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TO: All Law Enforcement Chief Executives; All County Prosecutors

FROM: Matthew J. Platkin, Acting Attorney General

DATE: February 18, 2022

SUBJECT: **Updated Guidance on the Role of Law Enforcement in Election Activities**

The right to vote in free and fair elections is the cornerstone of our democracy. New Jersey voters have several options for participating in our democratic process. Voting at a polling place on Election Day and voting by mail are longstanding and familiar options. In recent years, the state also has increased access to the democratic process by expanding voters' options to include voting in person before Election Day at early voting locations and casting a vote-by-mail ballot at a ballot drop box.

In past years, the Office of the Attorney General has issued guidance concerning certain election laws and the role of law enforcement officers in elections. Last month, the Legislature passed and the Governor signed into law P.L. 2021, c. 459, which establishes new parameters for law enforcement presence at polling places, early voting sites, and ballot drop boxes. Given this recent legislation, I am now issuing this updated guidance to help our state's law enforcement leaders remain fully informed about the role of law enforcement in elections.

As in the past, this guidance is not exhaustive, but rather emphasizes New Jersey's rules regarding law enforcement activity at polling places, early voting sites, and ballot drop boxes, as well as the importance of protecting voters from intimidation and coercion. With your assistance and cooperation, we will continue to ensure that elections in New Jersey are conducted safely, securely, and in accordance with our country's highest democratic ideals.



Prohibitions on Voter Intimidation

Among the laws that law enforcement officers may be called upon to enforce are the laws securing the right to vote and protecting voters from intimidation and harassment. This duty may arise on Election Day or earlier, including but not limited to the early voting period.

New Jersey has strong protections in place against voter intimidation, including several that were enacted following our 1981 gubernatorial election. During that election, a political party allegedly intimidated voters on Election Day by posting at polling places off-duty law enforcement officers who wore armbands identifying them as members of a “National Ballot Security Task Force.” Some of these off-duty officers wore equipment normally associated with law enforcement personnel, such as two-way radios and firearms. These tactics prompted the Legislature to enact rules limiting law enforcement officers’ activity relating to elections, including the recently-enacted P.L. 2021, c. 459.

For similar reasons, federal law imposes additional restrictions on federal officers and employees’ involvement in elections. *See, e.g.*, 18 U.S.C. § 592 (generally prohibiting deployment of federal troops or armed men at any place where an election is held, except where “necessary to repel armed enemies of the United States”); *id.* at § 593 (prohibiting interference in elections by an officer or member of the Armed Forces of the United States); *id.* at § 595 (prohibiting interference in elections by other federal employees).

Other laws that protect voters from intimidation apply generally to all members of the public. For example, it is a crime of the second degree for any person, including an election official or law enforcement officer, to knowingly and willfully intimidate, threaten or coerce—or attempt to intimidate, threaten or coerce—another person from voting, attempting to vote, or urging or aiding another person to vote or attempt to vote. *See* N.J.S.A. 19:34-1.1. State law also prohibits any person from using or threatening use of force, violence, or restraint; inflicting or threatening to inflict any injury, damage, harm or loss; or in any manner practicing intimidation upon or against any person, in order to “induce or compel” that person to vote or refrain from voting or voting for any particular person or on account of that person having voted or refrained from voting. *See* N.J.S.A. 19:34-28. Likewise, it is a federal crime to intimidate, threaten, or coerce—or attempt to intimidate, threaten, or coerce—any other person for the purpose of interfering with their right to vote or to vote as they may choose in a federal election. *See* 18 U.S.C. § 594. These protections apply at all times and locations, including but not limited to polling places, ballot drop boxes, and their immediate surroundings.

Obstructing or interfering with a voter’s free exercise of the elective franchise—at a polling place or elsewhere—is also illegal. *See* N.J.S.A. 19:34-29; *see also* N.J.S.A. 19:34-20 (making it a crime of the third degree to in any way willfully hinder or prevent a voter from casting their legal vote, knowing such person has a right to vote); N.J.S.A. 19:34-20 (making it a crime of the third degree to tamper with, injure, mutilate, destroy or render unfit for use, any ballot box); N.J.S.A. 19:63-28(a) (making it a crime of the third degree to prevent or attempt to prevent by fraud the voting by mail of any person legally entitled to do so); N.J.S.A. 19:34-6(a) (making it a crime of the third degree to obstruct the entrance to any polling place, obstruct or interfere with any voter, or loiter in or near a polling place).

There are additional rules that govern conduct at polling places, early voting locations, and ballot drop boxes. For example, no person shall wear, display, sell, give, or provide any political or campaign slogan, badge, button, or other insignia associated with any political party or candidate within 100 feet of any of these locations, except with respect to the badge furnished by the county board of elections as provided by law. N.J.S.A. 19:63-16.1(b)(2)(g); *see also* P.L. 2021, c. 459, *codified* at N.J.S.A. 19:63-16.1(g) (applying this rule to ballot drop boxes). Moreover, it is prohibited to engage in electioneering within 100 feet of any of the above locations. N.J.S.A. 19:34-6; N.J.S.A. 19:34-15 (as amended by P.L. 2021, c. 459). Electioneering includes oral or printed communications (such as messages on signs, leaflets, t-shirts, masks, etc.) in support of, or opposition to, a candidate, campaign, party, or public question on the ballot.

Individuals who aid or abet violations of election laws may be subject to criminal liability. *See* N.J.S.A. 19:34-20; N.J.S.A. 19:63-28(b). Of course, individuals engaged in voter intimidation or obstruction also may be in violation of laws that do not pertain specifically to elections. Criminal laws concerning weapons, assault, harassment, bias intimidation, and paramilitary activity (*see* N.J.S.A. 2C:39-14) are among the many potentially relevant statutes. Law enforcement officers called upon to address voter intimidation or obstruction should consider the applicability of both the election laws and generally applicable statutes.

Role of Law Enforcement In Elections

New Jersey's law enforcement officers are entrusted with the special responsibility and authority to keep residents safe. Nevertheless, the involvement of law enforcement in election-related activities—even in the lawful performance of official duties—may cause unease for some New Jersey residents seeking to exercise their right to vote. In part for this reason, our state laws limit the involvement of both on- and off-duty law enforcement officers in elections.

At the county and local levels, civilian election officials—not law enforcement officers—are in charge of administering elections, just as at the state level, it is the Division of Elections within the New Jersey Department of State—not the Department of Law & Public Safety or the Office of the Attorney General—that are entrusted with election-administration responsibilities.

Thus, during the early voting period for an election and on Election Day, responsibility for preserving the peace and maintaining good order in early voting locations and polling places lies principally with poll workers (district board members under N.J.S.A. 19:6-15, and elections officers under N.J.S.A. 19:15A-1(d)). In addition, county superintendents of elections and their staff may remove from any polling place or early voting location or other place where an election is being held any person who violates the state's election laws or in any way unlawfully interferes with the conduct of an election. *See* N.J.S.A. 19:32-25. In the rare cases where such action is necessary, these election officials may call upon law enforcement officers to assist with the arrest or removal of individuals who refuse to comply with the election laws or the lawful commands of election officials. *See, e.g.*, N.J.S.A. 19:32-22; N.J.S.A. 19:32-45.

The Legislature recently enacted P.L. 2021, c. 459, which establishes the following additional parameters for police presence at early voting locations, polling places, and ballot drop boxes.

First, although a poll worker may request police officers to assist in preserving the peace and order in and about an early voting location or a polling place, a poll worker may make such a request only with regard to a “specific emergency, allegation of criminal conduct, or disturbance that exists at the time the request for assistance is made.” N.J.S.A. 19:6-16(b). Police officers or law enforcement officers responding to such a request for assistance shall take any prompt actions as may be available and as necessary to address the emergency or allegation or disturbance and shall remain “only as long as necessary to investigate, address, and remove that specific emergency or disturbance.” *Ibid.* Officers may also investigate, address or remove any cause for a disturbance or otherwise respond to a request for assistance on or around the premises of the location of a ballot drop box. N.J.S.A. 19:63-16.1(f).

Second, when any police officer is dispatched to an early voting location or a polling place, the county board of elections or superintendent of elections shall promptly notify the Secretary of State of such dispatch. N.J.S.A. 19:6-16(b). The Secretary of State, county boards of elections, and superintendents of elections shall maintain a record of dispatches issued and reported including, but not limited to the time of dispatch, polling place location, the reason for the dispatch, the name of the police or law enforcement officer dispatched, the police or law enforcement officer’s badge number, the duration of the police or law enforcement officer’s presence and the immediate outcome of the dispatch. *Ibid.* Such information is deemed to be a public or government record under the Open Public Records Act. *Ibid.* This notification is not required for officers’ responses to disturbances or requests for assistance on or around the premises of the location of a ballot drop box.

Third, police officers may continue to assist, and be assigned to assist, election officials with the transport of specific election materials to and from an early voting location, polling place, or ballot drop box. N.J.S.A. 19:6-15.1(c); N.J.S.A. 19:63-16.1(f). Moreover, one or more officers may be assigned to a senior residential center that reported a threat or safety concern, but such assigned officer shall not interfere with any person present at the location for the purpose of voting. N.J.S.A. 19:6-16(a).

Fourth, no police officer, whether on-duty or off-duty, in or out of uniform, shall remain or stand within 100 feet of an early voting location or polling place during the conduct of an election “unless present at the location in response to a request for assistance” as noted above. N.J.S.A. 19:6-15.1(b). Similarly, no police officer shall remain or stand within 100 feet of a ballot drop box in use during the conduct of an election except to address a disturbance or responding to a request for assistance at the location as discussed above. N.J.S.A. 19:63:16.1(b)(2)(f). This does not prohibit a police officer from traveling to and from, or remaining within, their personal residence if the residence is within 100 feet of an early voting location, ballot drop box, or polling place; voting at that early voting location, ballot drop box, or polling place in a personal capacity; or escorting a person who may require the assistance of the officer to or from an early voting location, ballot drop box, or polling place. N.J.S.A. 19:6-15.1(c). Nor does this prohibit a police officer from traveling to and from, or remaining within, their place of employment in their official capacity for employment related activities, if their place of employment is within 100 feet of a polling place or early voting location.

Finally, as a general matter, an *off-duty* officer is permitted to serve as a member of the district board of elections or, if duly authorized, to serve as a challenger for a political party or

a candidate or on public question. *See* N.J.S.A. 19:6-15.1. No full-time or part-time police officer shall serve as a member of a district board (also known as a poll worker) unless the person is off-duty. N.J.S.A. 19:6-15.1(a). Nor shall a full-time or part-time police officer serve as an authorized challenger for a political party or a candidate or on a public question in the municipality in which that person is employed or if employed by an institution of higher education, in the municipality in which such institution is physically located, unless the person is off-duty. N.J.S.A. 19:6-15.1(a). This also applies to any officer employed by a county or the state: such officer shall not serve as a member of a district board or as a challenger in the county that person is employed or stationed, unless off-duty. Any police officer who is a candidate for an office and whose name appears on the ballot to be voted for an election may act as a challenger during the election as may be permitted under the laws for a candidate to act as a challenger. *Ibid.* Under no circumstances may such an officer wear a police officer's uniform or carry an exposed weapon while acting in the capacities described herein. *See* N.J.S.A. 19:6-15.1; *see also* N.J.S.A. 19:7-1 *et seq.* (concerning appointment of challengers).

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Should a law enforcement agency require additional guidance as to the application of the principles set forth in this memorandum, please contact in the first instance the appropriate Assistant Prosecutor in your County Prosecutor's Office and/or your county board of elections and/or superintendent of elections, depending on whether the matter is criminal or civil in nature. The Office of the Attorney General will provide an update if any policy discussed above changes.



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ATTEST:



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