giving a detailed statement about what happened or providing other important information.

All complaints against law enforcement officers are thoroughly investigated. You will be advised in writing of the outcome of the investigation.

If our investigation shows that a crime might have been committed, the county prosecutor will be notified. You might be asked to testify in court.

If our investigation results in an officer being charged with a violation of department rules, you might be asked to testify in a departmental hearing.

If our investigation shows that the complaint is unfounded or that the officer acted properly, the matter will be closed.

All disciplinary hearings shall be closed to the public unless the defendant officer requests an open hearing.

- *It is unlawful to provide information in this matter which you do not believe to be true.*
- You may call the (INTERNAL AFFAIRS INVESTIGATOR) at (PHONE NUMBER) with any additional information or any questions about the case.

# Appendix C

## Internal Affairs Report Form

| DEPARTMENT | O1 NO. | INTERNAL AFFAIRS CASE NO. |
|---|---|---|

**PERSON MAKING REPORT**

| NAME | | | ALIAS |
|---|---|---|---|
| ADDRESS | | | |
| CITY | STATE | ZIP | PHONE |
| DOB ISSN | AGE | SEX | RACE |
| EMPLOYER/SCHOOL | | | PHONE |
| ADDRESS | CITY | STATE | ZIP |

**INCIDENT**

| NATURE OF COMPLAINT | | | |
|---|---|---|---|
| COMPLAINT AGAINST (NAME(s)) | | | BADGE NO(s) |
| | | | |
| DATE / TIME | DATE/TIME REPORTED | | HOW REPORTED |
| INCIDENT LOCATION | | DIST/AREA | BEAT |
| DESCRIPTION OF INCIDENT | | | |
| DESCRIPTION OF ANY INJURIES | | | |
| PLACE OF TREATMENT | DOCTOR'S NAME | DATE OF TREATMENT | |
| SIGNATURE OF COMPLAINANT *(Optional)* | | | DATE |
| COMMENTS | | | |
| SIGNATURE | BADGE NO. | DATE RECEIVED | |

# Appendix D

## Model Performance Notice

Police Department

To: _____ Badge No. _____

You are hereby D Commended D Reprimanded for:

_____

_____

_____

_____

From: _____ Date: _____

# Appendix E

## Sample Immediate Suspension Notice

TO: _____ Date & Time: _____
(Name & Rank of Officer)

TAKE NOTICE that you are suspended from duty effective immediately for the following reason:

_____ You are unfit for duty

_____ You are a hazard to other persons if permitted to remain on the job

_____ An immediate suspension is necessary to maintain safety, health, order or effective direction of public services; or

_____ You have been formally charged with a first, second or third degree crime.

_____ You have been formally charged with a first, second, third or fourth degree crime or a disorderly persons offense while on-duty, or the act is directly related to your employment.

The facts in support of the above reason are:

_____

_____

_____

_____

_____
Supervisor making suspension

I hereby acknowledge receipt of this notice.

Signature: _____ Date: _____

# Appendix F

## Internal Affairs Complaint Notification

To: _____ Badge No. _____

You are hereby notified that an internal affairs complaint has been made against you.

This complaint involves an allegation of _____

_____

which occurred on or about_____

You will be contacted by the investigator if you will be needed for an interview or to render any other assistance to the investigation.

Signature: _____

Date: _____

# Appendix G

## Witness Acknowledgment Form

1. I acknowledge that I have been informed that I am a witness in an internal investigation. This investigation concerns----------

   _____

2. I acknowledge my responsibility to answer truthfully all questions specifically related to the performance of my official duties.

3. I acknowledge that this investigation is confidential, and I am hereby ordered not to disclose any information discussed during this interview.

Signature: _____

Date: _____ Time: _____

Witnessed by: ----------

## Appendix H

### Sample Administrative Advisement Form

# Administrative Investigations Only

1. I am being questioned as part of an investigation by this agency into potential violations of department rules and regulations, or for my fitness for duty. This investigation concerns

   _____

2. This is an administrative investigation. I will be asked questions specifically, narrowly and directly related to the performance of my official duties.

3. I may be subject to departmental discipline for refusing to answer a question directly related to the performance of my duties, or for not answering truthfully.

4. I have the right to consult with a representative of my collective bargaining unit, or another representative of my choice, and have him or her present during the interview.

5. I acknowledge that this investigation is confidential, and I am hereby ordered not to disclose any information discussed during this interview.

Signature: _____

Date: _____ Time: _____

Witnessed by: _____

# Appendix I

## *Miranda* Warnings & Waiver

1. You have the right to remain silent and refuse to answer any questions.
2. Anything you say may be used against you in a court of law.
3. You have the right to consult with an attorney at any time and have him present before and during questioning.
4. If you cannot afford an attorney one will be provided if you so desire prior to any questioning.
5. A decision to waive these rights is not final and you may withdraw your waiver whenever you wish either before or during questioning.

I acknowledge that I have been advised of my constitutional rights listed above.

Signature: _____

Date: _____ Time: _____

Do you understand each of these rights listed above? _____

Having these rights in mind, do you wish to talk to us now? _____

Signature: _____

Date: _____ Time: _____

Witnessed by: _____

Others Present: _____

_____

# Appendix J

## Sample Use Immunity Grant Advisement Form
### *"Garrity* Warning"

1. I am being questioned as part of an investigation by this agency into potential violations of department rules and regulations, or for my fitness for duty. This investigation concerns

   _____

2. I have invoked my *Miranda* rights on the grounds that I might incriminate myself in a criminal matter.

3. I have been granted use immunity. No answer given by me, nor evidence derived from the answer, may be used against me in any criminal proceeding, except for perjury or false swearing.

4. I understand that I must now answer questions specifically, directly and narrowly related to the performance of my official duties or my fitness for office.

5. If I refuse to answer, I may be subject to discipline for that refusal which can result in my dismissal from this agency.

6. Anything I say may be used against me in any subsequent departmental charges.

7. I have the right to consult with a representative of my collective bargaining unit, or another representative of my choice, and have him or her present during the interview.

Assistant Prosecutor or
Deputy Attorney General authorizing: _____

Signature: _____

Date: _____ Time: _____

Location: _____

Witnessed by: _____

_____

# Appendix K

## Sample Response Letters

### Report Acknowledgment

*This will acknowledge receipt of the report made by you on [date of report] concerning the actions of a member of this department occurring on [date of incident].*

*An investigation will be conducted into the allegations contained in your report and you will be advised of the results of the investigation upon its conclusion. In the meantime, if you have any questions, please feel free to contact this office by calling 555-5555, Monday through Friday, between the hours of 8:00a.m. and 5:00p.m.*

### Officer Exonerated

*The Internal Affairs Unit of this department has completed its investigation of your report concerning the conduct of {name of subject officer]. The investigation and a review of all information currently available to this office indicates that the officer followed the appropriate department policies and procedures. More specifically, department policies and procedures permit the officer to [give details of the policy or procedure] ...*

*If you have any additional information which you believe should be considered, please contact the Internal Affairs Unit at 555-5555.*

*Thank you for bringing this matter to our attention.*

### Not Sustained

*The Internal Affairs Unit of this department has completed its investigation of your report concerning the conduct of {name of subject officer]. The investigation and a review of all information failed to disclose sufficient evidence to clearly prove or disprove the allegation. More specifically, ...*

a. *(witness could not be located)*
b. *(document could not be located)*
c. *(physical or forensic evidence could not be located)*
c. *(witness did not support your complaint)*
d. *(document did not support your complaint)*
e. *(physical or forensic evidence did not support your complaint)*
f. *(the investigation failed to yield enough evidence to support your complaint)*
g. *(while some evidence supported your complaint there was not enough evidence to support your complaint)*

*If you have additional information which you believe should be considered, please contact the Internal Affairs Unit at 555-5555. If no additional information is received within ten days, this case will be considered closed.*

*Thank you for bringing this matter to our attention.*

**Unfounded**

*The Internal Affairs Unit of this department has completed its investigation of your report concerning the conduct of [name of subject officer]. The investigation revealed that the alleged incident did not occur.*

*If you have additional information which you believe should be considered, please contact the Internal Affairs Unit at 555-5555. If no additional information is received within ten days, this case will be considered closed.*

*Thank you for bringing this matter to our attention.*

**Sustained**

*The Internal Affairs Unit of this department has completed its investigation of your report concerning the conduct of [name of subject officer]. The investigation revealed that the officer violated departmental rules and regulations. He/she will be subject to appropriate discipline under our agency's procedures.*

*If you have any* questions, please feel free to contact the Internal Affairs Unit at 555-5555.

Thank you for bringing this matter to our attention.

# Appendix L

## Sample Case Checklist and Summary Sheet

IA Case# _____ Date received: _____

Type of complaint: _____

Principal person(s): _____

O ON/A Complaint form completed
O ON/A Prosecutor's Office notified
O ON/A Citizen Information form given to complainant
O ON/A Complaint information entered into computer/index file
O O N/A Officer notified of complaint
O ON/A Department reports received
O O N/A Medical reports received
O O N/A Photographs taken
O ON/A Video recordings received
O ON/A Communications recordings received
O ON/A Interview of complainant
O ON/A Interview of witnesses
O ON/A Interview of officers
O ON/A Special reports by officers received
O ON/A Subject employee warnings
O ON/A Interview of subject employee
O ON/A Special report by subject employee
O ON/A Evidence reports
O ON/A Chronological record of investigation
O ON/A Internal affairs investigative report
O ON/A Officer notified of conclusion
O ON/A Complainant notified of conclusion

| Allegation | Conclusion |
|---|---|
| 1. | D Sustained D Not Sustained D Unfounded D Exonerated |
| 2. | D Sustained . D Not Sustained D Unfounded D Exonerated |
| 3. | D Sustained D Not Sustained D Unfounded D Exonerated |

Date completed: _____

Disposition: _____

# Appendix M

## Statutes and Rules Recommended for Review

The chief executive officer and personnel assigned to the internal affairs unit shall familiarize themselves with the following statutes and rules.

### State Statutes Applicable to Municipal Police

| | |
|---|---|
| N.J.S.A. 40A:14-118 | Creation of municipal police force; designation of appropriate authority; adoption of rules and regulations; appointment of chief of police; chiefs powers and duties |
| N.J.S.A. 40A:14-122 | General qualifications |
| N.J.S.A. 40A:14-147 | Disciplinary process for municipal police officers; suspension and removal; written charges and hearing; 45 day rule |
| N.J.S.A. 40A:14-148 | Authority of hearing officer to obtain evidence |
| N.J.S.A. 40A:14-149 | Suspension of a municipal police officer pending a hearing |
| N.J.S.A. 40A:14-149.1 | Suspension of a municipal police officer charged with a criminal offense |
| N.J.S.A. 40A:14-150 | Judicial review of disciplinary determinations in non-civil service jurisdictions |
| N.J.S.A. 40A:14-181 | Requires law enforcement agencies to establish internal affairs policy and procedures consistent with Attorney General's guidelines |

### State Statutes Applicable to County Police

| | |
|---|---|
| N.J.S.A. 40A:14-106 | Creation of county police force; adoption of rules and regulations |
| N.J.S.A. 40A:14-106a | Disciplinary process for county police officers; 45 day rule |

### State Statutes Applicable to County and Municipal Police

| | |
|---|---|
| N.J.S.A. 11A:2-13 to -22 | Provisions governing discipline in civil service jurisdictions; disciplinary hearings; appeals to the Civil Service Commission |
| N.J.S.A. 11A:4-15 | Working test periods in civil service jurisdictions |

# Administrative Code Provisions Applicable to County and Municipal Police

## Civil Service Commission Rules

| | |
|---|---|
| N.J.A.C. 4A:2-2.1 - 2.13 | Major discipline |
| N.J.A.C. 4A:2-3.1 | Minor discipline |
| N.J.A.C. 4A:2-4.1 - 4.3 | Termination of working test period |
| N.J.A.C. 4A:4-5.1 - 5.5 | Working test periods |

# Appendix N

## Preliminary Notice of Disciplinary Action (31-A)

Civil ServicCo Qmission – State of New Jersey

Instructions for employer; This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated: (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. S bsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

| Employing Agency Name | Address/ Phone Number | Date |
|---|---|---|
| | | |

| Attorney representing your agency should this matter be appealed | Address/Phone number/Email address |
|---|---|
| | |

| Employee Name | Permanent Civil Service ntle | Employee Identification Number |
|---|---|---|
| | | |

| Address/ Phone Number | Pension Number |
|---|---|
| | |

You are hereby notified that the following charge(s) have been made against you: *(If necessary, use additional sheets and attach)*

Charges:

D *If checked, charges are continued on attached page.*

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

D *If checked, incidents are continued on attached page.*

D You are hereby suspended effective---:-:::-:---:--:---:--:--::---:--::----:--:----:--:--::--::--:-::---:::--:-::---::-::-----
*(Check box to indicate if employee is suspended pending final disposition of the matter)*

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within _____*days of receipt of this form. If you request a hearing it will be held on ---------- at (time) _____ at (place of hearing) _____

**Must be a minimum of five days*

The following disciplinary action may be taken against you:

D Suspension for working days, beginning _____ and ending _____

D Indefinite suspension pending criminal charges effective (date, _____

D Removal, effective (date> ----------

O Demotion to position of _____ effective (date), _____

O Resignation not in good standing, effective (date)

O Other Disciplinary Action

O Fine --:-:-:-:-:-:-:-:-:-:- which is equal to number (number of working days)

Appointing authority or authorized agent's signature and title.

Signature _____ Title

This form must be personally served on the employee or sent by certified or registered mail.

O Certified or Registered Mail D Receipt Number ----------

O Signature of Server _____ O Date of personal service

OPF-31A Revised 03-24-11

DISTRIBUTION: Employee, Union Representative or Attorney, Management, Civil Service Commission.
When using a form downloaded from the internet you still must provide the indicated above number of copies to all parties.

# Appendix O

## Final Notice of Disciplinary Action (31-C)
## For Law Enforcement and Fire Fighter Removals
### Civil Service Commission – State of New Jersey

Instructions for employer: This notice must be served on a permanent employee in the career service after a Departmental hearing if one is requested. This form should only be used for removal from employment of a Law Enforcement Officer or Fire Fighter as defined in *N.J.S.A.* 40A:14-200. If the employee does not request or does not appear at the Departmental hearing, this notice must be served as the final action within 30 days of the removal effective date. A copy of this notice must be sent to the Civil Service Commission and served on the employee by personal service or by certified or registered mail.

| Employing Agency Name | Address/ Phone Number | Date |
|---|---|---|

| Attorney representing your agency should this matter be appealed | Address/Phone number/Email address |
|---|---|

| Employee Name | Permanent Civil Service Title | Employee Identification Number |
|---|---|---|
| Address/ Phone Number | | Pension Number |

On you were served with a Preliminary Notice of Disciplinary Action (31A) and notified of the pending disciplinary action.

O You requested a hearing which was held on O You did not request a hearing

D You requested a hearing and did not appear at the designated time and place

| Sustained Charges: | Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred: |
|---|---|
| D *If checked, charges are continued on attached page.* | O *If checked, incidents are continued on attached page.* |

The following disciplinary action has been taken:

O Removal, effective (date)_____

Appointing authority or authorized agent's signature and title.

Signature Title

This form must be personally served on the employee or sent by certified or registered mail.

O Certified or Registered Mail D Receipt Number — — — — — — — — — — — — — —

D Signature of Server_____ D D te of personal service _____

APPEAL PROCEDURE TO THE EMPLOYEE: You have the right to appeal within 20 days from receipt of this form. All appeals must include a copy of this form and must be sent to BOTH the Civil Service Commission, P.O. Box 31. Trenton, N.J. 08625-0312 AND the Office of Administrative Law: Attn: Direct Filing, 33 Washington, St., 7th fl., Newark, N.J. 07102. Pursuant to P.L.2010, c.26, effective July 1, 2010 there is a $20 fee for removal appeals. Please include the required $20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC and sent to the CSC, P.O.Box 312, Trenton, N.J.08625-0312. Do not send checks to the Office of Administrative Law. Persons receiving public assistance pursuant to P.L.1947, c.156 (C.44:8-107 *et* seq.), P.L.1973, c.256 (C.44:7-85 *et* seq.), or P.L.1997, c.38 (C.44:10-55 *et* seq.), and veterans as defined by N.J.S.A.11A:5-1 *et seq.* are exempt from this appeal fee. Any appeal postmarked after the 20 days statutory time limit will be denied. We recommend sending your appeal by certified mail to prove your filing in the event of lost or misdirected mail. Do not give your appeal to your personnel office for forwarding to the Civil Service Commission.
For more information on the rules that govern Major Discipline and the appeals process, please visit our website at: www.state.nj.us/csc.



DISTRIBUTION: Employee. Union Representative or Attorney. Management. Civil Service Commission.
When using a form downloaded from the internet you still must provide the indicated above number of copies to all parties.

# Appendix P

## Sample Internal Affairs Case Index

| Officer | Complainant | Allegation | Status |
|---|---|---|---|
| Ptl. John Doe | Jane Smith | Attitude and demeanor during an MV stop | Pending |
| Sgt. Mary Jones | Lt. Fred Clock | Abuse of sick leave | Investigation complete; pending disciplinary charges |
| Ptl. Bill Gates | BobJobs | Theft | Closed; Complainant withdrew complaint |
| | | | |

# Appendix Q

**Departmental Policy for Handling of Domestic Violence Incidents Involving Law Enforcement Officers[1]**

This Policy, prepared by the Division of Criminal Justice, is intended to serve as a model for the law enforcement agency in formulating a written policy regarding the Department's handling of domestic violence incidents involving a member of the law enforcement agency.

Each Department's policy should be reviewed by the Department's legal advisor to ensure that it meets all constitutional and statutory standards, meets the needs of the jurisdiction, and incorporates all provisions of this policy to provide guidance to those who must comply with the requirements of the policy.

As used in this Model Policy: the term "Department" refers to the particular Department or law enforcement agency that is the subject of this policy. Law enforcement departments may include additional provisions to their policy as long as the additions do not conflict with the policies and procedures established by this model policy.

## I. PURPOSE

This Department recognizes that some law enforcement officers commit acts of domestic violence as defined in *N.J.S.A.* 2C:25-17 *et. seq.* The integrity of the law enforcement profession and the community's trust in law enforcement are dependent upon a uniform policy on handling of such incidents.

## II. POLICY

This Department will act quickly where incidents of domestic violence are alleged to have occurred to protect the victim, arrest the perpetrator, where appropriate, and conduct parallel administrative and criminal investigations. In addition, the Department will work to develop and implement appropriate, case-specific remedies to the situation.

This policy for handling of domestic violence incidents involving law enforcement officers does not supercede the *Attorney General's Guidelines on Police Response*

---

[1] This model is based on a comprehensive policy approved by the New Jersey Domestic Violence Fatality and Near Fatality Review Board that was based on a model policy promulgated by the International Association of Chiefs of Police.

*Procedures in Domestic Violence Cases* and Attorney General Directives Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers and from All State Law Enforcement Officers Involved in Domestic Violence Incidents [Directives 2000-3 and 2000-4 dated September 1, 2000, hereinafter *Attorney General Weapons Seizures Directives).* These guidelines and directives remain in full force and effect and must be followed by law enforcement officers responding to a domestic violence call involving a law enforcement officer.

Failure of any officer or supervisor to comply with any provision of this policy will subject the officer to discipline.

## III. DEFINITIONS

See *N.J.S.A.* 2C:25-19 and *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* for definitions.

## IV. PREHIRE SCREENING AND INVESTIGATION

A. This Department will conduct thorough background investigations of all potential new employees to determine if there is a criminal history with particular attention to acts of domestic violence, sexualabuse, stalking, elder abuse or child abuse. This Department will conduct a check of the Domestic Violence Registry to determine the existence of any active restraining orders and to determine if there is a history of domestic violence.

B. All candidates will be interviewed about any history of acts of domestic violence, sexual assault, stalking, elder abuse or child abuse and past or present restraining orders and their disposition.

C. Those candidates with a history of perpetrating acts of domestic violence, sexual assault, stalking, elder abuse or child abuse will be screened out at this point in the hiring process.

## V. POST-CONDITIONAL OFFER OF EMPLOYMENT

A. This Department will require a psychological examination of all viable candidates to be performed by an experienced and licensed psychiatrist/psychologist or other mental health professional.

B. The psychological screening should include a focus on indicators of violent or abusive tendencies or behaviors, including domestic violence, in their background.

## VI. EDUCATION AND TRAINING

A. All law enforcement officers within this Department will receive at least four hours of training on domestic violence issues annually, as approved by the Division of Criminal Justice, pursuant to *N.J.S.A.* 2C:25-20.

B. All police dispatchers within this Department, sworn and unsworn, will receive annual training on how to handle a domestic violence call.

C. All law enforcement officers and unsworn members of this Department will receive at least annual training on the impact of domestic violence within the law enforcement community and on the Department's policy and procedures when a law enforcement officer or an unsworn member is involved in a domestic violence incident.

D. In addition to the training required in Paragraph A. above, all police supervisors within this Department will receive annual training on such matters as:

1. How to recognize potential indicators or early warning signs of domestic violence behavior by law enforcement officers.

2. How to investigate indicators of potential abusive behavior or early warning signs potentially indicative of domestic violence.

3. When to notify the Chief of Police or Law Enforcement Chief Executive of the information gathered in accordance with the Department's chain of command.

4. Available programs to assist law enforcement domestic violence victims and batterers.

## VII. EARLY WARNING AND INTERVENTION RESPONSIBILITIES

A. Department Responsibilities

1. This Department will, either in response to observed warning signs of domestic violence behavior or at the request of an officer, provide non-punitive avenues of assistance to officers, their partners, and other family members.

2. This Department will encourage officers to take personal responsibility in seeking referrals and assistance, confidential or otherwise, and assistance from the Department or on their own initiative to prevent a problem from escalating to the level of criminal conduct.

3. When this Department is aware that an officer is undergoing a separation or divorce, or that an officer is otherwise undergoing a high conflict period with a spouse or intimate partner, and the officer is exhibiting any of the warning signs of domestic violence behavior, the Department will encourage the officer to seek individual counseling.

4. This Department will investigate reports of domestic violence reported by family members or other officers.

5. The Department, either in response to observed signs of domestic violence behavior or at the request of an officer, will refer the officer to Employee Assistance.

B. Supervisor Responsibilities

1. Supervisors will document any information potentially indicative of domestic violence including but not limited to:

a. Aggressiveness

(1) Excessive or increased use of force on the job.

(2) Inappropriate surveillance activities.

(3) Unusually high incidences of physical altercations and verbal disputes.

(4) Citizen and fellow officer complaints of unwarranted aggression or verbal abuse.

(5) Inappropriate treatment of animals.

(6) On or off-duty officer injuries.

b. Domestic violence-related issues

Monitoring, controlling or harassing the purported victim directly or through any other person.

c. Deteriorating work performance

(1) Tardiness.

(2) Excessive absences.

(3) Alcohol and drug abuse.

2. When the supervisor finds a pattern of behavior potentially indicative of domestic violence, the supervisor will:

   a. Address the behaviors, consistent with Internal Affairs policies, through a review with the officer and document all contacts. Under no circumstances will the identity of a reporting victim or witness be disclosed to the officer at this stage.

   b. Forward written reports detailing the behaviors to the Chief of Police or Law Enforcement Chief Executive through the chain of command in a timely manner to determine discipline or other appropriate action.

   c. Prepare and submit to the Chief of Police or Law Enforcement Chief Executive a written request for a psychological exam/counseling by a licensed psychologist/psychiatrist or other mental health professional. The supervisor's written report will include the factual basis for the referral and will attach any relevant supporting documentation. A copy of the report will also be forwarded to the County Prosecutor for consideration and discussion with the Chief of the Department.

3. When the supervisor determines an officer has engaged in domestic violence, the supervisor will:

   a. Prepare and submit to the Chief of Police or Law Enforcement Chief Executive a written request for a psychological exam/counseling by a licensed psychologist/psychiatrist or other mental health professional. The psychologist/psychiatrist must be provided with all reports and information available regarding the domestic violence incident/s. The psychologist/psychiatrist must attempt to contact the reported victim for their input and must be provided with the reported victim's contact information; the contact information must be kept confidential. A copy of the report will also be forwarded to the County Prosecutor.

   b. Request that the Chief of Police or Law Enforcement Chief Executive order the officer to seek assistance from a program for batterers that has been approved by the County Prosecutor or the Department. If such a program is not

available, request that the Chief of Police or Law Enforcement Chief Executive order the officer to a counselor who has demonstrable training and experience in counseling domestic violence batterers. [The cost of the counseling is to be paid by the officer].

c. Contact and inform the purported victim of the concerns regarding the officer's behavior; that the officer has been ordered to undergo a psychological evaluation; that the evaluator will be contacting the reported victim; that the reported victim is not required to speak with the evaluator; and, that any information disclosed by the reported victim may not be confidential. The supervisor will document that he/she informed the reported victim concerning this procedure.

d. If the Department decides to take adverse action against the officer, it will provide a copy of the psychological report to the officer in a timely manner, unless doing so would endanger the safety of the victim.

C. Law Enforcement Officer Responsibilities

1. Officers must:

a. When an officer knows or is made aware of any information of abuse or violence involving a fellow officer, the officer must report that knowledge or information to his or her supervisors.

b. Cooperate with the investigation of a domestic violence case involving a law enforcement officer except in the case where the officer is the victim.

2. Officers may be subject to criminal charges or discipline in accordance with Department procedure, if they:

a. Interfere with domestic violence cases involving themselves or fellow officers.

b. Intimidate or coerce witnesses or victims *(i.e.,* surveillance, harassment, stalking, threatening, or falsely reporting).

3. Officers who are involved in any domestic violence incident involving police response, regardless of jurisdiction, must

immediately notify the on-duty supervisor and provide notice of the court dates, times, appearances, and proceedings. Failure to do so may result in Departmental discipline in accordance with Departmental Policy and Procedures.

4. Officers who are the subject of any domestic violence restraining order or protective order proceeding, whether or not the order is issued and regardless of jurisdiction, must immediately notify their supervisor and provide a copy of the order, if issued. Failure to do so may result in Departmental discipline in accordance with Departmental Policy and Procedures.

## VIII. INCIDENT RESPONSE PROTOCOLS

### A. Department-Wide Response

1. This Department will accept, document, and preserve all calls or reports, including those made anonymously, regarding domestic violence as on-the-record information. A detailed Criminal Investigative report (CIR) must be completed by the responding officer to a domestic violence call. This report is to be completed regardless of whether or not an arrest is made, and regardless of whether or not a criminal offense has been committed.

2. All reports of possible criminal activity implicating law enforcement officers in domestic violence will be documented in accordance with approved policies and procedures governing the handling of reports of domestic violence incidents.

3. A copy of the report alleging domestic violence by an officer will be forwarded to the Chief of Police or Law Enforcement Chief Executive through the chain of coi'Timand including the Internal Affairs Officer.

4. The Department will make all such CIRs available to the victim without cost. *N.J.S.A.* 47:1A-1.1.

5. The Department will make all such CIRs available to the officer at no cost.

6. The Chief of Police or Law Enforcement Chief Executive will consult with the County Prosecutor, who will determine who should be the designated Principal Law Enforcement Contact person. If the designated Principal Law Enforcement Contact person is not available 24/7, then, after consultation with the Chief of Police of

Law Enforcement Chief Executive, the County Prosecutor will select an alternate contact person. The contact person's information must be provided to the victim. The Principal Law Enforcement Contact person will:

a. Advise the victim to immediately report any violation of any restraining order to the police department where it occurred and to the designated Principal Law Enforcement Contact person.

b. Advise the victim to contact the designated Principal Law Enforcement Contact person if there is any harassment, witness tampering or intimidation by a law enforcement officer.

c. Intervene if the officer or agents of the officer are harassing or intimidating the victim, or violating no-contact orders.

d. Provide the victim with the name and contact number of the domestic violence Assistant Prosecutor in the county where the abusive officer is charged with committing a criminal offense, contempt of a domestic violence restraining order, or subject to a motion for forfeiture of weapons. The victim should also be provided with the name of the victim-witness advocate or detective in the Prosecutor's Office who have been designated as the resource persons in the Prosecutor's Office.

e. Provide the victim with contact information for a local domestic violence program and with approved safety planning material.

f. Keep the victim apprised of all case developments.

g. Ensure that the chain of command, including the Chief of Police or Law Enforcement Chief Executive, is regularly briefed on both the administrative and criminal investigations.

h. Assist the victim with safety planning should the officer be terminated. Assistance will be provided by linking the victim with resources and preparation planning either within the Department or via outside government and non-profit agencies.

B. Communications Response if the agency has its own communication center or Departmental Agreement with a Regional or County communication center.

1. Communications officers/dispatchers will assign a high priority to all domestic violence calls, including those that involve or appear to involve law enforcement personnel from any agency.

2. Communications officers/dispatchers will immediately notify the communications supervisor of any domestic violence call received that involves, or appears to involve, law enforcement personnel from any agency.

3. Communications supervisors will prepare and preserve documentation of the facts and circumstances of the call, including any relevant recorded call for service, for use in potential administrative or criminal investigations upon knowledge or notification that the domestic violence incident involved law enforcement personnel from any agency.

C. Patrol Response

1. Upon arrival on the scene of a domestic violence call or incident involving a law enforcement officer, the primary patrol unit will immediately notify dispatch and request the primary patrol supervisor or shift commander to report to the scene, regardless of the involved officer's jurisdiction.

2. The responding officers will follow standard police response procedures as set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases.*

D. On-Scene Supervisor Response

1. The primary patrol supervisor or shift commander will immediately report to the scene of all law enforcement officer domestic violence incidents regardless of the involved officer's jurisdiction.

2. The on-scene supervisor will immediately notify the County Prosecutor's Office of any domestic violence incident involving a law enforcement officer for direction on handling the case regardless of whether criminal charges are filed or a restraining order is issued.

3. The on-scene supervisor will assume command and ensure that the crime scene is secured and that all evidence is collected in accordance with approved police investigative procedures.

4. The on-scene supervisor will ensure that an arrest is made in cases where mandatory arrest is required or probable cause exists.

5. If the alleged offender has left the scene and probable cause exists, the supervisor will:

   a. Exhaust all reasonable means to locate the alleged offender.

   b. Ensure that an arrest warrant is sought, if unable to locate the alleged offender.

   c. Document all subsequent actions in a timely manner.

6. If the victim has left the scene, the supervisor will make every effort to follow through on the investigation and attempt to locate the victim.

7. Arrest of both parties involved in a domestic violence incident should be avoided. The supervisor will ensure that a thorough investigation is conducted and an arrest of the primary aggressor is made in accordance with State law. In determining which party is the primary aggressor where both parties exhibit signs of injury, the supervisor should consider such factors as:

   a. Any history of domestic violence or violent acts by either person.

   b. Whether the injury was caused by a person acting in self-defense.

   c. Relative size and strength of the persons involved.

   d. The comparative severity of the injuries suffered or inflicted.

   e. Each person's fear of physical injury resulting from the other person's threatened use or history of use of force.

8. The on-scene supervisor will ensure the victim is informed of the following:

   a. Victims' Rights as set forth in the Victim Notification Form.

b. Procedures for obtaining a restraining order.

c. The availability of a Domestic Violence Response Team member or a domestic violence advocate immediately following the incident.

d. The availability of confidential transportation to a location that can provide improved victim safety.

e. Community resources, local domestic violence victim services, including shelter, and safety planning information.

9. Whenever a domestic violence call involving a law enforcement officer does not result in an arrest or a warrant is not sought, the on-scene supervisor will explain in a written report why these actions were not taken, and the report shall be forwarded to the Internal Affairs Unit.

10. The on-scene supervisor will notify the Chief of Police or Law Enforcement Chief Executive through the chain of command as soon as possible. If the officer is from another jurisdiction, the supervisor will ensure that notification is made to the Chief of Police or Law Enforcement Chief Executive in the department where the accused officer is employed. All notifications, and attempts to notify, will be fully documented in writing and shall be forwarded to the Internal Affairs Unit.

11. [Optional] The supervisor will ensure that the communications supervisor is notified that the incident involves a law enforcement officer.

E. Additional Critical Considerations

1. When responding to a domestic violence incident involving a law enforcement officer from another jurisdiction, all responding officers, investigators, and supervisors will follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from this Department as set forth in the *Attorney General's Guidelines on Police Response to Domestic Violence* Cases and *Attorney General Weapons Seizure Directives.*

2. When responding to a domestic violence incident involving a law enforcement officer from another county, the Chief of Police or Law

Enforcement Chief Executive or person acting in those capacities shall notify the County Prosecutor where the officer is employed.

3. If the reported incident involves the Chief of Police or Law Enforcement Chief Executive or a person acting in those capacities, the supervisor will immediately notify the County Prosecutor's Office which may directly oversee the criminal investigation. If warranted the County Prosecutor may designate a member of the office to respond to the scene of all domestic violence incidents involving a Chief of Police, Law Enforcement Chief Executive.

4. In responding to domestic violence incidents where the victim is a law enforcement officer, standard domestic violence response and investigation procedures should be followed as set forth in *the Attorney General's Guidelines on Police Response to Domestic Violence Cases.*

5. In responding to domestic violence incidents where the parties involved are both law enforcement officers, standard domestic violence response and investigation procedures as set forth in the *Attorney General's Guidelines on Police Response to Domestic Violence Cases* and the *Attorney General Weapons Seizure Directives* should be followed.

6. When responding to a domestic violence complaint involving a law enforcement officer employed by the federal government or out-of-state agency, all responding officers, investigators and supervisors will follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from this Department as set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and in the *Attorney General's Weapons Seizure Directives.* All weapons are to be seized. The Chief of Police shall notify the federal government agency that employs the officer.

F. Department Follow-Up

1. In a timely manner, the Chief of Police or Law Enforcement Chief Executive shall ensure that all officers who responded to a law enforcement officer domestic violence call are debriefed. The debriefing should include:

   a. A review of department confidentiality guidelines.

b. A direct order prohibiting discussion of the incident outside of the official inquiry.

c. A clear delineation of assignments.

2. Follow-up investigators will proactively seek out information on existing protective orders and, if found, will enforce them and any applicable state and federal firearms laws and determine whether the officer violated department policy by failing to report the temporary or final restraining order.

3. Arrest warrants charging law enforcement officers with domestic violence and protective orders issued at a later time should all be served by no fewer than two officers with at least one being of senior rank to the officer being served. In cases where firearms have not previously been seized, firearms will be seized and decisions about seized weapons shall be made as set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and in the *Attorney General Weapons Seizure Directives.*

4. This Department will conduct a thorough Internal Affairs investigation even if the temporary or final restraining order is dismissed against a member of this Department.

5. Following the reported incident, the Chief of Police or Law Enforcement Chief Executive of the primary investigative department or his/her designee will immediately contact the designated Principal Law Enforcement Contact person and advise that officer of the domestic violence incident and request that he/she perform the duties listed in Section VIII. A.(6) above.

G. Response in Cases Involving Restraining Order Only

1. Any law enforcement officer who is served with a temporary or final restraining order must immediately inform his or her supervisor and provide a copy of the order to the supervisor.

2. Whenever this Department is notified that a temporary or final restraining order is issued against a member of this Department, this Department will serve the restraining order, if it has not already been served, or will assist any other agency in ensuring the immediate service of the restraining order. This Department will also ensure that a supervisory officer will be present at any time the

law enforcement officer is removing personal items from any common residence with the victim pursuant to the restraining order.

3. If the law enforcement officer's duty and off-duty firearms and weapons have not already been turned in pursuant to the *Attorney General Weapons Seizure Directives,* the weapons shall be immediately seized by this Department.

4. No weapon is to be returned or issued to the law enforcement officer except pursuant to the procedure set forth in *Attorney General Weapons Seizure Directives.*

5. This Department will ensure that an Internal Affairs investigation is initiated pursuant to the procedures set forth in *the Attorney General's Internal Affairs Policy and Procedures Manual.*

6. This Department will immediately notify the Prosecutor's Office of the issuance of a restraining order against the officer.

7. The Chief of Police or Law Enforcement Chief Executive or his/her designee will immediately contact the designated Principal Law Enforcement Contact person to perform the duties listed in Section VIII. A.(6) above.

## IX. SEIZURE OF WEAPONS

A. See *Attorney General Directives Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers and from All State Law Enforcement Officers Involved in Domestic Violence Incidents* [Directives 2000-3 and 2000-4 dated September 1, 2000].

## X. VICTIM SAFETY AND PROTECTION

A. Victim Safety

This Department will make all reasonable efforts to

1. Provide law enforcement protection and other safety measures to a victim of law enforcement officer domestic violence.

   a. Directed patrol initiatives including:

      (1) Drive-bys.

      (2) Dismounted patrols.

(3) Welfare checks.

2. Assist in arranging for the transportation of the victim to a safe place when necessary.

3. Ensure victim contact with trained domestic violence advocates for safety planning.

These protective measures will remain in effect even if the officer is dismissed as a result of committing domestic violence.

B. Victim Notification

To better ensure victim safety, the designated Principal Law Enforcement Contact person will inform the victim as to the status of the case as far in advance as possible to all impending actions taken against or with the officer. This Department will provide reasonable assistance to help the victim with safety measures.

C. Confidentiality of Victim Location

If the victim wishes to be placed in an undisclosed "safe home," she/he may be transported by another party in lieu of a law enforcement officer. Those law enforcement employees who do have contact with the victim must keep all information concerning his or her whereabouts and safety plans confidential.

D. Prohibition of Law Enforcement Court Accompaniment

No law enforcement officer will attend any domestic violence related court proceeding of any law enforcement officer employee unless subpoenaed to appear, or authorized by their agency, or as part of their investigation.

## XI. POST INCIDENT ADMINISTRATIVE AND CRIMINAL DECISIONS

Departments must conduct an administrative investigation of an alleged incident of domestic violence committed by an officer in the department in accordance with *the Attorney General's Internal Affairs Policy and Procedures Manual.*

# Appendix R

*State of New Jersey*

**DEPARTMENT OF LAW AND PUBLIC SAFETY**

DIVISION OF CRIMINAL JUSTICE

POBox085

TRENTON, NJ 08625-0085

TELEPHONE (609) 984-6500

JOHN J. FARMER, JR.
*Attorney General*

KATHRYN FLICKER
*Director*


September 19, 2000

TO: ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: KATHRYN FLICKER, DIRECTOR
DIVISION OF CRIMINAL JUSTICE

SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVES 2000-3 and 20004 - Replacements for an unnumbered Attorney General Directive dated August 14; 1995, regarding Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents

Attached for your attention are the following Directives which were recently signed by Attorney General Farmer:

No. 2000-3- Revision to August 14,1995, Directive Implementing Procedures for the Seizure of Weapons from Municipaland Countv Law Enforcement Officers involved in Domestic Violence Incidents. This Directive is to be followed by county prosecutors when handling local and county law enforcement officers involved in domestic iolence incidents.

No. 2000-4- Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from All State Law Enforcement Officers involved in Domestic Violence·Incidents. This Directive provides notice of the procedures the Division of Criminal Justice will follow when removing weapons from state law enforcement officers, which includes the Division of State Police, Division of Criminal Justice investigators, Department of Corrections officers, Juvenile Justice Commission officers, Bureau of Parole officers, State Park Ranger Service (Fish and Game) officers, Human Services Police, N. J. Transit Police Officers, state college and university campus police, Division of Taxation agents, and investigators for the State Commission of Investigations.

The procedures are essentially the same. The separation eliminates any confusion contained in the August 14, 1995, Directive between areas of responsibility for county prosecutors and the Division of Criminal Justice.

All County Prosecutors
All Law Enforcement Chief Executives
September 19, 2000

SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVES
2000-3 and 2000-4 - Replacements for an unnumbered Attorney General Directive dated August 14, 1995, regarding Seizure of Weapons from law Enforcement Officers Involved in Domestic Violence Incidents

Please distribute to all law enforcement officers and/or assistant prosecutors in your agency. If you have any questions you may contact either DAG Jessica S. Oppenheim or DAG Martin C. Mooney, Sr., in the Prosecutors and Police Bureau at 609/984-2814.

jak
Attachments
c Attorney General John J. Farmer
First Assistant Paul H. Zoubek
Administrator Thomas O'Reilly
Director of State Police Affairs Martin Cronin
Colonel Carson J. Dunbar, Jr., Supt., NJSP
Commissioner Jack Terhune, Dept. of Corrections
Chief of Staff Debra I. Stone
Chief State Investigator John A. Cocklin
Deputy Director Wayne S. Fisher, Ph.D.
Deputy Director Ronald Susswein
Chief Greta Gooden Brown, Pros. & Police Bureau

# DOMESTIC VIOLENCE

Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers Involved in Domestic Violence Incidents

Issued August 1995
Revised September 2000

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: JOHN J. FARMER, JR. ATTORNEY GENERAL

DATE: SEPTEMBER 1, 2000

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2000-3**

REVISION TO AUGUST 14, 1995, DIRECTIVE IMPLEMENTING PROCEDURES FOR THE SEIZURE OF WEAPONS FROM MUNICIPAL AND COUNTY LAW ENFORCEMENT OFFICERS INVOLVED IN DOMESTIC VIOLENCE INCIDENTS

## I. INTRODUCTION

When law enforcement officers are charged with committing acts of domestic violence, it is important that the matters be uniformly and expeditiously handled. To achieve these objectives, it is necessary that there be a statewide policy governing the seizure of weapons from a law enforcement officer who is charged with committing an act of domestic violence.

The Criminal Justice Act of 1970, *N.J.S.A.* 52:178-97 *et seq.*, requires the Attorney General "to provide for the general supervision of criminal justice" in this State. All law enforcement agencies and law enforcement officers in the State are required to cooperate with the Attorney General "to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state." *N.J.S.A.* 52:178-98. Accordingly, it is directed that all law enforcement agencies and law enforcement officers who are authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6 are to comply with this directive.

II. GUIDELINES FOR THE SEIZURE OF WEAPONS FROM A LAW ENFORCEMENT OFFICER INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

A. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a law enforcement officer all weapons, department issued and personal, possessed by that officer shall immediately be

1. Seized by the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury, or

2. Surrendered by the officer involved when served with a domestic violence restraining order, search warrant or bail condition which requires the surrender of weapons.

B. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must:

1. Immediately report that fact to the officer's departmental supervisor who must promptly notify the Prosecutor's Office in the county where the officer is employed.

2. Voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.

C. Where weapons have been seized from an officer, a report shall immediately be made to the arresting officer's departmental supervisor who must notify the prosecutor's office in the county where the charge had been filed.

III. CUSTODY AND CONTROL OF SEIZED OR SURRENDERED WEAPONS

A. Any department-issued weapon, which is seized or surrendered in connection with a domestic violence incident, is to be returned to the custody and control of the department which issued that weapon.

B. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the county Prosecutor's Office in the county where the seizure of weapons took place in accordance with the procedures set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and the County Prosecutor's Procedures for the seizure and transportation of firearms to the Prosecutor's Office in accordance with the provisions of *N.J.S.A.* 2C:25-21d.

C. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to *N.J.S.A.* 2C:2o-21d, the County Prosecutor's Office where the civil and/or criminal charge was filed or incident occurred shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings. The County Prosecutor completing the investigation shall forward the report to the County Prosecutor within whose jurisdiction the officer is employed.

D. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph IVD, listed below, should be followed for the return of the weapons to the law enforcement officer.

E. The chief of the law enforcement agency where the officer is employed shall

1. Conduct an investigation into the officer's background and shall recommend to the appropriate County Prosecutor's Office whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return oflhe weapons, consistent with any family or criminal or municipal court bail orders entered against the officer in the jurisdiction which the incident occurred.

2. If necessary, re-assign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.

F. The County Prosecutor's Office within whose jurisdiction the incident occurred should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the County Prosecutor, not the victim or the law enforcement agency where the officer is employed.

IV. RETURN OF SEIZED WEAPONS

A. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic violence warrant for the seizure of weapons; or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.

B. When a court order, either criminal or civil, which prohibits a law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph IVD, listed below, should be followed.

C. If it is determined by the County Prosecutor that the officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the County Prosecutor may recommend to the appropriate court that:

1. The officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and

2. The officer be directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining order, while armed.

3. The department owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.

D. When a weapon has been seized from a law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, a County Prosecutor may authorize the return of the seized weapons subject to conditions, if any, the Prosecutor determines necessary.

## V. RESTRICTIONS ON RETURN OF FIREARMS

Pursuant to the provisions of the federal crime bill, 18 *U.S.C.A.* 922(g), if a final domestic violence restraining order is issued, and for the duration of that order,

A. A law enforcement officer may be authorized by a court to possess a department issued firearm under conditions recommended by the appropriate county prosecutor, and

B. The officer may not possess any personally owned firearms.

## VI. PURPOSE AND EFFECT OF THIS DIRECTIVE

This directive is binding upon all county prosecutors and all law enforcement officers in this State. This directive and the procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at Law by any party in any matter, civil or criminal.

# DOMESTIC VIOLENCE

Directive Implementing Procedures for the Seizure of Weapons from State Law Enforcement Officers Involved in Domestic Violence Incidents

Issued August 1995
Revised September 2000

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: JOHN J. FARMER, JR. ATIORNEY GENERAL

DATE: SEPTEMBER 1, 2000

SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2000-4

REVISION TO AUGUST 14, 1995, DIRECTIVE IMPLEMENTING PROCEDURES FOR THE SEIZURE OF WEAPONS FROM ALL STATE LAW ENFORCEMENT OFFICERS INVOLVED IN DOMESTIC VIOLENCE INCIDENTS

## I. INTRODUCTION

When Law enforcement officers are charged with committing acts of domestic violence, it is important that the matters be uniformly and expeditiously handled. To achieve these objectives, it is necessary that there be a statewide policy governing the seizure of weapons from a law enforcement officer who is charged with committing an act of domestic violence.

The Criminal Justice Act of 1970, *N.J.S.A.* 52:17B-97 *et seq.,* requires the Attorney General "to provide for the general supervision of criminal justice" in this State. All law enforcement agencies and law enforcement officers in the State are required to cooperate with the Attorney General "to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state." *N.J.S.A.* 52:17B-98. Accordingly, it is directed that all state law enforcement agencies and law enforcement officers who are employd by the State Department of Corrections, the Division of Criminal Justice, the Division of State Police, Human Services Police, Juvenile Justice Commission or the State Park Ranger Service and who are authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6 are to comply with this directive.

## II. GUIDELINES FOR THE SEIZURE OF WEAPONS FROM A LAW ENFORCEMENT OFFICER INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

A. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a state law enforcement officer all weapons, department issued and personal, possessed by that officer shall immediately be

1. Seized by the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury, or

2. Surrendered by the officer involved when served with a domestic violence restraining order, search warrant or bail condition which requires the surrender of weapons.

B. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a state law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must:

1. Immediately report that fact to the state officer's departmental supervisor who must promptly notify the Prosecutor's Office in the county where the officer is employed and also notify the Division of Criminal Justice, Prosecutors and Police Bureau;

2. Voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.

C. Where weapons have been seized from a state law enforcement officer, a report shall immediately be made to the arresting officer's departmental supervisor who must notify the Division of Criminal Justice, Prosecutors and Police Bureau.

III. CUSTODY AND CONTROL OF SEIZED OR SURRENDERED WEAPONS

A. Any department-issued weapon, which is seized or surrendered in connection with a domestic violence incident, is to be returned to the custody and control of the department which issued that weapon.

B. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the County Prosecutor's Office in the county where the seizure of weapons took place in accordance with the procedures set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and the County Prosecutor's Procedures for the seizure and transportation of firearms to the Prosecutor's Office in accordance with the provisions of *N.J.S.A.* 2C:25-21d.

C. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to *N.J.S.A.* 2C:25-21d, the Division of Criminal Justice, Prosecutors and Police Bureau shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings. The Division of Criminal Justice, Prosecutors and Police Bureau shall promptly forward its report and recommendations to the County Prosecutor within whose jurisdiction the officer is employed.

D. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a state law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph IVD, listed below, should be followed for the return of the weapons to the law enforcement officer.

E. The chief of the law enforcement agency where the officer is employed shall

1. Conduct an investigation into the officer's background and shall recommend to the Division of Criminal Justice, Prosecutors and Police Bureau who shall determine whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return of the weapons, consistent with any family or criminal or municipal court bail orders entered against the officer in the jurisdiction which the incident occurred.

2. If necessary, re-assign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.

F. The Division of Criminal Justice, Prosecutors and Police Bureau or designee generally should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the Division of Criminal Justice Prosecutors and Police Bureau, not the victim or the law enforcement agency where the officer is employed.

IV. RETURN OF SEIZED WEAPONS

A. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic violence warrant for the seizure of weapons; or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.

B. When a court order, either criminal or civil, which prohibits a state law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph IVD, listed below, should be followed.

C. If it is determined by the Division of Criminal Justice, Prosecutors and Police Bureau that the state law enforcement officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the Division of Criminal Justice, Prosecutors and Police Bureau may recommend to the appropriate court that:

1. The officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and

2. The officer be directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining

order, while armed.

3. The department-owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.

D. When a weapon has been seized from a state law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, Division of Criminal Justice, Prosecutors and Police Bureau may authorize the return of the seized weapons subject to conditions, if any, the Division of Criminal Justice, Prosecutors and Police Bureau determines necessary.

## V. RESTRICTIONS ON RETURN OF FIREARMS

Pursuant to the provisions of the federal crime bill, 18 U.S.C.A. 922(g), if a final domestic violence restraining order is issued, and for the duration of that order,

A. A law enforcement officer may be authorized by a court to possess a department issued firearm under conditions recommended by the appropriate county prosecutor, and

B. The officer may not possess any personally owned firearms.

## VI. PURPOSE AND EFFECT OF THIS DIRECTIVE

This directive is binding upon all county prosecutors and all law enforcement officers in this State. This directive and the procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

# Appendix S

PROFESSIONAL STANDARDS SUMMARY REPORT FORM

Agency: _____ Coun: _____

Reporting Year: _____

TABLE 1 -- COMPLAINTS FILED

| Type of Complaint | Anonymous Complaints | Citizen Complaints | Agency Complaints | Total Complaints |
|---|---|---|---|---|
| Excessive Force | | | | |
| Improper Arrest | | | | |
| Improper Entry | | | | |
| Improper Search | | | | |
| Other Criminal Violation | | | | |
| Differential Treatment | | | | |
| Demeanor | | | | |
| Domestic Violence | | | | |
| Other Rule Violation | | | | |
| TOTAL | | | | |

## PROFESSIONAL STANDARDS SUMMARY REPORT FORM

**Agency:** _____ **Coun:** _____

**Reporting Year:** _____

### TABLE 2 --AGENCY DISPOSITIONS

| | Sustained | Exonerated | Not Sustained | Unfounded | Administratively Closed | Total Dispositions |
|---|---|---|---|---|---|---|
| Excessive Force | | | | | | |
| Improper Arrest | | | | | | |
| Improper Entry | | | | | | |
| Improper Search | | | | | | |
| Other Criminal Violation | | | | | | |
| Differential Treatment | | | | | | |
| Demeanor | | | | | | |
| Domestic Violence | | | | | | |
| Other Rule Violation | | | | | | |
| **TOTA** | | | | | | |

PROFESSIONAL STANDARDS SUMMARY REPORT FORM

Agency: _____

Reporting Year: _____

Coun =----------

TABLE 3 --COURT DISPOSITIONS

| Court | Cases Dismissed | Cases Diverted | Acquittals | Convictions |
|---|---|---|---|---|
| Municipal Court | | | | |
| Superior Court | | | | |
| 'TOTAL | | | | |

## 20_ PROFESSIONAL STANDARDS EXECUTIVE SUMMARY[1]

## _____COUNTY

The following report contains a statistical summary for reports of police misconduct in _____County for 20_. In addition, the report provides statistics for the disposition of those complaints. A review of the report and a comparison of this report with the reports prepared in prior years reveals the following:

(Instructions: Each County Prosecutor's Office shall prepare a written narrative concerning its review and analysis of the statistical reports filed by each law enforcement agency within its jurisdiction. Suggested topics shall include but are not limited to the topics below.)

(a) number of complaints filed

(b) number of complaints disposed

(c) criminal dispositions

(d) administrative dispositions

(e) trends

(f) a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to a member of the agency. The synopsis shall not contain the identities of the officers or complainants. However, it should briefly outline the nature of the transgression and the fine or suspension imposed. An example of a synopsis may be found in Appendix V.

(g) conclusions

(h) recommendations / goals for new calendar year

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[1]This is a suggested format for the Executive Summary to be prepared by each County Prosecutor's Office.

**Notes:**

1) Counting method: In cases where more than one complaint has been filed against an officer with respect to a single incident, only the most serious complaint is counted for purposes of the report. Similarly, with respect to dispositions, only the most serious complaint that has been substantiated against an officer is counted for purposes of the report.

2) There is some disparity between law enforcement agencies concerning the types of investigations that are referred to and conducted by professional standards units. For example, while all units are expected to investigate complaints of police misconduct, some units may be called upon to investigate all motor vehicle accidents involving a police vehicle whether or not there is any allegation of misconduct. The varying responsibilities of the units may impact the statistics that are reported by the agencies at the close of the calendar year.

3) Anonymous complaints: This category includes all complaints in which the identity of the complainant is not disclosed, including those in which the nature of the complaint may lead an agency to believe it is from an internal source, but the name of the source is not disclosed.

4) Citizen complaints: This category includes all complaints filed by members of the public or other agencies or entities.

5) Agency complaints: This category includes all complaints generated by supervisors or other members of a law enforcement agency.

6) Municipal Court dispositions: This category includes all dispositions of all municipal ordinance violations, DUI offenses, petty disorderly persons offenses, disorderly persons offense or criminal complaints. Dispositions may include on-duty and off-duty conduct. This category does not include other traffic offenses. Criminal charges related to domestic violence incidents are included, but civil restraining orders should not be reported.

7) Superior Court dispositions: This category includes all criminal dispositions naming a law enforcement officer for conduct that occurred either on-duty or off-duty.

8) Diversions: This category includes conditional discharges and similar programs available in municipal court. In Superior court, this category refers to pre-trial intervention and similar programs.

## Definitions

### Reporting Year

For all three tables, the reporting year is the calendar year, January 1st through December 31st. Events reported should have occurred during the reporting year. It is understood that not all complaints filed will have a disposition during the same reporting year and that the number of dispositions will not equal the number of complaints filed.

### Complaints

The unit of measurement for this chart is the complaint. A "complaint" is defined as a single incident and the officer involved. If there are multiple officers involved in a situation, each officer who had a complaint filed against him or her is to be counted separately for the purposes of this report.

Each complaint is to be classified as one of the eight types of complaints outlined below. Their order, from top to bottom on the left hand column of the report form, reflect their relative seriousness. Should an officer have more than one type of complaint filed arising from the same incident, record the disposition in the complaint category which represent the most serious charge. Only one disposition and one type of complaint should be reported for each case.

Disposition is defined as any complaint which includes a conclusion of fact of sustained criminal, sustained rule violation, exonerated, not sustained or unfounded, notwithstanding that further events, such as a court case in sustained criminal complaints, may be necessary to formalize closure.

### Types of Complaints

The complaint type categories are:

1. **Excessive Force**

   Complaint regarding the use or threatened use of excessive force against a person.

2. **Improper Arrest**

   Complaint that the restraint of a person's liberty was improper or unjust, or violated the person's civil rights.

3. **Improper Entry**

   Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.

4. **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.

5. **Other Criminal Violation**

Complaint regarding the commission of an illegal act not specified elsewhere.

6. **Differential Treatment**

Complaint that the taking, failure to take, or method of police action was predicated upon irrelevant factors such as race, appearance, age, or sex.

7. **Demeanor**

Complaint that a department member's bearing, gestures, language or other actions were inappropriate.

8. **Domestic Violence**

Complaint that a department member violated the provisions of *N.J.S.A.* 2C:25-17 *et* seq. This category is not limited to cases in which a criminal or disorderly persons complaint is filed or a temporary or final restraining order is issued.

9. **Other Rule Violation**

Complaint for conduct which violates agency rules, but is not specified above. This includes conduct such as insubordination, drunkenness on duty, sleeping on duty, neglect of duty, false statements or malingering, untidiness, tardiness, faulty driving, or failure to follow procedures.

**Manner of Disposition**

The disposition categories are:

1. **Sustained**

The investigation disclosed sufficient evidence to prove the allegation by a preponderance of the evidence.

2. **Exonerated**

The alleged incident did occur, but the actions of the officer were justified, legal and proper.

3. **Not Sustained**

The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

4. **Unfounded**

The alleged incident did not occur.

## 5. Administratively Closed

In some cases, the complaint or investigation is closed prior to reaching a disposition. These should be counted as "Administratively Closed." Examples include situations when a complainant voluntarily requests that a complaint be withdrawn, or the subject officer terminates his or her employment prior to disposition of the complaint.

# Appendix T

## ATTORNEY GENERAL DIRECTIVE, 2006-02

## SUPERSEDING DIRECTIVE REGARDING ELECTRONIC RECORDATION OF STATIONHOUSE INTERROGATIONS

(January 17, 2006)

On December 17, 2004, the Attorney General and the County Prosecutors' Association amended a prior policy statement so as to require that when a statement is obtained following a stationhouse interrogation in any case involving a first, second or third degree crime (or any case involving a juvenile age 14 or older suspected of committing a crime enumerated in N.J.S.A. 2A:4A-26a(2)(a)), the law enforcement entity involved either video or audio record any final statement obtained, or any acknowledgment by the suspect of the content of a written statement. That Amended Policy also put into effect a staggered time table with regard to effective dates. For all first and second degree crimes, the electronic recording requirement would go into effect on September 1, 2005. For third degree and juvenile cases, the requirement was to go into effect on January 1, 2006. The Amended Policy also noted that the Attorney General, in consultation with the County Prosecutors' Association, would subsequently make a final determination as to whether to issue a law enforcement directive "requiring expansion of the electronic recordation policy so as to cover the entire stationhouse interrogation process in certain cases."

Thereafter, on October 14, 2005, the New Jersey Supreme Court adopted the recommendations of its Special Committee on the Recordation of Custodial Interrogations. Most significantly, the recommendations included a requirement that police electronically record the entirety of all custodial interrogations occurring in a place of detention for cases in which the adult or juvenile being interrogated is charged with an offense requiring the use of a warrant pursuant to R. 3:3-1c. The effective dates for that requirement are staggered so as to go into effect for all covered homicide cases on January 1, 2006, and for all other offenses specified in R. 3:3-1c on January 1, 2007.

Upon review and consideration of these two sets of requirements, the Attorney General and the County Prosecutors' Association have determined that having different time frames may be difficult to implement and may cause confusion in the law enforcement community. Accordingly, the Attorney General, the Director of the Division of Criminal Justice, and the County Prosecutors have jointly determined that the two sets of requirements must be harmonized to the greatest extent possible. Electronic recording is a valuable tool to law enforcement. It insures that the suspect's or defendant's statement is accurately recorded and voluntarily made. Electronic recording also protects

detectives/investigators and prosecutors from claims of fabrication, omission or lack of thoroughness.

It is hereby adopted that, consistent with the Supreme Court's actions of October 14, 2005, law enforcement officials shall electronically record the entirety of all custodial interrogations occurring in a place of detention. This recording requirement shall apply to all first, second and third degree crimes. Also, it shall apply to adults and juveniles alike.

The effective dates for the above requirements are staggered. The recording requirement for all homicides listed in R. 3:17 shall go into effect on January 1, 2006. The recording requirement for all other first and second degree crimes shall go into effect on October 1, 2006. The recording requirement for all third degree crimes shall go into effect on January 1, 2007.

All existing policy statements and Directives that are in any way inc s1 nt with the foregoing provisions are hereby superseded and re cinded.

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Peter C. Harvey, Attorney General

ATTEST:

Vaughn L. McKoy, Director

Dated: January 17, 2006

# Appendix U

## Public Synopsis of Disciplinary Action

Officer was suspended for ten (10) days for insubordination. Officer refused a direct order to complete a report.

Officer was suspended for twelve (12) days for failing to safeguard department property. Officer was found to be at fault for a motor vehicle accident.

Officer was suspended for fifteen (15) days for neglect of duty. Officer was found on three occasions to be absent from his post.

Officer was fined ten (10) vacation days for abuse of sick leave.

Officer was suspended for ten (10) days for conduct unbecoming an employee. Officer attempted to collect a private debt while in uniform.

Officer was suspended for twenty-five (25) days for failing to take police action. Officer failed to arrest an individual who had an active warrant.