

New Jersey Office of the Attorney General Division of Criminal Justice



Uniform Statewide Procedures and Practices for
Investigating and Reviewing
Police Use-of-Force Incidents

Governing Attorney General Directives

- Attorney General Directive 2006-5
 - Establishes procedures for multi-layered, independent investigation and review of police use-of-force incidents.
 - http://www.nj.gov/oag/dcj/agguide/directives/dir2006_5.pdf
- 2015 Independent Prosecutor Directive
 - Takes additional steps to ensure transparency and thorough review by multiple layers of independent, neutral prosecutors.
 - http://www.nj.gov/oag/dcj/agguide/directives/2006-5_SRT_OIS.pdf

2015 Independent Prosecutor Directive

- **Collaborative Process.** 2015 Independent Prosecutor Directive drafted based on extensive study and collaboration with law enforcement and community leaders:
 - Asian Law Enforcement Officers Association
 - BIC (Black Issues Conference)
 - NJ Chiefs of Police Association
 - NJ Communities Forward
 - County Prosecutors and County Chiefs of Detectives
 - Division of Criminal Justice
 - NJ Institute for Social Justice
 - Latino Leadership Alliance
 - NAACP
 - National Action Network
 - NOBLE (National Organization of Black Law Enforcement Executives)
 - NJ State Police

Core Principles

Seven core principles underlie both Directives:

- Comprehensive, rigorous, impartial investigation;
- Maintenance and protection of integrity of ongoing investigations and rights of the accused;
- Mandatory review of all actual and potential conflicts of interest;
- Multi-tiered layers of independent prosecutorial review;
- Uniformity in statewide investigative and legal practice, including grand jury practice;
- Transparency of process and factual findings at appropriate junctures;
- Ongoing outreach and study.

Two Review Processes: OIS and SRT

- Every police use-of-force case is investigated and reviewed under one of two designations:
 - (1) Officer-Involved Shooting (“OIS”):** Any use of force by a municipal police officer; or
 - (2) Shooting Response Team (“SRT”):** Any use of force by a county-level officer (county prosecutor’s office investigator, county sheriff’s officer, etc.); state-level officer (State Police, Division of Criminal Justice, Bureau of Parole, etc.); or federal officer (FBI, DEA, etc.).

OIS: Independent Investigation by County Prosecutor

- **County Prosecutor:** OIS investigations are overseen and conducted by the County Prosecutor (not by the involved municipal police department).
 - DCJ receives immediate notification of the investigation.
- **Walling-Off:** The municipal police department that employs the officer who is the subject of the investigation must be walled off from conducting the investigation.
 - The involved municipal police department may conduct necessary first-responder functions, and may perform necessary CSI, forensic, or other specialized functions, but only with written authorization from the County Prosecutor.
- **Conflicts Check:** Within 72 hours of any incident, County Prosecutor must conduct a comprehensive review for actual or potential conflicts of interest between investigating personnel and the officer being investigated.
 - Conflicts check applies to the County Prosecutor, first assistant, chief of detectives, and all members of the investigative team.
 - Results must be reported to the AG/DCJ, who will determine whether any individuals must be walled off, or if the entire case must be superseded (i.e., reassigned to another County Prosecutor or DCJ).

OIS: Presumption of Grand Jury

- **Grand Jury:** At conclusion of an investigation, County Prosecutor determines whether case should be presented to grand jury.
 - Grand jury is comprised of 23 civilians, drawn at random from the public.
- **Presumption of Grand Jury:** County Prosecutor must present all cases to grand jury unless “the undisputed facts indicate that the use of force was justifiable under the law.”
 - Also may present to grand jury when “in the interests of justice,” including to enhance public confidence in thoroughness, impartiality and integrity of investigation.

OIS: Independent Review of County Prosecutor by DCJ

- **Independent Review by Attorney General / Division of Criminal Justice**
 - If County Prosecutor determines that a case does not need to be presented to a grand jury, that determination is independently reviewed by AG/DCJ.
 - AG/DCJ conducts independent review of the entire case file, including County Prosecutor's factual findings and legal analysis.
- **AG/DCJ Determination:** After completing its independent review, AG/DCJ determines next steps:
 - **Grand Jury:** case must be presented to grand jury (presumption of grand jury).
 - **No Grand Jury:** case does not need to be presented to grand jury ("the undisputed facts indicate that the use of force was justifiable under the law").
 - **Administrative Review:** police officer's conduct must be reviewed for administrative / disciplinary action (can accompany grand jury and potential criminal charges).
 - **Further Investigation:** County Prosecutor must conduct additional investigation and re-submit case to AG/DCJ for review.

SRT: Independent Investigation Overseen by AG/DCJ

- **SRT:** Investigations of use of force by county, state, or federal officers are conducted by the Attorney General's Shooting Response Team (SRT).
 - **Composition:** SRT is comprised of Deputy Attorneys General, State Police Major Crimes Unit detectives, and DCJ detectives.
- **Conflicts Check:** Within 72 hours of any incident, the SRT must conduct a comprehensive review for actual or potential conflicts of interest between investigating personnel and the officer being investigated.
 - Conflicts check applies to the DCJ Director, DCJ chief of detectives, and all members of the investigative team.
 - Results must be reported to the AG/DCJ, who will determine whether any individuals must be walled off, or if the entire case must be superseded.
- **Chain of Command:** SRT chain of command runs directly and exclusively to Director of DCJ and the Attorney General.
 - SRT chain of command operates separately and independently of normal State Police chain of command.

SRT: Presumption of Grand Jury

- **Grand Jury:** At conclusion of an investigation, AG and DCJ Director determine whether case should be presented to grand jury (comprised of civilian members of the public).
- **Presumption of Grand Jury:** Must present all cases to grand jury unless “the undisputed facts indicate that the use of force was justifiable under the law.”
 - Also may present to grand jury when “in the interests of justice,” including to enhance public confidence in thoroughness, impartiality and integrity of investigation.
- **Same standard as in OIS (municipal) cases,** as described above.

Crimes and Legal Justification

- **Crimes:** In all cases, grand jury is instructed as to potentially applicable crimes, and the legal requirements (“elements”) to prove each crime.
 - **Examples:** murder, attempted murder, aggravated assault, etc.
- **Justification:** Any criminal charge, in any case, is subject to a defense of justification. Three primary legal bases for justification in OIS/SRT cases:
 - **Self-defense (N.J.S.A. 2C:3-4):** actor can use only that amount or degree of force that he reasonably believes is necessary to protect himself against harm. If the actor is attempting to protect himself against exposure to death or the substantial danger of serious bodily harm, he may resort to the use of deadly force. Otherwise, he may resort only to non-deadly force.
 - **Defense of others (N.J.S.A. 2C:3-5):** use of force, including deadly force, is justifiable to protect a third person when: (1) the actor would be justified in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; and (2) under the circumstances as the actor reasonably believes them to be, the person whom he seeks to protect would be justified in using such protective force; and (3) actor reasonably believes that his intervention is necessary to protect the other person.
 - **Use of force in law enforcement (N.J.S.A. 2C:3-7A):** actor may use force when making or assisting in making arrest and reasonably believes that such force is immediately necessary to effect lawful arrest. Limited to arrests for crimes of homicide, kidnapping, sexual assault, criminal sexual contact, arson, robbery, burglary of a dwelling, or attempt to commit one of these crimes; and the actor reasonably believes: (a) there is an imminent threat of deadly force to himself or to a third party; or (b) the use of deadly force is necessary to thwart the commission of a crime listed above; or (c) the use of deadly force is necessary to prevent an escape.
- **Proof:** Once justification is asserted as a defense, the prosecution must disprove the justification beyond a reasonable doubt.

Post-Closure Public Statement

- **Public Statement:** Where a case is not presented to a grand jury, or where a grand jury votes “no true bill” (no criminal charges), County Prosecutor or DCJ must issue a public statement setting forth findings of the investigation and findings regarding justification for use of force. (2015 Supp. Directive).

Ongoing Study and Outreach

- **Advisory Group:** Formation of Advisory Group, comprised of law enforcement and community stakeholders, to continue to study the process and make recommendations for further improvements.
 - Resulted in issuance of **AG Directive 2018-1**, requiring presumptive public release of body-cam and dash-cam videos of police lethal force events upon substantial completion of initial investigation (typically, 20 days)
- **Outreach:** Requires development of outreach materials and requires each County Prosecutor to hold community outreach events.
 - **New initiative under AG Grewal:** Mandatory community outreach events in every county, four per year