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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2016-5

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

FROM: Christopher S. Porrino, Attorney General

DATE: October 4, 2016

SUBJECT: Law Enforcement Directive Establishing a Community-Law Enforcement Affirmative Relations Continuing Education Institute

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1. INTRODUCTION AND OVERVIEW: USING CONTINUING EDUCATION OF POLICE OFFICERS TO BUILD UPON RECENT ATTORNEY GENERAL INITIATIVES TO ENHANCE COMMUNITY-LAW ENFORCEMENT RELATIONS

In his conditional veto message returning Assembly Bill No. 1663 (First Reprint) with recommendations for reconsideration, Governor Christie recently emphasized that effective and responsible law enforcement requires a collaborative relationship between the police and all residents within their jurisdiction. The Governor further concluded that cultural diversity training would assist in promoting positive interactions between police and the communities they serve. To that end, on August 9, the Governor signed Assembly Bill No. 1663 into law as amended in accordance with his recommendations. The new law, P.L. 2016, c. 23, requires the Department of Law and Public Safety to create or identify a uniform cultural diversity training course to promote positive interaction with, and community outreach to, all residents within a community, including residents of all racial, ethnic, and religious backgrounds and lesbian, gay, bisexual, and transgender individuals. The statute requires that this cultural diversity course be made available to all county, municipal, and campus police departments in the State.

The statutory requirement to develop this specific training course presents an opportunity to enhance the entire process by which officers throughout the State stay abreast of new developments affecting the law enforcement profession and its relationship to the community. Continuing education must become an important component of New Jersey's comprehensive plan of action for enhancing police-community relations. To fully understand how and why in-service training can contribute to the goal of promoting positive interactions between police and the communities they serve, it is appropriate to recount recent initiatives undertaken by the Department of Law and Public Safety to address one of the major challenges confronting police departments and community leaders – the use of deadly force by police officers.

In 2015, events across the nation presented an opportunity, and responsibility, for my office to re-examine our State's policies concerning the law enforcement decision to use deadly force and the manner in which police-involved shootings are investigated. Although New Jersey's procedures for investigating use-of-force incidents were already among the most comprehensive and rigorous in the nation, the Attorney General issued a supplemental directive in July 2015 to strengthen those investigative standards and ensure that best practices are followed uniformly across the state. The supplemental directive ensures that all deadly-force incidents are investigated in a fair, expeditious, thorough, and impartial manner that bolsters public confidence in the integrity and independence of these investigations.

The Attorney General issued another directive on the same day instructing police departments how to deploy body-worn cameras in a manner that promotes officer accountability while simultaneously protecting officers from false allegations of excessive force and respecting citizens' privacy rights. Body-worn cameras can enable police to document objectively the circumstances that lead to the police decision to use force, including deadly force. After issuing the body-worn camera directive, the Attorney General awarded \$2.5 million in grant funds to help police departments obtain these devices, and recently announced a second round of more than half a million dollars in grant funding. The Attorney General has since issued yet another directive that authorizes the measured use of conducted energy devices so that these weapons might be more readily available as an alternative to deadly force.

All three directives were designed to enhance police-community relations by addressing different aspects of an especially sensitive issue – the use of lethal force by police against a citizen – that by its inherent nature creates tension between police departments and the communities they protect and serve. Recognizing the complexity of the issues relating to the police use of lethal force, those directives addressed public concerns from different perspectives. The substantive content of the directives is important. The deliberative and collaborative process by which those three directives were developed and thereafter implemented also turned out to be critically important. The cutting-edge policies and procedures established by those directives were not created in a vacuum. Rather, they were the product of candid conversations between law enforcement executives and community leaders.

Those conversations did not cease when the directives were issued. The officer-involved shooting supplemental directive called for the creation of an Advisory Committee, consisting of members of the community and law enforcement, tasked to make recommendations on how to further improve the process for investigating police use-of-force incidents. The body-worn camera directive likewise established an Advisory Committee to develop best practices on the use of that new technology. Recognizing that these directives share a common underlying purpose, namely, to strengthen police-community relations, the two Advisory Committees have since been merged.

The officer-involved shooting supplemental directive also instructed the Division of Criminal Justice and County Prosecutors to develop community outreach programs to ensure that county and local law enforcement officials engage community and faith-based leaders before use-of-force incidents occur. Those outreach programs, which have been very well received, provide opportunities to explain how the investigative process works and how multiple layers of review help to ensure the independence and integrity of these investigations.

In addition to traditional community outreach meetings to explain the law and Attorney General policies governing the use of force by law enforcement, some prosecutors have invited community and faith-based leaders to gain hands-on experience in police use-of-force training by using virtual firearms training simulators to show how split-second decisions actually are made. These direct-participation scenario-based events provide community leaders the opportunity to walk in the shoes of a police officer during swiftly-evolving police-citizen encounters where the use of

deadly force may – or may not – be warranted. That experience has proved to be especially effective at building bridges between community leaders and the law enforcement professionals attending these events.

It is now appropriate to build upon the foundation laid by the prior Attorney General directives, recognizing that the pursuit of enhanced police-community relations is a work in progress. While it remains an important goal to foster communication between law enforcement chief executives and community and faith-based leaders, it is just as important to build rank-and-file officers into the process. It is not enough, in other words, to impose and enforce policies and protocols to channel the discretion of officers in the field. Rather, it is necessary to engage officers in training that enables them to explore why those policies and protocols are needed to enhance their relationship with the citizens they protect and serve. The concerns, ideals, and values candidly expressed at community-outreach events must be ingrained in the culture of modern policing, and thus must be shared with every officer in every duty assignment. Community policing, after all, is more than having uniformed officers walk a beat. Rather, it is an overarching strategy that depends on collaboration between police departments and community groups to identify and solve local neighborhood problems. At its core, community policing embraces the notion that officers are an integral part of, not isolated from, the communities they serve. For community policing to be effective, officers at all ranks must understand why and how their decisions impact the community by enhancing, or diminishing, public confidence in the integrity and impartiality of the law enforcement function.

Officers also will benefit from understanding how their relationship to the community affects their own safety. When segments of our society are afraid or mistrustful of police, those citizens during encounters with police are more likely to engage in behaviors, such as fighting or fleeing, that put officers at risk. The goal of enhancing officer safety – a concern raised to the forefront by deeply disturbing recent events across the nation where officers have been targeted for violence – cannot be viewed in isolation from the goal of enhancing police-community relations.

While the core values of professionalism, fairness, compassion, and impartiality must first be taught to new recruits at police academies, these principles also must be reinforced throughout an officer’s career. A continuing education program would help to ensure that every officer understands how the exercise of police discretion is viewed by and impacts the community, and how officers on patrol and every other duty assignment can contribute to the goal of improving police-community relations in a constantly-changing world.

Pre-service training for police recruits is strictly regulated through prescribed curricula approved by the Police Training Commission for county and local law enforcement agencies, and by the Superintendent of State Police for State Police members. In contrast, in-service training for current county, local, and campus police officers – the equivalent of continuing education programs in other professions – for the most part is left to the discretion of local departments and County

Prosecutors. There are only a few statewide in-service training requirements.¹ At present, there is no uniform statewide policy regarding the specific courses of in-service training that are provided to county and local officers, and thus no uniform statewide policy to ensure that after graduating from a police academy, officers participate in education programs to help them deal with the challenges they will confront as the policing environment changes around them.

The uniform cultural diversity course developed pursuant to P.L. 2016, c. 23 is a crucial step to help fill the void. However, no single course – even one as comprehensive as the one contemplated by the new law² – can ensure that officers will stay apprised of important developments affecting police-community relations, especially if officers need only take the course on a single occasion. The goal of maintaining the highest professional standards cannot be achieved by a single in-service training event. What is needed is an entire library of courses and a coordinated continuing education system that provides opportunities for sustained professional growth throughout an officer's career.

The Governor in his conditional veto message expressly recognized in this regard that the Attorney General already has the authority to require individual local law enforcement departments to abide by the basic components of a uniform statewide action plan to enhance police-community relations. Although that plan necessarily includes the cultural diversity course required by the new law, it should not be limited to that course given that the goal of enhancing police-community relations is a multi-faceted one that requires a sustained, multi-faceted system for educating officers throughout their careers as peace officers.

For all of the foregoing reasons, it is appropriate to exercise the Attorney General's constitutional and statutory authority as the State's chief law enforcement officer, responsible for the

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See, e.g., N.J.S.A. 2C:25-20a(2) (requiring four hours of annual in-service training on the handling, investigation, and response procedures concerning reports of domestic violence and abuse and neglect of the elderly and disabled); Attorney General Use of Force Policy (2000), §II(A) (requiring semiannual use of force and vehicular pursuit training as part of the semiannual firearms re-qualification process). See also Attorney General Law Enforcement Directive No. 2005-1 (requiring a single three-hour episode of in-service training on the uniform statewide policy that prohibits all forms of racially-influenced policing).

²

The statute requires the uniform cultural diversity course to include instruction on:

- (1) the various cultural communities and the effects of diversity on community relations within a community;
- (2) appropriate methods by which an officer may interact with people of various cultures and religions in the community, with an emphasis on officer safety skills and conflict resolution techniques;
- (3) best practices in law enforcement techniques when analyzing and solving local neighborhood problems, meeting with community groups, and working with citizens on crime prevention programs; and
- (4) the impact that police diversity skills have on overall law enforcement effectiveness.

general oversight of law enforcement and for ensuring the uniform and efficient enforcement of the criminal law and the administration of criminal justice, N.J.S.A. 52:17B-98, to establish and implement a system of continuing education to enhance police-community relations.

Accordingly, I, Christopher S. Porrino, Attorney General of the State of New Jersey, pursuant to the authority vested in me by the Constitution of the State of New Jersey and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, hereby DIRECT that all law enforcement agencies and officers operating under the authority of the laws of the State of New Jersey implement and comply with the following provisions:

2. ESTABLISHMENT OF THE ATTORNEY GENERAL COMMUNITY-LAW ENFORCEMENT AFFIRMATIVE RELATIONS CONTINUING EDUCATION INSTITUTE

There is hereby established in the Division of Criminal Justice an Attorney General Community-Law Enforcement Affirmative Relations Continuing Education Institute (“Institute”) to implement and oversee the provisions of P.L. 2016, c. 23 and this Directive. The Institute shall be staffed by such personnel in the Division of Criminal Justice as the Director of the Division determines. The Institute shall work in cooperation with the County Prosecutors’ Association of New Jersey, the New Jersey State Police, the Office of Law Enforcement and Professional Standards, the New Jersey Association of Chiefs of Police, and such other law enforcement agencies and organizations, community, faith-based, and educational organizations, and civic leaders as the Director deems appropriate to accomplish the goals set forth in this Directive.

The Institute’s mission shall include, but not be limited to, identifying or developing the cultural diversity training course and materials required by P.L. 2016, c. 23. That course shall be made available in a format that allows officers to participate via the Internet or to view an electronic recording of the course (e.g., a DVD), and shall be designed so that it may be viewed in segments over time to afford flexibility in scheduling an officer’s participation. The course should not merely present factual information, but rather shall, to the extent practicable, present and discuss scenarios (i.e., scenario-based training) designed to enhance an officer’s decision-making skills. The course shall include a test to confirm that officers taking the course understand the principles that are presented.

3. CONTINUING EDUCATION PROGRAM

A. Annual In-Service Training Participation. Every sworn officer employed on a full- or part-time basis by a law enforcement agency operating under the authority of the laws of the State of New Jersey shall, by December 1, 2017, participate in not less than five credit hours of qualifying continuing education as defined in this Directive. Thereafter, such officers shall participate in not less than three credit hours of qualifying continuing education per year.

On or before January 31 of each calendar year starting in 2018, each agency shall report in

writing to the appropriate County Prosecutor, or to the Director of the Division of Criminal Justice in the case of a State law enforcement agency, documenting 1) the number of sworn officers employed by the agency who satisfactorily participated in the required number of qualifying continuing education credit hours during the preceding calendar year, and 2) identifying the steps that will be taken to ensure that any officer who did not participate in the required number of qualifying continuing education credit hours in the preceding year satisfies that year's requirement as soon as practicable. Each County Prosecutor shall report to the Director on compliance with this Directive by county and municipal agencies subject to the Prosecutor's supervisory authority. Nothing in this Directive shall be construed in any way to impose upper limits on the number of hours of in-service training provided by a department.

B. Methods of Satisfying Requirement. Participation in a qualifying course of instruction may be achieved by attending a live in-person presentation, by watching a live presentation broadcast electronically from a remote location, or by viewing an online tutorial or pre-recorded presentation (e.g., an NJ Learn or other web-based program, a DVD, etc.). Nothing in this Directive shall be construed to require any officer to travel to a training site, and participation in qualifying continuing education courses pursuant to this Directive may be satisfied by viewing course materials, a video presentation, or an online tutorial while at the officer's duty station or such other location, and at such times, as shall be determined by the chief executive of the agency that employs the officer.

C. Qualifying Courses That Satisfy Other In-Service Training Requirements. Participation in a qualifying continuing education course also may be used to satisfy the in-service training requirements associated with the semiannual firearms re-qualification process, see note 1, provided that the continuing education course relates to the police use of force or techniques or strategies to avoid the need to use force. Participation in a qualifying course of instruction also may be used to satisfy the training requirements set forth in N.J.S.A. 2C:25-20a(2), see note 1, provided that the continuing education course relates to interactions with persons during domestic violence incidents or investigations, or events or investigations involving the abuse of the elderly or disabled persons. Nothing in this paragraph shall be construed to excuse or reduce the in-service training requirements set forth in the Attorney General Use of Force Policy or in N.J.S.A. 2C:25-20a(2). Rather, this paragraph allows an in-service training event to satisfy the requirements set forth in the Use of Force Policy and/or the Prevention of Domestic Violence Act while also satisfying the continuing education provisions of this Directive. The chief executive of the agency that employs the officer, or the County Prosecutor where the Prosecutor chooses to exercise such authority with respect to agencies subject to the prosecutor's supervisory authority, shall determine the content of the in-service training provided to satisfy the in-service training requirements in the Use of Force Policy and the Prevention of Domestic Violence Act.

D. Repeated Courses. An officer shall not receive credit for participating in the same course of instruction presented on two or more occasions unless the course has been substantially modified, as determined by the Institute.

4. QUALIFYING CONTINUING EDUCATION COURSE CATALOG

4.1 Designation of Qualifying Continuing Education Courses.

A. Catalog of Qualifying Courses. The Institute shall compile a catalog of courses of instruction that are relevant to the goal of enhancing the relationship between police agencies and officers and the communities they protect and serve. For purposes of this Directive, the term “course of instruction” includes a training course, program, seminar, presentation, moderated group discussion, online tutorial, or other educational program or event designed to share information and enhance the knowledge of course participants. Courses of instruction included in the Institute’s catalog shall constitute qualifying continuing education courses for purposes of the continuing education requirement set forth in Section 3 of this Directive. The Institute shall designate the number of credit hours that may be earned for each course. If a course of instruction is updated, the Institute shall determine whether the course has been substantially modified for purposes of subsection 3(D).

B. Standards for Designating Courses. The Institute may establish standards for determining which courses of instruction should be included in the catalog. These courses of instruction may be developed by or specifically for the Institute, by or for a New Jersey law enforcement agency or a law enforcement agency in another jurisdiction, by a college, university, or law school, or by a non-profit organization or foundation. The catalog shall not include any course of instruction presented to officers by a for-profit corporation for a fee paid to be paid by the officer’s department or the officer. Nothing herein shall limit the authority of a law enforcement agency to contract with a vendor to design or develop a course.

C. Disclaimer. Inclusion in the catalog shall not be construed as an endorsement of the views or opinions expressed in the presentation of the course, but rather merely indicates a finding by the Institute that the course is relevant to the goal of enhancing police-community relations. The authors and presenters are solely responsible for the content of a qualifying course of instruction.

D. Non-exhaustive List of Relevant Topics. Specific topics relevant to the general goal of enhancing police-community relations may include, but need not be limited to: de-escalation techniques; cultural diversity and cultural awareness; racial profiling/racially-influenced policing; implicit bias; conflict resolution; communications skills; crisis intervention training and responding to persons with special needs (e.g., mental health issues); and investigating bias crimes.

4.2 Course Selection.

All officers should participate in the course of instruction identified or developed pursuant to P.L. 2016, c. 23 within one year of the course being made available by the Department of Law and

Public Safety. (Note that the five-credit-hour requirement for calendar year 2017 contemplates that officers will participate in this particular course of instruction in that calendar year.) The Director of the Division of Criminal Justice, or the County Prosecutor with respect to law enforcement officers and agencies subject to the Prosecutor's supervisory authority, may at any time designate one or more other courses of instruction that all officers should take within a prescribed period of time. Otherwise, the determination as to which courses of instruction an officer participates in shall be determined by the chief executive of the agency that employs the officer.

5. COUNTY PROSECUTORS' AUTHORITY

County Prosecutors may submit for possible inclusion in the Institute's catalog any courses of instruction provided to or by law enforcement agencies within the Prosecutor's jurisdiction that relate to the goal of enhancing police-community relations. Nothing in this Directive shall be construed to limit the authority of a County Prosecutor to impose in-service training requirements for agencies subject to the Prosecutor's supervisory authority, to impose limits on which qualifying courses of instruction officers may attend, to determine how agencies subject to the Prosecutor's supervisory authority comply with the semi-annual in-service training requirements set forth in the Attorney General Use of Force Policy or the annual in-service training requirements set forth in N.J.S.A. 2C:25-20a(2), see paragraph (C) of Section 3, or to designate specified qualifying courses of instruction that officers must attend. See subsection 4.2.

6. ADVISORY COMMITTEE

The Advisory Group established pursuant to the July 28, 2015 Supplemental Directive amending Attorney General Law Enforcement Directive No. 2006-5 shall also serve to provide advice to the Institute, and may review, comment on, and recommend courses of instruction for inclusion in the Institute's catalog of qualifying courses. The Director of the Division of Criminal Justice may in his or her discretion expand the membership of the Advisory Group to account for this new task.

7. VIRTUAL FIREARMS SIMULATION MODEL PROGRAMS

Section 11 of the officer-involved shooting supplemental directive issued by the Attorney General on July 28, 2015 called for the development of model outreach programs to engage community and faith-based leaders before use-of-force incidents occur. Based upon extremely positive feedback concerning one particular type of interactive outreach program that should be replicated to the greatest extent practicable, County Prosecutors, working in cooperation with local police officials, are strongly encouraged to implement a program in which selected community and faith-based leaders and other appropriate civilians (e.g., leaders of college-based civil rights organizations, etc.) are invited to use a virtual firearms simulator to experience first-hand how police officers decide whether to employ deadly force. The purpose of these interactive programs in which community leaders portray police officers in simulated encounters is not just to demonstrate to civilian participants that police officers face dangers and have to make split-second, life-altering decisions, but also to show how the physiological effects of stress during a use-of-force encounter

impact an officer's ability to perceive and recollect critical facts. Each presentation should include a discussion of how the Attorney General Use of Force Policy and the use-of-force justification defenses established under the New Jersey Code of Criminal Justice apply to the specific audio-video scenario that was presented. The program also should include a segment where each civilian who portrayed a police officer is interviewed as if he or she were the principal of a use-of-force investigation to demonstrate how human perception and memory can differ from an objective electronic recording of sudden events.

8. QUESTIONS

Questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or his designee.

9. EFFECTIVE DATE

This Directive shall take effect immediately, except that the annual continuing education requirement set forth in Section 3 shall commence on February 1, 2017 (the effective date of P.L. 2016, c. 23). Any course of instruction designated at any time as a qualifying course that is taken during the period between the issuance of this Directive and February 1, 2017, shall be credited to the officer's 2017 continuing education activities.



Christopher S. Porrino
Attorney General

ATTEST:



Elie Honig
Director, Division of Criminal Justice

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