



State of New Jersey

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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2020-13

TO: All Law Enforcement Chief Executives and County Prosecutors

FROM: Gurbir S. Grewal, Attorney General

DATE: December 21, 2020

SUBJECT: Directive Revising Use of Force Policy and Procedures

New Jersey’s law enforcement officers are entrusted with protecting public safety and, in some instances, are authorized to use force—including deadly force—to fulfill that responsibility. Law enforcement agency use of force policies are designed to give clear guidance to officers on the limited circumstances in which the exercise of that exceptional power is appropriate. Both officers and community members alike benefit when such policies are evidence-based and provide as much clarity as possible. While no policy document can anticipate all of the unique situations that a law enforcement officer may encounter, careful development, training, and enforcement of such policies can help ensure that state-sanctioned force is only used as a last resort, when necessary to accomplish legitimate law enforcement objectives.

Although law enforcement agencies typically maintain their own individual policies regarding the use of force, in New Jersey all such policies must be consistent with the Attorney General Directive Establishing the Use of Force Policy and Procedures (“Use of Force Policy” or “Policy”), which applies statewide. While agency policies may be more restrictive, they cannot permit the use of force where the Policy prohibits it.

Today, I am issuing a comprehensive revision to the Policy—the first time it has been updated since 2000. Given the need to ensure that officers are appropriately trained on its parameters before it is fully implemented, the effective date of the Policy shall be December 31, 2021.

I first announced in December 2019 that the Office of Public Integrity & Accountability (OPIA) within the Attorney General’s Office would revisit the Use of Force Policy as part of our



efforts to overhaul and standardize use of force data collection across the state. At the time, media reporting suggested disparities and inconsistencies in how force was being used and reported by New Jersey law enforcement. The need to revise this Policy took on added urgency in the wake of the killing of George Floyd this past May. That tragic incident was roundly and rightfully decried for its injustice by stakeholders across the country and in New Jersey, including, and especially, our law enforcement leaders. It also prompted many states and localities to conduct wholesale reviews of their policing policies and practices to ensure they accord with modern best practices, and are in line with community expectations about the reasonable and appropriate use of force by law enforcement.

In New Jersey, that hard work has been underway for many years. Together, we have been working in partnership with stakeholders across the state to develop and implement a variety of initiatives—collectively known as the “Excellence in Policing Initiative”—that both standardize and build upon the incredible policing already being done in New Jersey. Drawing upon the experience and relationships we have gained, I established a robust and comprehensive process for gathering input and expertise on potential reforms to the Use of Force Policy we are announcing today.

First, we established a working group with deep expertise in law enforcement to provide comprehensive input on what components of the prior policy have worked well and which needed to be reexamined. This group included police chiefs, experts in police training and in investigating police misconduct, policing policy experts, county prosecutors, and assistant prosecutors. Subcommittees focusing on discrete aspects of the policy developed recommendations, which were then shared and evaluated by the full working group.

Second, we solicited feedback from the public through many different channels. We established a public comment portal that was open for several months, through which over a thousand residents and organizations submitted their views on the policy, potential revisions, and other thoughts on policing and the criminal justice system more generally. Every one of New Jersey’s 21 County Prosecutors held live listening sessions open to the community and chronicled the input they received. Representatives from my office also attended each of these sessions, and I personally participated in multiple town halls, hearing directly from citizens about their ideas and concerns.

Third, we engaged with numerous community groups and advocacy organizations throughout the state, who expressed their concerns with the existing policy and lent their expertise as we developed revisions.¹

¹ One particular area of concern which was raised, but not fully resolved, was the use of canines by police. Notably, the Use of Force Policy incorporates some new limitations on their use. It prohibits their use against those who are resisting arrest, but do not pose a threat to an officer or someone else. It also prohibits the visible presence of canines for crowd control purposes at peaceful demonstrations and their deployment against a crowd, except to respond to a threat of death or serious bodily injury to a member of the public or to an officer. Canines may continue to be used for explosive detection or similar security sweeps at such gatherings. There is, however, additional work to be done and information to be gathered about the use of canines, including from the Use of Force Portal. Today, I

Fourth, we undertook a sweeping examination of best practices and ideas regarding use of force from around the country, analyzing numerous use of force policies from other jurisdictions, academic research, media investigations, reports by government agencies involved in policing reform, and other policy documents produced by experts in the field.

The Use of Force Policy is the result of this careful and comprehensive process—quite possibly the only such statewide effort of its kind. It reflects the collective commitment of New Jersey law enforcement to be guided by the evidence and a recognition that policies to improve professionalism in policing further public safety, rather than undermine it.

Revisions to this Policy will not, alone, solve all problems of excessive force or police accountability. Nor will this Policy by itself rebuild trust between law enforcement and communities where it has frayed. I am mindful of the difficulties in changing culture in law enforcement or in any organization, and that is why this Policy is only one component of our overall push towards excellence in policing—a broader strategy to enhance police accountability, transparency and professionalism. At the same time, we must also remind ourselves that systemic injustices in the criminal justice system are part and parcel of broader, longstanding societal inequities that must also be remedied.

Nevertheless, I am certain that the Use of Force Policy and our other work will serve as a model for how jurisdictions across the country can modernize practices so as to better sustain the lives of all of our citizens, civilians, and law enforcement officers alike.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the state in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement or adopt policies consistent with the revised Use of Force Policy, including the Policy's addenda, appended to this Directive. This Directive repeals and supersedes the provisions of the following Attorney General Directives:

- Attorney General Use of Force Policy, last revised June 2000;
- New Jersey Vehicular Pursuit Policy, last revised July 2009;
- Attorney General Directive 2016-3, a Directive Revising the Supplemental Policy on Conducted Energy Devices, and all prior guidance on Conducted Energy Devices;
- Attorney General Supplemental Policy on Less-Lethal Ammunition, issued March 2008; and
- Attorney General Approved List of Less-Lethal Ammunition, December 2010.

am separately directing OPIA to continue its work with law enforcement and community stakeholders and provide further recommendations to me by March 31, 2021.

I. Summary of the Use of Force Policy

Although officers are necessarily granted the authority to use force to accomplish lawful objectives, force must only be used as a last resort. The Fourth Amendment further requires that an officer's use of force be "objectively reasonable." *Graham v. Connor*, 490 U.S. 386 (1989). This provision, however, provides a constitutional "floor" for officer use of force that all officers must meet. The Use of Force Policy sets standards that go beyond the minimum constitutional requirements set forth in *Graham*.

This Policy is premised on seven core principles that guide every law enforcement interaction and are designed to ensure that law enforcement officers preserve the sanctity of life, as well as the dignity, rights and liberties of the public at every turn. It requires, whenever feasible, that officers use "critical decision-making" and de-escalation techniques to reduce the amount of force used or avoid it altogether. Force is only authorized when necessary as a last resort and requires that the amount of force used always be reasonable and proportional to further a lawful law enforcement objective. The Use of Force Policy also provides more detailed guidelines for officers to use in the face of situations that may require the use of force. In addition, it establishes a robust duty for all officers to intervene to prevent or stop improper uses of force.

Officers face dynamic, quickly evolving, and potentially dangerous situations that require split-second decisions. Therefore, officers who act in good faith consistent with the Use of Force Policy will be strongly supported in any subsequent review of their conduct regarding their use of force. However, those who do not follow the Policy may face administrative action, or disciplinary action—up to and including termination—and, depending on the conduct, criminal consequences.

As detailed herein, to ensure adherence to the Use of Force Policy, every use of force must be reported on the Attorney General's Use of Force Reporting Portal within 24 hours, and undergo a meaningful command-level review. In addition, each law enforcement chief executive must annually review the overall use of force by their department to ensure compliance with the Policy and necessary reporting to their respective County Prosecutor's Office.

Finally, strict adherence to the Policy will ensure a mutually respectful relationship between the public and law enforcement, allowing law enforcement to effectively do their jobs as guardians of public safety. If the public understands that officers prioritize de-escalation and only when necessary as a last resort, use force with restraint and in an even-handed, non-discriminatory manner, they will be more likely to support law enforcement and comply with their lawful requests. This, in turn, will reduce the number of instances in which force is needed and improve both public and officer safety.

II. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of both this Directive and the Use of Force Policy shall be severable. If any phrase, clause, sentence or provision of either this Directive or the Use of Force Policy is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive or the Use of Force Policy shall be addressed to the Director of the Office of Public Integrity & Accountability, or their designee.
- D. ***Effective date and training deadline.*** This Directive shall take effect on December 31, 2021. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General. The Use of Force Policy appended to this Directive supersedes all prior versions of the Use of Force Policy and other relevant policies and directives. All state, county, and local law enforcement agencies shall ensure that sworn personnel employed by their agencies complete the training mandated by the Attorney General pursuant to this Directive and Policy before December 31, 2021.



Gurbir S. Grewal
Attorney General

ATTEST:



Thomas J. Eicher
Director
Office of Public Integrity & Accountability

Dated: December 21, 2020