



## *State of New Jersey*

PHILIP D. MURPHY  
*Governor*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
PO BOX 080  
TRENTON, NJ 08625-0080

ANDREW J. BRUCK  
*Acting Attorney General*

SHEILA Y. OLIVER  
*Lt. Governor*

### **ATTORNEY GENERAL ADMINISTRATIVE EXECUTIVE DIRECTIVE NO. 2021-13**

**TO:** Director, Division of Alcoholic Beverage Control  
Director, Division on Civil Rights  
Director, Division of Consumer Affairs  
Director, Division of Gaming Enforcement  
Executive Director, New Jersey Racing Commission

**FROM:** Andrew J. Bruck, Acting Attorney General

**DATE:** December 16, 2021

**SUBJECT: Directive Prioritizing Racial Justice in Civil Enforcement**

On my first day as Acting Attorney General, I asked all 17 Divisions of the Department of Law & Public Safety to identify specific ways they could address and alleviate the racial disparities that have long plagued our State. This Directive supplements that effort by making use of one of the Department's most powerful tools: its civil enforcement authority.

At least five of our Divisions are empowered to enforce State laws and seek civil remedies for those who fail to comply—Division of Alcoholic Beverage Control (ABC), the Division on Civil Rights (DCR), the Division of Consumer Affairs (DCA), the Division of Gaming Enforcement (DGE), and the New Jersey Racing Commission (NJRC) (collectively, "civil enforcement agencies" or "agencies"). In addition, the Affirmative Civil Enforcement Practice Group within the Division of Law (DOL) provides legal and investigative support to a range of client agencies that wield similar authorities. Taken together, these Divisions affect a broad swath of life in New Jersey—and provide significant opportunities to promote racial justice across our State.

Because this Directive is intended to provide overarching guidance to agencies with varied statutory duties and authorities, its mandates are necessarily general in nature. Each Division must determine for itself how best to implement the principles and best practices set forth here, with guidance from the Office of the Attorney General.

Yet the central commitments of this Directive are clear:



1. When setting investigative and enforcement priorities, a Division should consider how its enforcement actions may affect racial justice and equity for underserved communities.<sup>1</sup>
2. Each Division should affirmatively identify and prioritize matters that promote racial justice and equity for underserved communities.
3. Each Division should routinely assess whether its actions are advancing those goals.

This Directive provides a starting point for agencies to better promote racial justice and equity for underserved communities through civil enforcement. Each Division should consider whether and how every aspect of its work advances these goals.

Pursuant to the authority granted to me under the New Jersey Constitution and the Law and Public Safety Act of 1948, N.J.S.A. 52:17B-1, et seq., which provides for general responsibility of the Department's operations and the supervision of the organization of the Department, I hereby direct all civil enforcement agency personnel operating under the authorities of the laws of the State of New Jersey to implement and comply with the following directives.<sup>2</sup>

## **I. Providing an Equitable Complaint Process**

It should be easy for members of the public to file complaints and otherwise report violations of the law for investigation. Information about how to file a complaint or submit a tip should be displayed prominently on each agency's website and in its other written resources. Those resources should clearly identify the information that is necessary for the agency to initiate an investigation as well as describe what a complainant can expect once the claimant initiates the process (e.g., the next steps and anticipated time frame). Contact information for staff should be available to assist individuals who are having difficulty filing a complaint on their own.

To promote equitable access to their services, agencies should offer members of the public multiple convenient means of submitting tips and initiating complaints. The options should include methods accessible to people with different abilities and people with limited access to technology. Generally, members of the public should be able to submit tips and initiate complaints by mail and by phone as well as online. The option to file a complaint in person – either at the agency's offices, on site at regulated businesses, or in other locations – may be most convenient for some populations, including those who need assistance or who have limited access to technology. In particular, agencies should consider enabling individuals to file or initiate complaints at community events where the agency is represented by its staff, if

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<sup>1</sup> The term "underserved communities" is meant to be inclusive. Underserved communities are groups of people whose opportunity to participate in economic, social, or civic life, or ability to access and use government services, has been adversely affected by a characteristic they share. Examples of such characteristics include, without limitation, race, color, ethnicity, religion, gender, affectional or sexual orientation, gender identity or expression, geographic location, national origin, nationality, immigration status, age, disability and/or language or communication barriers.

<sup>2</sup> Nothing in this Directive is intended to amend or supersede any statute, law, or regulation. In addition, this Directive neither governs the Division of Law in its representation of client agencies outside the Department of Law & Public Safety nor applies to those client agencies directly. However, the Directive may be considered instructive in circumstances where it is not binding.

appropriate confidentiality can be maintained. Agencies also may use other methods – such as email and smartphone apps – to further increase accessibility.

Agencies should accept – and investigate when appropriate – complaints or tips that are submitted anonymously or by a third party other than the victim. Although agencies may be unable to provide relief to individual victims in such cases, accepting anonymous and third-party complaints and tips may help agencies to identify and address misconduct affecting more than one victim and misconduct targeting underserved communities who lack trust in government agencies.

## **II. Setting and Implementing Enforcement Priorities that Promote Racial Justice**

Responding effectively to individual complaints is important. At the same time, to fulfill its mission, a civil enforcement agency must do more than effectively handle individual complaints.

Civil enforcement agencies should proactively identify appropriate targets for investigation and possible enforcement actions, rather than rely solely on the submission of complaints. These investigations and enforcement actions may allow agencies to identify and remedy systemic problems that have disproportionate impacts on underserved communities but that may be difficult or impossible for affected individuals to identify themselves. In addition, members of underserved communities may be reluctant or unlikely to file complaints with a government agency when they have been victimized or their rights have been violated—for a variety of reasons (e.g., distrust of government or enforcement authorities, cultural barriers, skepticism, or a sense of hopelessness)—and they may be targeted in part because they are perceived as less likely to report violations. Proactive enforcement not only can protect the rights of those who are unwilling to file a complaint but also can send a message to potential victims and perpetrators that violations of the law that target members of underserved communities will not go unanswered.<sup>3</sup>

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<sup>3</sup> See, e.g., New Jersey Division on Civil Rights, Preventing and Eliminating Sexual Harassment in New Jersey: Findings and Recommendations from Three Public Hearings 15-16 (Feb. 2020), [https://www.nj.gov/oag/dcr/pdfs/DCR-SH-Report\\_Feb2020.pdf](https://www.nj.gov/oag/dcr/pdfs/DCR-SH-Report_Feb2020.pdf) (discussing how individuals with intersecting vulnerabilities face an increased risk of sexual harassment, including due to heightened fears of reprisal if they report their harassers). Even when the number of complaints from underserved communities is higher than elsewhere, that does not mean that complaint rates are higher; it is possible that there are more complaints because members of these communities are more often being mistreated in a particular way. Cf. Consumer Financial Protection Bureau, *Consumer Complaints Throughout the Credit Life Cycle, by Demographic Characteristics* 15 (Sept. 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-complaints-throughout-credit-life-cycle\\_report\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-complaints-throughout-credit-life-cycle_report_2021-09.pdf) (“[A]s the share of African American residents increases, the rate of submitting complaints [to the Consumer Financial Protection Bureau] continues to increase across virtually the whole range of shares. This difference is substantial, but it is unclear what factors contribute to the higher rates of submission in communities with a high share of Black or African American residents.”); Federal Trade Commission, *Serving Communities of Color: A Staff Report on the Federal Trade Commission’s Efforts to Address Fraud and Consumer Issues Affecting Communities of Color* 3 (Oct. 2021), [https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report\\_oct\\_2021-508-v2.pdf](https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf) (noting communities with different demographic populations reported different types of concerns at different rates).

When setting investigative and enforcement priorities, civil enforcement agencies should consider how their enforcement actions may affect underserved communities. They should affirmatively identify and prioritize matters that promote racial justice and equity, and should routinely assess whether their actions are advancing those goals. Under no circumstances may an agency use its civil enforcement powers to pursue an investigation or enforcement action on the basis of the actual or perceived race or other protected characteristic of the target or persons related to the target (e.g., owners or patrons).

In assessing impacts on racial justice and equity for underserved communities, agencies should consider the geographic distribution of their enforcement actions. Since 2018, for example, the Department of Environmental Protection and the Office of the Attorney General have prioritized the filing of environmental cleanup actions in overburdened “environmental justice” communities. That focus reflects that, historically, New Jersey’s low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution, and that it is incumbent upon the State to act now to correct this historic injustice.<sup>4</sup> While different agencies may confront different historic inequities, it may be appropriate for any agency to consider whether the geographic distribution of its enforcement activities is equitable.

In addition, when determining which investigations and enforcement action to pursue, it is appropriate for civil enforcement agencies to consider whether those harmed by a violation of the law are likely to be able to protect their rights and secure appropriate remedies by other means, or if instead, action by a civil enforcement agency is likely to be their only realistic recourse. For example, a corporation’s use of arbitration agreements to limit victims’ access to court and/or ability to participate in a class action may weigh in favor of government enforcement.

Evaluating the impacts on racial justice and equity for underserved communities from violations of the law and from civil enforcement agencies’ own actions may require new approaches to acquiring and analyzing demographic data. To the extent that they have authority to do so, agencies may find that it useful to begin requiring regulated entities to report such information on a regular basis and/or may seek such information in the course of investigations (for example, by subpoenaing demographic information about a target’s customer base).

### **III. Enforcing Anti-Discrimination Mandates**

One way for agencies to promote racial justice and equity for underserved communities is to vigorously enforce anti-discrimination and anti-harassment mandates in the laws they administer.

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<sup>4</sup> The groundbreaking environmental justice law signed by Governor Murphy on September 18, 2020, defines “overburdened community” as “any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.” N.J.S.A. 13:1D-158. Other civil enforcement agencies may consider using the Department of Environmental Protection’s Environmental Justice Mapping Tool to help them assess how their own actions may affect racial justice and equity for underserved communities.

DCR is the state agency charged with enforcing the Law Against Discrimination to combat discrimination and bias-based harassment in employment, housing, and places of public accommodation, but other agencies also should recognize that the laws they enforce also may prohibit discriminatory or harassing conduct in these or other areas. Agencies should identify which of the laws they enforce incorporate anti-discrimination and anti-harassment principles and apply those laws to promote racial justice and equity for underserved communities to the full extent of their authority through both regulation and enforcement.

In particular, anti-discrimination and anti-harassment principles may be embedded in laws of broader applicability. For example:

- Professional and occupational boards' authority to take action against a licensee for "professional or occupational misconduct" has been understood to include an anti-discrimination mandate.<sup>5</sup>
- ABC may take action against licensees that discriminate against customers pursuant to its broad authority to ensure the proper regulation and control of the manufacture, sale, and distribution of alcoholic beverages.<sup>6</sup>
- Casino licensees are required to afford equal employment opportunity to prospective and actual employees.<sup>7</sup> DGE, through its regulations, maintains strong policies and procedures prohibiting discrimination and harassment, including sexual harassment, and requiring industry Equal Employment Opportunity Business Plans and Plans Prohibiting Harassment and Discrimination.<sup>8</sup>
- NJRC may impose penalties upon and obtain other relief from a regulated person or entity who engages in discriminatory actions if NJRC determines that those actions constitute "conduct detrimental to the sport."<sup>9</sup>

Where a civil enforcement agency other than DCR has overlapping authority to address discrimination and harassment, the agencies should determine how best to coordinate investigations and enforcement actions. How matters are referred or coordinated between agencies will depend in part on the available investigative tools and possible remedies – including penalties – among other considerations.

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<sup>5</sup> N.J.S.A. 45:1-21(e); *see, e.g.*, N.J.A.C. 13:34C-1.9(b)(5) (Alcohol and Drug Counselor Committee); N.J.A.C. 13:42-10.4(d) (Board of Psychological Examiners); N.J.A.C. 13:44G-10.7(e) (Board of Social Work Examiners).

<sup>6</sup> *See, e.g.*, N.J.S.A. 33:1-39.

<sup>7</sup> *See* N.J.S.A. 5:12-134 and -135.

<sup>8</sup> N.J.A.C. 13:69K-1.1 to -7.3.

<sup>9</sup> *See* N.J.A.C. 13:70-1.15; N.J.A.C. 13:70-1.17; N.J.A.C. 13:71-7.29; N.J.A.C. 13:71-7.32; N.J.A.C. 13:71-8.16; N.J.A.C. 13:74-5.10; N.J.A.C. 13:74C-6.10.

#### **IV. Providing Equitable Remedies**

Civil enforcement agencies often have wide latitude to determine how the violation should be remedied. Remedies should be crafted to benefit those individuals and groups harmed by the violation(s) at issue – including, where appropriate, relief designed to prevent or deter future violations and relief for individuals who did not file a complaint with the agency. For example, when an entity’s violation involves racially disparate treatment or a racially disparate impact, an agency should consider whether to require anti-discrimination and anti-harassment training, including implicit-bias training, and/or monitoring or reporting to ensure compliance with the law and the terms of any resolution.

Although open investigations are generally confidential, agencies may consider if it is appropriate to consult with victims about the nature and amount of relief that may be obtained prior to a resolution being made public, and may consider consulting with other stakeholders when identifying appropriate remedies in matters that have already become public, including in pending litigation. Additionally, in appropriate cases, agencies may provide for a period of public input regarding the resolution of a matter before it is finalized. If a remedy requires members of the public to take some action in order to benefit—submitting a claim form, for example—the agency should take appropriate steps to provide information about the relief available and to provide such additional assistance as may be needed.

#### **V. Ensuring Robust Stakeholder Engagement**

Agencies should consult with community organizations, representatives of underserved communities, and other sources of information to identify potential violations of the laws they enforce that disproportionately affect underserved communities, to determine which subject matter areas and types of violations are of the greatest concern to these communities, and to enable agencies to prioritize those concerns. Although agencies generally must maintain confidentiality regarding pending investigations, they may communicate their broader enforcement priorities publicly and may seek the assistance of non-governmental organizations in providing information relevant to agency investigations and in referring individual complainants to the agency.

Advisory bodies offer a more formal option for informing agencies’ civil enforcement priorities and strategies. Agencies that pursue this option should assess the diversity of any advisory body they consult to consider whether its membership is able to speak from experience to considerations of racial justice and equity for underserved communities.

#### **VI. Improving Access for Individuals with Disabilities and Limited English Language Proficiency**

Government agencies should be able and ready to communicate effectively with all members of the public. Agencies therefore must be prepared to accommodate complainants, respondents, and witnesses with disabilities or with limited English language proficiency. Additionally, about 1 in

4 New Jersey adults identify as having a disability,<sup>10</sup> and they are disproportionately likely to be Black or Hispanic.<sup>11</sup> Meanwhile, more than a million New Jersey residents have limited English language proficiency; a plurality of those residents speak Spanish.<sup>12</sup>

A civil enforcement agency's inability to appropriately accommodate individuals with disabilities or with limited English language proficiency can adversely affect their ability to carry out their civil enforcement function. It can affect the integrity of the evidentiary record, the outcome of cases, and the ability to deliver justice for the individuals involved.

No less importantly, an agency's failure to appropriately accommodate individuals with disabilities or with limited English language proficiency can make those individuals less likely to seek out the benefits of the agency's services. That is unacceptable, particularly because individuals with disabilities or with limited English language proficiency may be targeted for predatory practices and violations of their legal rights.

Accordingly, each agency should have a plan for ensuring that its services are accessible to individuals with disabilities or with limited English language proficiency. Among other things, plans should address translation of significant documents, such as complaint forms; interpretation and translation services during intake, investigations, and proceedings; and the availability of bilingual and multilingual staff. Regarding intake processes in particular, complaint forms should be available in English and Spanish, at a minimum, and intake staff should understand when and how to use interpreter, translator, and relay or other assistive services.

## **VII. Effectively Communicating with All Members of the Public**

Effectively communicating to regulated entities and the broader public about civil enforcement actions is particularly important if those enforcement actions are intended not only to provide redress for a single complainant but also to deter similar violations in the future. When appropriate, public education about enforcement efforts should be tailored to populations whose members are most likely to be subjected to similar violations, including by translating such information into languages other than English and by communicating with non-governmental organizations that may expand the reach of an agency's message.

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<sup>10</sup> Centers for Disease Control & Prevention, Disability and Health Promotion, Disability & Health U.S. State Profile Data for New Jersey (Adults 18+ Years of Age), <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/new-jersey.html> (last visited Dec. 15, 2021).

<sup>11</sup> Centers for Disease Control & Prevention, National Center on Birth Defects and Developmental Disabilities, Division of Human Development and Disability, Disability and Health Data System (DHDS) Data, <https://dhds.cdc.gov/> (last visited Dec. 15, 2021).

<sup>12</sup> See U.S. Dep't of Justice, Civil Rights Division, Total Persons 5 Years and over Who Speak a Language Other than English at Home and Speak English Less than "Very Well," [https://www.lep.gov/sites/lep/files/resources/US\\_state\\_LEP\\_count.ACS\\_5yr.2014.pdf](https://www.lep.gov/sites/lep/files/resources/US_state_LEP_count.ACS_5yr.2014.pdf) (last visited Dec. 15, 2021) (using data from the 2010-2014 5-Year American Community Survey).

**VIII. Other Provisions**

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General’s authority to supervise operations of the Department of Law and Public Safety. This Directive imposes limitations 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 this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive 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 shall be addressed to the First Assistant Attorney General, or the First Assistant’s designee.
- D. ***Effective date.*** This Directive shall take effect immediately and remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Andrew J. Bruck  
Acting Attorney General

ATTEST:



Jennifer Davenport  
First Assistant Attorney General and  
Principal Law Enforcement Advisor

Date: December 16, 2021