

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: John F. Cunningham  
PTC Administrator

FROM: Louise T. Lester  
Assistant Attorney General

DATE: June 15, 2020

SUBJECT: **Proposal for the State-wide Licensure of Law Enforcement Officers**

**INTRODUCTION**

Since December 2019, the Police Training Commission (PTC) has been working to develop and implement a plan that would require State licensure of law enforcement officers. Early on, the PTC recognized that the licensing of law enforcement officers is essential to help ensure that all New Jersey officers are held to the same standards of professionalism. In light of recent events involving the alleged excessive use of force by law enforcement officers and the current public protests and riots that have ensued throughout the country as a result, it is more important than ever that New Jersey continue moving forward in developing and implementing its plan for the State licensure of law enforcement officers.

There is a nation-wide need for enhanced training of new police recruits and continued police training for veteran police officers in the proper “use-of-force” when making arrests and restraining individuals. Additionally, there is a continued nation-wide need to strengthen certain urban community and police relationships to eradicate mistrust and negative perceptions that each may have for the other.

Fortunately, New Jersey has been on the forefront of strengthening community and police relations through community engagement, such as law enforcement interactions with faith-based groups, and several other initiatives implemented by the Attorney General’s Office. However, there is, and always will be a need to ensure that New Jersey’s law enforcement officers are properly trained and conduct themselves with the professionalism that the title “Law Enforcement Officer” requires. To that end, the State, in order to help protect the health, safety and welfare of its citizens, must have the ability to monitor and properly discipline officers who act outside the bounds of professionalism and engage in illegal or improper conduct.

To help ensure that law enforcement officers throughout the State are all held to the same standards of professionalism and can be properly disciplined or removed from office if those standards are violated, the PTC is proposing the State-wide “licensure” of law enforcement officers. Licensure of officers will require that all individuals that fall under the definition of “law enforcement officer” will have to meet certain uniform professional standards to become or continue to be an active law enforcement officer. Licensure will establish uniform standards of police conduct that will allow New Jersey to monitor and share information about officers who violate those standards.

This memorandum addresses the issues that require vetting by the PTC in developing and implementing a plan for the proposed State-wide licensure of police officers.

## **POLICE TRAINING ACT**

In order to develop and implement the licensure of police officers, there must first be a State agency responsible for creating, monitoring and maintaining State-wide standards of professionalism for officers. Currently, no such agency exists in New Jersey. Other states throughout the country provide their respective Police Training Commissions with the authority to create state-wide law enforcement professional standards. For example, other states provide their PTCs with the authority to monitor in-service training, promotional training, entrance requirements and administer standardized testing.

Under current law, New Jersey’s PTC has limited authority and cannot enforce State-wide standards of professionalism. Currently, the PTC, in accordance with N.J.S.A. 52:17B-66, is required to oversee the training and educational instruction provided by training academies throughout the State. Additionally, under the PTC’s rules, the PTC is required to ensure that each law enforcement agency conduct background investigations on prospective hires. The PTC rules, at N.J.A.C. 13:1-8.1(a)(4) state:

(a) Prior to the acceptance of a trainee into a basic course, the chief police officer or chief executive officer of the employing law enforcement agency shall certify by completing a trainee record card issued by the Commission that:

...4.The employing law enforcement agency has conducted a pre-employment or background investigation of the individual to ascertain his or her character, fitness and eligibility to be permanently appointed as a police officer. The results of the pre-employment or background investigation shall be made known to the appointing authority;

Notwithstanding the above, the PTC rules do not provide it with the authority to review or determine the quality of the background investigations conducted by a law enforcement agency. Thus, the first issue that must be addressed by the PTC is whether the PTC’s authority should be increased to resemble other state commissions and whether it should be authorized to create uniform standards of professionalism and/or licensure.

## INTERNAL AFFAIRS GUIDELINES

Currently, standards of police officer professionalism are governed by individual internal affairs guidelines developed by each law enforcement agency. Under N.J.S.A. 40A:14-181, each law enforcement agency throughout the State is required to adopt and implement internal affairs guidelines that govern officer professionalism. The statute provides that:

Every law enforcement agency shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.<sup>1</sup>

On December 4, 2019, Attorney General Grewal issued a Directive to strengthen and supplement the internal affairs policies and procedures that each law enforcement and prosecuting agency in the State is required to implement. Generally, the Directive, among other things:

- Incorporates the new law enforcement resiliency initiatives established by the Officer Resiliency Directive (AG Directive 2019-1);
- Facilitates the review of the disciplinary history of an officer who seeks employment with another law enforcement agency;
- Emphasizes the importance of “early warning systems” for the prevention of misconduct;
- Clarifies standards for the selection of personnel for Internal Affairs units;
- Expands and standardizes training for officers assigned to Internal Affairs units;
- Strengthens procedures for accepting reports of alleged misconduct;
- Ensures effective handling of complaints against law enforcement executives and senior management;
- Establishes new timelines to encourage quicker resolution of Internal Affairs investigations;
- Requires completion of an administrative investigation after a criminal investigation is declined or terminated;
- Generally, requires recording of witness statements;
- Clarifies that investigations of firearm discharges are subject to the Independent Prosecutor Directive (AG Directive 2019-4);
- Clarifies public reporting requirements;
- Clarifies when police departments may share certain Internal Affairs investigative materials with third parties; and
- Enhances the role of County Prosecutors in overseeing police departments’ Internal Affairs functions.

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<sup>1</sup>N.J.S.A. 40A:14-181

As stated above, the AG Directive is intended to increase law enforcement professionalism and accountability.<sup>2</sup> Additionally, the Directive is intended to help provide uniformity in how each law enforcement and prosecuting agency conducts internal affairs investigations and hearings. The Directive goes a long way in helping to ensure standards of professionalism in law enforcement. However, because each law enforcement agency can develop its own standards in accordance with the AG Directive, there is room for inconsistency in the application of the Directive. To help remove the possibility of inconsistencies in the application of the AG's Directive, the licensure of police officers will go a step further in helping to ensure uniformity of police professional standards and to remove and discipline officers that fail to adhere to those standards.

As such, the establishment of a State agency with the authority to develop, implement and monitor standards of professional conduct for officers throughout the State is proposed. The State agency is necessary for uniformity, transparency, and consistency of disciplinary actions of officers who violate the law or engage in unethical conduct. To that end, the licensure of police officers through a designated State agency will help ensure that an officer who violates the standards of professional conduct will have their license revoked so that they can no longer work in the State as an officer.<sup>3</sup>

## **POLICE OFFICER LICENSING OR CERTIFICATION IN OTHER STATES**

In 1967, a report entitled "The Challenge of Crime in a Free Society and the Police," was prepared by the President's Commission of Law Enforcement and the Administration of Justice (the Commission). Recognizing the importance of training and state-wide standards for law enforcement personnel, one of the major recommendations of the Commission was that each state establish a "Peace Officers Standards and Training (POST) Commission."<sup>4</sup> There is a wide diversity of functions among the various states POST's; some actually run the training academies, and others, like New Jersey, certify training facilities managed by other governmental units.

In 2005, the Commission issued a survey to all 50 states to determine which states required certification or licensure of police officers. The responses to the 2005 Survey of POST Agencies Regarding Certification Practices indicate that of the forty-nine states with POSTs, forty-six of them certify law enforcement officers, and forty-four have the authority to revoke certification for cause. This ability to revoke makes the certification a de facto license. In fact, five states use the term license – Michigan, Minnesota, Missouri, North Dakota, and Texas. There is a great diversity among the states regarding the reasons a license can be revoked. Forty-three states are able to revoke for a felony conviction, six states can revoke for any misdemeanor conviction, twenty-nine for certain specified misdemeanor convictions, twenty-four

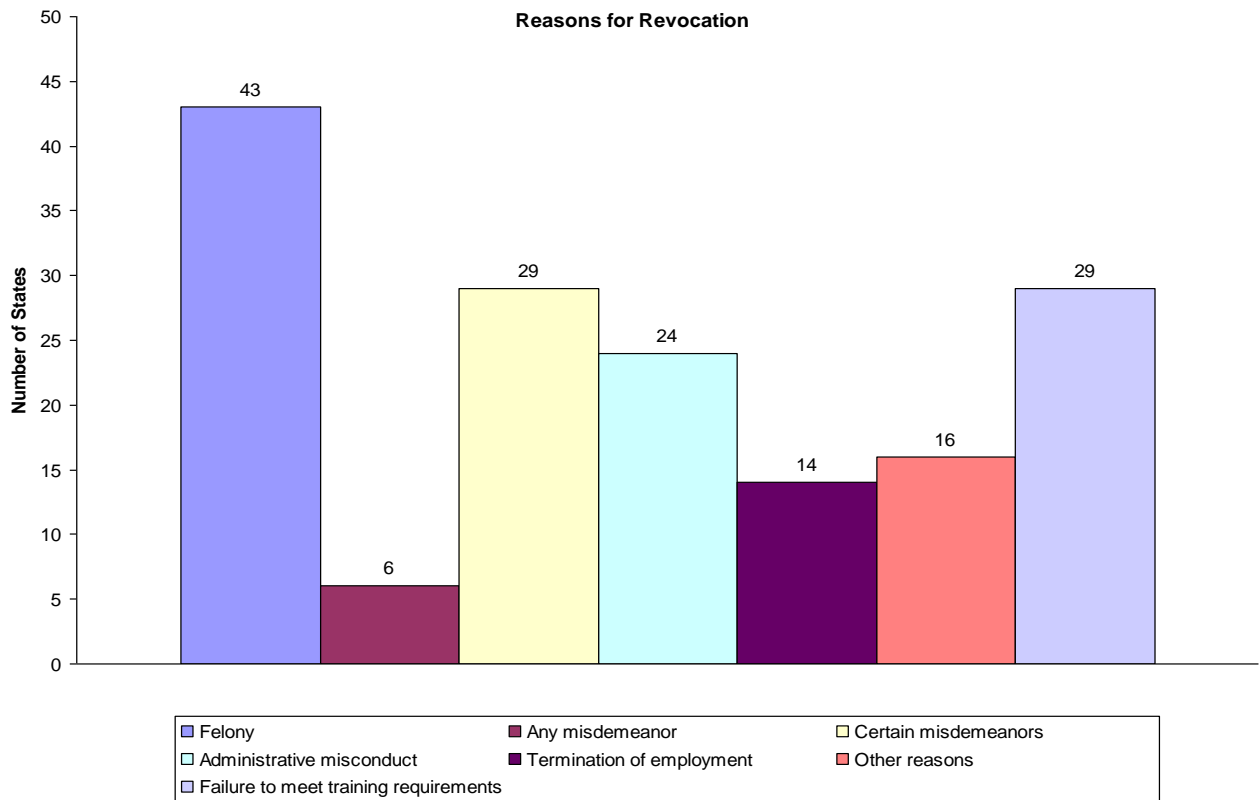
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<sup>2</sup> These changes were scheduled to take effect on April 1, 2020, but that date has been extended to August 31, 2020 by Attorney General Law Enforcement Directive 2020-2, due to the COVID-19 pandemic.

<sup>3</sup> Any revocation of an officer's license will be done in accordance with due process and civil service commission requirements.

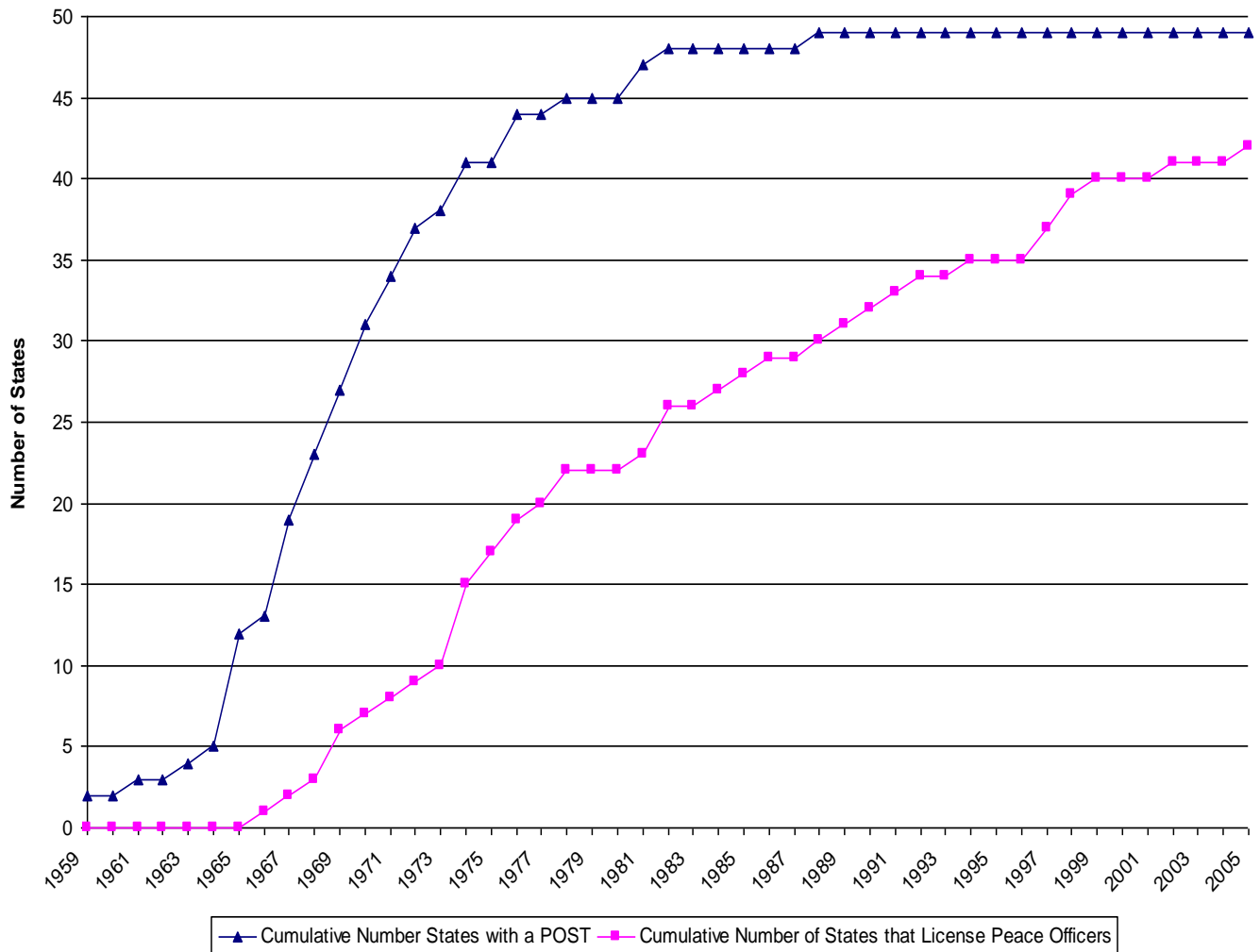
<sup>4</sup> "Law Enforcement Licensing", June 1, 2004, Daniel H. Colucci, Academy Director, County of Morris Firefighters & Police Training Academy.

administratively for misconduct, twenty-nine states for failure to meet training/qualification requirements, fourteen for termination of employment, and sixteen states reported the authority to revoke for other reasons. Additionally, thirty-three states reported having the authority to suspend a certification and of the forty-four states that possess the authority to revoke, Illinois was the only one reporting that they did not afford the officers due process through hearing or appeal. Of course, New Jersey only certifies that training has occurred, and consequently, there exists no certification of the officer that can be revoked or suspended.



Like New Jersey, the majority of POST commissions were not given the authority to revoke when they were created. Ten POST's were given the authority when they were created, with the remaining POST's obtaining the authority to revoke between one and thirty-eight years after the creation of the commission. The median length of time between the creation of the POST and the POST receiving the authority to revoke was nine years, with Indiana reporting the greatest length of time, thirty-eight years. As previously mentioned, Hawaii has no state-wide POST; the other five states that lack the authority to revoke certifications do have state-wide training commissions. They are: Massachusetts, New York, Rhode Island, Vermont, and of

course, New Jersey. It is noteworthy that New Jersey was one of the first states to create state-wide standards for law enforcement, and yet is one of the few remaining states that have not implemented law enforcement licensing.



**REQUIREMENT OF DUE PROCESS PRIOR TO LICENSE REVOCATION**

It is important to note that the revocation of any officer’s license is a serious matter and will not be done without due process. It is recommended that any legislation proposed to implement State-wide licensure of police officers include a specific provision outlining that the revocation of a license will only take place in accordance with due process and only after a fair and impartial hearing and an opportunity to appeal adverse decisions. As is the current practice,

any proposed legislation will require that all factual disputes concerning alleged officer misconduct will be adjudicated in an Administrative Law hearing.

### **Action Plan**

In developing a plan to license all New Jersey police officers, it is recommended that the plan be implemented in phases and that those phases be developed by the PTC. To that end, this proposal for licensure will be presented to the Police Training Commission for consideration at its next meeting to be held on June 24, 2020.

#### 1. Design

The design phase of this project includes meeting individually with the various stakeholders to obtain a consensus of objectives for the system, and then design the processes necessary to achieve these objectives. Below is a list of stakeholders to be consulted while developing and implementing State-wide licensure:

- County Prosecutors' Association of New Jersey
- Division of Criminal Justice
- NJ Policemen's Benevolent Association, Inc.
- NJ State Association of Chiefs of Police
- Representative from the OAG
- NJ State Lodge of the Fraternal Order of Police
- Police Academy Directors' Association of New Jersey (PADA)
- Sheriffs' Association of New Jersey
- NJ Jail Wardens Association
- NJ Department of Corrections

#### 2. Legislation

Legislation reflecting the agreed upon design will need to be enacted.

#### 3. Promulgate Regulations

In order to provide a licensing framework that addresses all aspects of the process, including appeal procedures, regulations will need to be promulgated.

#### 4. Hire Staff

Additional staff and resources are unquestionably required to implement this new process.

#### 5. Issue Licenses

This phase is estimated to be lengthy since there are over 35,000 police officers in the State. Additionally, issues concerning cost of implementation will have to be considered.

### **RECOMMENDATIONS**

Licensing of law enforcement professionals in New Jersey would provide significant benefit to both the law enforcement community as well as the citizenry in general, with no apparent detrimental impact. It is recommended that the PTC vet all issues concerning licensure and develop a plan to implement State-wide licensure of police officers.

#### **Licensure Committee Members**

Prosecutor Angelo Onofri – County Prosecutors Association of New Jersey

Undersheriff Mark Spitzer – New Jersey Sheriffs Association

Undersheriff Frank Cordero – New Jersey Sheriffs Association

Chief John Zebrowski – New Jersey Association of Chiefs of Police

Director Daniel Colucci – New Jersey Academy Directors Association

Warden Matthew Leith – New Jersey Jail Wardens Association

James Sharrock – New Jersey Fraternal Order of Police

Kevin Lyons – New Jersey State Policemen's Benevolent Association

Thomas Eicher – New Jersey Office of the Attorney General

Joseph Walsh – New Jersey Office of the Attorney General

Jeffery Barile – New Jersey Division of Criminal Justice

John Cunningham – New Jersey Police Training Commission