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**SUPPLEMENTAL LAW ENFORCEMENT DIRECTIVE AMENDING
ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2006-5**

TO: Director, Division of Criminal Justice
Superintendent, New Jersey State Police
All County Prosecutors
All County Sheriffs
All Chief Law Enforcement Executives

FROM: John J. Hoffman, Acting Attorney General

DATE: July 28, 2015

SUBJECT: **Supplemental Law Enforcement Directive Regarding Uniform Statewide Procedures and Best Practices for Conducting Police-Use-of-Force Investigations**

Under New Jersey law and practice, prosecutors and police departments are required to follow well-established procedures when responding to a law enforcement officer's decision to employ deadly force. Recent events across the nation present an opportunity, and responsibility, to examine and to enhance those practices and procedures as appropriate to ensure that use-of-force investigations are conducted fairly, expeditiously, thoroughly, and impartially.

The New Jersey Attorney General has broad authority under our Constitution and statutory law to establish and enforce uniform statewide standards that police and prosecutors must follow. For example, in this State, the rules governing when and in what circumstances a law enforcement officer is authorized to use physical, mechanical, enhanced mechanical, or deadly force are established by the Attorney General through the promulgation of the Attorney General's Use of Force Policy and supplemental use-of-force policies concerning specified types of weapons and ammunition. So too, the Attorney General is authorized to establish the rules governing how use-of-force incidents are investigated. See N.J.S.A. 52:17B-98 (providing 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").

Through the issuance of Attorney General Law Enforcement Directive No. 2006-5 (hereinafter: "Directive"), the Attorney General exercised this constitutional and statutory authority by establishing the basic process by which incidents are investigated when a police officer uses force

against a civilian. The Directive provides that investigations to determine the lawfulness of police use of force are not conducted by police agencies, but rather are conducted by and under the direct supervision of a County Prosecutor or the Division of Criminal Justice.

The Directive further provides that critical decisions are subject to multiple levels of independent review. For example, the Directive specifies that in determining whether the use of force was lawful, the circumstances of the incident must be presented to a grand jury, composed of 23 civilians, for its independent review unless the undisputed facts indicate that the use of force was justified under the law. Grand juries traditionally serve to ensure the rights of the accused and to assure the community that civilians, not just law enforcement officials, decide whether a criminal prosecution should be initiated.

In any case where a County Prosecutor overseeing the investigation decides not to present the matter to the grand jury for its review, that decision itself is subject to substantive review and approval by the Director of the Division of Criminal Justice. This independent review and oversight process is made possible by the Attorney General's supervisory authority as the State's chief law enforcement officer, and pursuant to the Attorney General's specific statutory authority to participate in or supersede any criminal investigation. See N.J.S.A. 52:17B-107(a).

Although New Jersey's existing procedures for investigating use-of-force incidents are already among the most comprehensive and rigorous in the nation, it is appropriate to strengthen those investigative standards and protocols to ensure that best practices are followed uniformly across the State. Accordingly, pursuant to the authority vested in me by the Constitution of the State of New Jersey and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, I hereby direct that Attorney General Law Enforcement Directive No. 2006-5 is amended and supplemented as follows:

1. Definitions.

As used in this Supplemental Directive:

- a. "Director" means the Director of the New Jersey Division of Criminal Justice.
- b. "Law enforcement agency" means any agency or department with law enforcement or prosecution powers and responsibilities operating under the authority of the laws of the State of New Jersey.
- c. "Law enforcement officer" means any law enforcement officer operating under the authority of the laws of the State of New Jersey.
- d. "Principal of the investigation" or "principal" means a law enforcement officer

whose conduct is the subject of the investigation conducted pursuant to this Supplemental Directive and Attorney General Law Enforcement Directive No. 2006-5.

- e. "Use-of-force investigation" or "investigation" means an investigation conducted pursuant to Attorney General Law Enforcement Directive No. 2006-5 of any use of force by a law enforcement officer involving death or serious bodily injury to a person, or where deadly force is employed with no injury, or where any injury to a person results from the use of a firearm by a law enforcement officer. These terms include an investigation of the use of such force by an officer while acting in the performance of official duties or exhibiting evidence of his or her authority notwithstanding that the officer was not on duty when the force was used. These terms do not include a criminal investigation of the use of force by an officer who was not acting in performance of official duties or exhibiting evidence of his or her law enforcement authority (e.g., while committing an act of domestic violence).

2. Scope and Supersedure.

This Supplemental Directive applies to all use-of-force investigations as defined herein, and supersedes any contrary provision of Attorney General Law Enforcement Directive No. 2006-5. Any provision of Attorney General Law Enforcement Directive No. 2006-5 not inconsistent with this Supplemental Directive shall remain in force and effect.

3. Comprehensive Conflicts Inquiry to Inform Supersession/Recusal Decisions.

When the investigation is conducted by the County Prosecutor, the Prosecutor shall as expeditiously as feasible determine whether any actual or potential conflict of interest exists that might undermine public confidence in the impartiality and independence of the investigation. As part of this comprehensive conflicts inquiry, the Prosecutor shall determine whether any member of the leadership team of the office (e.g., the County Prosecutor, First Assistant Prosecutor, Chief of Detectives, etc.), has had any personal or professional interaction with or relationship to the principal(s) of the investigation that might reasonably create an actual or potential conflict of interest for the member or office. The Prosecutor likewise shall determine whether any person assigned to participate in or supervise the use-of-force investigation has had any such personal or professional interactions with or relationship to the principals(s) of the investigation. The Prosecutor also shall determine whether the principal(s) of the investigation is/are expected to testify on behalf of the State in pending matters being prosecuted by the Prosecutor's Office, and whether the principal(s) of the investigation has/have, within the preceding 5 years, been assigned to a task force operating under the direct supervision of the Prosecutor's Office.

The County Prosecutor within 3 days of initiating the investigation shall report the results

of the comprehensive conflicts inquiry to the Director. The County Prosecutor shall have an ongoing responsibility to update the comprehensive conflicts inquiry report based on new information or the involvement of additional persons in the investigation. The initial report and any updates to that report shall be made in a manner and on a form as shall be prescribed by the Director. The Director shall develop and make available forms to facilitate the comprehensive conflicts inquiry reporting process.

Based on the information in the comprehensive conflicts inquiry report, and any such additional information as the Director may require the Prosecutor to provide, the Director shall determine whether the interests of justice would best be served by superseding the investigation, assigning the investigation to another County Prosecutor's Office, ordering the recusal of any person or persons from the investigation, or taking such other actions as may be needed to ensure the impartiality and independence of the investigation.

When the investigation is conducted by the Division of Criminal Justice, the Deputy Director responsible for overseeing the Attorney General Shooting Response Team, or other Assistant Attorney General designated by the Director, shall undertake the comprehensive conflicts inquiry, and shall report thereon to the Director. The Director shall determine whether any actions are needed to ensure the impartiality and independence of the investigation.

4. Authorization to Disseminate Investigative Information to Principals and Other Witnesses.

To prevent contaminating a witness's personal recollection of events, express prior authorization from the assistant prosecutor or assistant/deputy attorney general supervising the investigation, or his or her designee, is required before information learned in the course of the use-of-force investigation may be shared with or provided to any law enforcement or civilian witness to the use-of-force event, including a principal of the investigation. An employee of a law enforcement agency shall not directly or indirectly (*i.e.*, through another person) share information learned in the course of the use-of-force investigation, including but not limited to police video recordings or information learned from reviewing such videos, with any principal or other law enforcement or civilian witness without such prior authorization. Nor shall any law enforcement officer who is a witness to the use-of-force incident, including a principal, receive any such information from any sworn or civilian employee of a law enforcement agency without first obtaining authorization from the assistant prosecutor or assistant/deputy attorney general supervising the investigation, or his or her designee.

Any dissemination or receipt of investigative information without prior authorization as required by this section shall be reported promptly to the assistant prosecutor or assistant/deputy attorney general supervising the investigation, or his or her designee, who shall investigate the circumstances. The potential effects of any unauthorized dissemination or receipt of investigative information may be considered in determining whether the interests of justice would be served by

presenting the matter to a grand jury for its review, see section 6, and also may be considered in determining whether the interests of justice would be served by superseding the investigation, assigning the investigation to another County Prosecutor's Office, ordering the recusal of any person or persons from the investigation, or taking such other actions as may be needed to ensure the impartiality and independence of the investigation pursuant to section 3. Any law enforcement officer or civilian employee who knowingly violates this section shall be subject to discipline.

5. Procedures to Ensure That Investigations Are Conducted Independently From the Agency Whose Officer(s) Employed Force.

a. *General Rule Excluding Investigators From the Same Agency as the Officer(s) Who Employed Force.*

Except as may expressly be authorized pursuant to subsection b. or c. of this section, no employee of the police department or agency that employs the principal(s) of the investigation shall participate in the investigation or attend any investigative activities (e.g., interviews of principals or other witnesses), provided however that nothing herein shall be construed to preclude an officer employed by that department or agency from acting as a first responder to the scene of the use-of-force incident, from providing or facilitating medical assistance to any injured person, from helping to secure the scene (e.g., to control traffic or to prevent civilians from accessing the scene), or from participating in a be-on-the-lookout (B.O.L.O.) search for or pursuit of any person(s) suspected of a crime related to the use-of-force incident.

b. *Authorized Assistance for Good and Sufficient Cause.*

Notwithstanding the general rule established in subsection a. of this section, the County Prosecutor or designee, or Director or designee, may for good and sufficient cause authorize an officer or civilian employed by the department that employs the principal(s) of the investigation to assist in the investigation in the following circumstances:

i. *CSI Unit.*

Officers or civilians employed by a principal's department who have specialized crime scene investigation skills may be authorized to collect or document physical evidence at the scene when the County Prosecutor or designee, or the Director or designee, determines that the use of these personnel is necessary to support the investigation, provided that such personnel operate under the direct supervision of the on-scene assistant prosecutor or assistant/deputy attorney general overseeing the investigation, and further provided that the officers or employees shall operate independently of their ordinary chain of command and report directly to the County Prosecutor or designee, or to the Director or designee. Because of the exigent need

to dispatch officers or civilians with specialized crime scene investigation skills without delay, the County Prosecutor or Director may issue a standing order authorizing the use of an agency's CSI unit and personnel assigned to that unit, provided that the Prosecutor or Director finds in writing that such standing authorization is necessary to ensure the prompt collection/documentation of evidence by qualified personnel following a use-of-force incident, and that without such a standing order, a reasonable probability exists that evidence at the scene will not be collected/documented in a timely and proper manner.

ii. *Forensic Laboratory Examiners.*

Officers or civilians employed by a principal's department may be authorized to perform laboratory, ballistics, or other forensic tests or examinations where the County Prosecutor or designee, or the Director or designee, determines that the use of such laboratory facility/forensic unit/personnel is necessary to support the investigation, and further provided that such personnel shall operate independently from their ordinary chain of command and report directly to the County Prosecutor or designee, or to the Director or designee.

iii. *Other Specialized Expertise.*

Officers or civilians employed by a principal's department may be authorized to assist the investigation through their specialized knowledge, skills, non-English language proficiency, or training not otherwise accounted for in subsection b(i) or (ii), provided that the County Prosecutor or designee, or the Director or designee, determines that their specialized knowledge, skills, non-English language proficiency, or training is necessary to support the investigation, balancing practical, logistical, and operational needs against the possibility that such participation might undermine public confidence in the impartiality and independence of the investigation, and further provided that such personnel shall operate independently of their ordinary chain of command and report directly to the County Prosecutor or designee, or to the Director or designee.

iv. *Agency Liaison.*

An officer or civilian employee of the department may be designated by the County Prosecutor or designee, or the Director or designee, to serve as a liaison to the investigative team to facilitate obtaining departmental documents (e.g., personnel or internal affairs records, records involving other cases, etc.), identifying employees and providing contact information, identifying and locating local residents/witnesses, and performing other ministerial support functions.