

INTERNAL AFFAIRS POLICY & PROCEDURES

Office of the Attorney General | State of New Jersey

August 2020
Version

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1 Introduction

1.0.1 The purpose of *Internal Affairs Policy & Procedures* is to assist the State's law enforcement agencies with investigating and resolving complaints of police misconduct that originate with members of the public or are generated by the supervisors, officers, or employees of a law enforcement agency. The goals of the policy are to enhance the integrity of the State's law enforcement agencies, improve the delivery of police services, and assure the people of New Jersey that complaints of police misconduct are properly addressed. This policy can also be more broadly applied to non-law enforcement employees.

1.0.2 State and federal courts have emphasized the importance of the internal affairs function for protecting the constitutional rights and civil liberties of the State's residents. Case law generally requires that law enforcement agencies do three things under the internal affairs function. First, agencies must implement an internal affairs policy that provides for a meaningful and objective investigation of complaints and other evidence of police misconduct. Second, agencies must monitor and track the behavior of police officers for incidents of misconduct. Third, when officers are found to have engaged in misconduct, agencies must correct the behavior. The courts have with increasing frequency issued decisions that set minimum standards of performance for the internal affairs function.

1.0.3 The New Jersey Legislature also recognized the importance of the internal affairs function in 1996 with the enactment of N.J.S.A. 40A:14-181. The statute provides that:

Every law enforcement agency shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.

1.0.4 In accordance with this mandate, and recognizing that proper administration of internal affairs is a critical priority for the State's criminal justice system, Attorneys General have periodically issued updated versions of this Internal Affairs Policy & Procedures document through the Division of Criminal Justice. This most recent round of revisions reflects the need to incorporate emerging best practices into the State's internal affairs system, and to ensure that all law enforcement agencies in the State are adhering to the guidelines.

1.0.5 It is important for county and municipal law enforcement agencies to recognize that, as they conduct internal affairs investigations, they do so under the general supervision of the Attorney General. The Criminal Justice Act of 1970 designates the Attorney General as the State's chief law enforcement officer. See N.J.S.A. 52:17B-98. As such, the Attorney General is responsible for the general supervision of the State's law enforcement agencies to

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

Notifications to the County Prosecutor

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

Recordkeeping & Data Reporting

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

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

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

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

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

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

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

2.2 Rules and Regulations

- 2.2.1 The agency's rules and regulations should form a "code of conduct" for employees. It should contain the broadly stated "do's and don'ts," without delving into specific details. For instance, an agency's rules and regulations should state that any use of force by an officer must comply with state and federal law, the Attorney General's and the County Prosecutor's policies, and the agency's S.O.Ps. The specific details of what is considered force, and what constitutes the acceptable use of force, should be found in the agency's use of force S.O.P.
- 2.2.2 The rules and regulations should identify general categories of misconduct or inappropriate behavior that are subject to disciplinary action. An incident of misconduct or inappropriate behavior may fall into one or more of the following categories:
 - (a) *Crime*. Complaint regarding the commission of an illegal act that constitutes a violation of the criminal code including disorderly and petty disorderly persons offenses.
 - (b) *Excessive force*. Complaint regarding the use or threatened use of excessive force against a person.
 - (c) *Improper arrest*. Complaint that the restraint of a person's liberty was improper, unjust, or violated the person's civil rights.
 - (d) *Improper entry*. Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.
 - (e) *Improper search*. Complaint that the search of a person or property was improper, unjust, violated established agency procedures or violated the person's civil rights.
 - (f) *Differential treatment*. Complaint that the taking of police action, the failure to take police action or method of police action was predicated upon irrelevant factors such as race, appearance, age or sex.
 - (g) *Demeanor*. Complaint that an agency member's bearing, gestures, language or other actions were inappropriate.

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

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

2.3 Responsibility for Discipline

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

3 Prevention of Misconduct

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

3.1 Recruitment and Selection

- 3.1.1 Selecting and appointing the highest quality individuals to serve as law enforcement officers must be a priority of every law enforcement agency. During the selection process, written tests, psychological tests, background investigations and individual interviews should be completed by each candidate in an attempt to identify those who would be best suited for law enforcement employment. Background investigations must include a review of the prior internal affairs files of any candidate.
- 3.1.2 New Jersey law enforcement agencies are required by this policy to disclose the entire internal affairs file of a candidate to prospective law enforcement employers. *See* Section 9 ("Internal Affairs Records"). Candidates with out-of-state law enforcement experience must sign waivers of confidentiality regarding their internal affairs files so that they may be reviewed by the prospective employer, where legally permissible. These procedures may also be used for promotional testing, and assignment to especially sensitive responsibilities or those that pose the greatest opportunities for abuse or wrongdoing. Each agency should establish policies and procedures for recruitment, oral and written examinations, selection and the promotional process.

3.2 Training

- 3.2.1 Basic and in-service training for law enforcement officers should emphasize the sworn obligation of those officers to uphold the law and ensure public safety. Police ethics should be a major component in the training curricula. In addition, the rules, regulations, policies and procedures of the agency, including the disciplinary process, should be stressed. There must also be a process to advise veteran officers of any new statutory requirements or significant procedural changes.
- 3.2.2 An agency's supervisory personnel should always consider the need for training when officers engage in inappropriate behavior or misconduct. The question should be, "Could training have prevented this behavior and can training prevent it from happening in the

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

4 Internal Affairs Unit or Function

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

4.1 Duties and Responsibilities

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

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

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

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

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

5 Accepting Reports of Officer Misconduct

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

5.1 Accepting Reports Alleging Officer Misconduct

- 5.1.1 All complaints of officer misconduct shall be accepted from all persons who wish to file a complaint, regardless of the hour or day of the week. This includes reports from anonymous sources, juveniles, undocumented immigrants, and persons under arrest or in custody. Internal affairs personnel, if available, should accept complaints. If internal affairs personnel are not available, supervisory personnel should accept reports of officer misconduct, and if no supervisory personnel are available, complaints should be accepted by any law enforcement officer. At no time should a complainant be told to return at a later time to file their report.
- 5.1.2 Members of the public should be encouraged to submit their complaints as soon after the incident as possible. If the complainant cannot personally appear at the agency to file the complaint, a member of the agency, preferably a member of the internal affairs function, should visit the complainant at their home, place of business or other location if necessary to complete the report. Law enforcement agencies are encouraged to establish systems to enable complaints to be accepted by telephone or by email if a complainant does not wish to be interviewed in person or wishes to remain anonymous. Under no circumstances shall it be necessary for a complainant to make a sworn statement to initiate the internal affairs process. Furthermore, every police agency shall accept and investigate anonymous complaints.
- 5.1.3 The internal affairs investigator, supervisor or other officer receiving the complaint will explain the agency's disciplinary procedures to the person making the complaint. The officer shall advise the complainant that he or she will be kept informed of the status of the complaint, if requested, and its ultimate disposition. To best accomplish this, the agency shall prepare a fact sheet or brochure that includes information on the agency's internal affairs process and what role the complainant can expect to play. If feasible, the fact sheet or brochure should be provided to the complainant at the time the complaint is made. A sample fact sheet is found in Appendix A.

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

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

D). In the event of a refusal by the individual to accept that written statement, a copy shall be provided to the individual's collective bargaining representative as soon as possible. If a supervisor or commander authorized to do so imposes an immediate suspension, the law enforcement executive must be advised without delay. He or she will then determine the status of the suspension given the facts of the case in light of the above criteria. In no case shall an immediate suspension be used as a punitive measure.

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

Figure 1.

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

- 6.1.7 The law enforcement executive should consult with counsel about compliance with the 45-day rule, which includes several exceptions and tolling provisions. For example, the "45-day rule" does not apply to internal affairs investigations alleging incapacity. In addition, members of the public are not required to make their complaint within 45 days of the incident. But once the agency has received the individual's complaint, the 45-day rule applies.
- 6.1.8 Commencing a criminal investigation into the subject matter of an internal affairs complaint will suspend the 45-day rule pending the disposition of that investigation; such suspension remains until the disposition of the criminal investigation. (Similarly, a criminal investigation will toll the notice requirements established in Sections 6.1.4 – 6.1.6.) Upon disposition of the criminal investigation, agencies will once again be bound by the 45-day rule, with the 45-day period starting anew upon termination of the criminal investigation.

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

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

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

executive (if he or she was not the hearing officer) for the imposition of discipline. Upon completion of the hearing, internal affairs will complete all required forms (Civil Service Commission jurisdictions use the Final Notice of Disciplinary Action form DPF-31C), including the entry of the disposition in the index file. If the charges were sustained, internal affairs will cause the penalty to be carried out. Documentation of the charge and the discipline shall be permanently placed in the officer's or employee's personnel file.

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

6.4 Domestic Violence Incidents Involving Agency Personnel

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

7 Internal Affairs Investigation Procedures

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

7.1 Interviewing the Complainant and Civilian Witnesses

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

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

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

7.3 Physical Evidence

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

7.4 Photographs

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

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

7.7 Polygraph

- 7.7.1 N.J.S.A. 2C:40A-1 states that an employer shall not influence, request or require an employee to take or submit to a lie detector test as a condition of employment or continued employment. To do so constitutes a disorderly persons offense. Therefore, a law enforcement officer should never be asked to take a polygraph examination as part of an internal affairs investigation. The investigator should not even suggest to the officer that a polygraph examination would be appropriate or that it "might clear this whole thing up." However, the subject officer may voluntarily request to take a polygraph examination.
- 7.7.2 Polygraph tests of civilian complainants and witnesses should only be used when a reasonable suspicion exists that their statements are false. Polygraph examinations should not be used routinely in internal affairs investigations. Under no circumstances should polygraph examinations be used to discourage or dissuade complainants. In addition, a victim of sexual assault cannot be asked or required to submit to a polygraph examination.

7.8 Search and Seizure

- 7.8.1 All people, including police officers, have a Fourth Amendment right to be free from unreasonable searches and seizures. In an internal affairs investigation, the Fourth Amendment applies to any search the employing agency undertakes. The internal affairs investigator must be cognizant of the various principles governing search and seizure, particularly where the investigator will conduct a search as part of a criminal investigation or will search personal property belonging to the subject officer.
- 7.8.2 Criminal investigations generally require the investigator to obtain a search warrant to conduct a search. Search warrants require probable cause to believe that the search will reveal evidence of a crime. In internal affairs investigations, a search warrant should be obtained before a search is conducted of a subject officer's personal property, including any home, personal car, bank accounts, safety deposit boxes, briefcases, etc. A warrant also may be necessary where a search of the subject officer's workplace is conducted and it is determined that the officer has a high expectation of privacy in the place to be searched. The internal affairs investigator should consult with the County Prosecutor's Office before undertaking the search of any workplace area in a criminal investigation.

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

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

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

7.9 Electronic Surveillance

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

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

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

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

7.10 Lineups

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

7.11 Investigation of Firearm Discharges

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

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

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

7.11.9 The investigator must consider relevant law, any Attorney General or County Prosecutor policies and guidelines, and agency rules, regulations and policy. In addition to determining if the officer's actions were consistent with agency regulations and policy, the internal affairs investigator should also examine the relevance and sufficiency of these policies. The investigator should also consider any relevant aggravating or mitigating circumstances.

7.11.10 The investigation of a shooting by an officer should include photographs, ballistics tests, and interviews with all witnesses, complainants and the officer involved. All firearms should be treated as evidence according to agency procedures. A complete description of the weapon, its make, model, caliber and serial number must be obtained and, if appropriate, N.C.I.C. and S.C.I.C. record checks should be made.

7.11.11 In a firearm discharge investigation, the investigator must determine if the weapon was an approved weapon for that officer and if the officer was authorized to possess and carry it at the time of the discharge. The investigator must also determine if the weapon was loaded with authorized ammunition. The weapon must be examined for its general operating condition and to identify any unauthorized alterations made to it.

7.12 Collateral Issues

7.12.1 The work of an internal affairs function should not be limited to resolving complaints by narrowly focusing on whether the subject officer engaged in misconduct. In many cases, the examination of collateral issues presented by the complaint can be as important as the resolution of the allegation itself. For example, while investigating an allegation of excessive force during an arrest, the officer's actions in making the arrest may be improper. In such cases, even though the investigation may exonerate the officer of the excessive force allegation, internal affairs must still examine whether the officer should have been effecting the arrest at all.

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

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

8 Interviewing Members of the Agency

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

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

8.1 Overview of Interviews

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

Figure 2.

	Investigation is CRIMINAL	Investigation is ADMINISTRATIVE
Officer is SUBJECT	• Prosecutor notification • Treat as any other defendant • <i>Miranda</i> warning if appropriate • No <i>Garrity</i> warning unless prosecutor approves • May require routine business reports • No special reports • Right to counsel (attorney)	• Obligation to cooperate • Administrative interview form • May require special reports • Cannot charge as a subterfuge • Right to representative
Officer is WITNESS	• Obligation to cooperate • No <i>Miranda</i> warning • Witness acknowledgement form • May be entitled to a <i>Weingarten</i> representative⁷	• Obligation to cooperate • Witness acknowledgement form • May be entitled to a <i>Weingarten</i> representative

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

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

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

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

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

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

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

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

9.3 Investigation Files

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

9.4 Retention Schedule

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

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

9.6.3 As a general matter, a request for internal investigation case files may satisfy the good cause requirement:

- (a) If a Civilian Review Board that meets certain minimum requirements requests access to a completed or closed investigation file, subject to the conditions described in this section; or
- (b) If another law enforcement agency requests the files because it is considering hiring an officer who was formerly employed at the agency with the internal investigation files.

9.6.4 Agencies may receive law enforcement or judicially sanctioned subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the law enforcement executive or internal affairs investigator should consult with the agency's legal counsel to determine whether the subpoena is valid and reasonable. Courts may modify or quash invalid or unreasonable subpoenas, but will require the agency seeking to so modify or quash to file an appropriate motion. Similar considerations may provide grounds for opposing a records request from a Civilian Review Board that otherwise satisfies the minimum requirements described below. For that reason, the appropriate agency personnel should consult with legal counsel to determine under what circumstances it would be appropriate to provide notice to any individual who is referenced in records requested by a Civilian Review Board.

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

9.7 Coordination with Civilian Review Boards

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

9.7.2 For the purposes of satisfying the requirements of Section 9.7.1, a Civilian Review Board must implement the following minimum procedural safeguards:

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

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

(c) Conflicts of Interest

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

9.8 Coordination with Other Law Enforcement Agencies

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

9.9 Reporting to Law Enforcement Executive

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

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

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

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

9.11 Public Reports

9.11.1 On an annual basis, every law enforcement agency shall provide to the County Prosecutor and publish on its public website a report summarizing the types of complaints received and the dispositions of those complaints. This report should be statistical in nature. The County Prosecutor shall submit a summary of the reports from all agencies in its jurisdiction to the Office of Public Integrity and Accountability. The Annual Internal Affairs Summary attached to Appendix K may be used to satisfy the requirements of this Section.

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.

10 The Responsibilities of County Prosecutors

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

Internal Affairs Policy & Procedures

August 2020 Version

List of Appendices

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Appendix B

Department/Agency _____ IA Case Number _____

INTERNAL AFFAIRS REPORT FORM

Person Making Report (Optional, But Helpful)

Full Name _____ Phone _____ Preferred? ☐

Address _____ Email _____ ☐

City, State _____ DOB _____

Officer(s) Subject to Allegation (Provide Whatever Info Is Known)

Officer(s) _____ Badge No. _____

Incident Site _____ Date/Time _____

In the space below, describe the type of incident (traffic stop, street encounter) and any information about the alleged conduct. If you cannot fit your response below, feel free to use extra pages and attach them to this document. If you do not know the officer's name or badge number, provide any other identifying information.

Other Information

How was this reported? ☐ In Person ☐ Phone ☐ Letter ☐ Email ☐ Other _____

Any physical evidence submitted? ☐ Yes ☐ No If yes, describe: _____

Was incident previously reported? ☐ Yes ☐ No If yes, describe: _____

To Be Completed by Officers Receiving Report

Officer Receiving Complaint _____ Badge No. _____ Date/Time _____

Supervisor Reviewing Complaint _____ Badge No. _____ Date/Time _____

Appendix D

Sample Immediate Suspension Notice

To: _____

Date & Time: _____

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: _____

Print Name: _____

Unfounded

The Internal Affairs Unit of this department has completed its investigation of your complaint 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 [telephone number]. 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 complaint 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 [telephone number].

Thank you for bringing this matter to our attention.

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.

☐ Certified or Registered Mail Receipt number _____

☐ Signature of Server _____ Date of person service _____

I hereby acknowledge service of the within charges

Signature _____

Print Name _____

Appendix H
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: _____

Print name: _____

Date: _____

Location: _____

Witnessed by: _____

Print Name: _____

Appendix J
Sample Administrative Advisement Form

Administrative Investigations Only

1. I am being questioned as a subject 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 duties, or for not answering truthfully.

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: _____

Print Name: _____

Date: _____ Time: _____

Witnessed by: _____

Print name: _____

Agency Name: _____
 Year: _____

Annual Internal Affairs Summary

	Pending from Prior Years	New cases	Cases Closed		Source of Complaint			Criminal Outcome				Internal Disciplinary Outcome					Pending End of Year
					Agency	Civilian	Anon.	Conviction	Diversion	Acquittal	Dismissal	Exonerated	Not Sustained	Unfounded	Closed	Sustained	
Excessive Force			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Improper Arrest			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Improper Entry			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Improper Search			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Criminal Violation			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Differential Treatment			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Demeanor			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Domestic Violence			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Rule Violation			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Total Cases Opened	0
Total Cases Closed	0
Total Pending Cases	0
Total Cases >180 Days	0

Appendix M

Final Notice of Disciplinary Action (For Use in Non-Civil Service Jurisdictions Only)

FROM	Employing Agency Name	Address & Phone Number	Case ID #
TO	Employee Name	Title	Date

On _____ you were served with a Preliminary Notice of Disciplinary Action and notified of the pending disciplinary action.

- ☐ You requested a hearing which was held on _____
- ☐ You did not request a hearing
- ☐ 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
<i>If checked, charges are continued on attached page.</i> ☐	<i>If checked, incidents are continued on attached page.</i> ☐

The following disciplinary action has been taken against you:

- ☐ Suspension for _____ working days, beginning _____ and ending _____
- ☐ Indefinite suspension pending criminal charges effective (date) _____
- ☐ Removal, effective (date) _____
- ☐ Demotion to position of _____ effective (date) _____
- ☐ Resignation not in good standing, effective (date) _____ Other Disciplinary Action _____
- ☐ Fine _____ which is equal to _____ (number of working days)

Appointing authority or authorized agent's signature and title.

Signature _____ Title _____